MALDON DISTRICT COUNCIL

CONSTITUTION

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PART 1 – SUMMARY AND EXPLANATION

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(NB - this is not an exhaustive description: for details reference must be made to the full Constitution. This summary and explanation does not form part of the Constitution)

1. THE COUNCIL'S CONSTITUTION

1.1 The Local Government Act 2000 requires the Council to prepare, keep up-to-date and publicise a document known as the Constitution. This document provides an important means of enabling members of the local community and stakeholders to understand how the Council makes decisions and who is responsible for those decisions.

1.2 The Constitution is at the heart of the Council's business. It allocates power and responsibility, and it regulates the behaviour of individuals and groups through codes of conduct, protocols and rules of procedure.

1.3 The Constitution is divided into fourteen articles which set out the basic rules governing the Council's business followed by more detailed information including responsibility for discharge of functions, procedures and codes of practice.

1.4 The Articles are intended to set the overall framework and in general will not be subject to frequent change. They are about what is to be done and by whom.

1.5 Procedure Rules, Codes of Conduct and the other material located after the Articles are broadly about how the Articles will be put into effect.

1.6 Article 1 of the Constitution commits the Council to efficient, transparent, and accountable decision making so that it will be more open and responsive to the needs and aspirations of the Community. Articles 2–14 explain the rights of members of the local community and how the key parts of the Council will work.

PART 1 – SUMMARY AND EXPLANATION

2. HOW THE COUNCIL OPERATES

2.1 The Council is composed of 31 Councillors elected every four years. Councillors are democratically accountable to residents of the Ward for which they were elected. The overriding duty of Councillors is to the whole community, including those persons who did not vote for them. Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. The Council has established a Joint Standards Committee which guides Members on the Code of Conduct and holds them to account as necessary.

2.2 All Councillors meet together as the Council. Meetings are normally open to the public and held on dates set by the Council. By law the Council has to meet annually – this is known as the Statutory Annual meeting. At Council meetings Councillors, amongst other things, decide the Council's policy framework and set the overall budget each year. The Council also establishes Committees and appoints Members to these Committees that help the Council operate. At Council meetings members of the public are able to submit questions on issues of concern to them.

2.3 The Chairperson of the Council is elected by the Council at each annual meeting and remains in office until a successor is appointed. The Chairperson chairs meetings of the Council and will have regard to, and at times interpret, the Constitution relative to the conduct of meetings. The Chairperson is also the Council's civic head, representing it at various civic, ceremonial, and other social events – a key aspect of this role will be to promote the District. The Vice-Chairperson of the Council is also elected by the Council and will deputise for the Chairperson.

2.4 Councillors may form themselves into groupings usually based around political parties. In normal circumstances the largest group will form an Administration from which the leading positions in the structure will be filled. Other groups will normally take on the role of opposition to constructively test and challenge the work and views of the Administration. The Leader is the Council's political head, being the leader of the largest political group on the Council. At each annual meeting the Council is asked to ratify that person as the Leader of the Council. If it does not do so it must elect a Leader. The Council will also appoint annually a Deputy Leader who will deputise for the Leader. While under governance arrangements adopted by the Council the Leader has no executive or delegated powers as such, the Leader is in a position of influence and works closely with the Chief Executive.

3. HOW DECISIONS ARE MADE

3.1 Most decisions on council functions are dealt with by politically balanced Committees subject to the general oversight of Council. The main Committees which are appointed by the Council are:

- Strategy and Resources;
- Performance, Governance and Audit;
- Licensing;
- Planning;

3.2 The Council also has an Overview and Scrutiny Committee and a Joint Standards Committee. Each Committee will appoint its own Chairperson.

PART 1 – SUMMARY AND EXPLANATION

4. THE BUDGET AND POLICY FRAMEWORK

4.1 The Council from time to time may produce, or review and revise as the case maybe, the main policy documents within which all decisions taken by the Council, its Committees, Sub-Committees and Officers must follow. Changes to the policy and strategy framework require approval of the Council. The key documents will include the Corporate Plan and the Local Plan (Planning Local Development Framework).

4.2 For the most important policies, policy formulation will be achieved after discussion in Council, but since the Council's time is finite, the Council also will receive advice on particular policy areas or individual matters from its Committees and from Member panels or working groups. These can be created by the Council or by the Committees.

5. DECISION TAKING

5.1 The Council and its Committees meet on a regular basis with scheduled meetings set out in a timetable of meetings approved by the Council, although there may be additional meetings convened for particular purposes.

5.2 The exercise of its functions and powers are undertaken either by the Council itself, or otherwise by Committees or paid Officers of the Council in accordance with arrangements determined by the Council. The Council's Committees each have terms of reference reflecting their respective remits. Terms of reference set out those matters on which a Committee may consider and report to the Council (to recommend) as distinct from those matters which it may deal with on behalf of the Council (to resolve). These arrangements are backed up by a Scheme of Delegation which enable various actions and decisions to be taken by named Officers of the Council instead of a Committee. On occasions, delegated decisions can only be taken after consultation with the Chairperson of the Committee. The Leader of the Council and the local Ward Councillor may also be included in certain consultations.

6. PROTOCOLS

6.1 As many of the Council's procedures become written down the need arises for more informal documents which set out all parties understanding of how these procedures will be conducted.

7. JOINT WORKING

7.1 The Council has agreed arrangements with other Councils to perform important functions jointly with them. This includes:

- The South Essex Partnership Joint Committee which covers the Basildon, Brentwood, Castle Point, Chelmsford, Maldon and Rochford Council areas and has responsibility for the ongoing maintenance and enforcement of on street parking restrictions under delegation from Essex County Council as highway authority.
- The Essex Countywide Traveller Unit Joint Committee which consists of a range of partner authorities to address the issue of unauthorised encampments.

- The Joint Standards Committee which discharges standards / ethical arrangements and upholds high standards of conduct not only for the Council itself but also the Parish and Town Councils in the District.

8. THE COUNCIL'S STAFF

8.1 Council paid employees are called Council Officers. Officers give advice, act on, and put into effect the Council's decisions and run the Council's services. By law, the Council has to appoint or designate the following Officers:

- **Head of Paid Service** – responsible for the co-ordination of the operational activity involved in delivering the Council's services and functions, including the appointment and management of staff.
- **Section 151 Officer or Chief Finance Officer** – responsible for the proper administration of the Council's financial affairs.
- **Monitoring Officer** – reports to the Council on cases of maladministration, the conduct of councillors and officers, and ensuring compliance with the Constitution (including the provision of advice and interpretation).

8.2 There is an internal protocol which provides guidance and expectations around the working relationship between elected Councillors and paid Officers.

9. RIGHTS OF MEMBERS OF THE LOCAL COMMUNITY

9.1 Members of the local community have a number of rights in their dealings with the Council which are set out in more detail in Article 3 of the Constitution. Some of these are legal rights, whilst others depend on the Council's own processes.

9.2 Members of the local community have the right to:

a) vote at local elections if they are registered.

b) contact the Council or their local Councillor about any matters of concern to them.

c) obtain a copy of the Constitution on payment of a reasonable charge.

d) attend meetings of the Council and its Committees except that part of a meeting where, for example, personal or confidential matters are being discussed.

e) petition to request a referendum on a change of governance arrangements.

f) submit questions to meetings of the Council and speak at Committee meetings on items of business.

g) see reports and background papers, and any record of decisions made by the Council unless the Council decides that the papers should not be made public. Papers can only be withheld from the public for reasons provided for legally. These are set out in the Access to Information Procedure Rules at Part 4 of the Constitution.

h) complain to the Council about any Council service or the way it is delivered.

i) complain to the Ombudsman if they think the Council has not followed its procedures properly.

j) complain to the Council's Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct.

k) inspect the Council's accounts and make their views known to the external auditor during prescribed periods each year.

9.3 Where members of the public use specific Council services they have additional rights. These are not covered in the Constitution.

10. OTHER MATTERS

10.1 This outline summary aims only to give a shortened description of the main processes under the Council's Constitution. It should not be relied on for detailed procedures or definitions, which are contained in the full constitution. The constitution also deals with various matters which are not mentioned above either because they are not essential for the brief description.

11. FURTHER INFORMATION

11.1 The Council welcomes participation by the local community in its work. For further information on your rights as a member of the local community, please contact the Chief Executive at the Council Offices, Princes Road, Maldon, Essex (Tel: 01621 854477).

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PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 1 - THE CONSTITUTION

CONTENTS

1. **Powers of the Council**
2. **Constitution**
3. **Purpose of the Constitution**
4. **Interpretation and Review of the Constitution**

1. POWERS OF THE COUNCIL

1.1 This article sets out the fundamental provisions of the Constitution. It confirms that the Council will exercise all its powers and duties in accordance with the law and the provisions of this Constitution.

2. CONSTITUTION

2.1 This Constitution, in all its parts, is the Constitution of the Maldon District Council.

3. PURPOSE OF THE CONSTITUTION

3.1 The purpose of the Constitution is to:

a) set out the Council's overall governance arrangements.

b) enable decisions to be taken efficiently and effectively.

c) create an effective means of holding decision-makers to public account.

d) enable the Council to provide clear leadership to the community, working in partnership with the local community, businesses and other organisations.

e) encourage and support the active involvement of the local community in the process of local authority decision-making.

f) help Councillors represent their constituents more effectively.

g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions taken.

h) provide the framework and structure in which cost effective quality services to the community can be delivered.

3.2 The Corporate Plan and Strategic Themes underpinning it will guide the Council in all the things it does and the decisions it makes.

4. INTERPRETATION AND REVIEW OF THE CONSTITUTION

4.1 Any interpretation of the Constitution must have regard to the purposes stated above. The Council will monitor and evaluate the operation of the Constitution as set out in Article 15.

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PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 2 – MEMBERS OF THE COUNCIL

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1. **Composition and Eligibility**
2. **Election and terms of Councillors**
3. **Roles and functions of all Councillors**
4. **Conduct**
5. **Allowances**
6. **Political Groups**
7. **Leader and Deputy Leader of the Council, and Leader of the Opposition**
8. **Chairperson and Vice-Chairperson of Committees**

1. COMPOSITION AND ELIGIBILITY

(a) Composition

The Council will comprise 31 Members, otherwise called Councillors. One or more Councillors will be elected by the voters of each ward in accordance with a scheme drawn up the Electoral Commission and approved by the Secretary of State. Councillors' details, including their wards, and membership of committees are shown in Part 6 of this Constitution.

(b) Eligibility

Only registered voters of the District, those living or working there, or those that occupy as tenant or owner land or property in the District will be eligible to hold the office of Councillor.

2. ELECTION AND TERMS OF COUNCILLORS

2.1 The regular election of District Councillors will generally be held on the first Thursday in May every four years (2019, 2023, etc.). The term of office of Councillors, subject to them making a declaration of office, will start on the fourth day after their election and will finish on the fourth day after the date of the next regular election.

3. ROLES AND FUNCTIONS OF ALL COUNCILLORS

(a) Key roles

All Councillors will:

(i) Collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions.

(ii) Contribute to the good governance of the District and actively encourage community participation and involvement in the decision-making process.

(iii) Effectively represent the interests of the Council and their ward as community leaders.

(iv) Respond to constituents' enquiries and representations, fairly and impartially and assist in the resolution of concerns and grievances.

(v) Contribute to the governance and effective management of the Council's business at meetings of the Council and other committees.

(b) Rights and duties

(i) Councillors will have rights of access to such documents, information, land and buildings of the Council as are necessary for the proper discharge of their functions and in accordance with the law.

(ii) Councillors will not make public information which is confidential or exempt without the consent of the Monitoring Officer or divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it. For these purposes, "confidential" and "exempt" information are defined in the Access to Information Procedure Rules in Part 4 of this Constitution.

(c) Training

Councillors will avail themselves of the opportunities provided for training so that they may vote at meetings of Planning Committees, and also participate in other quasi-judicial hearings e.g. employment, disciplinary and conduct matters, Public Licensing.

4. CONDUCT

(i) Councillors will maintain the highest standards of conduct and ethics.

(ii) Councillors will at all times observe the Codes of Conduct and Protocols set out in Part 5 of this Constitution.

5. ALLOWANCES

5.1 Councillors will be entitled to receive allowances in accordance with the Members' Allowances Scheme which is published on the Council's website.

6. POLITICAL GROUPS

(a) Application

As required by law the Members of the Council are to be treated as divided into different political groups when there is at least one political group constituted in accordance with paragraph (b) below.

(b) Constitution

(i) A political group shall be treated as constituted when there is delivered to the Director of Legal and Governance a notice in writing which:

a) is signed by two or more members of the Council who wish to be treated as a political group; and

b) complies with the provisions of paragraph (iii).

(ii) A political group shall cease to be constituted if the number of persons who are to be treated as members of that group is less than two.

(iii) A notice under paragraph (i) shall state:

a) that the Members of the Council who have signed it wish to be treated as a political group;

b) the name of the group;

c) the name of one member of the group who has signed the notice and who is to act as its leader.

(iv) A notice under paragraph (i) may specify the name of one other member of the group who has signed the notice and who is authorised to act in the place of the leader of that group.

(v) The Local Government (Committees and Political Groups) Regulations 1990 as amended applies and its provisions are supplemental to this Article.

7. LEADER AND DEPUTY LEADER OF THE COUNCIL, AND LEADER OF THE OPPOSITION

7.1 The Leader is the Council's political head, being the leader of the largest political group on the Council as notified annually to the Director of Legal and Governance under the Local Government and Housing Act 1989. Prior to each annual meeting, this person will be recognised as 'Leader-designate of the Council'. If there is no single largest political group the Programmes, Performance and Governance Manager is entitled for the purposes of these arrangements to regard the Leader of whichever of the equal largest groups which was previously the larger as Leader-designate of the Council until the Council by resolution determines otherwise.

7.2 At each annual meeting the Council is asked to ratify that person as the Leader of the Council. If it does not do so it must elect a Leader. The Council will also appoint annually a Deputy Leader who will deputise for the Leader. While under governance arrangements adopted by the Council the Leader

has no executive or delegated powers as such, the Leader is in a position of influence and works closely with the Chief Executive.

7.3 The Leader of the Council will also have the following roles:

- Provide a focal point for political leadership and strategic direction for the Council.
- Represent the interests of the Council.
- Ensure effective decision making including working with all political groups to seek to achieve, where possible, cross party co-operation.
- Be the key political contact for outside organisations (including Central Government, Local Authority Associations and Council partners) and internally for the Council's Management Team.
- Be the representative of the Council, for example, in its dealings with Central Government, other local authorities etc. and positively promote the Council within the media.
- Promote the long-term financial, business and economic stability of the Council.

7.4 The Deputy Leader will assist the Leader generally in the conduct of the role and will deputise when the Leader is unable to act or is unavailable. If the office of the Leader of the Council becomes vacant for any reason, the Deputy Leader shall temporarily assume the responsibility of Leader until the next or subsequent ordinary meeting of the Council when the process for either ratifying or electing the Leader as described above will apply.

7.5 The Leader of the second largest political group on the Council shall be recognised as the Opposition Leader. If there is more than one group of equal size which are each the second largest on the Council, then the Leaders of all such groups shall be recognised as Opposition Leaders.

7.6 For all the above arrangements, the term 'political group' shall have the meaning as in the Local Government and Housing Act 1989.

8. CHAIRPERSON AND VICE-CHAIRPERSON OF COMMITTEES

(a) Chairperson and Vice-Chairperson of Committees

The Council shall appoint at each Annual Meeting of the Council the Chairperson and Vice- Chairperson of all the Council's Committees.

The role of the Chairperson (and in their absence, the Vice-Chairperson) is as follows:

- Ensure effective conduct of committee meetings.
- Maintain a good understanding of the nature of the business of the Committee and key issues within its remit.

- Act as a Council spokesman as appropriate on matters within the Committee's remit, including responding to questions at Council meetings relating to the business and functions of the committee, media enquiries etc.
- Maintain good communication with other Chairpersons and officers to ensure the co-ordination and efficient management of all committee activity.
- Represent the Council in connection with matters within the committee's remit, for example other local authorities etc. and positively promote the Council within the media.

The Chairperson and Vice-Chairperson shall remain in office until the Annual Meeting following their appointment unless they resign or are removed by decision of the Council.

The Chairperson of Committees shall assume the role as 'Lead Member' for issues within their committees' remit.

(b) Procedure for Appointments

Appointments to the positions of Chairperson and Vice- Chairperson of Committees shall be conducted in accordance with the Council and Committee Procedure Rules 16(f) in Part 4 of this Constitution.

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PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 3 – THE LOCAL COMMUNITY AND THE COUNCIL

CONTENTS

1. **Rights of Members of the Local Community**
2. **Residents' responsibilities**

1. RIGHTS OF MEMBERS OF THE LOCAL COMMUNITY

1.1 The rights of members of the local community are summarised in Part 1 of this Constitution and are set out in more detail in this Article. Their rights to information and to participate are explained in more detail in the Access to Information Procedure Rules in Part 4 of this Constitution.

(a) Voting and Petitions

People on the Electoral Register for the District have the right to vote in elections in their ward and sign a petition to request a referendum for a change from one form of governance to another. For a petition to be valid to require a referendum, the number of signatures to it must equate to no less than 5% of the electorate of the area. If there is such a referendum, registered electors will have a right to vote.

(b) Other Petitions

The Council has adopted a petitions scheme which is available on the Council's website. A petition can, amongst other outcomes, lead to a Council debate or the matter being considered by one of the Council's committees. The Council only accepts signatures to a petition from those who live, work or study in the District.

(c) Information

The public have the right to:

(i) attend meetings of the Council, its Committees and Sub-Committees and Panels, with the exception of working groups or forums set up outside of the committee structure, other than by invitation. However, where confidential or exempt information is likely to be disclosed the meeting, or part of the meeting, may be held in private. See also paragraph (e) below.

(ii) see non-confidential reports and background papers, and any records of decisions made by the Council.

(iii) inspect the Council's accounts as published by law and the Management Letter published by the Council's External Auditor and make their views known to him.

(d) Consultation and Participation

Article 8 sets out the range of consultation and participation opportunities available to the local community. In summary, the opportunity exists for local people to:

(i) be consulted on proposals for service delivery.

(ii) ask questions at Council meetings and speak on items of business at Committee meetings and Public Licensing hearings. Details are published on the Council's website.

(iii) submit a petition.

(e) Attendance by the public at Council and Committee Meetings

(i) Although meetings of the Council shall be open to the public as provided by statute (subject to the power to exclude by resolution the public during the whole or part of the proceedings in certain circumstances) the public shall not be admitted in excess of the number which the public accommodation can safely contain.

(ii) In accordance with the provisions of the Openness of Local Government Bodies Regulations 2014, any person attending a Council meeting which is open to the public, may report on proceedings and publish or disseminate the results. For the purposes of the Regulations, 'Reporting' includes filming and providing comments on proceedings and 'report on proceedings' means:

- filming, photographing or making an audio recording of the proceedings at the meeting,
- using any other means for enabling persons not present to see or hear proceedings at the meeting as it takes place or later, or
- reporting or providing commentary on proceedings at the meeting, orally or in writing, so that the report or commentary is available to persons not present, as the meeting takes place or later."

(iii) Open sessions of Council and Committee meetings are recorded and published on the Council's website. Members of the public attending the meeting with a view to speaking are deemed to be giving permission to be included in the recording.

(iv) The public and press shall be excluded from meetings whenever it is likely that the business to be transacted would result in the disclosure of confidential information. Confidential information means information given to the Council by a Government Department on terms that forbid its public disclosure or information which cannot be publicly disclosed by court order.

(v) The public and press may be excluded from meetings whenever it is likely that the business to be transacted would result in the disclosure of exempt information. Exempt information is defined and explained further in the Access to Information Rules.

(vi) Where the public are excluded by resolution from a meeting, in whole or in part, no person shall report proceedings using methods which can be used without that person's presence at the meeting, and which enable persons not at the meeting to see or hear the proceedings at the meeting as it takes place or later.

2. RESIDENTS' RESPONSIBILITIES

2.1 Responsibilities of Members of the Public

2.1.1 Members of the public must not be violent, abusive or threatening to Councillors or officers and must not wilfully damage property owned by the Council, Councillors or officers.

PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 4 – THE COUNCIL

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1. **Meanings**
   - (a) **Policy Framework –**
   - (b) **Budget**
2. **Functions of the Council**
3. **Council Meetings**
4. **Responsibility for Functions**

1. MEANINGS

(a) Policy Framework –

The Council's policy framework means the following plans and strategies:

- The Corporate Plan;
- The Sustainable Community Strategy;
- Crime and Disorder Reduction Partnership Plan;
- Licensing Policy;
- Gambling Policy;
- Plans and strategies which together comprise the Local Development Framework / Development Plan *(Section 54 of the Town and Country Planning Act 1990)*;
- Development Plan Documents *(Section 15 of the Planning and Compulsory Purchase Act 2004)*;
- The Local Development Scheme;
- Supplementary Planning Documents.

And such other plans and strategies that the Council may decide or that are required by law.

(b) Budget

The budget is a statement identifying the allocation of financial resources, including capital resources, to different services and projects and to contingency provisions and reserves. The Annual Budget setting process includes the determination of such allocations, decisions on prudential indicators and the setting of the Council Tax. It also includes a review of fees and charges.

2. FUNCTIONS OF THE COUNCIL

2.1 The functions of the Council are set out in Part 3 of this Constitution.

3. COUNCIL MEETINGS

3.1 There are three types of Council meeting:

(a) The Annual Meeting;

(b) Ordinary Meetings;

(c) Extraordinary Meetings.

and they will be conducted in accordance with Council Procedure Rules in Part 4 of this Constitution.

4. RESPONSIBILITY FOR FUNCTIONS

4.1 The Council will maintain the tables and appendices in Part 3 of this Constitution setting out the responsibilities for the Council's functions as prescribed in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 5 – CHAIRPERSON OF THE COUNCIL

CONTENTS

1. Role and Function of the Chairperson and Vice-Chairperson of the Council
2. Civic and Ceremonial Role
3. Chairing Meetings of the Council
4. Other Responsibilities

1. ROLE AND FUNCTION OF THE CHAIRPERSON AND VICE-CHAIRPERSON OF THE COUNCIL

1.1 The Chairperson is elected and the Vice- Chairperson is appointed by the Council at the Annual Meeting. The Councillors who currently hold these positions are identified in Part 6 of this Constitution. The Chairperson of the Council and, in their absence, the Vice- Chairperson, will have the following roles and functions:

2. CIVIC AND CEREMONIAL ROLE

2.1 The Chairperson will attend such civic and ceremonial functions as they determine appropriate having regard to Council protocol, and local functions as part of supporting the community or promoting the interests of the Council and the District. They will promote public involvement in the Council's activities and will encourage the Council to engage in activities to increase the understanding of democratic processes, particularly amongst minority and disadvantaged groups and young people.

3. CHAIRING MEETINGS OF THE COUNCIL

3.1 The Chairperson will have the following responsibilities at Council meetings:

(a) To uphold and promote the purposes of the Constitution, and to rule on its interpretation and application when necessary.

(b) To preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community. The ruling of the Chairperson as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the aims of this Constitution contained in Article 1.

(c) To ensure that the Council meeting is a forum for the debate of matters of concern to the local community so that its business can be carried out efficiently in accordance with the law and this Constitution with regards to the rights of councillors and the interests of the community.

4. OTHER RESPONSIBILITIES

4.1 To call extraordinary meetings of the Council under Schedule 12 paragraph 3 to the Local Government Act 1972.

4.2 The detailed role of the Chairperson of the Council, in particular the civic responsibilities, are contained in the Council's Civic Protocol.

PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 6 - COMMITTEES

CONTENTS

1. **Committees**
2. **Roles and Functions**
3. **Proceedings**
4. **Membership**
5. **Sub-Committees**

1. COMMITTEES

1.1 The Council will establish such Committees as it requires for efficient and effective decision making and as required by law.

1.2 For matters relating to the ethics and probity of Members of the District Council and also Members of Parish and Town Councils in the District, and for the purposes of conducting any necessary hearings and monitoring the operation of the Member Code of Conduct, the Council has established a 'Joint Standards Committee'. The Council has established an Overview and Scrutiny Committee which also meets as the Council's Crime and Disorder Committee.

2. ROLES AND FUNCTIONS

2.1 The roles and functions of these Committees and any Sub-Committees established are set out in Part 3 of this Constitution.

3. PROCEEDINGS

3.1 Committees will conduct their proceedings in accordance with the Council and Committee Procedure Rules set out in Part 4 of this Constitution.

4. MEMBERSHIP

4.1 The size, membership and the Chairperson and Vice-Chairperson of all Committees and Sub-Committees established is set out in Part 6 of this Constitution.

5. SUB-COMMITTEES

5.1 A Sub-Committee may at any time be established to assist a Committee in furtherance of its role and responsibilities by either:

(a) the Council;

(b) the relevant Committee.

5.2 When establishing a Sub-Committee, the terms of reference of any such Sub-Committee its membership and the appointment of a Chairperson and Vice-Chairperson shall be settled.

PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 7 – STANDARDS ARRANGEMENTS

CONTENTS

1. **Composition**
2. **Roles and Functions of the Joint Standards Committee:**
3. **Procedural Arrangements:**
4. **Code of Conduct Complaints Process – Written Summary**

The Council has established a Joint Standards Committee (JSC) with all Parish and Town Councils in the Maldon District.

1. COMPOSITION

a. The JSC consists of eight elected Members of Maldon District Council, two Local Council representatives and one Independent Person (IP). The IP (or Reserve) - shall be notified of and invited to attend meetings and may participate in the discussion. The IP has no voting rights.

b. Maldon District Council Members will be appointed at the Annual Meeting of the Council in line with the rules on political proportionality.

c. Local Council Member representatives will be nominated (including substitutes) by the Essex Association of Local Councils. The representatives will act as co-opted members (without voting rights) and serve for a period of no more than two years subject to remaining elected and pending further nomination.

d. IPs will be appointed by the Council. IPs shall be appointed for a period of four years, with the option of re-appointment for a further four years; no IP may serve more than two terms of office.

The current IP is Mr J Mitchell and the reserve IP is Ms K Payne.

e. Group Leaders may not be members of the Committee.

f. The Chairperson and Vice-Chairperson of the Committee shall be elected at the first and special meeting of the Committee held on the day of the Annual Meeting of the Council. The Chairperson and Vice-Chairperson shall not be appointed from the same political group.

g. The Vice-Chairperson shall deputise for the Chairperson in his or her absence.

h. The quorum for meetings of the Committee shall be three voting Members.

i. Substitutes shall be permitted for District Council Members to maintain political balance, and named substitutes as nominated by the Parish Councils shall be permitted for Local Council Members.

2. ROLES AND FUNCTIONS OF THE JOINT STANDARDS COMMITTEE:

2.1 The JSC will promote and maintain high ethical standards of conduct by Councillors in the District of Maldon. It will hold Councillors to account where it determines that

Councillors' conduct has fallen short of what is to be expected or otherwise required of them pursuant to the applicable Council's adopted Code of Conduct. Further details on the role and functions of the JSC are set out elsewhere in this part of the Council's Constitution.

3. PROCEDURAL ARRANGEMENTS:

3.1 The JSC will conduct its proceedings in accordance with the relevant Procedure Rules set out in Part 4 of this Constitution and the adopted Conduct Complaint Process set out below. The Committee will meet as and when required.

3.2 When dealing with matters deemed to be private / confidential where the public is to be excluded from the meeting, it is essential that the Committee's work is confined to the Members of the Committee only at the time, and circulation of papers will be restricted accordingly. Notwithstanding Procedure Rule 19 and the general acceptance of the practice which enables Members to attend meetings of other Committees, private sessions of meetings of this Committee should proceed only with the appointed Members, the IP and required support of Officers present.

4. CODE OF CONDUCT COMPLAINTS PROCESS – WRITTEN SUMMARY

Stage I

1. If a complaint has been made by an Officer of the District Council against a District Councillor, it shall not normally be referred to the Monitoring Officer (MO) unless it has first been dealt with under the Member / Officer Relations Protocol.

2. Upon receipt of complaint, an initial assessment within five working days will be undertaken by the MO to establish the exact nature of the complaint and whether there is a potential breach of the Code of Conduct.

   Informative: It is the normal practice of this Council to disclose the identity of the complainant to the Councillor who is the subject of the complaint unless there are good reasons for the identity of the complainant to remain confidential.

3. All complaints will be acknowledged, and the Councillor complained of notified within five working days of receipt. The MO shall send a copy of this complaints process to the Councillor. The Leader of the Council and relevant Political Group Leader will be notified of all complaints against District Councillors and generally kept advised.

4. The MO will seek further information as required from either the Councillor complained of or the complainant within ten working days of receipt of the complaint. If the subject Councillor declines to co-operate with the MO within 15 working days of receipt of the complaint without good reason, then the MO may move directly to consult with the IP – this in itself could constitute a separate breach of the Code of Conduct.

5. The MO will then consider the complaint in discussion with the IP and reach a conclusion as to the likelihood of a breach of the Code and a way forward taking into account the public interest test (see below as a footnote[1]). A conclusion will normally

[1] Public Interest Test

- The seriousness of the alleged breach taking into consideration that minor breaches do not always require that action should be taken and if an

be reached within 15 working days of receipt of the complaint, and the respective parties notified. Options for conclusion at this stage are:

- No further action.
- Informal resolution, which may include reference to Political Group Leader for action (MO / IP to reconsider if no action taken).
- Refer to Police (if potential criminal issues involved).
- Formal investigation to be commenced within five working days of the receipt of the request and completed in a timely manner.

Stage II

1. Formal investigation outcomes:

    - NO BREACH
        - No further action.
        - Copy of report and findings to all parties including IP.
        - Report to JSC Members for information.

    - BREACH
        - Following investigation the MO / IP consider and pursue possible informal resolution, with a report afterwards to JSC for information.
        - **JSC Hearing** to determine if there is a breach of the Code of Conduct and to impose any sanctions (which may also be convened if there is a failure to achieve informal resolution under Stage II)

- Hearing findings to be notified to all parties immediately and any rationale/detailed reasoning for decision to be provided within seven working days of the hearing. Decision notice to be published on Council's website as soon as is practicable after notification if there is a breach of the Code of Conduct. In the case of a finding of no breach the decision notice shall only be published at the request of the Councillor the subject of the complaint.

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individual incident is deemed minor whether it forms part of a pattern of behaviour;

- Whether the complaint is politically motivated or is "tit for tat";
- When the alleged conduct took place and whether it could be fairly investigated;
- Whether the Councillor is still in office;
- Whether the Member deliberately sought personal gain for themselves or another person at the public expense;
- Whether the circumstances of the breach are such that a Member has misused a position of trust or authority and caused harm to another;
- Whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity.

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PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 8 - COMMUNITY CONSULTATION AND PARTICIPATION

CONTENTS

1. Community Consultation and Participation

1. COMMUNITY CONSULTATION AND PARTICIPATION

1.1 The Council will promote community consultation and participation through a range of opportunities as set out in the table below and has adopted a Consultation and Engagement Strategy:

Consultation and Participation Opportunity	Form, Function and Scope
Parish and Town Councils	Autonomous local authorities within defined areas able to raise funds through Council Tax to provide local services.
Community engagement and special interest groups	We have lists of stakeholder and community engagement group for consultation purposes.
Council and Committee meetings	The Council has approved and published arrangements for members of the public to ask questions at meetings of the Council and to speak at Committee meetings.
Petitions	The Council has approved and published a Petitions Scheme detailing how it will respond to petitions received from the community.
Surveys and consultations	Throughout the year a number of paper-based and on-line survey and consultations are undertaken to seek residents' views.

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PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 9 – JOINT ARRANGEMENTS

CONTENTS

1. **Arrangements to Promote Well-being**
2. **Joint arrangements**
3. **Access to information**
4. **Delegation to and from other local authorities**
5. **Contracting Out**

1. ARRANGEMENTS TO PROMOTE WELL-BEING

1.1 The Council may, subject to statutory restrictions:

(a) enter into arrangements or agreements with any person or body;

(b) co-operate with, or facilitate or co-ordinate the activities of, any person or body;

(c) exercise on behalf of that person or body any functions of that person or body; and

(d) create partnerships and partnership bodies.

2. JOINT ARRANGEMENTS

(a) In accordance with Section 101 of the Local Government Act 1972 (as amended), the Council may enter into joint arrangements with one or more local authorities to advise the Council on, or exercise Council functions.

(b) Details of any joint arrangements including delegations to joint committees are detailed in Part 3 of this Constitution.

3. ACCESS TO INFORMATION

3.1 The Access to Information Procedure Rules in Part 4 of this Constitution apply to functions in a joint arrangement except in so far as the arrangement itself has made provision.

4. DELEGATION TO AND FROM OTHER LOCAL AUTHORITIES

(a) The Council may arrange for the discharge of its functions to another local authority, or in certain circumstances, to the Executive of another local authority.

(b) The decision whether or not to accept a delegation from another local authority shall be reserved to a meeting of the Council.

5. CONTRACTING OUT

5.1 The Council may contract out to another body or organisation the running of services but remains accountable for the quality of service contractors provide.

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PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 10 - EMPLOYEES

CONTENTS

1. **General**
2. **Corporate Leadership**
3. **Functions and Areas of Responsibility of the Chief and Statutory Officers**
   - (a) Functions of the Head of Paid Service
   - (b) Functions of the Monitoring Officer
   - (c) Functions of the Section 151 Officer
   - (d) Duty to Provide Sufficient Resources to the Head of Paid Service, Monitoring Officer and Section 151 Officer
   - (e) Conduct
   - (f) Employment

1. GENERAL

1.1 The Council may engage such employees (referred to as Officers) as it considers necessary to carry out its functions. Charts showing the Senior Leadership Team structure of the Council are at Part 7 of this Constitution.

2. CORPORATE LEADERSHIP

2.1 The Council will employ Chief Officers (in accordance with an organisational structure approved by the Council) to take operational responsibility for management and delivery of its services and functions. Currently the Chief Officers are the Chief Executive, Director of Finance, Director of Legal and Governance, Director of Neighbourhood Services and Communities, Director of Strategy and Improvement and Director of Place, Planning and Growth.
The Council will also appoint the following statutory positions ("Statutory Officers"):

- Head of Paid Service
- Monitoring Officer
- Section 151 Officer

3. FUNCTIONS AND AREAS OF RESPONSIBILITY OF THE CHIEF AND STATUTORY OFFICERS

3.1 The Chief Officers shall work with Councillors to develop and manage the Council's strategic direction and to ensure the delivery of agreed targets. The Statutory Officer posts shall have the following functions:

(a) Functions of the Head of Paid Service

(i) Overall Responsibilities

Overall corporate management and operational responsibility for the Council (including overall management responsibility for all employees). The provision of professional advice to all parties in the decision-making process and together with the Monitoring Officer, responsibility for a system of record keeping for all the Council's decisions. Representing the Council on partnership and external bodies either as required by statute or by the Council.

(ii) Discharge of Functions by the Council

The Head of Paid Service will report to the Council, whenever they consider it appropriate, on how the Council's functions are discharged, the number and grade of Officers required to discharge the functions and how Officers are organised into an overall Officer structure.

(iii) Restrictions on Position

The Head of Paid Service may not be the Monitoring Officer but may hold the post of Section 151 Officer if appropriately qualified.

(iv) Structure

The Head of Paid Service will determine and publicise a description of the overall Officer structure of the Council showing the management structure and deployment of Officers.

(b) Functions of the Monitoring Officer

(i) Ensuring lawfulness and fairness of decision making

After consulting with the Head of Paid Service and Section 151 Officer, the Monitoring Officer will report to the Council, if they consider that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of placing a stop on the proposal or decision being implemented until the report has been considered.

(ii) Supporting the Joint Standards Committee

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Joint Standards Committee.

(iii) Receiving Reports

The Monitoring Officer will receive and act on reports into investigations of allegations of breach of the Members Code of Conduct.

(iv) Receiving complaints, conducting investigations and undertaking other action

The Monitoring Officer will carry out an initial assessment of conduct complaints received, conduct investigations or undertake other action in respect of matters referred to them by the Joint Standard Committee (within the provisions set out in Part 3 of this Constitution). This includes conduct complaints against Parish and Town Councillors in the Maldon District.

(v) Advising whether decisions are within the budget and policy framework

In association with the Section 151 Officer the Monitoring Officer may advise whether decisions are in accordance with the budget and policy framework.

(vi) Providing Advice

The Monitoring Officer will provide advice to all Councillors on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues. The Section 151 Officer has similar responsibilities.

(vii) Restrictions on Position

Neither the Head of Paid Service or the Section 151 Officer can be the Monitoring Officer.

(c) Functions of the Section 151 Officer

(i) Ensuring Lawfulness and Financial Prudence of Decision Making

After consulting with the Head of Paid Service and the Monitoring Officer, the Section 151 Officer will report to the Council and to the Council's external auditor if they consider that any proposal, decision or course of action will involve incurring unlawful expenditure or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.

(ii) Administration of Financial Affairs

They will have responsibility for the administration of all the financial affairs of the Council, including those contained in Schedule 4 of Part 3 of this Constitution.

(iii) Internal Audit

They will have responsibility for the provision of an effective internal audit function.

(iv) Providing Advice

They will provide advice to all Councillors on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues, and will support and advise Councillors and Officers in their respective roles. The Monitoring Officer has similar responsibilities.

(v) Give Financial Information

They will be responsible for the provision of financial information to the media, members of the public and the community.

(d) Duty to Provide Sufficient Resources to the Head of Paid Service, Monitoring Officer and Section 151 Officer

The Council will provide the Head of Paid Service, Monitoring Officer and Section 151 Officer with such Officers, accommodation and other resources sufficient to allow their duties to be performed.

(e) Conduct

Officers will comply with the Employees' Code of Conduct, and also the Protocol on Member / Officer Relations set out in Part 5 of this Constitution.

(f) Employment

The recruitment, selection and dismissal of Officers will comply with the Officer Employment and Disciplinary Rules set out in Part 4 of this Constitution.

PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 11 – DECISION MAKING

CONTENTS

1. **Responsibility for decision making**
2. **Principles of decision making**
3. **Type of Decision**
4. **Decision Making by the Council**
5. **Decision Making by other committees established by the Council**
6. **Decision Making by Council Bodies Acting as Tribunals**
7. **Access to Information**

1. RESPONSIBILITY FOR DECISION MAKING

1.1 The Council will issue, and keep up to date, a record of what part of the Council or what individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

2. PRINCIPLES OF DECISION MAKING

2.1 All decisions of the Council will be made in accordance with the following principles:

(a) Proportionality (i.e. the action should be proportionate to the desired outcome).

(b) Due consideration of all relevant factors and options, taking into account the results of any consultation undertaken and the professional advice of Officers.

(c) Respect for human rights and equal opportunity.

(d) A presumption in favour of openness.

(e) Clarity of aims and desired outcomes.

3. TYPE OF DECISION

a) **Decisions Reserved to Council** - Decisions relating to the functions referred to in Article 4 and specified in Part 3 of this Constitution will be made by the Council and will not be delegated.

b) **Decisions made by Committees appointed by the Council** – Power to make such decisions is delegated by the Council as set out in the Terms of Reference contained in Part 3 of this Constitution, in accordance with Section 101 of the Local Government Act 1972.

c) Decisions made by Sub-Committees appointed either by the Council or the main Committees with power delegated to them to make decisions in accordance with the terms of reference contained in Part 3 of the Constitution.

d) Decisions made by officers in accordance with the scheme of delegation contained in Part 3 of the Constitution.

4. DECISION MAKING BY THE COUNCIL

4.1 Subject to the general principles contained in this Article, the Council meeting will follow the Council and Committee Procedure Rules set out in Part 4 of this Constitution when considering any matter.

5. DECISION MAKING BY OTHER COMMITTEES ESTABLISHED BY THE COUNCIL

5.1 Subject to the general principles contained in this Article, other Council Committees will follow the Procedure Rules relating to Committees and Sub-Committees set out in Part 4 of this Constitution when considering any matter.

6. DECISION MAKING BY COUNCIL BODIES ACTING AS TRIBUNALS

6.1 The Council, a Councillor or an Officer acting as a tribunal or in a quasi-judicial manner or determining / considering (other than for the purposes of giving advice) the civil rights and obligations, or the criminal responsibility, of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

7. ACCESS TO INFORMATION

7.1 The Access to Information Procedure Rules in Part 4 of this Constitution apply to decisions taken under this Article.

PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 12 – FINANCIAL MANAGEMENT, CONTRACTS AND LEGAL MATTERS

CONTENTS

1. **Financial Management**
2. **Contracts**
3. **Legal proceedings**
4. **Authentication of Documents**
5. **Common Seal of the Council**
6. **Signing of documents**

1. FINANCIAL MANAGEMENT

1.1 The administration of the Council's financial affairs will be conducted in accordance with the Financial Regulations set out in Part 4 of this Constitution.

2. CONTRACTS

2.1 Every contract made by the Council will comply with the Contract Procedure Rules set out in Part 4 of this Constitution.

3. LEGAL PROCEEDINGS

3.1 The Chief Executive or Directors in consultation with the Chairperson or Vice-Chairperson of the relevant Committee and Leader of the Council is authorised to institute or defend legal proceedings on any criminal offence or civil proceedings not otherwise provided for in the Scheme of Delegation. A report will subsequently be made to the relevant Committee. This authorisation includes responding to legal representations on behalf of the other party, any directions of the Court, and the pursuance and settlement of disputes by means other than litigation.

4. AUTHENTICATION OF DOCUMENTS

4.1 Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Director of Legal and Governance or other person authorised by them, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

4.2 Any contract shall be entered into on behalf of the authority will be in accordance with the Contract Procedure Rules set out in Part 4 of this Constitution.

5. COMMON SEAL OF THE COUNCIL

5.1 A decision of the Council, a Committee or Sub-Committee of the Council or a delegated decision by an officer will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Director of Legal and Governance should be sealed and shall be attested by either the Chief Executive or any Director who reports directly to the Chief Executive or any employed solicitor, barrister or legal executive. An entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for the purpose and shall be signed by the person who has attested the seal. Such documents will include those relating to works contracts, leases, transfers and bylaws.

6. SIGNING OF DOCUMENTS

6.1 The Chief Executive or any Director who reports directly to the Chief Executive acting within their area of responsibility or any employed solicitor, barrister or legal executive are authorised to sign any contracts, notices, or other documents which are not required to be sealed by the Council.

PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 13 – REVIEW AND REVISION OF THE CONSITUTION

CONTENTS

1. **Duty to Monitor and Review the Constitution**
2. **Changes to the Constitution**

1. DUTY TO MONITOR AND REVIEW THE CONSTITUTION

1.1 The Chief Executive will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect and will make recommendations for ways in which it could be amended in order to better achieve the purposes set out in Article 1.

2. CHANGES TO THE CONSTITUTION

2.1 Changes to the Constitution may take place in the following ways:

(a) The Chief Executive has authority to correct anomalies, errors, inconsistencies and changes which do not have any material effect, and to make textual changes which may arise from any decision the Council might make on any matter or changes to the law.

(b) The Chief Executive may recommend changes to the Constitution to the Performance, Governance and Audit Committee or the Council.

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PART 2 – ARTICLES OF THE CONSTITUTION

ARTICLE 14 – SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

CONTENTS

1. **Suspension of the Constitution**
2. **Interpretation**
3. **Publication**

1. SUSPENSION OF THE CONSTITUTION

(a) Limit to suspension

The Articles of this Constitution may not be suspended. The Rules of Procedure relating to meetings of the Council, Committees and Sub-Committees may be suspended to the extent permitted within those Rules and the law.

(b) Procedure to Suspend

A motion to the Council to suspend any rules will not be moved without notice unless at least sixteen Members of the Council are present.

The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the aims of the Constitution set out in Article 1.

2. INTERPRETATION

2.1 The ruling of the Chairperson of the Council as to the interpretation or application of this Constitution, or as to any proceedings of the Council, shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

3. PUBLICATION

3.1 The Chief Executive will ensure that:

(a) an electronic copy of this Constitution is made available to each Member of the Authority upon delivery a declaration of Acceptance of Office on the Member first being elected to the Council. Any revisions to this Constitution will be provided at the earliest opportunity.

(b) copies of the Constitution are available for inspection on the Council's website, at the authority's offices and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee;

(c) the summary of the Constitution is made available without charge and is updated as necessary.

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PART 3 – RESPONSIBILITY AND FUNCTIONS

INTRODUCTION

The Council may make arrangements under Section 101 of the Local Government Act 1972 (as amended) for the discharge of any of its functions, except where legislation prescribes that Section 101 shall not apply, by:

(a) a Committee;

(b) a Sub-Committee;

(c) a joint Committee;

(d) another local authority, or

(e) an Officer.

Under the Local Government Act 1972, there is no statutory power to delegate the exercise of any function of the authority to an individual Councillor.

Part 3 of this Constitution deals with:

(a) The role and functions of the Council and delegated powers of committees appointed by the Council at its annual meeting and of any sub-committees established.

(b) The delegation of Council functions to officers.

(c) The “Proper Officer” provisions.

In the case of all delegation of functions, a Committee or Sub-Committee or Officer may determine not to exercise a function delegated to them and refer the decision back to Council or the relevant Committee.

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PART 3 – RESPONSIBILITY AND FUNCTIONS

GENERAL PROVISIONS

CONTENTS

1. **Conferences**
2. **Development Proposals**
3. **Sealing, Signing and Authentication of Documents**
4. **Authentication of documents for legal proceedings**
5. **Common Responsibility**
6. **Contracts**
7. **Membership of Outside Organisations**
8. **Responsibilities and Functions**
9. **Conflicts between Committees**
10. **Inspection of Documents**
11. **Inspection of Lands, Premises etc.**

The following general provisions apply to Committees in exercise of their functions and responsibilities and also Officers acting under the Scheme of Delegation.

1. CONFERENCES

1.1 Each Committee may authorise the attendance, subject to budgetary provision, of a Member at a Conference the subject matter of which falls within the purview of that Committee.

2. DEVELOPMENT PROPOSALS

(a) In cases where a Committee proposes to submit an application under the Town and Country Planning General Regulations 1992 for development on behalf of the Council, including for development of land which has been declared surplus to the requirements of the Council, the Committee may resolve that such applications be submitted to the relevant planning authority.

(b) The Chief Executive and Director of Neighbourhood Services and Communities are authorised to make proposals under the 1992 Regulations and to seek any required planning or building control permission in pursuance of any resolution or objection of the Council.

3. SEALING, SIGNING AND AUTHENTICATION OF DOCUMENTS

3.1 **Sealing and Signing of documents**

3.1.1 A resolution of the Council or of a Committee where that Committee has the power, or an Officer acting under delegated powers relevant, authorising the acceptance of any tender, the purchase, sale, letting, or taking of any property, the issue of any stock, the presentation of any petition, memorial, or address, the making of any rate

or contract, or the doing of any other thing, shall be a sufficient authority for sealing any document or for the conclusion of any contract necessary to implement or give effect to the resolution.

3.1.2 The Seal shall be attested by the Chief Executive and any Director who reports directly to the Chief Executive or any employed Solicitor, barrister or legal executive. An entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for the purpose and shall be signed by the person who has attested the seal. Such documents will include those relating to works contracts, leases, transfers and bylaws.

3.1.3 The Chief Executive and any Director who reports directly to the Chief Executive, acting within their area of responsibility or any employed solicitor, barrister or legal executive shall be authorised to sign any contract, notice, or other document which is not required to be sealed by the Council.

4. AUTHENTICATION OF DOCUMENTS FOR LEGAL PROCEEDINGS

4.1 Where any document will be a necessary step in legal proceedings on behalf of the Council it shall be signed by the Director of Legal and Governance unless any enactment otherwise requires or authorises, or the Council gives the necessary authority to some other person for the purpose of such proceedings.

5. COMMON RESPONSIBILITY

5.1 Each Committee shall have regard to the implications of the Maldon Corporate Plan, Workforce Development Plan, the Crime and Disorder Strategy and the IT Strategy.

6. CONTRACTS

6.1 There shall be delegated to each Committee power to allocate and manage within approved estimates contracts entered into for the purpose of achieving or furthering the approved programme of the Committee.

7. MEMBERSHIP OF OUTSIDE ORGANISATIONS

7.1 Appointments to Outside Organisations shall be made by the Council, normally at its Annual Meeting. Casual vacancies shall be considered by the next ordinary meeting of the Council.

8. RESPONSIBILITIES AND FUNCTIONS

8.1 All proposals for amending the terms of reference of Committees and the Scheme of Delegation will be considered by the Performance, Governance and Audit Committee and recommended to the Council.

9. CONFLICTS BETWEEN COMMITTEES

9.1 All conflicts between Committees shall be determined by the Council.

10. INSPECTION OF DOCUMENTS

10.1 A Member of the Council may on application to the Director of Legal and Governance inspect any document which has been considered by a Committee, or by the Council, and if copies are available shall on request be supplied for the like purposes with a copy of such a document.

10.2 A Member shall not knowingly inspect and shall not call for a copy of any document relating to a matter in which they are professionally interested or in which they have a disclosable personal interest in the terms of the Local Code of Conduct.

10.3 This shall not preclude the Chief Executive, Directors or the Council's legal advisor from declining to allow inspection of any document that is, or in the event of legal proceedings, would be protected by privilege arising from the relationship of solicitor and client.

10.4 All reports made or Minutes kept by any Committee shall, as soon as the Committee has concluded action on the matter to which such reports or Minutes relate, be open for the inspection of any Member of the Council.

10.5 On the request of any Member attending a meeting of a Committee of which they are not a Member, they shall be given access to any documents which have been provided to the Committee at that meeting except where the report or document contains information relating to staffing information, or where the identity of individual staff would be revealed (see Access to Information Procedure Rules).

11. INSPECTION OF LANDS, PREMISES ETC.

11.1 Unless specifically authorised to do so by the Council, or a Committee, a Member of the Council shall not issue any order for any works which are being carried out by or on behalf of the Council or claim by virtue of their membership of the Council any right to inspect or to enter upon any lands or premises which the Council has the power or duty to inspect or enter.

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PART 3 – RESPONSIBILITY AND FUNCTIONS

TERMS OF REFERENCE – COUNCIL

CONTENTS

Terms of Reference

COMMITTEE	**COUNCIL**
MEMBERSHIP	All 31 Members of the Council
LEAD OFFICER	Chief Executive
OFFICERS / UNITS PRIMARILY REPORTING	Statutory Officers and Directors

TERMS OF REFERENCE

The Council Meeting will deal with the following matters:

1. Adopt any fundamental changes to the Council's Constitution after consideration by the Performance, Governance and Audit Committee.

2. Make appointments to:
   - all committees and approve the delegation / allocation of functions to them; and
   - outside bodies and joint committees.

3. Determine the Budget Strategy in terms of the total revenue and capital budgets each year for the General Fund.

4. Determine the amount of Council Tax to be levied.

5. Adopt a Code of Conduct for Members and employees.

6. Approve or adopt the following applications, plans, schemes and strategies:
   - Corporate Plan and Thematic Strategies;
   - Local Development Plan and associated Supplementary Planning Guidance / Documents and Strategic Masterplan Frameworks;
   - Commercial Strategy;
   - Homelessness, Rough Sleeper and Housing Strategy;
   - Commissioning and Procurement Strategy;
   - ICT Strategy;
   - Strategic Plan for Workforce and Development;
   - Treasury Management and Annual Investment Strategy;
   - Corporate Communications Protocol;
   - Marketing and Communications Strategy;
   - Corporate Debt Recovery Strategy;
   - Medium Term Financial Strategy.

and any other plans, policies or strategies which have a significant corporate impact on the Council or which have a significant impact on the Council's resources.

7. Adopt an allowances scheme under Part VI of the Constitution having regard to the recommendations of the Independent Remuneration Panel;

8. Confirm the appointment of the Head of the Paid Service;

9. Appoint a Returning Officer, Electoral Registration Officer, and designate other Proper and Responsible Officers as required by statute.

10. Consider recommendations from the Investigating and Disciplinary Panel (Section 27a of the Localism Act) and agree action to be taken in relation to dismissal of the statutory officers.

11. Debate issues that are the subject of petitions signed by a specified number of people (as set out in the Petitions Scheme in the appendix to the Constitution);

12. The determination of neighbourhood area applications in the following circumstances:

- where appropriate representations have been received;
- where the area to be designated includes land within another civil parish not represented by the applicant;
- where an application is made by an organisation or body not recognised by Section 61G of the Town and Country Planning Act 1990; or
- where there are two competing neighbourhood area applications for the same location

13. Consider all other matters which, by law, must be reserved to Council or otherwise as provided for in the Council's Constitution.

PART 3 – RESPONSIBILITY AND FUNCTIONS

TERMS OF REFERENCE – STRATEGY AND RESOURCES COMMITTEE

CONTENTS

1. **Terms of Reference**
2. **Operating Protocol**

COMMITTEE	**STRATEGY AND RESOURCES**
MEMBERSHIP	11 Members of the Council appointed annually and politically balanced
LEAD OFFICER	Chief Executive
OFFICERS / UNITS PRIMARILY REPORTING	Senior Leadership Team

1. TERMS OF REFERENCE

1.1 The Strategy and Resources Committee will exercise the Council's powers in relation to the following, subject to its recommending policy for those areas that fall outside the policy or budget framework, which will be submitted to the Council for approval or adoption.

a) Review and recommend to the Council on its budget framework including:

- Medium Term Financial Strategy
- Capital Strategy
- Capital and Revenue Budgets
- Treasury Management Strategy
- Fees and Charges levied by the Council
- Funding initiatives

provided that the Committee may change individual fees and charges where the Council needs to respond to market changes or changes to the cost base.

b) Regulation and control of the Council's finances, including investments and borrowing, in accordance with its treasury management strategy.

c) Ensure compliance with the Council's budget including its revenue and capital budgets

d) Review the Council's overall policy framework, and recommend on those plans, policies and strategies (except relating to Public Licensing and Risk Management) which are reserved to the Council for approval and adoption (see Terms of Reference- Council (6)).

e) Approval or adoption any other plans, policies and strategies which do not have a significant corporate impact on the Council or on its resources (see Terms of Reference - Council (6). [1]

f) Strategic control and management of the Council's assets, including decisions on leases with an annual value in excess of £25,000 or tenure in excess of 14 years.

g) Approval of business cases for new corporate and commercial projects, and allocation of resources where required.

h) Consideration and recommend to the Council on:

- Strategic and Corporate Objectives.
- Adoption of a new function or sphere of activity.
- Cessation of a new function or sphere of activity.
- Contracting out of an existing activity or reinstatement in-house of a previously contracted out activity (including service tender proposals under the Community Right to Challenge).

i) Preparation, planning and oversight of civil emergencies.

j) Consideration of strategic transport and flood management matters.

k) Review and appraisal of designated Conservation Areas, the approval of Conservation Area Management Plans, and the identification and designation of new Conservation Areas.

l) Approval of the Local Planning Authority's response to the Neighbourhood Planning Consultations under Regulation 16 of the Neighbourhood Planning (General) Regulations 2012.

m) Decisions in exercise of any function, duty or power of the council which is not delegated to another Committee, Sub-Committee or an officer, or reserved for decision by full Council under this Constitution or by law.

n) Receive reports on Human Resources statistics.

o) Expenditure over £10,000 from the budget for the development of commercial opportunities and projects.

2. OPERATING PROTOCOL

2.1 The Committee will meet in accordance with arrangements determined by the Council.

2.2 Other Members, the Head of Paid Service, Monitoring Officer, Section 151 (S151) Officer and Directors will also have the right to attend.

2.3 In all other respects and as appropriate, the Council and Committee Procedure Rules will apply.

[1] With exception of Human Resources Policies and Procedures (Council 30/07/24)

PART 3 – RESPONSIBILITY AND FUNCTIONS

TERMS OF REFERENCE – PERFORMANCE, GOVERNANCE AND AUDIT COMMITTEE

CONTENTS

1. **Terms of Reference**
   - Performance and service delivery
   - Governance
   - Audit and risk
2. **Operating Protocol**

COMMITTEE	**PERFORMANCE, GOVERNANCE AND AUDIT**
MEMBERSHIP	10 Members of the Council appointed annually and politically balanced Non-voting Members: One Independent person (co-opted)
LEAD OFFICER	Chief Executive
OFFICERS / UNITS PRIMARILY REPORTING	Senior Leadership Team

1. TERMS OF REFERENCE

1.1 The Performance, Governance and Audit Committee is primarily responsible for the monitoring of the performance of the Council, oversee the Council's audit and risk functions, and keep under review the Council's Corporate Governance arrangements. In particular, it will:

Performance and service delivery

a) Monitor and scrutinise the performance of the Council in the execution of its functions and delivery of services against business and improvement plans.

b) Make decisions within the Council's budget and overall policy framework on the delivery and performance of services, save for where provision is made in the terms of reference of another Committee or in the Scheme of Delegation, with particular attention to the Corporate Priorities.

Governance

c) Ensure the effective development and operation of corporate governance within the Council, including compliance with best practice.

d) Review the operation of the Council's Constitution and recommend to the Council on any changes identified.

e) Review and recommend to the Council on Financial Regulations, Financial Procedures and Contract Procedure Rules.

f) Consult the Joint Standards Committee in connection with the review of any codes or protocols relating to the ethical framework.

g) Review issues raised by the Council's statutory officers and Corporate Lead Officers.

h) Undertake and implement the outcome of Community Governance Reviews.

Audit and risk

i) Review the internal audit arrangements within the Authority, enhance the profile, status and authority of the Internal Audit function, and demonstrate its independence.

j) Approve (but not direct) the Internal Audit Plan and Strategy, and monitor progress against plans and delivery of the Internal Audit service, ensuring that co-ordination of effort between internal and external audit is maximised.

k) Receive the annual report and opinion of the Officer responsible for Internal Audit and consider the level of assurance given in respect of the Council's corporate governance arrangements.

l) Receive and consider summary Internal Audit reviews and reports, including reports of agreed recommendations not implemented within reasonable timescales, and seek assurance that action has been taken where necessary.

m) Monitor the effective development and operation of risk management and corporate governance in the Council, and seek assurance that action is being taken on issues identified by auditors and inspectors.

n) Ensure that the Council achieves value for money and that satisfactory arrangements are in place to promote economy, efficiency, and effectiveness.

o) Ensure there are effective relationships between Members, Internal and External Auditors, inspection agencies and other relevant bodies, and that the value of the audit process is actively promoted.

p) Approve appointment of the external auditor and the external audit plan.

q) Receive and consider the reports of external audit and inspection agencies.

r) Review the external auditor's opinion and reports, and monitor management action in response to the issues raised by external audit.

s) Receive and consider reports on the effectiveness of the monitoring and management of arrangements with external suppliers.

t) Consider the effectiveness of the Authority's counter fraud and corruption arrangements (including 'Whistleblowing' and Regulation of Investigatory powers Act 2000 (RIPA)) and promote an anti-fraud culture relating to all the activities of the Council.

u) Approve the Annual Governance Statement on behalf of the Council, ensuring it properly reflects the risk, control and governance environment and any actions required to improve it.

v) Approve the Statement of Accounts.

w) Oversee corporate health and safety issues in relation to the Council's activities.

x) Approve the Risk Management Policy and receive regular reports on risk management and the quarterly corporate risk register.

2. OPERATING PROTOCOL

1 The Committee has a key role to provide independent assurance to the Council on the adequacy of the risk management framework and the associated internal control environment and the extent to which the Council is complying with good corporate governance principles. The Committee independently scrutinises the Authority's financial and non-financial performance to the extent that it affects the Authority's exposure to risk and weakens the control environment and will oversee the financial reporting process and scrutinise the internal and external audit arrangements and review the overall performance.

2 The Committee will meet at least four times a year and in accordance with arrangements determined by the Council. It will meet separately with the External Auditor as necessary**.**

3 Meetings will normally be attended by the Director of Finance (S151 Officer) and representative(s) from the Council's Internal Audit provider and External Auditors when dealing with audit and risk management matters. Other Members, the Head of Paid Service, Monitoring Officer and Corporate Lead Officers will also have the right to attend.

4 The Committee may require any officer to attend its meetings to provide pertinent information and advice in relation to any internal or external audit report.

5 In all other respects and as appropriate, the Council and Committee Procedure Rules will apply.

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PART 3 – RESPONSIBILITY AND FUNCTIONS

TERMS OF REFERENCE – LICENSING COMMITTEE

CONTENTS

1. **Terms of Reference**
2. **Operating Protocol**

COMMITTEE	**LICENSING**
MEMBERSHIP	10 Members of the Council appointed annually, and politically balanced
LEAD OFFICER	Director of Neighbourhood Services & Communities
OFFICERS / UNITS PRIMARILY REPORTING	Licensing Officers, Legal Officers
SUB-COMMITTEE	Licensing Sub-Committee

1. TERMS OF REFERENCE

1. The Committee will recommend to the Council on the approval and adoption of polices under the Licensing Act 2003 and the Gambling Act 2004, and the making of any regulations for the performance of licensing functions.

2. The Committee will also recommend to the Council on fees for all the Council's licensing functions (including fees for Hackney Carriage and Private Hire Licences and the determination of objections to them).

3. The Committee will (save as set out above) exercise all the Council's licensing and registration functions including relating to:

   a) licensing under the Licensing Act 2003.

   b) gambling or gaming under the Gaming Act 1968 and the Gambling Act 2005.

   c) the control of sex establishments pursuant to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009.

   d) licensing under the Scrap Metal Dealers Act 2013.

   e) hackney carriage drivers and vehicles, private hire drivers, vehicle and operators.

   f) street and house to house collections.

   g) registration of society lotteries.

   h) temporary road closures under the Town Police Clauses Act 1847.

   i) decisions upon applications under Schedule 1 part B of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and other licensing and regulatory matters not falling within the remit of any other Committee Licensing Sub-Committee or under the Scheme of Delegation to Officers.

   save for those matters falling within the remit of the Licensing Sub-Committee or otherwise provided for in the Scheme of Delegation to Officers.

4. The Committee will consider the making of byelaws and regulations for land and premises under the Council's control, including the River Blackwater, for recommendation to the Council.

2. OPERATING PROTOCOL

1 The Committee will meet in accordance with arrangements determined by the Council.

2 All members of the Committee shall have received appropriate and regular training on licensing matters**.**

PART 3 – RESPONSIBILITY AND FUNCTIONS

TERMS OF REFERENCE-PLANNING COMMITTEE

CONTENTS

1. Terms of Reference

1.4 To exercise on behalf of the Council the following functions:

(A) The making of decisions on those Schedule 2 of the Town and Country Planning (Discharge of Local Planning Authority Functions (England) Regulations 2026 planning applications falling to be considered by Maldon District Council as The Local Planning Authority

(B) The making of any other planning decision required under the Town and Country Planning Act 1990 or other relevant legislation which is not provided for in the above Regulations, where there is no delegation to Officers.

(C) The committee may also determine "Own Interest Applications" being defined as:

Provisos:

2. Operating Protocol

ANNEXE A – Informal Technical Briefings

ANNEXE B – List of Schedule 1 Applications

ANNEXE C – List of Schedule 2 Applications

COMMITTEE	**PLANNING COMMITTEE**
MEMBERSHIP	13 Members of the Council (politically balanced)
LEAD OFFICER	Director of Place, Planning and Growth
OFFICERS / UNITS PRIMARILY REPORTING	Head of Service: Development Management and Building Control
SUB-COMMITTEE	None

1. TERMS OF REFERENCE

1.1 To hear pre-application or pre-determination presentations of developments by developers and for individual members of the Committee to ask questions and highlight issues that may require further consideration by the developer.

1.2 To determine the planning applications referred to it pursuant to the Regulations and the Constitution, as set out below.

1.3 To consider, and where necessary determine, any other planning matter referred to it by the Director of Place, Planning and Growth.

PART 3 – RESPONSIBILITY AND FUNCTIONS

1.4 To exercise on behalf of the Council the following functions:

(A) The making of decisions on those Schedule 2 of the Town and Country Planning (Discharge of Local Planning Authority Functions (England) Regulations 2026 planning applications falling to be considered by Maldon District Council as the Local Planning Authority by reason of their meeting the threshold, or "Gateway Test" for referral to planning committee - being one or both of the following:

(i) where an application raises an economic, social or environmental issue of significance to the local area

(ii) Where the application raises a significant planning matter having regard to the development plan and any other material considerations

(iii) **AND** Subject to the Nominated Officer having decided that one or both thresholds are met and having consulted with and obtained the agreement of the Nominated Member.

(B) The making of any other planning decision required under the Town and Country Planning Act 1990 or other relevant legislation which is not provided for in the above Regulations, where there is no delegation to Officers.

(C) The Planning Committee may also determine "Own Interest Applications" being defined as:

- applications whether made jointly or not with another person by the authority or an officer or member of the authority
- or it is in the view of a nominated officer and the nominated Member the authority or any of its members or officers has an interest are own interest applications.

Subject to both the Nominated Member and Nominated Officer agreeing that it is in the interests of openness and transparency that the Application should be referred to the Planning Committee for determination.

2. OPERATING PROTOCOL

1. The Committee will meet in accordance with arrangements determined by the Council.

2. The Officer recommendation will be accepted as the substantive motion and no proposer or seconder is required.

3. In all other respects and as appropriate, the Council and Committee Procedure Rules will apply, in particular Procedure Rule 13(1) which prevents a member of a Planning Committee from voting in connection with the determination of a planning application or related matter unless they have been present for the whole of the consideration at the meeting or has undergone fundamental induction training.

4. If, after debate, the Committee is minded to refuse an application contrary to the recommendation of Officers to approve and without having moved to a vote, then (unless it is agreed upon the advice of Officers that no useful purpose would be served) any further consideration **will** be deferred to enable Officers to consider all relevant implications of that proposed decision and report back to the Committee.

PART 3 – RESPONSIBILITY AND FUNCTIONS

5. The Council has adopted the concept of members of Planning Committees being given information briefings / presentations by Officers on complex / technical issues arising from certain planning applications ahead of their formal consideration and determination. The guidelines set out **ANNEXE A** will be followed.

PART 3 – RESPONSIBILITY AND FUNCTIONS

ANNEXE A – INFORMAL TECHNICAL BRIEFINGS

Operating Guidelines

For certain complex and/or major applications, where there are difficult or technical issues such as to consider, it may be appropriate to hold informal briefings for members before an application comes before a committee for formal consideration and determination.

Following publication of the agenda containing the report and Officer recommendation on the particular application, the Director of Place, Planning and Growth will decide whether an informal briefing is required to be held, provided the following guidelines are adhered to:

- Members should understand that an informal briefing is distinct from the Committee meeting and therefore no decisions will be taken at the briefing.
- The informal briefing is to provide an opportunity for Members to receive information and ask questions to help them understand more about the proposal before formal consideration of the applications at the Committee meeting.
- The informal briefing is not a forum for debate or for stating opinions about the development and certainly not for Members to indicate how they will vote at the Committee meeting.
- Whilst Members can begin to form views about the proposed, it is important that they seek to avoid reaching a firm view or decide how they will vote in advance of the Committee meeting since this will mean that they have pre-determined the application. In that event, they will have compromised their involvement in the subsequent Committee meeting. It is essential that an open mind is kept in order to hear all the information presented, and discussion held, at the Committee meeting itself.
- The informal briefing will not be held in public, and only those Members of the determining Committee and relevant Officers will be present. Although attendance by Members will be encouraged, non-attendance at informal briefings will not prevent their subsequent participation in deciding an application when it comes before the Committee. Nothing less than is presented to the briefing will be presented to the Committee meeting.
- A record will be kept of the fact that the meeting took place and who attended the meeting but formal minutes or notes of the meeting will not be made or published.

PART 3 – RESPONSIBILITY AND FUNCTIONS

ANNEXE B – LIST OF SCHEDULE 1 APPLICATIONS

Applications that Must be Determined by an Officer

1. An application made under section 17(1) of the Land Compensation Act 1961 (certificates of appropriate alternative development).

2. An application made under section 26H(1) of the Listed Buildings Act (certificate of lawfulness of proposed works).

3. A householder application.

4. A minor commercial application.

5. A minor residential application.

6. An application for permission in principle.

7. An application made under section 73(1) of the Town and Country Planning Act (TCPA) 1990 (application to develop land without compliance with conditions previously attached) in respect of which the original planning permission was a Schedule 1 planning permission.

8. An application made under section 96A(4) of the TCPA 1990 (non-material changes to planning permission or permission in principle).

9. In respect of a planning obligation that the authority concerned considers is connected with a Schedule 1 approval:

   (a) a request to agree to modify or discharge that obligation under section 106A(1)(a) of the TCPA 1990 (modification and discharge of planning obligations);

   (b) an application to modify or discharge that obligation under section 106A(3) of TCPA 1990 (modification and discharge of planning obligations).

10. An application made under section 191(1) of the TCPA 1990 (certificate of lawfulness of existing use or development).

11. An application made under section 192(1) of the TCPA 1990 (certificate of lawfulness of proposed use or development).

12. The submission of a biodiversity gain plan under paragraph 13(2)(a) of Schedule 7A to the TCPA 1990.

13. A reserved matters approval application in respect of an outline planning permission other than a large outline permission.

14. An application made under article 27(1) of Development Management Procedure (England) Order (DMPO) (applications made under a planning condition).

15. An application pursuant to provision in Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for:

   (a) prior approval, or

   (b) a determination as to whether prior approval is required.

PART 3 – RESPONSIBILITY AND FUNCTIONS

ANNEXE C – LIST OF SCHEDULE 2 APPLICATIONS

Applications that may be Determined by a Committee or by an Officer

1. An application for listed building consent made under section 10(1) of the Listed Buildings Act (making of applications for listed building consent).

2. An application made under section 19(1) of the Listed Buildings Act (variation or discharge of conditions of listed building consent).

3. An application for planning permission that the authority concerned considers is connected with an application of a kind specified in paragraph 1 or 2.

4. An application for planning permission that is not:

   (a) a householder application,

   (b) a minor commercial application, or

   (c) a minor residential application.

5. An application made under section 73(1) of TCPA 1990 (application to develop land without compliance with conditions previously attached) in respect of which the original planning permission was a Schedule 2 planning permission.

6. An application made under section 73A(1) of TCPA 1990 (planning permission for development already carried out).

7. In respect of a planning obligation that the authority concerned considers is connected with a Schedule 2 approval:

   (a) a request to agree to modify or discharge that obligation under section 106A(1)(a) of TCPA 1990 (modification and discharge of planning obligations);

   (b) an application to modify or discharge that obligation under section 106A(3) of TCPA 1990 (modification and discharge of planning obligations).

8. A reserved matters approval application in respect of a large outline permission.

9. An application made under regulation 9(1) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (application for express consent to display advertisement).

10. An application made under regulation 16(1) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (application for consent under tree preservation order).

PART 3 – RESPONSIBILITY AND FUNCTIONS

TERMS OF REFERENCE – LICENSING SUB-COMMITTEE

CONTENTS

1. **Terms of Reference**
   - Licensing Act 2003
   - Gambling Act 2005
   - Other Licensing Functions
2. **Operating Protocol**

COMMITTEE	**LICENSING SUB-COMMITTEE**
MEMBERSHIP	4 Members of the Licensing Committee (see Operating Protocol 2 below)
LEAD OFFICER	Licensing Officer(s)/Director of Legal & Governance
COMMITTEE REPORTING	Licensing Committee

1. TERMS OF REFERENCE

Licensing Act 2003

1. To determine applications for Premises Licences and Club Premises Certificates where representations are made by an Interested Party or a Responsible Authority.

2. To determine applications to vary Premises Licences and Club Premises Certificates where representations are made by an Interested Party or a Responsible Authority.

3. To determine applications to transfer Premises Licences where the Chief Officer of Police gives notice that granting an application would undermine the crime prevention objective.

4. To determine applications for reviews of Premises Licences and Club Premises Certificates.

5. To determine reviews of Premises Licences where a Closure Order has come into force and where notice has been received of a Magistrates' Court Determination.

6. To determine applications for Provisional Statements where representations are made by an Interested Party or a Responsible Authority.

7. To determine applications to vary a Designated Premises Supervisor where the Chief Officer of Police gives notice that granting an application would undermine the crime prevention objective.

8. To determine Interim Authority Notices where the Chief Officer of Police gives notice that failure to cancel any notice will undermine the crime prevention objective.

9. To consider Objection Notices given by the Chief Officer of Police in respect of Temporary Event Notices and determine if a Counter Notice is to be issued to the applicant.

10. To determine applications for Personal Licences where the Chief Officer of Police gives an Objection Notice that granting an application would undermine the crime prevention objective.

11. To determine applications for renewals of Personal Licences where the Chief Officer of Police gives an Objection Notice that granting an application would undermine the crime prevention objective.

12. To determine Objection Notices given by the Chief Officer of Police where a Personal Licence holder has been convicted during the application period of a Relevant or Foreign Offence after the grant or renewal of a Personal Licence.

13. The determination of requests for film exhibitions at a classification that differs from that granted by the British Board of Film Classification (including the viewing of such films).

Gambling Act 2005

14. Determination of applications for the following matters where objections have been received and not withdrawn:

    (a) premises licences;

    (b) variation to licences;

    (c) transfers of licences;

    (d) provisional statements;

    (e) club gaming / club machine permits.

15. Determination of applications or decisions on the following matters:

    (f) review of premises licences;

    (g) cancellation of club gaming / club machine permits;

    (h) giving a counter notice to a temporary use notice.

Other Licensing Functions

16. The determination of applications for sex establishments where an objection has been received to the grant, renewal or transfer of the licence.

17. The determination of applications for Hackney Carriage and Private Hire Drivers' Licences where the applicant has unspent convictions or endorsements exceeding six points accrued on his/her Driving Licence or where the applicant is aggrieved at a decision to refuse the grant of a Drivers Licence on medical grounds.

18. The determination of applications for Charitable Collections (Street and House to House Collections), the Registration of Society Lotteries and Temporary Road Closures (for special events) where an objection has been received to the grant of a licence, permit or registration.

19. To determine licence applications under the Scrap Metal Dealer Act 2013 where the Officers acting under delegated powers are minded to refuse the application and representations have been received.

20. To revoke or vary licence applications under the Scrap Metal Dealer Act 2013 where representations have been received.

PART 3 – RESPONSIBILITY AND FUNCTIONS

2. OPERATING PROTOCOL

1 The Sub-Committee will meet in accordance with arrangements determined by the Council.

2 The Sub-Committee will be constituted to deal with matters which require a hearing under the relevant legislation. The membership of each Licensing Sub-Committee meeting comprises of four Members drawn from the membership of the Licensing Committee. A quorum shall be three**.**

3 All members of the Committee shall have received appropriate and regular training on licensing matters.

4 In all other respects and as appropriate, the Council and Committee Procedure Rules will apply.

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PART 3 – RESPONSIBILITY AND FUNCTIONS

TERMS OF REFERENCE – APPOINTMENTS BOARD

CONTENTS

1. **Terms of Reference**
2. **Operating Protocol**

COMMITTEE	**APPOINTMENTS BOARD**
MEMBERSHIP	Leader of the Council (or Deputy), Opposition Leader (or Deputy), Chairperson (or Vice-Chairperson) of the Strategy and Resources and the Performance, Governance and Audit Committees, plus two other named Members appointed by the Council (political balance provisions shall apply).
LEAD OFFICER	Head of Paid Service
OFFICERS / UNITS PRIMARILY REPORTING	Head of Paid Service / Chief Officers
SUB-COMMITTEE	None

1. TERMS OF REFERENCE

1 To recommend to the Council on the appointment of the following:

(a) Head of Paid Service;

(b) Chief Executive.

2 To appoint the following:

(a) Section 151 Officer;

(b) Monitoring Officer;

(c) Chief Officers (as set out in Article 10)

3 To consider and report to the Council on appropriate levels of pay for the Chief Executive.

2. OPERATING PROTOCOL

1 The Board will meet in accordance with arrangements determined by the Council, and these are described in Article 6 of this Constitution.

2 The Board shall be advised by the Head of Paid Service or a Chief Officer as appropriate and by a suitably experienced Human Resources Officer provided, they did not prepare the report under consideration**.**

3 In the event that the Board needs to make a decision about the appointment of posts within its terms of reference, and that conflicting advice has been given to the Board by the in-house Professional teams, Board should seek independent advice at the earliest opportunity to avoid any undue delays in the appointment process.

4 In all other respects and as appropriate, the Council and Committee Procedure Rules will apply.

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PART 3 – RESPONSIBILITY AND FUNCTIONS

TERMS OF REFERENCE – INVESTIGATING AND DISCIPLINARY COMMITTEE

CONTENTS

1. **Terms of Reference**
2. **Operating Protocol**

COMMITTEE	**INVESTIGATING AND DISCIPLINARY**
MEMBERSHIP	Five Members of the Council appointed annually and politically balanced
LEAD OFFICER	Head of Paid Service / Monitoring Officer / Section 151 / Chief Officers as appropriate
OFFICERS / UNITS PRIMARILY REPORTING	As above
SUB-COMMITTEE	None

1. TERMS OF REFERENCE

1. Consider any allegation of misconduct, capability or breakdown of trust against the Head of Paid Service, the Section 151, the Monitoring Officer or any Chief Officer and to suspend (under the Officer Employment Procedure Rules) the Officer concerned for the purpose of investigating the allegation.

2. Authorise an investigation in relation to matters referred to in paragraph 1 above in accordance with the Council's statutory obligations.

3. Decide whether the matter can be dealt with by informal resolution or other appropriate procedures or that there is no case to answer.

4. Report to the Council on any issues, including disciplinary action, arising from steps taken above, in accordance with the Council's statutory obligations.

5. Hear and decide appeals arising from Human Resources (HR) Policies.

NOTE:

1 See role of Investigating and Disciplinary Panel in relation to dismissal.

2 The exercise of the Committee's duties under paragraph 5 above will have regard to relevant HR Policies / Procedures and related employment advice and is not subject to the Operating Protocol set out below.

2. OPERATING PROTOCOL

1 The Committee will meet as and when required, subject to compliance with Access to Information requirements.

2 The Committee shall be advised by the Head of Paid Service, Monitoring Officer, Section 151 Officer or Chief Officer as appropriate and suitably experienced Human Resources Officer, provided that they did not prepare the report to the Committee.

3 Allegations or complaints falling within the remit of the Committee will normally be sent or passed to the Chairperson of the Committee who will ensure circulation to other Members of the Committee as required. Allegations or complaints may in the first instance be received by the Leader of the Council or one of the Council's Statutory Officers.

4 It is for the Committee expeditiously to undertake an initial, but not detailed, investigation having regard to the facts and, if necessary, to seek further information/ clarification from the complainant including an indication of how the matter might be resolved.

5 As soon as practicable the Committee will inform the Officer the subject of the allegation, seek a response, and provide an opportunity to appear in person and call witnesses and be represented.

6 It is for the Committee to consider and decide whether:

a. the matter requires any further formal action, or

b. the matter is suitable for informal resolution or other action/procedure and therefore resolved, or

c. the matter should be the subject of a formal investigation and appoint a Designated Independent Person (DIP),and advise the Officer accordingly.

7 An allegation or complaint must be considered by the Committee, meetings of which are subject to the normal rules around notice, summons and publication of the agenda. For the most part, it is likely that the business of the Committee will be conducted in private session due to the confidentiality and sensitivity of the subject matter.

8 In the light of the above, and the potential for further consideration, investigation, and report to the Council, and also potential conflicts of interest, arrangements for meetings of the Committee need to remain flexible with the appointment of substitutes. The fairness and integrity of the process must be maintained at all times.

9 It is essential that the Committee's work is confined to the Members of the Committee only at the time, and circulation of papers will be restricted accordingly. Notwithstanding Procedure Rule 19 and the general acceptance of the practice which enables Members to attend meetings of other Committees, private sessions of meetings of this Committee should proceed only with the appointed Members and required support Officers present (e.g. Human Resources, Committee / Governance). A quorum shall be three Members.

10 The appointment of a DIP must be agreed between the Committee and the Officer the subject of the complaint. In the event of failure to agree, the Council will ask the Secretary of State to make an appointment. It is essential that this stage is

progressed expeditiously particularly if the Officer has been suspended, as there is a two month time limit on suspension.

11 The Committee will provide terms of reference to the appointed DIP and may consider and recommend to the Council on appropriate remuneration. The timescale for an investigation should be agreed between the Committee and the Officer in question.

12 The DIP has the power to direct the Council to terminate any suspension of the Officer, to extend the suspension beyond the two month limit, or to vary the terms of the suspension.

13 The DIP reports to the Council, but in reality, this will be Committee. The Officer in question will be given a further opportunity to state his / her case before a decision is made. The Committee is required to report to the Council on any issues arising from the process it has operated, including disciplinary action, in accordance with the Council's statutory obligations. The Committee will notify the Officer and keep him / her advised at all relevant stages.

14 In all other respects and as appropriate, the Council and Committee Procedure Rules will apply.

NB: The Council has agreed to adopt in its entirety the procedures laid down within the Joint Negotiating Committee for Local Authority Chief Executives model for use in connection with the exercise by this Committee of its remit in relation to the posts of Head of Paid Service, Section 151 Officer or Monitoring Officer.

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PART 3 – RESPONSIBILITY AND FUNCTIONS

TERMS OF REFERENCE – INVESTIGATING AND DISCIPLINARY PANEL

CONTENTS

1. **Terms of Reference**
2. **Operating Protocol**

COMMITTEE	**INVESTIGATING AND DISCIPLINARY PANEL**
MEMBERSHIP	Minimum of five Members of the Council – politically balanced – of which three have not served on the initial investigation carried out by the Investigating and Disciplinary Committee. In addition, two or three Independent Persons appointed by the Council to assist the Joint Standards Committee under the Localism Act 2011.
LEAD OFFICER	Monitoring Officer / Chief Executive / any Chief Officer as appropriate.
OFFICERS / UNITS PRIMARILY REPORTING	As above
SUB-COMMITTEE	None

1. TERMS OF REFERENCE

1. To receive and consider references from the Investigating and Disciplinary Committee on proposed disciplinary action culminating in dismissal against the Head of Paid Service, Section 151 Officer, the Monitoring Officer or any Chief Officer.

2. To recommend to the Council on any proposed course of action involving or culminating in dismissal.

2. OPERATING PROTOCOL

1 The Panel will meet as and when required, meetings being convened by or on behalf of the Monitoring Officer with 20 days notice and subject to compliance with Access to Information requirements.

2 In all other respects and as appropriate, the Council and Committee Procedure Rules will apply.

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PART 3 – RESPONSIBILITY AND FUNCTIONS

TERMS OF REFERENCE – JOINT STANDARDS COMMITTEE

CONTENTS

1. **Terms of Reference**
2. **Operating Protocol**

COMMITTEE	**JOINT STANDARDS**
MEMBERSHIP	Eight elected Members appointed annually. Political balance provisions apply. Non-voting Members: • Two representatives of Parish / Town Councils nominated by the Essex Association of Local Councils • Independent Person (or Reserve)
	NB The Chairperson and Vice-Chairperson of the Joint Standards Committee be appointed not from the same political group (Council 23 June 2020 – Minute No. 1009 refers).
LEAD OFFICER	Monitoring Officer
OFFICERS / UNITS PRIMARILY REPORTING	Monitoring Officer
SUB-COMMITTEE	None

1. TERMS OF REFERENCE

1) Promoting and maintaining high standards of conduct by Members and co-opted members (with or without voting rights) of the District Council and also Parish / Town (Local) Councils, and considering relevant issues to enable the Committee to fulfil this role;

2) Advising and assisting Councillors to maintain high standards of conduct and to make recommendation to Local Councils on improving standards or actions following a finding of a failure by a Local Councillor to comply with the Code of Conduct;

3) Advising the Council and Local Councils on the adoption or revision of the applicable Member Code of Conduct;

4) Receiving and considering referrals from the Monitoring Officer into allegations of misconduct;

5) Receiving reports from the Monitoring Officer and assessing the operation and effectiveness of the Member Code of Conduct;

6) Advising, training or arranging to train Councillors and co-opted Members on matters relating to the Member Code of Conduct;

7) Assisting Councillors and co-opted Members to observe the Member Code of Conduct;

8) Conducting hearings and determining complaints as necessary about District and Local Councillors and co-opted Members where an investigation is undertaken to consider whether an allegation that there has been a breach of the Member Code of Conduct has been undertaken;

9) Following a hearing the Joint Standards Committee is able to make one of the following findings:

   (a) That the Member has not failed to comply with the Member Code of Conduct and no further action needs to be taken in respect of the matters considered at the hearing; or

   (b) That the Member has failed to comply with the Member Code of Conduct but that no further action needs to be taken in respect of the matters considered at the hearing; or

   (c) That the Member **has failed** to comply with the Member Code of Conduct and that a sanction and/or an informal resolution should be imposed in respect of the matters considered at the hearing;

10) After making a finding at a hearing the Committee shall, through the Monitoring Officer, provide written notice of its findings immediately. Detailed reasons for its decision shall be given to the subject Member and the complainant in the form of a decision notice within 10 days of the hearing;

11) Advising the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council;

12) Maintaining oversight of the Council's arrangements for dealing with complaints against Councillors;

13) Informing the Council and the Head of Paid Service of relevant issues arising from the determination of Code of Conduct complaints;

14) Developing and adopting:

   (a) Arrangements for dealing with complaints against councillors and publicising the arrangements;

   (b) Such other provisions and procedures as may be required;

15) The Committee may impose any action or combination of actions available to it, or impose any informal resolution or combination of informal resolutions in accordance with the approved Complaints Procedure. The following list is an indication of the actions or combination of actions available:

- Reporting its findings to Council (or to the Local Council) for information;
- Recommending to Council that the Member concerned be issued with a formal censure or reprimand (or to the Local Council);
- Recommending to the Member's Group Leader (or in the case of ungrouped Members, recommend to the Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommending to the Leader of the Council that the Member be removed from, or removed from any particular posts or responsibilities they hold;

- Instructing the Monitoring Officer to (or recommend that the Local Council) arrange training for the member;
- Removing (or recommend to the Local Council that the Member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Local Council);
- Withdrawing (or recommend to the Local Council that it withdraws) facilities provided to the Member by the Council, such as a computer, website and/or email and internet access; or
- Excluding (or recommend that the Local Council exclude) the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

16) Granting dispensations relating to the effects of declaring interests under the Members Code of Conduct when a request for a dispensation is referred by the Monitoring Officer.

17) Determining arrangements for the remuneration of the Independent Person(s).

18) Recommending to the Council on the appointment of the Independent Person(s).

2. OPERATING PROTOCOL

1 The Committee will meet in accordance with arrangements determined by the Council and these are described in Article 6 of this Constitution.

2 When dealing with matters deemed to be private / confidential where the public is to be excluded from the meeting, it is essential that the Committee's work is confined to the Members of the Committee only at the time, and circulation of papers will be restricted accordingly. Notwithstanding Procedure Rule 19 and the general acceptance of the practice which enables Members to attend meetings of other Committees, private sessions of meetings of this Committee should proceed only with the appointed Members, the Independent Person and required support of Officers present.

3 In all other respects and as appropriate, the Council and Committee Procedure Rules will apply.

Article 7 (Standards arrangements) of the Articles of the Constitution should be read in conjunction with these Terms of Reference.

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PART 3 – RESPONSIBILITY AND FUNCTIONS

TERMS OF REFERENCE – OVERVIEW AND SCRUTINY COMMITTEE

CONTENTS

1. **Terms of Reference**
2. **Operating Protocol**

COMMITTEE	**OVERVIEW AND SCRUTINY**
MEMBERSHIP	10 Members of the Council appointed annually, excluding the Chairperson of the Council, Leader and Deputy Leader of the Council and Chairperson & Vice-Chairperson of Strategy & Resources and Performance, Governance & Audit Committees. Political balance provisions apply.
LEAD OFFICER	As designated or appointed.
OFFICERS / UNITS PRIMARILY REPORTING	Monitoring Officer

The Committee will also act as the Council's Crime and Disorder Committee.

1. TERMS OF REFERENCE

1) Prepare and agree a work programme annually, taking account of items put forward by Members and the Corporate Leadership Team, ensuring that those items that relate to the Council's functions fall, primarily, within the Council's Priorities.

2) Co-ordinate and monitor the Committee's work programme.

3) Recommend to the Council the detailed arrangements for the discharge of the overview and scrutiny function.

4) Prepare and present an Annual Report to the Council.

5) Review experience, identify good practice and develop learning in relation to the overview and scrutiny role.

6) Have a strong and effective role in corporate policy review, including proposing policy options to the Strategy and Resources Committee, Corporate Leadership Team, or exceptionally to the Council Meeting.

7) Receive reports and other evidence from public bodies, organisations and individuals which the Committee or a working group considers relevant to its work.

8) Take a lead on specific improvement objectives assigned to it by the Council.

9) Review or scrutinise decisions made, or other action taken in connection with the discharge of any functions of the Council and to present reports and/or recommendations either with respect to the discharge of any functions of the Council or on matters which affect the Council's area or the inhabitants of the area, including the draft budget, as follows:

   - to the Council or,

- to any Committee or Sub-Committee of the Council or
- to any joint Committee on which the Council is represented or any Sub-Committee of such a Committee.

10) When acting as the Crime and Disorder Committee, the undertaking of the Council's crime and disorder functions as follows by way of the review or scrutiny of decisions made, or other action taken, by the responsible authorities (within the meaning of section 5 of the Crime and Disorder Act 1998) in connection with crime and disorder functions.

11) Consideration of petitions in accordance with the Council's Petition Scheme, in particular requests for review of action taken or responses to petitions, and report on the outcome to either the Council or the appropriate Committee.

2. OPERATING PROTOCOL

1 The Committee will meet in accordance with arrangements determined by the Council.

2 Members of the Committee must have early induction training on the Overview and Scrutiny committee role.

3 To conduct as much of its proceedings as possible in public.

4 To appoint the chair and members of working groups to undertake tasks within the work programme, where appropriate; to establish the terms of reference for working groups, together with reporting arrangements; and co-ordinate and monitor the work of those working groups.

5 In all other respects and as appropriate, the Council and Committee Procedure Rules will apply.

The Committee will:

- seek to confine its meetings to the carrying out of actual scrutiny work.
- arrange for the review of Member suggestions for items and review validity of items based on set criteria, prior to inclusion in its Workplan.
- be positive and forward looking including providing 'critical friend' challenge.
- identify future improvements that will help the way the Council runs its business and provides public services.
- seek to demonstrate added value from the scrutiny process.
- review readiness for emerging strategy and future planning.
- help the Council and other Committees do their work better.
- produce defined outcomes associated with each scrutiny item.
- manage 'watching brief' items for areas of concern where the need for or the precise area of scrutiny has not been identified - to be picked up by the Working Group (e.g. lessons learned from Project Management Office).
- refer potential scrutiny items to the working group for thorough review and receive reports on items to be added to the workplan.

- receive finalised Scrutiny reports and recommendations for review.
- make recommendations to the Council and other Committees on conclusions arising from scrutiny.

The Committee will not:

- develop a workplan based on ‘pet projects’ of individual Members or matters that should be properly dealt with elsewhere, e.g. via another Committee’s remit.
- duplicate review work being undertaken elsewhere, e.g. by another Committee.
- look backwards or be focussed on blame, rather than come from a place of ‘lessons learned’.
- use Committee meetings as a forum for receiving information, discussing / planning the detail and validity of suggested scrutiny items.
- accept items where Officers have not yet been approached and asked for response / further detail on a matter.
- accept items where they fall in the remit of another committee, and that committee hasn’t made the referral, or first reviewed it within their Committee.
- have a standing item for ‘any other items of scrutiny members wish to consider’ as under the proposed new process is designed to accommodate this.

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PART 3 – RESPONSIBILITY AND FUNCTIONS

SCHEME OF DELEGATION (GENERAL PROVISIONS)

CONTENTS

1. Principles of Delegation

2. Statutory Officer and Other Designations

Monitoring Officer

Head of Paid Service

Section 151 Officer

Registration of Electors

Returning Officer at Local Government Elections

"Proper Officers"

Delegation to Officers – General (continued)

1. PRINCIPLES OF DELEGATION

1.1 Section 101 of the Local Government Act 1972 provides that:

- A Council may delegate its powers (except those incapable of delegation) to a committee or an Officer.
- A Committee may delegate its powers to a Sub-Committee.
- A Committee may delegate its powers to an Officer.
- Powers which have been delegated may be exercised by the delegating body.

1.2 Any delegation to a Committee or an Officer shall be exercised in compliance with the Council's Constitution, any other policies or conditions imposed by the Council and with the law.

1.3 In making any decision regard shall be had to the Council's Corporate Plan and Themed Strategies, and also the principles of decision-making as set out in Article 11 of the Constitution.

1.4 Save in the cases of statutory appointments, a function delegated to an Officer shall be validly exercised if carried out on behalf of that Officer and in that Officer's name by staff authorised by them in writing for that purpose. Any Officer so authorised shall not extend that authorisation to another Officer. The exercise of a function in the name of an Officer will not be invalidated by the absence of that Officer at the time when the function was exercised.

1.5 In the absence of the Chief Executive or other authorised Officer, or their inability to act, any other Director may exercise that power or function should the need arise, and vice versa.

PART 3 – RESPONSIBILITY AND FUNCTIONS

2. STATUTORY OFFICER AND OTHER DESIGNATIONS

Monitoring Officer

1. Pursuant to Section 5 of the Local Government and Housing Act 1989, the person appointed by the Appointments Board (see Officer Employment Procedure Rules) shall be Monitoring Officer for the Maldon District Council. For the purposes of this document the Monitoring Officer is referred to as the Director of Legal and Governance.

Head of Paid Service

2. Pursuant to Section 4 of the Local Government and Housing Act 1989, the person appointed by the Appointments Board (see Officer Employment Procedure Rules) shall be the Head of Paid Service for the Maldon District Council. For the purposes of this document the Head of Paid Service is referred to as the Chief Executive.

Section 151 Officer

3. Pursuant to Section 151 of the Local Government Act, 1972, the person appointed by the Appointments Board (see Officer Employment Procedure Rules) shall be the Section 151 Officer for the Maldon District Council. For the purposes of this document the Section 151 Officer is referred to as the Director of Finance.

Registration of Electors

4. Pursuant to Section 8 of the Representation of the People Act 1983, Mr Doug Wilkinson, Chief Executive, shall be Registration Officer for the Maldon District.

5. Pursuant to Section 8 of the Representation of the People Act 1983, the Lead Elections and Democratic Services Manager shall be appointed as the Deputy Electoral Registration Officer for the Maldon District.[1]

Returning Officer at Local Government Elections

6. Pursuant to Section 35 of the Representation of the People Act 1983, Mr Doug Wilkinson, Chief Executive, is Returning Officer for the election of Councillors of the Maldon District and of Councillors of parishes and communities within the Maldon District. Mr Doug Wilkinson is also Returning Officer for the conduct of Parish Polls within the Maldon District.

"Proper Officers"

7. The Council has approved and adopted the appointment of the following officers as proper officers, as described in the following specified sections of the relevant Acts of Parliament or regulations. Proper Officer is defined for most legislation by s.270(3)

[1] Minute 678 refers (Council 30 March 2023)

Local Government Act 1972 as an officer appointed for that purpose by that body or for that area, as the case may be.

The Local Government Act 1972		
Section of Act	**Functions**	**Proper Officer**
83(l) to (4)	Witness and receipt of declaration of acceptance of office	Director of Legal and Governance
84	Receipt of declaration of resignation of office	Director of Legal and Governance
88(2)	Convening of meeting of Council to fill casual vacancy in the office of Chairperson	Director of Legal and Governance
89(l)(b)	Receipt of notice of casual vacancy from two local government electors	Chief Executive
100 B(2)	Circulation of Reports and Agendas	Director of Legal and Governance
100 B(7)(c)	Supply of Papers to the Press	Director of Legal and Governance
100 C(2)	Summaries of Minutes	Director of Legal and Governance
100 D(1)(a)	Compilation of lists of background papers	Director of Legal and Governance
100 D(5)(a)	Identification of background papers	In joint reports the Chief Executive and in all other cases the Director of Legal and Governance
100 F(2)	Papers not open to Members	Chief Executive
115(2)	Receipt of money due from Officers	Director of Finance
117	Record of notices given by Officers of personal interests in contracts	Director of Legal and Governance
l46(l)(a) & (b)	Declarations and certificates with regard to securities	Director of Finance
151	Responsibility for proper administration of the Council's financial affairs.	Person appointed by Appointments Board
191	Functions with respect to ordnance survey	Director of Place, Planning and Growth
215	Registrar of Local Land Charges	Director of Place, Planning and Growth
225(l)	Deposit of documents	Director of Legal and Governance
229(5)	Certification of photographic copies of documents	Director of Legal and Governance
234(l) & (2)	Authentication of documents	Director of Legal and Governance
236(9)(i)	To send copies of byelaws for parish records	Director of Legal and Governance

The Local Government Act 1972		
Section of Act	**Functions**	**Proper Officer**
236(l0)(ii)	To send copies of byelaws to the County Council	Director of Legal and Governance
238	Certification of byelaws	Director of Legal and Governance

Data Protection Act 1998		
Section of Act	**Functions**	**Proper Officer**
	Data Protection Officer	Director of Legal and Governance

Local Government Finance Act 1988		
Section of Act	**Functions**	**Proper Officer**
S116	Notification to auditor of the date, time and place of a proposed meeting to consider a report under Section 114 and of any decision made at the meeting.	Chief Executive

Crime and Disorder Act 1998		
Section of Act	**Functions**	**Proper Officer**
	For all matters relating to the Act	Director of Neighbourhood Services and Communities

Local Government Act 2000		
Section of Act	**Functions**	**Proper Officer**
S81	Maintenance of Register of Interests of Members	Director of Legal and Governance

Localism Act 2011		
Section of Act	**Functions**	**Proper Officer**
S29	Maintenance of Register of Interests of Members	Director of Legal and Governance

Local Government and Housing Act 1989		
Section of Act	**Functions**	**Proper Officer**
S3A (Amended by Localism Act 2011)	Grant of exemptions from politically restricted posts.	Chief Executive
S4	Head of Paid Service	Person appointed by Appointments Board

The Openness of Local Government Bodies Regulations 2014		
Regulation	**Functions**	**Proper Officer**
9	Disclosure of confidential information	Chief Executive

Public Health (Control of Disease) Act 1984 and related legislation		
Section	**Functions**	**Proper Officer**
48	Issue certificates relative to the removal of bodies to mortuaries or for immediate burial	Named Officers of the Health Protection Agency appointed by the Environmental Health Manager (Protection)

Food and Environmental Protection Act 1985		
Section	**Functions**	**Proper Officer**
	Enforcement and Investigating Officers	Director of Neighbourhood Services and Communities Environmental Health Managers and staffing

(i) In the event of any other notices being required to be served under any other Section of the Local Government Act 1972 or any other enactment, and not otherwise specified in the Council's Scheme of Delegation, the Chief Executive is designated the "Proper Officer".

(ii) The Director of Legal and Governance is recognised as the Officer responsible for giving public notice of the time and place of meetings pursuant to Section 100 A(6)(a).

(iii) The Director of Legal and Governance in consultation with the "Proper Officer" as appropriate, is recognised as the officer responsible for provision of the Agendas and Reports for public inspection pursuant to Sections 100 B(1) and 100 E(1) of the Act.

Delegation to Officers – General (continued)

8. To renew Council membership of bodies or organisations, subject to the costs of any particular subscription renewal falling within the Council's estimates guideline figure.

9. The authorisation of directed surveillance under the provisions of the **Regulatory and Investigatory Powers Act 2000** to the undermentioned Officers:

- Director of Legal and Governance (as Senior Responsible Officer);
- Director of Neighbourhood Services and Communities

10. **Emergency Action** – The Chief Executive or any Director is authorised to act in emergencies, and where time permits in consultation with the Leader of the Council and Chairperson of appropriate Committee(s)

11. **Consultations** – The Chief Executive or any Director, in liaison with the relevant Lead Member (Committee Chairperson or Leader of the Council), is authorised to respond to consultation documents where the period during which a response is

required does not allow the matter to be reported to the relevant committee or where the consultation is of a predominantly technical nature.

12. **Legal Proceedings** - The Chief Executive or any Director in consultation with a Legal Advisor, Chairperson of the relevant Committee (or Vice-Chairperson in his or her absence) and Leader of the Council, be authorised to institute or defend legal proceedings on any criminal offence or civil proceedings not otherwise provided for in Officer delegation arrangements elsewhere in this document, subject to subsequent report to the next meeting of the relevant Committee. The exercise of this authorisation shall, for the avoidance of any doubt, include responding to legal representations on behalf of the other party, any directions of the Court, and the pursuance and settlement of disputes by means other than litigation.

13. **Financial Management –** Directors, and service managers, have responsibility for the management of the financial aspects of service provision, which includes authority to incur expenditure considered to be reasonably required to carry out the policies of the Council at any time provided that such expenditure is in accordance with the budget, is fit for purpose, and there is sufficient money existing within the budget or otherwise vired.

PART 3 – RESPONSIBILITY AND FUNCTIONS

SCHEME OF DELEGATION

CONTENTS

1. **To the Chief Executive (Head of Paid Service)**
   Assets of Community Value
   Corporate Projects
   Staffing
   (As Electoral Registration Officer)

2. **To the Director of Finance (Section 151 Officer)**
   Financial Management

3. **To the Director of Place, Planning and Growth**
   Development Management
   Enforcement of Planning Control
   Environment and Conservation
   Building Control
   Neighbourhood Planning
   Housing
   Others

4. **To the Director of Neighbourhood Services and Communities**
   Environmental Health and related licensing / regulatory matters
   Licensing
   Community and Leisure
   Asset Management
   Rivers Management
   Others
   Local Development Land

5. **To the Director of Strategy and Improvement**
   ICT

6. **Licensing Act 2003**
   Head of Service (Environmental Health, Waste and Climate Action):
   Environmental Health Manager- Environmental Protection:

7. **Gambling Act 2005**
   Head of Environmental Health, Waste and Climate Action:

8. **Other Licensing Functions**

9. **To the Director of Legal and Governance**

PART 3 – RESPONSIBILITY AND FUNCTIONS

1. TO THE CHIEF EXECUTIVE (HEAD OF PAID SERVICE)

Assets of Community Value

1. To consider and undertake reviews of listings of Assets of Community Value requested under the Localism Act 2011 (Community Right to Bid).

Corporate Projects

2. In consultation with the Commercial Projects Board to approve any spend up to £10,000, subject to the details being reported to the Strategy and Resources Committee.

Staffing

3. To approve the filling of vacancies other than the posts of Chief Executive, Monitoring Officer, Section 151 Officer and Directors.

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

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

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

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

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

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

10. To approve voluntary staff redundancy or voluntary dismissal for those staff who are below the Chief Executive in the interests of the efficient discharge of the Council's functions.

11. To approve secondments to / from other public bodies.

12. To represent the authority on cross-organisational groups.

13. In consultation with the Chairperson of the Strategy and Resources Committee to appoint suitably qualified staff on a consultancy basis to cover for the absence of Senior Officers if necessary.

14. To approve secondment of staff between Departments.

15. In consultation with the Chairperson of the Strategy and Resources Committee, to approve statutory and procedural updates to Human Resources Policies and Procedures.

(As Electoral Registration Officer)

16. To fix the fees paid to canvassers for the Register of Electors within the overall approved estimate provision.

2. TO THE DIRECTOR OF FINANCE (SECTION 151 OFFICER)

Financial Management

1. To write off irrecoverable debts of individual amounts not exceeding the amount specified in Appendix F of Financial Regulations.

2. To review and set Fees and Charges which generate income of less than £2,000 per annum.

3. To exercise day to day functions relating to Treasury Management in accordance with approved Treasury Management Practices.

4. To exercise day to day administrative control over mortgages granted for the purchase or improvement of properties including:

   a) the power to instigate legal proceedings for recovery of possession of such property.

   b) to agree to enter into Deeds of Postponement where there is no doubt as to the equity remaining in the property.

5. To approve financial references for contractors.

6. To investigate payments for compensation losses arising as a result of the listing of an asset as part of the Community Right to Bid Scheme. Outcomes of investigation are to be reported to the Strategy and Resources Committee.

7. To determine applications for staff car loans under the Council's scheme.

8. To approve attendance of staff at courses, conferences and seminars (other than post entry training courses.

9. To be authorised to make an ex-gratia payment of up to £250 in instances of claims for damaged clothing.

10. To pay professional fees / practice certificates where necessary.

11. In consultation with a Legal Advisor, the institution of legal proceedings in respect of benefit fraud under the provisions of the Social Security Administration Act 1992 (as amended), the Fraud Act 2006, the Theft Acts 1968 and 1978, and The Proceeds of Crime Act 2002.

12. All matters relating to the billing, collection and recovery of the National Non-Domestic Rate and Council Tax, including the determination of all discretionary rate relief where the application falls within the guidelines adopted by the Council.

13. To administer the Housing / Council Tax benefits scheme and the Local Council Tax Support Scheme, including the waiving of overpayments, the approval of discretionary awards / Hardship Fund awards and referral of fraudulent claims in line with the Council's prosecution policy.

14. Authorisation, together with any staff designated by them, to appear in Court, on the Council's behalf, in connection with recovery proceedings for Council Tax, Non-Domestic Rates and Small Claims Procedure.

15. Authorisation to appear on behalf of the Council at Local Valuation Tribunals.

16. Authorisation to appear on behalf of the Council at Housing and Council Tax Benefit and Local Council Tax Support Appeal Tribunals.

17. The Director of Finance, in consultation with a valuer, a Legal Advisor and the Chairperson of the Strategy and Resources Committee, be authorised to release any restrictive covenants which are stated to be in favour of the Maldon District Council (or its predecessors) at a market value or at such other value as deemed appropriate by the Chief Executive.

18. The appointment of the Members Remuneration Panel.

19. To settle on behalf of the Council COT3 through the Advisory Conciliation and Arbitration Services (ACAS) and/or during the proceedings of Employment Appeal Tribunals.

PART 3 – RESPONSIBILITY AND FUNCTIONS

3. TO THE DIRECTOR OF PLACE, PLANNING AND GROWTH

Development Management

References to “Regulations” in this section are a reference to the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026.

1. All planning development applications shall be delegated to the Director of Place, Planning and Growth (Director) with the exception of:

    - Those applications listed in Schedule 2 that the Nominated Member (Chairperson of the Planning Committee or their Nominated Substitute) and Nominated Officer (Director) agree that referral to and determination by [the Planning Committee] is necessary.
    - An Own-Interest Application, as defined in the Regulations.
    - Any other planning matter that an officer of the authority with delegated powers considers that referral to and determination by [the Planning Committee] is necessary

2. 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.

3. In consultation with the Chairperson of the 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.

4. Following the grant of a Development Consent Order by the Secretary of State or anyone appointed by them, and in consultation with the Chairperson of the Planning Committee, the ability to make any post grant decisions required of the Council, including planning enforcement, in relation to the development.

5. 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.

Enforcement of Planning Control

6. 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.

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

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

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

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

11. 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).

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

13. On the grounds of urgency, and in consultation with the Chairperson of the 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 Planning Committee.

14. 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 Planning Committee.

Environment and Conservation

15. 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.

16. 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.

17. 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

18. 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.

19. 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.

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

Neighbourhood Planning

21. To determine applications made under Regulations 5 and 5A of the Neighbourhood Planning (General) Regulations 2012 for the designation of a neighbourhood plan area where no representations objecting to the proposal have been received to a public consultation, or where public consultation is not required by regulation, and where the area to be designated is coterminous with or wholly within the area of a civil parish. Any such decisions made are to be reported to the Members of the Planning Committee.

22. On the grounds of urgency, and in consultation with the Chairperson of the Planning Committee; the response on behalf of the Local Planning Authority for the Regulation 16 Consultation to the Neighbourhood Planning (General) Regulations 2012; provided that these actions are reported to Members of the Planning Committee.

Housing

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

24. 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.

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

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

Others

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

28. 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.

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

30. To authorise officers and duly appoint contractors who are appropriately qualified and experienced to discharge the powers and duties delegated to the Director.

31. 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.

PART 3 – RESPONSIBILITY AND FUNCTIONS

4. TO THE DIRECTOR OF NEIGHBOURHOOD SERVICES AND COMMUNITIES

Environmental Health and related licensing / regulatory matters

1. To authorise appropriately experienced and qualified officers to exercise the Council's powers and duties in respect of:

   a. pollution control and general public health functions

   b. refuse collections and waste management

   c. housing functions relating to housing standards

   d. of health and safety at work functions under the above legislation or any legislation replacing or amending the same, or any regulations made thereunder.

   e. animal welfare functions

   f. food hygiene functions

   g. pest control functions

   h. control of infection functions

   i. caravan site licensing

   under the legislation listed in 6 (below) or any legislation replacing or amending the same, or any regulations made thereunder.

2. 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, Parts 2, 4 and 7

   (c) Acquisition of Land Act 1981

   (d) Breeding and Sale of Dogs (Welfare) Act 1999

   (e) Building Act 1984 (Part III)

   (f) The Caravan Sites Act 1968

   (g) Caravan Sites and Control of Development Act 1960 (as amended, and to include the varying of site licence conditions)

   (h) Clean Air Act 1993

   (i) Clean Neighbourhoods and Environment Act 2005

   (j) The Compulsory Purchase Act 1965

   (k) Control of Horses Act 2015

   (l) Control of Dogs Order 1992

   (m) Control of Pollution Act 1974

   (n) Coronavirus Act 2020

   (o) Dangerous Dogs Act 1991

   (p) Dangerous Wild Animals Act 1976

   (q) Dogs Act 1906

   (r) Dogs (Fouling of Land) Act 1996

(s) Energy Act 2011

(t) Environment Act 1995

(u) Environment Act 2021

(v) Environmental Protection Act 1990 (as amended by the Environment Act 1995)

(w) Essex Act 1987 (Part IV, Part VI and Part VII)

(x) Food and Environment Protection Act 1985 (Parts I & III)

(y) The Food Safety and Hygiene (England) Regulations 2013

(z) Food Safety Act 1990 (as amended)

(aa) Gambling Act 2005

(bb) Guard Dogs Act 1975

(cc) Health Act 2006

(dd) Health and Safety at Work etc Act 1974 (and any other relevant statutory provisions as defined in Section 53 of the Act)

(ee) House to House Collections Act 1939

(ff) Housing Act 1985

(gg) Housing Act 2004

(hh) Housing and Planning Act 2016

(ii) Housing Grants (Regeneration and Construction) Act 1996

(jj) Land Compensation Act 1973

(kk) Land Drainage Acts 1976 and 1991

(ll) Law of Property Act 1925

(mm) Licensing Act 2003

(nn) Litter Act 1983

(oo) Local Government and Housing Act 1989

(pp) Local Government (Miscellaneous Provisions) Act 1976

(qq) Local Government (Miscellaneous Provisions) Act 1982 (Sections 13 to 17, 27, 29 Part II and Part III)

(rr) Mobiles Homes Act 2013

(ss) 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)

(tt) Noise and Statutory Nuisances Act 1993

(uu) Noise Act 1996

(vv) Official Feed and Food Controls (England) Regulations 2009

(ww) Police, Factories, etc (Miscellaneous Provisions) Act 1916

(xx) Pollution Prevention and Control Act 1999

(yy) Prevention of Damage by Pests Act 1949 – (Part I)

(zz) Public Health Acts Amendment Act 1890 – Section 42

(aaa) Public Health Act 1936

(bbb) Public Health Act 1961

(ccc) Public Health (Control of Disease) Act 1984

(ddd) The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014

(eee) Refuse Disposal (Amenity) Act 1978

(fff) Regulation (EC) No. 178 / 2002

(ggg) Regulation (EC) No. 852 / 2004

(hhh) Regulation (EC) No. 853 / 2004

(iii) Regulation (EC) No. 854 / 2004

(jjj) Regulation (EC) No. 882 / 2004

(kkk) Regulation (EC) No. 2073 / 2005

(lll) Scrap Metal Dealers Act 2013

(mmm) Sunbeds (Regulation) Act 2010

(nnn) Sunday Trading Act 1994

(ooo) Town Police Clauses Act 1847

(ppp) Trade in Animal Related Products Regulations 2011

(qqq) Vehicle Excise and Registration Act 1994

(rrr) Water Industry Act 1991 (Sections 67 – 86)

(sss) Wildlife and Countryside Act 1981

(ttt) Zoo Licensing Act 1981

Or such other Acts of Parliament as relate to the relevant statutory functions of the Environmental Health Team.

3. 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.

4. To authorise Officers and duly appointed Contractors who are appropriately qualified and experienced to discharge the powers and duties delegated to the Director of Neighbourhood Services and Communities.

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 and Climate Action

(b) Environmental Health Managers, and staffing

Licensing

5. 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.

6. To authorise Officers and duly appoint Contractors who are appropriately qualified and experienced to discharge the powers and duties delegated to the Director of Neighbourhood Services and Communities or relevant Officers.

Community and Leisure

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

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

9. In consultation with the Director of Finance, the setting of the level of fees to be levied for events agreed under 2 above.

10. 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;Promotion and development of sport, the arts, heritage, play and other related activities;

    f) 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.

11. 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.

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

13. Operational issues relating to specialist community transport schemes.

14. 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.

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

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

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

18. 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.

19. 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.

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

21. 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

22.

(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 of the Council, 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 they consider appropriate in consultation with the Director of Finance and in accordance with Council policy on land disposals.

Rivers Management

23. 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.

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

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

26. 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.

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

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

Others

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

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

31. To approve requests for the sharing of vacant Office space within the Council office complex for a period of up to two years, in consultation with the Chairperson of the Strategy and Resources Committee and the Leader of the Council.*

    * Minute No. 853 of Finance and Corporate Services Committee 12 April 2011 refers.

Local Development Land

32. The identification of suitable and available land under the control of the Council for possible inclusion in the Local Development Plan Review begun in 2021 including the taking of any steps (e.g. re-appropriation) required to secure the availability of such land.

Note: This delegated power exists notwithstanding the powers of the Strategy and Resources Committee for the strategic control and management of the Council's assets and only for the duration of the selection of sites for inclusion in the Local Development Plan Review begun in 2021.

5. TO THE DIRECTOR OF STRATEGY AND IMPROVEMENT

ICT

1. To develop and implement ICT strategies.

2. To negotiate with current and potential suppliers to maximise the return on investment in ICT.

PART 3 – RESPONSIBILITY AND FUNCTIONS

6. LICENSING ACT 2003

Head of Service (Environmental Health, Waste and Climate Action):

1. The grant of a Premises Licence or Club Premises Certificate where no representations are made by a Responsible Authority or Interested Party.

2. In consultation with a Legal Advisor, a determination that representations made by a Responsible Authority or Interested Party regarding an application for the grant of (or a variation of) a Premises Licence or Club Premises Certificate or for the grant of a Provisional Statement are frivolous or vexatious.

3. The grant of an application to vary a Premises Licence or Club Premises Certificate where no representations are made by a Responsible Authority or Interested Party, and in the case of an application for a Minor Variation to determine that application having taken into account any representations received.

4. The grant of an application to transfer a Premises Licence where no Notice has been given by the Chief Officer of Police.

5. The determination of an exemption from the requirement to obtain a Personal Licence holder's consent for an application to transfer a Premises Licence.

6. The issue of a Notice specifying the date of entry and inspection (or any extension of that date) where a Club applies for a Club Premises Certificate, a variation of a Certificate or on a review of a Certificate.

7. In consultation with a Legal Advisor, a determination that an application for a review of a Premises Licence or Club Premises Certificate on the grounds that the ground for review is not relevant to one or more of the Licensing Objectives or is frivolous, vexatious or repetitious.

8. In consultation with a Legal Advisor, a determination that a Club is not a Qualifying Club or has ceased to be a Qualifying Club.

9. The grant of an application for a Provisional Statement in respect of a premises which are being or are about to be constructed or extended where no representations are made by a Responsible Authority or Interested Party.

10. The determination of an application to vary the Designated Premises Supervisor where no Notice has been given by the Chief Officer of Police.

11. The issue of a Notice granting or rejecting an application to vary the Designated Premises Supervisor.

12. The receipt of a Notice requesting the removal of a person as a Designated Premises Supervisor.

13. The determination of whether or not a Temporary Event Notice is void.

14. The acknowledgement of receipt of a Temporary Event Notice.

15. Where appropriate, following consideration of any Objection Notice to a Temporary Event Notice, the issue of a Counter Notice where it is considered necessary for the prevention of the crime prevention objective.

16. The issue of a Counter Notice where any of the Permitted Limits are exceeded in any Temporary Event Notice.

17. The rejection of applications for Personal Licences where applicants have failed to meet the statutory conditions.

18. The grant of an application for (or the renewal of) a Personal Licence where no Objection Notice has been given by the Chief Officer of Police.

19. The issue of a Notice to the Chief Officer of Police that an applicant for the renewal of a Personal Licence has a Relevant or Foreign Offence.

20. To issue Notices to the Chief Officer of Police where a Personal Licence holder has been convicted during the application period of a Relevant or Foreign Offence after the grant or renewal of a Personal Licence.

21. The issue and certification as a true copy of any Premises Licence or Club Premises Certificate (or a summary of either) or any Temporary Event Notice or Personal Licence where it has been lost, stolen, damaged or destroyed.

22. Unless specified to the contrary, the issue of all Licences, Certificates, Notices and any other formal notifications required under the Licensing Act 2003.

23. 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 powers under the Licensing Act 2003.

24. To keep the Licensing Register and any Central Register prescribed by the Secretary of State.

25. In consultation with the Director of Neighbourhood Services and Communities, to authorise Officers and duly appoint Contractors who are appropriately qualified and experienced to discharge the powers and duties delegated to the Head of Service (Environmental Health, Waste and Climate Action).

26. To determine, as part of applications by a management committee of a community premises for a new Premises Licence, whether the alternative licence condition in relation to the sale of alcohol should apply instead of the mandatory condition, provided that no representation is received from the Chief Officer of Police.

27. To suspend premises licences and club premises certificates for non-payment of the annual fee.

28. To make representations on behalf of the Licensing Authority in respect of all applications for premises licenses or club premises certificates and to apply for reviews of the same.

Environmental Health Manager- Environmental Protection:

29. To respond to the Licensing Authority on behalf of the Council (as a Responsible Authority) to applications for (or variations of or reviews of) Premises Licences or Club Premises Certificates.

30. To respond to the Licensing Authority on behalf of the Council (as a Responsible Authority) to applications for Provisional Statements in respect of premises.

31. To make applications on behalf of the Council (as a Responsible Authority) to the Licensing Authority for a review of Premises Licences or Club Premises Certificates.

32. In consultation with the Director of Neighbourhood Services and Communities, to authorise Officers and duly appoint Contractors who are appropriately qualified and experienced to discharge the delegated powers and duties set out in 1 – 3 above.

PART 3 – RESPONSIBILITY AND FUNCTIONS

7. GAMBLING ACT 2005

Head of Environmental Health, Waste and Climate Action:

1. Consideration and determination of applications for the following matters where no objections have been received or any so received have been withdrawn:

   (a) premises licences;

   (b) variation to licences;

   (c) transfers of licences;

   (d) provisional statements;

   (e) club gaming / club machine permits.

2. Consideration and determination of applications or decisions on the following matters:

   (f) other permits;

   (g) cancellation of licensed premises gaming machine permits.

3. Consideration of Temporary Use Notices and Occasional Use Notices.

PART 3 – RESPONSIBILITY AND FUNCTIONS

8. OTHER LICENSING FUNCTIONS

(Hackney Carriage Drivers and Vehicle Licences; Private Hire Drivers, Vehicle and Operators Licences; Street Collections; House to House Collections; Registration of Society Lotteries; Sex Establishments and Scrap Metal Dealers)

Head of Environmental Health, Waste and Climate Action:

1. Subject to no objections being received, the grant and issue of licences and permits for:
   * Charitable Collections (Street Collections and House to House Collections);
   * Registration of Society Lotteries;

2. The issue of Hackney Carriage and Private Hire Vehicle, Drivers and Operators Licences, except in the case of Drivers Licences where the applicant has unspent convictions or endorsements exceeding six points accrued on his/her Driving Licence in which event the matter shall be referred to the Licensing Sub-Committee.

3. The refusal of an application for a Drivers Licence on the recommendation of the applicant's GP in a medical report.

4. With regard to the Carriage of Assistance Dogs in Taxis:
   * The issue of Exemption Certificates under Section 37(5) of the Disability Discrimination Act 1995 where satisfactory medical evidence is provided by the applicant's GP of relevant medical grounds.
   * The determination of whether the exemption is to apply to a 'specified taxi' or a 'specified type of taxi'.

5. In consultation with the Chairperson of the Licensing Committee, the suspension or revocation of Hackney Carriage and Private Hire Drivers' licences.

6. To authorise Officers and duly appoint Contractors who are appropriately qualified and experienced to discharge the powers and duties delegated to the Head of Service (Environmental Health, Waste and Climate Action).

7. The grant, issue, renewal or variation of a Scrap Metal Dealer Licence where the applicant is deemed to be a suitable person and no objections are received.

8. The refusal or rejection of an application for a Scrap Metal Dealer Licence where no representations are received.

9. In consultation with the Chairperson of the Licensing Committee, the revocation of a Scrap Metal Dealers Licence where no representations are received.

10. To ensure all Scrap Metal Dealer Licences are reported to the National database.

11. The power to set fees (in consultation with the Director of Neighbourhood Services and Communities).

PART 3 – RESPONSIBILITY AND FUNCTIONS

9. TO THE DIRECTOR OF LEGAL AND GOVERNANCE

1 **Dispensations** – The Monitoring Officer in consultation with the Independent Person may grant dispensations relating to the effects of declaring interests under the Members Code of Conduct. The Monitoring Officer may at their discretion refer matters to the Joint Standards Committee.

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PART 4 - RULES OF PROCEDURE

COUNCIL AND COMMITTEE PROCEDURE RULES

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PART 4 - RULES OF PROCEDURE

BACKGROUND

The authority for making Standing Orders is found in paragraph 42 of Schedule 12 of the Local Government Act 1972, which states that:

"Subject to the provisions of the Act, a local authority may make standing orders for the regulations of their proceedings and business and may vary or revoke any such order".

The Local Government and Housing Act 1989 provides for Regulations to be made requiring Councils to adopt standing orders on particular issues.

The Local Government Act 2000 and sub-ordinate legislation provide for rules of procedure for Council and Committee meetings to be part of the Council's Constitution.

RULE 1. MEETINGS AND BUSINESS OF THE COUNCIL

Meetings

(1) Ordinary meetings of the Council will take place in accordance with a programme as determined by the Council.

(2) In a year when there is an ordinary election of Councillors, the annual meeting will take place within 21 days of the retirement of the outgoing Councillors (fourth day after day of election). In any other year, the annual meeting will take place in March, April or May as determined by the Council.

Order of Business

(3) Except as otherwise provided by paragraph**s** (4) and (5) of this Rule, the order of business at every meeting of the Council shall be:

(a) Choose a person to preside if the Chairperson and Vice-Chairperson are absent;

(b) Deal with any business required by statute to be done before any other business;

(c) To approve as a correct record and sign the Minutes of the last meeting of the Council;

(d) To receive declarations of interests and then deal with any business expressly required by statute to be done;

(e) Chairperson's announcements, and then receive public questions (not at the Statutory Annual meeting);

(f) To dispose of business (if any) remaining from the last meeting;

(g) To receive and consider any reports, minutes and recommendations of all Committees;

(h) To receive and, as appropriate, debate any Statements as specified in the Summons – to include the Leader's Speech setting out the Council's Programme for the current municipal year (to the first meeting following the Annual Meeting) and the Budget Speech setting out the Council's Budget for the ensuing year (to the February meeting);

(i) To receive and consider petitions requiring debate under the Council's Petitions Scheme;

(j) To consider motions in the order in which notice has been received;

(k) To answer questions asked under Rule 6;

(l) Other business, if any, specified on the summons;

(m) Questions (which may be made without notice) to the Leader of the Council (or in his / her absence the Deputy Leader) (other than at the Annual Meeting, and at the meetings referred to in (h) above) for a maximum of 15 minutes and not beyond 10.00pm unless such period is extended with the mutual agreement of the Chairperson of the Council and the Leader (or Deputy Leader).

(n) Business by reason of special circumstances considered by the Chairperson to be urgent.

Variation of order of business

(4) Business falling under items (a), (b) or (c) of paragraph (3) shall not be displaced, but subject to that, the order of business may be varied:

(a) by the Chairperson at their discretion;

(b) by a resolution passed on a motion (which need not be in writing) duly moved and seconded, which shall be moved and put without discussion.

Regulation of business and duration of meetings

(5) No business shall be transacted at a meeting of the Council or of any Committee or Sub-Committee other than that specified in the agenda except business brought before the meeting on the grounds of urgency, the reasons for which having first been agreed by the Chairperson.

(6) (i) The business of meetings of the Council (and its Committees and Sub-Committees) shall cease 2.5 / 3 hours after the meeting has commenced, or such sooner or later time as the Chairperson shall consider appropriate.

(ii) When a meeting is terminated, any remaining business shall stand adjourned until a date and time to be fixed by the Chairperson.

(iii) Where (ii) above applies, given that the agenda and associated reports and papers for the original meeting have been published, the adjourned meeting can be called as soon as practicable and without necessary delay, having regard to the remaining business and venue availability. In the case of Committees and Sub-Committees, where Substitutes have been appointed

the same Members should attend (the Substituted Members must not take their seats).

(iv) Notice of the adjourned meeting will be published on the Council's website, unless the adjourned meeting is held within 24 hours.

Annual Meeting

(7) (a) The Leaders of all groups to submit to the Director of Legal and Governance a list of Members of their group as required by the Act of 1989 (or to confirm in a non-election year that the list is unchanged) not less than 7 days prior to the Annual Meeting.

(b) The Chief Executive to call the Leader-designate of the Council and the Opposition Leader(s) to a meeting not less than 48 hours before the Annual Meeting to discuss the allocation of Committee places.

(c) The ruling of the Chief Executive on the interpretation of the relevant statutory provisions relating to the total number of seats on the Council's Committees to which each group is entitled to be recognised as being final.

(d) Not later than Noon on the day before the Annual Meeting the Leader-designate of the Council and Opposition Leader(s) to submit to the Director of Legal and Governance a list of their groups' nominations to the Committee places allocated to their groups.

(8) At the Annual Meeting the Council will also:

(a) Elect a person to preside if the Chairperson is not present

(b) Elect the Chairperson of the Council (and elected Chairperson to make Statutory Declaration of Acceptance of Office)

(c) Elect the Vice-Chairperson of the Council (and elected Vice-Chairperson to make Statutory Declaration of Acceptance of Office)

(d) Receive any announcements from the Chairperson

(e) Ratify the Leader-designate

(f) Appoint the Deputy Leader

(g) Appoint Committees

(h) Decide the allocation of seats to political groups in accordance with political balance rules

(i) Appoint Councillors to serve on Committees (see Rule 17)

(j) Adjourn for special meetings of Committees to elect their Chairperson and Vice-Chairperson to be appointed

(k) Appoint Councillors to serve on outside bodies

(9) The Council shall at the Annual Meeting appoint such Committees as it is required to appoint by or under any statute or under Rule 17 and may at any time appoint such other Committees as are necessary to carry out the work of the Council. It may, subject to any statutory provision in that behalf, may at any time dissolve a Committee (for the avoidance of doubt this excludes the Overview and Scrutiny Committee and the Joint Standards Committee) or alter the membership of its Committees. All Committees so appointed shall remain in existence until replaced at the next Annual Meeting.

(10) In connection with the special meetings of Committees referred to in 8(j) above, the Chairperson of the Council shall preside for the purpose of electing a Chairperson. In the event of an equality of votes between nominees a casting vote may be exercised. Should the Committee otherwise fail to elect a Chairperson, the Council shall appoint a Chairperson for that Committee.

(11) In the event of more than two nominations being submitted for the election of the Chairperson of the Council and the Chairperson of any Committee or Sub-Committee, on the first ballot those receiving the lowest number of votes shall be eliminated and a further ballot shall be taken for the remaining two candidates.

Leaders' Speech

(12) The Leader's Speech (first meeting following the Statutory Annual meeting) setting out the Council's Report and Programme for the current municipal year and the responses thereto of the Opposition Leader(s) shall exceptionally be time-limited to 15 minutes but the final right of reply to each shall be time-limited in accordance with Rule 8.

Budget Speech

(13) (a) The Budget Speech (February meeting) setting out the Council's Budget for the ensuing municipal year and the responses thereto of the Opposition Leader(s) shall exceptionally be time-limited to 15 minutes but the final right of reply to each shall be time-limited in accordance with Rule 8.

(b) No alternative proposal or amendment to that being recommended to the Council as part of the Budget and Council Tax Setting item of business shall be considered unless notice in writing (and marked confidential) has been given to the Council's Chief Finance Officer no later than 5pm three working days before the date of the Council meeting. (For the avoidance of doubt the confidentiality of the alternative proposal or amendment is only restricted to the nature of the proposal or amendment and not its existence.)

Extraordinary Meetings

(14) The Chief Executive may call an extraordinary meeting of the Council. In addition, those listed below may request the Chief Executive to call Council meetings in addition to ordinary meetings:

(a) the Council by resolution;

(b) the Chairperson of the Council;

(c) the Monitoring Officer;

(d) the Head of Paid Service;

(e) the Section 151 Officer; and

(f) any five Members of the Council if they have signed a requisition presented to the Chairperson and they have refused to call a meeting or have failed to call a meeting within seven days of the presentation of the requisition.

Policy Matters

(15) An issue before the Council shall be deemed to be a policy matter if it involves:

- an alteration, addition to, or removal from, the Council's Strategic and Corporate Objectives;
- the adoption by the Council of a new function or sphere of activity;
- the cessation by the Council of an existing function or sphere of activity;
- a decision to carry out an existing in-house activity by contract or the reinstatement in-house of an activity previously contracted out;
- any major or significant change in the Council's activities which the Monitoring Officer in consultation with the Leader of the Council and Opposition Leader(s) rules to be a policy matter.

(16) The item will be the subject of a specific agenda item at the Council and will not be considered as part of the reception of reports of any Committee;

(17) The normal rules of debate will apply and the Chairperson of the Committee, if any, with specific responsibility for the subject matter under consideration to have a right of reply to the debate

(18) Notwithstanding (16) above, before the conclusion of the debate the penultimate speaker will be the Opposition Leader(s) and the final right of reply will be afforded to the Leader of the Council.

RULE 2. CHAIRPERSON OF MEETING

Any power or duty of the Chairperson in relation to the conduct of any meeting of the Council and its Committees may be exercised by the person presiding at the meeting.

RULE 3. QUORUM FOR MEETINGS

(1) Unless otherwise provided, the quorum of a meeting will be one quarter of the whole number of Members (for the avoidance of doubt this will be rounded up to the next whole number). The quorum of a Committee shall not be less than three Members.

(2) If during any meeting the Chairperson, after counting the number of Members present, declares that there is not a quorum present, the meeting shall stand adjourned. The consideration of any business not transacted shall be adjourned to a time fixed by the Chairperson at the time the meeting is adjourned, or, if he / she does not fix a time, to the next ordinary meeting of the Council.

RULE 4. NOTICES OF MOTION

(1) Notice of every motion, other than a motion which under Rule 5 may be moved without notice, shall be given in writing and signed or sent by email from a Maldon District Council Member email address by the Member intending to move the motion and by a seconder and shall reach the Director of Legal and Governance before 10.30 a.m. on the Wednesday in the week preceding the week in which the Council meeting is held.

It shall be dated, numbered in the order in which it is received and entered in a book which shall be open to the inspection of every Member of the Council.

Motions to be set out in summons

(2) The Director of Legal and Governance shall set out in the summons for every meeting of the Council all motions of which notice has been duly given in the order in which they have been received, unless the Member and seconder giving such a notice intimated in writing when giving it, that they proposed to move it at some later meeting, or have since withdrawn it in writing. Provided that at each Council meeting a motion from only one member of each Political Group (non-aligned Councillors are regarded as a Group for this purpose) may be put forward.

Automatic reference to Committee

(3) If the subject matter of any motion of which notice has been duly given comes within the province of any Committee it shall stand referred without discussion to such Committee, or to such other Committee as the Council may determine, for resolution or recommendation depending on the Terms of Reference of that Committee.

Provided that the Chairperson may, in consultation with the Leader, and, if they consider it convenient and conducive to the dispatch of business, allow the motion to be dealt with at the meeting at which it is brought forward.

(4) When a motion has been referred to any Committee under (3), the Member of the Council who has moved, or given notice of intention to move the motion and their seconder shall have notice of the meeting of the Committee at which it is proposed to consider the motion. They shall have the right to attend the meeting and the opportunity of explaining the motion.

Scope of motions

(5) Every motion shall be relevant to some matter in relation to which the Council has powers or duties or which affect the District.

RULE 5. MOTIONS AND AMENDMENTS WHICH MAY BE MOVED WITHOUT NOTICE

The following motions and amendments may be moved without notice:

(1) Appointment of a Chairperson of the meeting at which the motion is made.

(2) Motions relating to the accuracy of the Minutes.

(3) That an item of business specified in the summons has precedence.

(4) Remission to a Committee.

(5) Appointment of a Committee or Members thereof, occasioned by an item mentioned in the summons to the meeting.

(6) Adoption of reports and recommendations of Committees or Officers and any consequent resolutions.

(7) That leave be given to withdraw a motion.

(8) Extending the time limit for speeches.

(9) Amendments to motions.

(10) That the Council proceeds to the next business.

(11) That the question be now put.

(12) That the debate be now adjourned.

(13) That the Council adjourns.

(14) Authorising the sealing of documents.

(15) Suspending Rules of Procedure, in accordance with Rule 22.

(16) Motion under section 100A(4) of the Local Government Act, 1972 to exclude the public.

(17) That a Member named under Rule 10 (Disorderly Conduct) be not further heard or do leave the meeting.

(18) Giving consent of the Council where the consent of the Council is required by these Rules.

RULE 6. QUESTIONS

(1) A Member of the Council may ask the Chairperson of a Committee a question on a recommendation of a Committee when that item is under consideration by the Council.

(2) Subject to paragraph (3), a Member of the Council may ask the Chairperson of a Committee a question on any matter the subject of a resolution of a Committee.

(3) A Member of the Council may:

(a) if notice in writing has been given to the Director of Legal and Governance, which has been received not later than Noon on the Monday preceding the day on which the meeting is to be held, ask the Chairperson or the Chairperson of any Committee, any question on any matter in relation to which the Council has powers or duties or which affect the District.

(b) with the permission of the Chairperson, put to them or the Chairperson of any Committee, any question relating to urgent business, of which such notice has not been given; but a copy of any such question shall, if possible, be delivered to the Director of Legal and Governance not later than ten o'clock in the morning of the day of the meeting.

(4) Every question shall be put and answered without discussion, but the person to whom a question has been put may decline to answer.

(5) An answer may take the form of:

(a) a direct oral answer; or

(b) where the desired information is contained in a publication of the Council, a reference to that publication; or

(c) where the reply to the question cannot conveniently be given orally, a written answer circulated to Members of the Council.

(6) Every question under the provisions of paragraphs (3)(a) and (3)(b) of this Rule shall be recorded in the Council Minutes together with any replies given thereto.

(7) Questions may be also be put, without notice, to the Leader of the Council under Rule 1(3)(m), provided that no question shall seek to raise, or have the effect of raising any matter dealt with or disposed of through the transaction of business earlier in the particular meeting.

RULE 7. MINUTES OF MEETINGS

(1) At the next suitable meeting, the Chairperson shall put the question that the Minutes of the meeting of the Council or of a Committee or Sub-Committee held on the .....day of..... be approved as a correct record.

(2) No discussion shall take place upon the Minutes, except upon their accuracy, and any question of their accuracy shall be raised by motion. If no such question is raised, or if it is raised then as soon as it has been disposed of, the presiding Chairperson shall sign the Minutes.

(3) Where in relation to any meeting of the authority, the next such meeting for the purpose of signing the minutes is a meeting called under paragraph 3 of Schedule 12 to the Local Government Act 1972 (an extraordinary meeting), then the next following meeting (being a meeting called otherwise than under that paragraph) shall be treated as a suitable meeting for the purposes of paragraph 41(1) and (2) of schedule 12 relating to signing of minutes.

RULE 8. RULES OF DEBATE FOR COUNCIL MEETINGS

Motions and Amendments

(1) A motion or amendment shall not be discussed apart from the opening speech of the proposer unless it has been proposed and seconded, and unless notice has already been given in accordance with Rule 4 it shall, if required by the Chairperson, be put into writing and handed to the Chairperson, before it is further discussed or put to the meeting.

(2) An Officer's recommendation in a Planning Committee meeting is recognised as the substantive motion and no proposer or seconder is required.

Seconder's speech

(3) A Member, when seconding a motion or amendment may, if they then declare their intention to do so, reserve their speech until a later period of the debate.

Only one Member to stand at a time

(4) A Member when speaking shall stand and address the Chairperson. If two or more Members rise, the Chairperson shall call on one to speak; the other or others shall then sit. While a Member is speaking the other Members shall remain seated, unless rising to a point of order or in personal explanation.

Content and length of speeches

(5) A Member shall direct their speech to the question under discussion or to a personal explanation or to a point of order. No speech shall exceed five minutes in the case of a mover of a motion and three minutes in all other cases except by consent of the Chairperson.

When a Member may speak again

(6) A Member who has spoken on any motion shall not speak again whilst it is the subject of debate, except:

(a) to speak once on an amendment moved by another Member;

(b) if the motion has been amended since he / she last spoke, to move a further amendment;

(c) if their first speech was on an amendment moved by another Member, to speak on the main issue, whether or not the amendment on which they spoke was carried;

(d) in exercise of a right of reply given by paragraph (11) or (13) of this Rule;

(e) on a point of order;

(f) by way of personal explanation.

Amendment to motion

(7) An amendment shall be relevant to the motion and shall be either:

(a) to refer a subject of debate to a Committee for consideration or reconsideration;

(b) to leave out words;

(c) to leave out words and insert or add others;

(d) to insert or add words;

but such omission, insertion or addition of words shall not have the effect of negating the motion before the Council.

(8) Only one amendment may be moved and discussed at a time and no further amendment shall be moved until the amendment under discussion has been disposed of.

(9) If an amendment be lost, other amendments may be moved on the original motion. If an amendment be carried, the motion as amended shall take the place of the original motion and shall become the motion upon which any further amendment may be moved.

Alteration to motion

(10) A Member may, with the consent of the Council, signified without discussion:

(a) alter a motion of which they have given notice, or

(b) with the further consent of their seconder alter a motion which they have moved,

If (in either case) the alteration is one which could be made as an amendment thereto.

Withdrawal of motion

(11) A motion or amendment may be withdrawn by the mover with the consent of his / her seconder and of the Council, which shall be signified without discussion, and no Member may speak upon it after the mover has asked permission for its withdrawal, unless such permission shall have been refused.

Right of reply

(12) The mover of a motion has a right to reply at the close of the debate on the motion, immediately before it is put to the vote. If an amendment is moved, the mover of the original motion shall also have a right of reply at the close of the debate on the amendment and shall not otherwise speak on the amendment. The mover of the amendment shall have no right of reply to the debate on their amendment.

Motions which may be moved during debate

(13) When a motion is under debate no other motion shall be moved except the following:

(a) to amend the motion;

(b) to adjourn the meeting;

(c) to adjourn the debate;

(d) to proceed to the next business;

(e) that the question be now put;

(f) that a Member be not further heard;

(g) by the Chairperson under Rule 10(2) that a Member leaves the meeting;

(h) a motion under section 100A(4) of the Local Government Act, 1972 to exclude the public.

Closure motions

(14) A Member may move without comment at the conclusion of a speech of another Member, "that the Council proceeds to the next business", "that the question be now put", "that the debate be now adjourned", or "that the Council adjourns", on the seconding of which the Chairperson shall proceed as follows:

(a) on a motion to proceed to next business: unless in their opinion the matter before the meeting has been insufficiently discussed, they shall first give the mover of the original motion a right of reply, and then put to the vote the motion to proceed to next business;

(b) on a motion that the question be now put: unless in their opinion the matter before the meeting has been insufficiently discussed, they shall first put to the vote the motion that the question be now put, and if it is passed then give the mover of the original motion their right of reply under paragraph (11) of this Rule before putting their motion to the vote;

(c) on a motion to adjourn the debate or the meeting: if in their opinion the matter before the meeting has not been sufficiently discussed and cannot reasonably be sufficiently discussed on that occasion, they shall put the adjournment motion to the vote without giving the mover of the original motion their right of reply on that occasion.

Points of Order

(15) A Member may rise on a point of order or in personal explanation and shall be entitled to be heard forthwith.

(a) A point of order shall relate only to an alleged breach of a Rule of Procedure or statutory provision, and the Member shall specify the Rule of Procedure or statutory provision and the way in which they consider it has been broken.

(b) A personal explanation shall be confined to some material part of a former speech by them which may appear to have been misunderstood in the present debate.

(16) The ruling of the Chairperson on a point of order or on the admissibility of a personal explanation shall not be open to discussion.

Respect for Chairperson

(17) Whenever the Chairperson rises during a debate a Member then standing shall resume their seat and the Council shall be silent.

Application to Committees and Sub-Committees

(17) This Rule (except those parts which relate to standing and to speaking more than once) shall, with any necessary modification, apply to Committee and Sub-Committee meetings.

RULE 9. MOTIONS AFFECTING PERSONS EMPLOYED BY THE COUNCIL

If any question arises at a meeting of the Council or of a Committee thereof to which section 100A of the Local Government Act, 1972 applies as to the appointment, promotion, dismissal, salary, superannuation or conditions of service, or as to the conduct of any person employed by the Council, such question shall not be the subject of discussion until the Council or Committee, as the case may be, has decided whether or not the power of exclusion of the public under section 100A (4) of the Local Government Act, 1972 shall be exercised.

RULE 10. DISORDERLY CONDUCT

(1) If at a meeting any Member of the Council misconducts themselves by persistently disregarding the ruling of the Chairperson, or by behaving irregularly, improperly, or offensively, or by wilfully obstructing the business of the Council, the Chairperson or any other Member may move "that the Member named be not further heard", and the motion if seconded shall be put and determined without discussion.

Continuing misconduct by a named Member

(2) If the Member named continues their misconduct after a motion under the foregoing paragraph has been carried the Chairperson shall:

EITHER move "That the Member named do leave the meeting" (in which case the motion shall be put and determined without seconding or discussion);

OR adjourn the meeting of the Council for such period as they in their discretion shall consider expedient.

General disturbance

(3) In the event of general disturbance which in the opinion of the Chairperson renders the due and orderly despatch of business impossible, the Chairperson, in addition to any other power vested in them may, without the question being put, adjourn the meeting of the Council for such period as they in their discretion shall consider expedient.

RULE 11. DISTURBANCE BY THE PUBLIC

If a member of the public interrupts the proceedings at any meeting the Chairperson shall warn them. If they continue the interruption the Chairperson shall order their removal from the Council Chamber. In case of general disturbance in any part of the Chamber open to the public the Chairperson shall order that part to be cleared.

RULE 12. RESCISSION OF PRECEDING RESOLUTION

No motion to rescind any resolution passed within the preceding six months, and no motion or amendment to the same effect as one which has been rejected within the preceding six months, shall be proposed unless the notice thereof given in pursuance of Rule 4 bears the names of at least ten Members of the Council. When any such motion or amendment has been disposed of by the Council, it shall not be open to any Member to propose a similar motion within a further period of six months.

This Rule shall not apply to motions moved in pursuance of a recommendation of a Committee.

RULE 13. VOTING

(NB: See also Rule 15 on Interests)

Meetings

(1) Any item of business will be decided by a simple majority of those Members voting and present at the time the question was put. If a Member has not been present at the meeting for the whole of the consideration of a planning application or related matter, or has not undergone fundamental induction training once such a programme has been introduced, they shall not vote on the matter.

(2) If there are equal numbers of votes for and against, the Chairperson will have a second or casting vote. There will be no restriction on how the Chairperson chooses to exercise a casting vote.

(3) The mode of voting at meetings of the Council, Committees and Sub-Committees shall be by a show of hands or electronic means, or if there is no dissent, by affirmation of the meeting: Provided that on the requisition of any Member of the Council made before the vote is taken and supported by one other Member who signifies their support the voting on any question shall be by roll-call and shall be recorded so as to show how each Member present and voting gave their vote. The name of any Member present and not voting shall also be recorded.

(4) Where any Member requests it immediately after a vote, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

(5) Immediately after any vote is taken at a budget decision meeting there must be recorded in the minutes of that meeting the name of the persons who cast a vote for or against the decision or who abstained from voting.

NOTE: For this purpose, 'budget decision' means a meeting at which it makes a calculation in accordance with sections 31A, 31B, 34-36A, 42A, 42B, 45-49, 52ZF, 52ZJ of the Local Government Finance Act 1992 or issues a precept under Chapter 4 of Part 1 of that Act, and includes a meeting where making the calculation or issuing the precept was included as an item of business for the agenda for that meeting. The requirement to record voting extends to a vote on any decision related to the making of the calculation or the issuing of the precept (The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2014).

(6) In the event of the Officers' recommendation to approve an application being formally defeated by the Planning Committee, the formation of alternative planning grounds for refusal shall require a separate recorded electronic vote for each specific policy reason put forward, ensuring maximum legal transparency.

Appointments

(7) Where there are more than two Members nominated for any position to be filled by the Council or a Committee and of the votes given there is not a majority in favour of one Member, the name of the Member having the least number of votes shall be struck off the list and a fresh vote shall be taken, and so on until a majority of votes is given in favour of one Member.

RULE 14. DISCLOSURE OF INTERESTS

(NB: See also the Council's Code of Member Conduct)

If a Member has a Disclosable Pecuniary, Other Registrable or Non-Registrable Interest as defined by the Council's Code of Member Conduct then that interest must be disclosed and where that interest is a Disclosable Pecuniary or Other Registrable one as defined in the Code the Member shall not only disclose it but then withdraw from the meeting while the business to be transacted is under consideration (unless formal dispensation has been granted).

RULE 15. APPOINTMENT AND CONSTITUTION OF COMMITTEES

(1) The Council shall at each Annual Meeting appoint from among its membership the Committees referred to in this Rule to advise the Council on the discharge of its functions, and to exercise on its behalf such functions as may be delegated to such Committees by the Council. The Council shall adopt and may from time to time review Terms of Reference for Committees.

(2) The Committees shall be the Strategy and Resources Committee, the Performance, Governance and Audit Committee, the Planning Committee, the Overview and Scrutiny Committee, the Licensing Committee, and the Joint Standards Committee.

(3) The Strategy and Resources Committee shall comprise 11 Members, the Performance, Governance and Audit Committee shall comprise 10 Members, and the Licensing Committee shall comprise 10 Members. All Committees shall be formed in accordance with the political balance provisions (see also Procedure Rule 1(7)).

The Chairperson of the Council is eligible to be appointed to any of the Committees referred to in (2) above in his / her own right (see however paragraph (7) below).

(4) The Planning Committee shall comprise 13 Members of the Council (politically balanced) and determine planning applications referred to it pursuant to the Regulations and the Constitution as detailed in its Terms of Reference.

(5) The Joint Standards Committee shall comprise:

(a) eight Members of the Council (political balance provisions apply);

(b) two persons appointed by the Council upon nomination by the Essex Association of Local Councils and who are Members of Parish / Town Councils in the Maldon District (non-voting);

(c) the Independent Person (or Reserve) (non-voting).

(6) The Overview and Scrutiny Committee of the Council shall comprise 10 Members of the Council and shall be formed in accordance with the political balance provisions. The Chairperson of the Council, the Leader and Deputy Leader of the Council and the Chairperson and Vice-Chairperson of the Strategy & Resources and the Performance, Governance & Audit Committees shall not serve on the Overview and Scrutiny Committee.

(7) The Council shall at its Annual Meeting also appoint Members to serve on the Appointments Board and the Investigating and Disciplinary Committee and Panel as set out below. Political balance provisions shall apply.

- Investigating and Disciplinary Committee – Five Members;
- Investigating and Disciplinary Panel – Minimum of five Members to ensure that at least three have not served on the initial investigation carried out by the Investigating and Disciplinary Committee
- Appointments Board – Two Members to serve in addition to the Leader or Deputy Leader, Opposition Leader or Deputy, and Chairperson or Vice-Chairperson of the Strategy & Resources and Performance, Governance and Audit Committees.

Substitutions

(8) A Member of a Committee shall, if the Member wishes another Member of the political group to which the Member belongs to attend a meeting of that Committee in their place, give the relevant Committee Chairperson, Vice-Chairperson, and copied to Director of Legal and Governance, written notice not later than fifteen minutes before the published start time of that meeting that the Member is unable to attend and that the substitute Member named in the notice will attend in their place.

(9) A substitution notice may be given by the Leader of a political group.

(10) The effect of a substitution notice shall be that the Member named in the notice shall cease to be a Member of that Committee for the duration of that meeting and that the substitute Member shall be a full Member of the Committee for the same period.

(11) A substitution notice may be revoked at any time preceding the deadline for giving of such notice.

(12) These arrangements shall not apply to the Licensing Committee unless the proposed substitute Member has been trained on public licensing matters, and do not apply to the Licensing Sub-Committee.

Termination of appointments and allocated seats falling vacant

(14) Where a seat allocated to a political group falls vacant the following procedure shall apply:

(i) If the seat has fallen vacant as a result of the death, resignation or disqualification of a Member, the Act and Regulations made there under provide for a review of allocations of seats to groups at the next meeting of the Council following the election of a replacement Member, unless the person elected indicates that the Member does not wish such a review to take place. If in these circumstances a review is to take place, the process set out in Procedure Rule 1(7) shall apply in respect of the next ordinary meeting of the Council following the by-election at which the person is elected.

(ii) In all other circumstances the group to which the seat is allocated shall give notice of its nomination of a Member to a vacant seat in writing to the Director of Legal and Governance who shall report as soon as possible to the Council for the Council to approve the filling of the vacant seat.

RULE 16. SPECIAL MEETINGS OF COMMITTEES

The Chairperson of a Committee or the Chairperson of the Council may call a special meeting of a Committee at any time. A special meeting shall also be called on the requisition of a quarter of the whole number of the Committee, delivered in writing to the Director of Legal and Governance, but in no case shall less than three Members requisition a special meeting. The summons to the special meeting shall set out the business to be considered thereat, and no business other than that set out in the summons shall be considered at that meeting.

RULE 17. APPOINTMENT OF SUB-COMMITTEES

(1) Every Committee appointed by the Council may appoint Sub-Committees for purposes to be specified by the Committee.

(2) The Chairperson of a Sub-Committee or the Chairperson of the parent Committee may call a meeting of the Sub-Committee at any time.

RULE 18. ATTENDANCE BY MEMBER AT COMMITTEE

A Member of the Council may attend Committee meetings of which they are not a member and may also speak by prior arrangement with, and at the discretion of, the Chairperson. This procedure rule shall not apply to meetings of the Appointments Board, Investigating and Disciplinary Committee and Panel (all matters) and the Joint Standards Committee (when considering matters deemed to be private / confidential and where the public is to be excluded from the meeting).

RULE 19. FINANCIAL ADMINISTRATION

Every Committee, Sub-Committee and Officer of the Council shall conform with the financial arrangements made by the Council under the provisions of section 151 of the Local Government Act, 1972.

RULE 20. SUSPENSION AND AMENDMENT OF PROCEDURE RULES

(1) All of these Procedure Rules except Nos. 7(3), 13(4), 13(5) and 21(2) may be suspended by motion on notice or without notice if at least sixteen (16) Members of the Council are present and by the consent of the simple majority of those Members. Suspension can only be for the duration of the meeting.

(2) Any motion to add to, vary or revoke these Rules will, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council. Any subsequent decision on such a motion shall be on the basis of a simple majority of those Members present and voting.

RULE 21. PROCEDURE RULES TO BE GIVEN TO MEMBERS

A printed copy of these Procedure Rules shall be given to each Member of the Council by the Director of Legal and Governance upon delivery to them of the Member's Declaration of Acceptance of Office on the Member being first elected to the Council.

RULE 22. INTERPRETATION OF PROCEDURE RULES

The ruling of the Chairperson as to the construction or application of any of these Rules, or as to any proceedings of the Council, or of its Committees or Sub-Committees, shall not be challenged at any meeting of the Council, or of its Committees or Sub-Committees and their decision shall be final.

PART 4 – RULES OF PROCEDURE

ACCESS TO INFORMATION PROCEDURE RULES

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1. SCOPE

1.1 These Rules apply to all meetings of the Council, and its Committees and Sub-Committees. They cover Members' rights of access to information and the public's access to information. These Rules do not cover public rights of access to information under the Freedom of Information Act 2000, and the Data Protection Act 1998.

2. ADDITIONAL RIGHTS TO INFORMATION

2.1 These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

3. RIGHTS TO ATTEND MEETINGS

3.1 Members of the public may attend all meetings subject only to the exceptions in these Rules.

4. NOTICES OF MEETING

4.1 The Council will give at least five working days notice of any meeting by posting details on its website www.maldon.gov.uk.

5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

5.1 The Council will make copies of the agenda and reports open to the public available for inspection at the Council Offices, Princes Road, Maldon CM9 5DL and on its website, at least five clear working days before the meeting (excluding the day of publication of notice and the day of the meeting). Where reports or associated documents are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to Members.

Note: The Local Government (Access to Information) Act 1985 provides that an item of business may not be considered unless either it is included on the published agenda for a meeting or by reason of special circumstances the Chairperson of the meeting considers it to be urgent. Once the agendas for meetings of the Council, its Committees and Sub-Committees have been produced, there is little scope for issuing supplementary reports. It is not permissible to simply create an agenda item for a report to follow at a later date.

6. SUPPLY OF COPIES

6.1 The Council will supply copies of:

(a) any agenda and reports which are open to public inspection;

(b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and

(c) if the Proper Officer thinks fit, copies of any other documents supplied to Members in connection with an item to any person on payment of a reasonable charge for postage and any other costs.

7. ACCESS TO MINUTES ETC. AFTER THE MEETING

7.1 The Council will make available copies of the following for six years after a meeting:

(a) the minutes of the meeting or records of decisions taken, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;

(b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;

(c) the agenda for the meeting; and

(d) reports relating to items when the meeting was open to the public.

8. BACKGROUND PAPERS

List of background papers

(a) The Proper Officer will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his opinion:

(i) disclose any facts or matters on which the report or an important part of the report is based; and

(ii) which have been relied on to a material extent in preparing the report but does not include published works or those which disclose exempt or confidential information (as defined) and in respect of executive reports, the advice of a political advisor.

Public inspection of background papers

(a) The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

9. SUMMARY OF PUBLIC'S RIGHTS

9.1 A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at the Maldon District Council Offices, Princes Road, Maldon, Essex CM9 5DL.

10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

Confidential information – requirement to exclude public

(a) The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

Exempt information – discretion to exclude public

(a) The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed. In these circumstances, public access to reports, background papers and minutes will also be excluded.

(b) Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

Meaning of confidential information

(a) Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order or under another Act.

Meaning of exempt information

(a) Subject to the **conditions** detailed in 14 (b) below, exempt information is defined in the Local Government (Access to Information) (Variation) Order 2006 as information falling within any of the following categories:

	Category	Conditions/definitions
1.	Information relating to any individual	1. Conditions - see 14 (b) below
2.	Information which is likely to reveal the identity of an individual	1. Conditions - see 14 (b) below
3.	Information relating to the financial or business affairs of any particular person (including the authority holding that information)	1. Conditions - see 14 (b) below 2. Definitions - "financial or business affairs" includes contemplated as well as past or current activities
4.	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or officer-holders under, the authority	1. Conditions - see 14 (b) below 2. Definitions - "employee" means a person employed under a contract of service "office holder" means the holder of any paid office appointments to which are or may be made or confirmed by the authority or any Joint Board on which the authority is represented or by any person who holds any such office or is an employee of the authority "labour relations matters" are as specified in paragraphs (a) to (g) of Section 218 (1) of the Trade Union and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute
5.	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings	1. Conditions - see 14 (b) below
6.	Information which reveals that the authority proposes: a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or b) to make an order or direction under any enactment	1. Conditions - see 14 (b) below
7.	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	1. Conditions - see 14 (b) below

(b) Exempt Information - Conditions

(i)	Information falling within Category 3 is not exempt information if it is required to be registered under the Companies Act 1985 the Friendly Societies Act 1974 the Friendly Societies Act 1992 the Industrial and Provident Societies Acts 1965 to 1978 the Building Societies Act 1986 (and in this context, "registered" means recorded in the public file of the Building Society); or the Charities Act 1993
(ii)	Information is not exempt information under any category if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.
(iii)	Exempt information under any category (and which is not prevented from being exempt by virtue of (a) or (b) above) is exempt information if and so long, as in all the circumstances of the case, **the public interest in maintaining the exemption outweighs the public interest in disclosing the information.** The **public interest test** for the purposes of the exempt categories of information is about whether it better serves the interests of the public to withhold or disclose the information. The Information Commissioner's Office has published guidance in connection with the Freedom of Information Act which may be useful in undertaking that test (Freedom of Information Act Awareness Guidance No. 3 The Public Interest Test). Basically, something is considered to be in the public interest if it serves the interests of the public. Examples of the types of factors that would encourage disclosure are: • furthering the understanding and participation of the public debate of issues of the day; • promoting accountability and transparency of public authorities for their decisions; • promoting accountability and transparency in the spending of public money; • allowing individuals and companies to understand decisions made by public authorities that affect their lives and, in some cases, assisting individuals in challenging such decisions; and • bringing to light information affecting public health and safety. The main factors against disclosure of information are those set out in exemptions (1) to (7) themselves such as the need to maintain and not prejudice law enforcement matters. If disclosure of information would adversely affect these matters, then it is relevant to consider the possible adverse effect of disclosure against the positive benefits of openness. Consideration of the European Convention on Human Rights may also lead to a conclusion that information should not be disclosed because it might prejudice the right to a fair hearing.

11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

11.1 If the Proper Officer thinks fit, the Council may exclude access by the public to reports which in their opinion relate to items for which, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.

11.2 Where an exemption is relied upon, any such report must contain the reasons why, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

12. MEMBER ACCESS TO INFORMATION

12.1 A Member has the same power of inspection of documents as members of the public.

12.2 A Member also has a statutory right of access to documents provided by Section 100F of the Local Government Act 1972. This provides that any document which is in the possession or under the control of the Council and contains material relating to any business to be transacted at a meeting of the Council or a Committee or a Sub-Committee must be open to inspection by a Member of the Council.

12.3 A Member has a common law right to be provided with or to inspect Council documents that it is reasonably necessary for them to see in order to carry out their duties as a Councillor. A Member wishing to exercise this 'need to know' right must inform the Chief Executive in writing of the document they wish to see together with information in support of their claim to have a 'need to know'. The decision of the Chief Executive as to whether or not the right is demonstrated shall be final.

12.4 All Members of the Council shall have access to all minutes and records of decisions.

13. MEMBER ACCESS TO EXEMPT OR CONFIDENTIAL DOCUMENTS

13.1 This Section deals with Member access to documents which contain confidential or exempt information, including agenda papers, background documents and minutes.

13.2 Members of a Committee or Sub-Committee will be provided with, and are entitled to receive, copies of confidential or exempt reports.

13.3 Subject to Rule 24 any Member of the Council may, upon request, receive a copy of a confidential or exempt report or agenda, or inspect an associated background document, on any matter except where the report or document contains information relating to staffing information, or where the identity of individual staff would be revealed.

13.4 Any Member wishing to receive or inspect a report or document containing information referred to in Rule 23 must demonstrate a 'need to know' in accordance with the process set out in Rule 19.

MALDON DISTRICT COUNCIL

MALDON DISTRICT COUNCIL

Financial Regulations and Financial Procedures

(Updated October 2025)

PART 4 – RULES OF PROCEDURE

FINANCIAL REGULATIONS AND FINANCIAL PROCEDURES

Changes log

Committee version	Change
C 2.1 changed to reflect audit committee responsibility as opposed to finance and corporate services.	June 2018
Throughout – Amend the references to Chief Executive and Directors titles in line with new structure.	October 2018
Appendix I reference to Deputy for Section 151 removed as this isn't a position.	January 2019
Amended wording relating to cheques as presigned cheques are now removed.	January 2019
Appendix G.9. Amended wording on BACS to reflect new BACS system of electronic signatures, and gave delegation of authorisations of BACS to Director of Resources.	February 2019.
Combined B.1.3 and B.1.4 as no required distinctions.	February 2019
Updating to reflect new Committee Structure (SPJ)	February 2020
Updating to reflect new Senior Management Structure	October 2025

PART 4 – RULES OF PROCEDURE

FINANCIAL REGULATIONS AND FINANCIAL PROCEDURES

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PART 4 – RULES OF PROCEDURE

FINANCIAL REGULATIONS AND FINANCIAL PROCEDURES

1. Status of Financial Regulations

1.1. Financial regulations provide the framework for managing the Council's financial affairs. They apply to every member and officer of the Council and anyone acting on its behalf.

1.2. The regulations identify the financial responsibilities of the Council, the Committees, the Directors, and the Monitoring Officer. Directors should maintain a written record where decision making has been delegated to members of their staff, including seconded staff. Where decisions have been delegated or devolved to other responsible officers, references to the Director in the regulations should be read as referring to them. Actions may also be delegated, and again delegation should be documented, however the responsibility to ensure that these actions are happening remains with the person specified in these regulations. (Appendix I)

1.3. All Council Members and staff have a general responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, properly authorised, provides value for money and achieves best value.

1.4. The Director of Finance is responsible for maintaining a continuous review of the financial regulations and submitting any additions or changes necessary to the Council for approval. The Director of Finance is also responsible for reporting, where appropriate, breaches of the financial regulations to the Strategy and Resources Committee. Any non-compliance with the Regulations must be reported to the Director of Finance. Anyone wishing to act outside the provisions of these regulations, in a specific instance, must seek the prior written approval of the Director of Resources.

1.5. The Council's detailed financial procedures, setting out how the regulations will be implemented, are contained in the appendices to the financial regulations.

1.6. The Director of Finance is responsible for ensuring that all staff are aware of the existence and content of the Council's financial regulations and other internal regulatory documents and that they comply with them.

1.7. The Director of Finance is responsible for issuing advice and guidance to underpin the financial regulations that Members, Officers and others acting on behalf of the Council are required to follow. Notes and guidance may expand upon, but not contradict the Regulations. Any consultation required under these Regulations must allow sufficient time for a proper consideration of any issues.

1.8. All financial and accounting procedures must be carried out in accordance with the Regulations.

PART 4 – RULES OF PROCEDURE

FINANCIAL REGULATIONS AND FINANCIAL PROCEDURES

2. FINANCIAL REGULATIONS

a) Financial Management

1. INTRODUCTION

1.1 Financial management covers all financial accountabilities in relation to the running of the Council, including the policy framework and budget.

2. THE COUNCIL

2.1 The Council is responsible for adopting the corporate governance arrangements (Standing orders and Terms of Reference), for approving the annual budget and the policy framework within which the Committees operate. It is also responsible for approving and monitoring compliance with the Council's overall framework of accountability and control. The framework is set out in its corporate governance arrangements. The Council is also responsible for monitoring compliance with the agreed policy and related Committee decisions.

2.2 The Council is responsible for approving procedures for recording and reporting decisions taken. This includes those key decisions delegated by and decisions taken by the Council and its Committees.

3. THE COMMITTEES

3.1 The Strategy and Resources Committee is responsible for proposing the annual budget to the Council, and for discharging its own functions in accordance with that budget and framework.

3.2 Once approved, the Strategy and Resources Services committee is responsible for the administration of the budget for the services set out in its Terms of Reference.

3.3 Committee decisions can be delegated to an officer or a sub-committee.

3.4 The Committees are responsible for establishing protocols to ensure that decisions take account of legal and financial liabilities and risk management issues that may arise from the decision.

3.5 The Overview and Scrutiny Committee along with its major role in reviewing Best Value, has power to scrutinise decisions made, or action taken, in respect of any of the functions of the Council which have financial implications. It also has powers to make recommendations on future financial policy options and for reviewing the general financial policy and service delivery of the Council.

3.6 The Joint Standards Committee is established by the Council and is responsible for promoting and maintaining high standards of conduct amongst councillors. In particular, it is responsible for advising the Council on the adoption and revision of the Members' code of conduct, and for monitoring the operation of the code.

4. THE STATUTORY OFFICERS

4.1 Head of Paid Service (Chief Executive)

4.1.1 He/she is responsible for the corporate and overall strategic management of the Council as a whole. He/she must report to and provide information for the Council, the Programme committees and other Committees. He/she is responsible for establishing a framework for management direction, style and standards and for monitoring the performance of the organisation. The Head of Paid Service is also responsible, together with the Monitoring Officer (see 4.2 below), for the system of record keeping in relation to all the Council's decisions.

4.1.2 The Director of Legal and Governance is responsible for keeping the Council's corporate governance arrangements up to date.

4.2 Monitoring Officer (Director Of Legal and Governance)

4.2.1 The Monitoring Officer is responsible for promoting and maintaining high standards of financial conduct and therefore provides support to the Joint Standards Committee. The Monitoring Officer is also responsible for reporting any actual or potential breaches of the law or maladministration to the Council and/or to the Committees, and for ensuring that procedures for recording and reporting key decisions, as defined in the Constitution, are operating effectively.

4.2.2 The Monitoring Officer must ensure that Committees' decisions and the reasons for them are made public. He/she must also ensure that Council Members are aware of decisions made by Committees and of those made by officers who have delegated responsibility.

4.2.3 The Monitoring Officer is responsible for advising all Members and officers about who has authority to take a particular decision.

4.2.4 The Monitoring Officer is responsible for advising the Committees or Council about whether a decision is likely to be considered contrary or not wholly in accordance with the policy framework.

4.2.5 The Monitoring Officer (together with the Section 151 Officer (see below)) is responsible for advising the Committees or Council about whether a decision is likely to be considered contrary or not wholly in accordance with the budget. Actions that may be 'contrary to the budget' include:

a) initiating a new policy;

b) committing expenditure in future years to above the current budget level;

c) incurring expenditure where no estimate or an inadequate estimate exists thereby giving rise to the necessity for supplementary estimates or virements above approved limits;

d) causing the total expenditure financed from council tax, grants and corporately held reserves to increase, or to increase by more than a specified amount.

4.3 Section 151 Officer (Director of Finance)

4.3.1 The Director of Finance is the Section 151 Officer and has statutory duties in relation to the financial administration and stewardship of the Council. This statutory responsibility cannot be overridden. The statutory duties arise from:

a) Section 151 of the Local Government Act 1972;
b) The Local Government Finance Act 1988;
c) The Local Government and Housing Act 1989;
d) The Accounts and Audit Regulations 2015;
e) The Localism Act 2011.

4.3.2 The Section 151 Officer is responsible for:

a) the proper administration of the Council's financial affairs;

b) setting and monitoring compliance with financial management standards;

c) advising on the corporate financial position and on the key financial controls necessary to secure sound financial management;

d) providing financial information;

e) preparing the revenue budget and capital programme;

Operational responsibility for these matters is assigned to the Director of Resources.

4.3.3 Section 114 of the Local Government Finance Act 1988 requires the Section 151 Officer to report to the Council, Committees and external auditor if the Council, Committees or one of its officers or members:

a) has made, or is about to make, a decision which involves incurring unlawful expenditure;
b) has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the Council;
c) is about to make an unlawful entry in the Council's accounts.

Section 114 of the 1988 Act also requires:

d) the Section 151 Officer to nominate a properly qualified member of staff to deputise should he/she be unable to perform the duties under section 114 personally;

e) the Council to provide the Section 151 Officer with sufficient staff, accommodation and other resources, including legal advice where this is necessary, to carry out the duties under section 114.

5. DIRECTORS

5.1 Directors are responsible for ensuring that Committees are advised of the financial implications of all proposals and that the financial implications have been agreed by the Director of Finance;

5.2 The Directors and the Chief Executive are responsible for signing contracts on behalf of the Council.

5.3 It is the responsibility of Directors and Committees to consult with the Director of Finance and seek approval on any matter liable to affect the Council's finances, before any commitments are incurred.

6. OTHER FINANCIAL ACCOUNTABILITIES

6.1 Virement

6.1.1 The Council is responsible for agreeing procedures for revenue and capital virements of expenditure or income between budget headings.

6.1.2 Directors must consult the Director of Finance on all virements, (see **Appendix F**)

6.2 Treatment of year-end balances

6.2.1 The Director of Finance is responsible for agreeing procedures for carrying forward under-spending on budget headings.

6.3 Accounting policies

6.3.1 The Director of Finance is responsible for selecting accounting policies and ensuring that they are applied consistently.

6.4 Accounting records and returns

6.4.1 The Director of Finance is responsible for determining the accounting procedures and records for the Council.

6.5 The Annual Statement of Accounts

6.5.1 The Director of Finance is responsible for ensuring that the annual Statement of Accounts is prepared in accordance with the Chartered Institute of Public Finance and Accountancy (CIPFA) Code of Practice for Local Authority Accounting in the United Kingdom and that the annual accounts are published by the deadline set out in the Accounts and Audit Regulations each year. The Performance, Governance and Audit Committee is responsible for approving the annual Statement of Accounts.

b) Financial Planning

1. INTRODUCTION

1.1 The Council is responsible for agreeing the Council's policy framework, in particular the Corporate Plan. It is also responsible for agreeing the budget, the main framework of which will be proposed by the Strategy and Resources Committee. In terms of financial planning, the key elements are:

a) the revenue budget;
b) the medium term financial strategy (MTFS);
c) the capital programme.

2. POLICY FRAMEWORK

2.1 The policy framework comprises a number of statutory plans and strategies, which are set out in the Councils corporate governance arrangements.

2.2 The Council is also responsible for approving procedures for agreeing variations to approved budgets, plans and strategies forming the policy framework and for determining the circumstances in which a decision will be deemed to be contrary to the budget or policy framework. The Monitoring Officer or the Section 151 Officer, as appropriate, should refer decisions to the Council.

2.3 The Committees are responsible for taking in-year decisions on resources and priorities in order to deliver the budget policy framework within the financial limits set by the Council.

2.4 Preparation of the Corporate Plan

2.4.1 The Director of Strategy and Improvement is responsible for proposing the Corporate Plan to the Council for approval.

3. BUDGETING

3.1 Budget format

3.1.1 The general format of the budget will be approved by the Strategy and Resources Committee and the Council on the advice of the Director of Finance. The draft budget should include current approvals updated for inflation and volume changes, proposals for growth and savings, together with the proposed taxation level.

3.2 Budget preparation

3.2.1 The Director of Finance is responsible for ensuring that a revenue budget is prepared on an annual basis and a MTFS at least on a three-yearly basis for consideration by the Strategy and Resources Committee, before submission to the Council. The Council may amend the budget before approving it.

3.3 Budget monitoring and control

3.3.1 The Director of Finance is responsible for providing appropriate financial information to enable budgets to be monitored effectively. He/she must monitor and control expenditure against budget allocations and report to the Strategy and Resources Committee on the overall position on a quarterly basis.

3.3.2 It is the responsibility of Directors to control income and expenditure within their area and to monitor performance, taking account of financial information provided by the Director of Finance. They should also take any action necessary to avoid exceeding their budget allocation and alert the Director of Finance to any problems.

3.4 Resource allocation

3.4.1 The Director of Finance is responsible for developing and maintaining a resource allocation process that ensures due consideration of the Council's strategic and financial planning process.

3.5 Preparation of the Capital Strategy

3.5.1 The Director of Finance is responsible for ensuring that the Capital Strategy and Capital Programme are prepared on an annual basis for consideration by the Strategy and Resources Committee before submission to the Council.

3.6 Guidelines

3.6.1 Guidelines on budget policies are issued to Directors by the Director of Finance following approval of the Strategy and Resources Committee. The guidelines will take account of:

a) legal requirements;
b) medium-term financial strategy;
c) the Corporate Plan;
d) available resources;
e) spending pressures;
f) other relevant guidelines issued by government or external audit;
g) other internal policy documents;
h) cross-cutting issues (where relevant);
i) external partnerships.

4. MAINTENANCE OF RESERVES

4.1 It is the responsibility of the Director of Finance to advise the Strategy and Resources Committee on prudent levels of reserves for the Council.

c) Risk Management and Control of Resources

1. INTRODUCTION

1.1 It is essential that robust, integrated systems are developed and maintained for identifying and evaluating all significant operational risks to the Council. This should include the proactive participation of all those associated with planning and delivering services.

2. RISK MANAGEMENT

2.1 The Performance, Governance and Audit Committee is responsible for approving the Council's Risk Management Policy and for reviewing the effectiveness of risk management. The Strategy and Resources Committee is responsible for ensuring that proper insurance exists where appropriate.

2.2 The Director of Finance is responsible for preparing the Council's Risk Management Policy and for promoting it throughout the Council and is responsible for advising the Committees on proper insurance cover where appropriate.

3. INTERNAL CONTROL

3.1 Internal control refers to the systems of control devised by management to help ensure the Council's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that the Council's assets and interests are safeguarded.

3.2 The Director of Finance is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and used economically, efficiently, effectively and in accordance with the statutory and other authorities that govern their use.

3.3 It is the responsibility of Directors to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency and effectiveness and for achieving their financial performance targets.

4. AUDIT REQUIREMENTS

4.1 The Accounts and Audit Regulations require every local Council to maintain an adequate and effective internal audit.

4.2 The Secretary of State for Communities and Local Government, via the Local Government Association has delegated the appointment of external auditors to each local authority to a body called Public Sector Audit Appointments Ltd (PSAA). The basic duties of the external auditor are governed by section 15 of the Local Government Finance Act 1982, as amended by the Local Audit and Accountability Act 2014.

4.3 The Council may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Revenues and Customs, which have statutory rights of access.

5. PREVENTING FRAUD AND CORRUPTION

5.1 The Director of Legal and Governance, is responsible for the development and maintenance of an Anti-Fraud and Anti-Corruption Policy.

6. ASSETS

6.1 Directors should ensure that records of the Council's assets in excess of the limit set out in section 1.7 of **Appendix F** are properly maintained and securely held. They should also ensure that contingency plans for the security of assets and continuity of service in the event of disaster or system failure are in place. The Director of Finance should ensure that all assets above the specified value are properly recorded in the asset register.

7. TREASURY MANAGEMENT

7.1 The Council has adopted CIPFA's Code of Practice for Treasury Management in Local Authorities.

7.2 The Strategy and Resources Committee is responsible for approving the treasury management policy and Treasury Management Practices (TMP's) setting out the matters detailed in CIPFA's Code of Practice for Treasury Management in Local Authorities. The Director of Finance has delegated responsibility for implementing and monitoring the TMP's.

7.3 All money in the hands of the Council is controlled by the officer designated for the purposes of section 151 of the Local Government Act 1972, referred to in the Code as the Director of Finance.

7.4 Subject to the Council setting the overall borrowing limits in accordance with the Prudential Code, the day to day decisions on borrowing, investment or financing shall be delegated to the Director of Finance, who is required to act in accordance with CIPFA's Code of Practice for Treasury Management in Local Authorities.

8. STAFFING

8.1 The Chief Executive is responsible for providing overall management to staff. He/she is also responsible for ensuring that there is proper use of evaluation or other agreed systems for determining the remuneration of a job.

8.2 The Chief Executive, in consultation with the Director of Finance, are responsible for controlling total staff numbers by:

a) advising the Council on the budget necessary in any given year to cover estimated staffing levels;
b) adjusting the staffing to a level that can be funded within approved budget provision, varying the provision as necessary within that constraint in order to meet changing operational needs;
c) the proper use of appointment procedures.

d) Systems and Procedures

1. INTRODUCTION

1.1 Sound systems and procedures are essential to an effective framework of accountability and control.

2. GENERAL

2.1 The Director of Finance is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. The Director of Finance must determine any changes proposed by Directors to the existing financial systems or the establishment of new systems. However, Directors are responsible for the proper operation of financial processes in their own services.

2.2 Any changes to agreed procedures by Directors to meet their own specific service needs should be agreed with the Director of Finance.

2.3 The Director of Finance should ensure that all staff receive relevant financial training.

2.4 Directors must ensure that, where appropriate, computer and other systems are registered in accordance with Data Protection legislation. Directors must ensure that staff are aware of their responsibilities under freedom of information legislation.

3. INCOME AND EXPENDITURE

3.1 It is the responsibility of Directors to ensure that a proper scheme of internal authorisation has been established within their area and that it is operating effectively. The scheme of delegation should identify in writing staff authorised to act on the Directors' behalf, or on behalf of the Council, in respect of payments, income collection and placing orders, together with the limits of their authority. The Strategy and Resources Committee is responsible for approving procedures for writing off debts as part of the overall control framework of accountability and control.

4. PAYMENTS TO EMPLOYEES AND MEMBERS

4.1 The Director of Finance is responsible for all payments of salaries and allowances to all staff, including payments for overtime, and for payment of allowances to Members.

5. TAXATION

5.1 The Director of Finance is responsible for advising Directors, in the light of guidance issued by appropriate bodies and relevant legislation as it applies, on all taxation issues that affect the Council.

5.2 The Director of Finance is responsible for maintaining the Council's tax records, making all tax payments, receiving tax credits and submitting tax returns by their due date as appropriate.

6. TRADING ACCOUNTS

6.1 It is the responsibility of the Director of Finance to advise on the establishment and operation of trading accounts.

e) External Arrangements

1. INTRODUCTION

1.1 The Council provides a distinctive leadership role for the community and brings together the contributions of the various stakeholders. It must also act to achieve the promotion or improvement of the economic, social and environmental well-being of its area.

2. PARTNERSHIPS

2.1 The Committees are responsible for approving delegations, including frameworks for partnerships. The Committees are the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.

2.2 The Committees can delegate functions, including those relating to partnerships, to officers. These are set out in the scheme of delegation that forms part of the Council's corporate governance arrangements. Where functions are delegated, the Committees remain accountable for them to the Council.

2.3 The Director of Finance is responsible for promoting and maintaining the same high standards of conduct with regard to financial administration in partnerships that apply throughout the Council.

2.4 The Director of Finance, in consultation with the Council's designated legal advisor, must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are robust and comply with best practices. He/she must also consider the overall corporate governance arrangements and in consultation with the designated legal advisor, legal issues when arranging contracts with external bodies. He/she must ensure that the risks have been fully appraised before agreements are entered into with external bodies.

2.5 Committees are responsible for ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies.

3. EXTERNAL FUNDING

3.1 The Director of Finance is responsible for ensuring that all funding notified by external bodies is received and properly recorded in the Council's accounts.

Appendix A

A. FINANCIAL MANAGEMENT PROCEDURES

A.1. FINANCIAL MANAGEMENT STANDARDS

1.1 Why is this important?

1.1.1 All staff and Members have a duty to abide by the highest standards of probity in dealing with financial issues. This is facilitated by ensuring everyone is clear about the standards to which they are working and the controls that are in place to ensure that these standards are met.

A.1.2 Key controls

1.2.1 The key controls and control objectives for financial management standards are

(a) their promotion throughout the Council;

(b) a monitoring system to review compliance with financial standards, and regular comparisons of performance indicators and benchmark standards that are reported to the Strategy and Resources and/or Performance, Governance and Audit Committees.

A.1.3 Responsibilities of the Director of Finance

1.3.1 To ensure the proper administration of the financial affairs of the Council.

1.3.2 To set the financial management standards and to monitor compliance with them.

1.3.3 To ensure proper professional practices are adhered to and to act as head of profession in relation to the standards, performance and development of finance staff throughout the Council.

1.3.4 To advise on the key strategic controls necessary to secure sound financial management.

1.3.5 To ensure that financial information is available to enable accurate and timely monitoring and reporting of comparisons of national and local financial performance indicators.

A.1.4 Responsibilities of Chief Executive and Directors

1.4.1 To promote the financial management standards set by the Director of Finance in their service and to monitor adherence to the standards and practices.

1.4.2 To promote sound financial practices in relation to the standards, performance and development of staff in their departments.

Appendix A

A.2. MANAGING EXPENDITURE

2.1 Scheme of Virement

2.1.1 Why is this important?

2.1.1.1 The scheme of virement is intended to enable the Strategy and Resources Committee, Directors and their staff to manage budgets with a degree of flexibility within the overall policy framework determined by the Council, and therefore to optimise the use of resources.

A.2.2 Key controls

2.2.1 Key controls for the scheme of virement are:

(a) it is administered by the Director of Finance within guidelines set by the Council. Any variation from this scheme requires the approval of the Council;

(b) the overall budget is proposed by the Strategy and Resources Committee and approved by the Council. Directors and budget holders are therefore authorised to incur expenditure in accordance with the estimates that make up the budget. The rules below cover virement (i.e. switching resources between approved budget headings of expenditure or income). For the purposes of this scheme, a budget heading is considered to be a line in the Budget Summary of the Budget Book;

(c) virement does not create additional overall budget liability. Directors are expected to exercise their discretion in managing their budgets responsibly and prudently. For example, they should aim to avoid supporting recurring expenditure from one-off sources of savings or additional income, or creating future commitments, including full-year effects of decisions made part way through a year, for which they have not identified future resources. Directors must plan to fund such commitments from within their own budgets.

A.2.3 Responsibilities of the Director of Finance

2.3.1 To prepare jointly with the Directors, a report to the Strategy and Resources Committee where revenue and capital virements, between different directorates, in excess of specified financial limits, are proposed (see **Appendix F**).

A.2.4 Responsibilities of Directors

2.4.1 A Director, in consultation with the Director of Resources may exercise virement within the same directorate under his/her control for any amount. Virements between different directorates must be reported to the Strategy and Resources Committee. The authorisation limits are set out in **Appendix F**.

2.4.2 Amounts that require the approval of the Strategy and Resources Committee must specify the proposed expenditure and the source of funding, and must explain the implications in the current and future financial years.

2.4.3 Virement that is likely to impact on the level of service activity of another Director should be implemented only after agreement with the relevant Director.

2.4.4 No virement relating to a specific financial year should be made after 31 March in that year.

2.4.5 Where an approved budget is a lump-sum budget or contingency intended for allocation during the year, its allocation will not be treated as a virement, provided that:

a) the amount is used in accordance with the purposes for which it has been established;

b) the Strategy and Resources Committee has approved the basis and the terms, including financial limits, on which it will be allocated. Individual allocations in excess of the financial limits should be reported to the Strategy and Resources Committee.

2.4.6 Virements are not permitted in relation to asset charges or other budget headings which are outside the control of the Directors or where a proposal would adversely affect long term revenue commitments.

A.3. ACCOUNTING POLICIES

A.3.1 Why is this important?

3.1.1 The Director of Finance is responsible for the preparation of the Council's Statement of Accounts, in accordance with proper practices as set out in the format required by the CIPFA Code of Practice on Local Authority Accounting in the United Kingdom for each financial year ending 31 March.

A.3.2 Key controls

3.2.1 The key controls for accounting policies are:

a) systems of internal control are in place which ensure that financial transactions are lawful;

b) suitable accounting policies are selected and applied consistently;

c) proper accounting records are maintained;

d) financial statements are prepared which present fairly the financial position of the Council and its expenditure and income.

A.3.3 Responsibilities of the Director of Finance

3.3.1 To select suitable accounting policies and to ensure that they are applied consistently. The accounting policies are set out in the Statement of Accounts, which is prepared at 31 March each year, and covers such items as:

a) income and expenditure;
b) fixed assets;
c) treatment of leasing;
d) depreciation;
e) charges to revenue;
f) capital receipts;
g) debtors and creditors;
h) support services;
i) pensions;
j) government grants;
k) investments;
l) reserves.
m) stocks

A.3.4 Responsibilities of Chief Executive and Directors

3.4.1 To adhere to the accounting policies and guidelines approved by the Director of Finance.

A.4. ACCOUNTING RECORDS AND RETURNS

A.4.1 Why is this important?

4.1.1 Maintaining proper accounting records is one of the ways in which the Council discharges its responsibility for stewardship of public resources. The Council has a statutory responsibility to prepare its annual accounts to present fairly its operations during the year. These are subject to external audit. This audit provides assurance that the accounts are prepared properly, that proper accounting practices have been followed and that quality arrangements have been made for securing economy, efficiency and effectiveness in the use of the Council's resources.

A.4.2 Key controls

4.2.1 The key controls for accounting records and returns are:

a) all Committees, finance staff and budget managers operate within the required accounting standards and timetables;

b) all the Council's transactions, material commitments and contracts and other essential accounting information are recorded completely, accurately and on a timely basis;

c) procedures are in place to enable accounting records to be reconstituted in the event of systems failure;

d) reconciliation procedures are carried out to ensure transactions are correctly recorded;

e) prime documents are retained in accordance with legislative and other requirements.

A.4.3 Responsibilities of the Director of Finance

4.3.1 To determine the accounting procedures and records for the Council. Where these are maintained outside his/her department, the Director of Finance should consult the Director concerned.

4.3.2 To arrange for the compilation of all accounts and accounting records under his/her direction.

4.3.3 To comply with the following principles when allocating accounting duties:

a) separating the duties of providing information about sums due to or from the Council and calculating, checking and recording these sums from the duty of collecting or disbursing them;

b) employees with the duty of examining or checking the accounts of cash transactions must not themselves be engaged in these transactions.

4.3.4 To make proper arrangements for the audit of the Council's accounts in accordance with the Accounts and Audit Regulations 2015.

4.3.5 To ensure that all claims for funds including grants are made by the due date.

4.3.6 To prepare and publish the audited accounts of the Council for each financial year, in accordance with the statutory timetable and with the requirement for the Audit Committee to approve the Statement of Accounts.

4.3.7 To administer arrangements for under-spending to be carried forward to the following financial year.

4.3.8 To ensure the proper retention of financial documents in accordance with the requirements set out in the Council's document retention guidelines.

A.4.4 Responsibilities of Chief Executive and Directors

4.4.1 To consult and obtain the approval of the Director of Finance before making any changes to accounting records and procedures.

4.4.2 To maintain adequate records to provide a management trail leading from the source of income/expenditure through to the accounting statements.

4.4.3 To supply information required to enable the Statement of Accounts to be completed in accordance with guidelines issued by the Director of Finance.

A.5. THE ANNUAL STATEMENT OF ACCOUNTS

A.5.1 Why is this important?

5.1.1 The Council has a statutory responsibility to prepare its own accounts to present fairly its operations during the year. The Audit Committee is responsible for approving the statutory annual Statement of Accounts.

A.5.2 Key controls

5.2.1 The key controls for the annual Statement of Accounts are:

a) the Council is required to make arrangements for the proper administration of its financial affairs and to secure that one of its officers has the responsibility for the administration of these affairs. In this Council, that officer is the Director of Finance (Section 151 Officer);

b) the Council's Statement of Accounts must be prepared in accordance with proper practices as set out in the latest CIPFA Code of Practice on Local Authority Accounting in the United Kingdom.

A.5.3 Responsibilities of the Director of Finance

5.3.1 To sign and date the Statement of Accounts, stating that it presents a true and fair view of the financial position of the Council at the accounting date and its income and expenditure for the year ended 31 March.

5.3.2 To select suitable accounting policies and to apply them consistently.

5.3.3 To make judgements and estimates that are reasonable and prudent.

5.3.4 To comply with the latest accounting Code of Practice.

5.3.5 To draw up the timetable for final accounts preparation and to advise staff and external auditors accordingly.

A.5.4 Responsibilities of Chief Executive and Directors

5.4.1 To comply with accounting guidance provided by the Director of Finance and to supply him/her with information when required.

B. FINANCIAL PLANNING

B.1. PERFORMANCE PLANS

B.**1.1 Why is this important?**

1.1.1 The purpose of performance plans is to explain overall priorities and objectives, current performance, and proposals for further improvement.

B.1.2 Key controls

1.2.1 The key controls for performance plans are:

(a) to meet the timetables set;

(b) to ensure that all performance information is accurate, complete and up to date;

(c) to provide improvement targets which are meaningful, realistic and challenging.

B.1.3 Responsibilities of Chief Executive and Directors

1.4.1 To contribute to the development of performance plans in line with statutory requirements.

1.4.2 To contribute to the development of corporate and service targets and objectives and performance information.

1.4.3 To ensure that systems are in place to measure activity and collect accurate information for use as performance indicators.

1.4.4 To ensure that performance information is collected and monitored sufficiently frequently to allow corrective action to be taken if targets are not likely to be met.

B.2. BUDGETING

B.2.1 Format of the budget

2.1.1 Why is this important?

2.1.1.1 The structure of the budget determines the level of detail to which financial control and management will be exercised. The structure shapes how the rules around virement operate, the operation of financial limits and sets the level at which funds may be reallocated within budgets.

B.2.2 Key controls

2.2.1 The key controls for the budget structure are:

a) the structure complies with all legal requirements;

b) the structure reflects the accountabilities of service delivery.

B.2.3 Responsibilities of Chief Executive and Directors

2.3.1 To comply with accounting guidance provided by the Director of Finance.

B.2.4 Revenue budget preparation, monitoring and control

2.4.1 Why is this important?

2.4.1.1 Budget management ensures that once the budget has been approved by the Council, resources allocated are used for their intended purposes and are properly accounted for. Budgetary control is a continuous process, enabling the Council to review and adjust its budget targets during the financial year. It also provides the mechanism that calls to account, managers responsible for defined elements of the budget.

2.4.1.2 By continuously identifying and explaining variances against budgetary targets, the Council can identify changes in trends and resource requirements at the earliest opportunity. The Council itself operates within an annual financial limit, approved when setting the overall budget. To ensure that the Council in total does not overspend, each service is required to manage its own expenditure within the budget allocated to it.

2.4.1.3 For the purposes of budgetary control by managers, a budget will normally be the planned income and expenditure for a service or policy area. However, budgetary control may take place at a more detailed level if this is required by the Directors scheme of delegation or by the Council.

B.2.5 Key controls

2.5.1 The key controls for managing and controlling the revenue budget are:

a) budget managers should be responsible only for income and expenditure that they can influence;

b) there is only one nominated budget manager for each budget area;

c) budget managers accept accountability for their budgets and the level of service to be delivered and understand their financial responsibilities;

d) budget managers follow an approved certification process for all expenditure;

e) income and expenditure are properly recorded and accounted for;

f) performance levels/levels of service are monitored in conjunction with the budget and necessary action is taken to align service outputs and budget;

g) Managers should supervise the financial management of those reporting to them.

B.2.6 Responsibilities of the Director of Finance

2.6.1 To establish an appropriate framework of budgetary management and control that ensures that:

a) budget management is exercised within annual financial limits unless the Council agrees otherwise;

b) each Manager has available timely information on receipts and payments on each budget which is sufficiently detailed to enable managers to fulfil their budgetary responsibilities;

c) all officers responsible for committing expenditure comply with relevant guidance, and the financial regulations;

d) each directly controllable cost centre has a single named manager, determined by the relevant Director. As a general principle, budget responsibility should be aligned as closely as possible to the decision-making process that commits expenditure;

e) significant variances from approved budgets are investigated and reported by budget managers regularly.

2.6.2 To administer the Council's scheme of virement.

2.6.3 To submit reports to the Strategy and Resources Committee and to the Council, in consultation with the relevant Director, where a Director is unable to balance expenditure and resources within existing approved budgets under his/her control.

2.6.4 To prepare and submit reports on the Council's projected income and expenditure compared with the budget on a quarterly basis.

2.6.5 To approve fees and charges where the budgeted income is less than or equal to £2,000.

B.2.7 Responsibilities of Directors

2.7.1 To maintain budgetary control within their services, in adherence to the principles in 2.6.1, and to ensure that all income and expenditure is properly recorded and accounted for.

2.7.2 To ensure that an accountable budget manager is identified for each item of income and expenditure under the control of the Director. As a general principle, budget responsibility should be aligned as closely as possible to the decision-making that commits expenditure.

2.7.3 To ensure that spending remains within the service's overall financial limit, and that individual budget headings are not overspent, by monitoring the budget and taking appropriate corrective action where significant variations from the approved budget are forecast.

2.7.4 To ensure that a monitoring process is in place to review performance levels/levels of service in conjunction with the budget and that it is operating effectively.

2.7.5 To ensure prior approval by the Council or Committees (as appropriate) for new proposals, of whatever amount, that:

a) create financial commitments in the current or future years;

b) change existing policies, initiate new policies or cease existing policies;

c) materially extend or reduce the Council's services.

2.7.6 To ensure compliance with the scheme of virement.

2.7.7 To agree with the relevant Director where it appears that a budget proposal, including a virement proposal, may impact materially on another service area or another Director's level of service activity.

B.2.8 Budgets and the Medium-Term Financial Strategy (MTFS)

2.8.1 Why is this important?

2.8.1.1 The Council is a complex organisation responsible for delivering a wide variety of services. It needs to plan effectively and to develop systems to enable scarce resources to be allocated in accordance with carefully weighed priorities. The budget is the financial expression of the Council's plans and policies.

2.8.1.2 A report on new proposals should explain the full financial implications, following consultation with the Director of Finance. Unless the Council or Strategy and Resources Committee has agreed otherwise, Directors must plan to contain the financial implications of such proposals within the relevant financial limit.

2.8.1.3 The revenue budget must be constructed so as to ensure that resource allocation properly reflects the business plans and priorities of the Council. Budgets (spending plans) are needed so that the Council can plan, authorise, monitor and control the way money is allocated and spent. It is illegal for a Council to budget for a deficit.

2.8.1.4 The annual strategic and financial planning process involves a cycle in which Directors develop their own plans for submission to the relevant Committee. As each year passes, another future year will be added to the MTFS. This ensures that the Council is always preparing for events in advance.

B.2.9 Key controls

2.9.1 The key controls for budgets and the MTFS are:

a) specific budget approval for all expenditure;

b) budget managers are consulted in the preparation of the budgets for which they will be held responsible and accept accountability within delegations set by the Council for their budgets and the level of service to be delivered;

c) a monitoring process is in place to review regularly the effectiveness and operation of budget preparation and to ensure that any corrective action is taken.

B.2.10 Responsibilities of the Director of Finance

2.10.1 To prepare and submit reports on budget prospects to the Strategy and Resources Committee including resource constraints set by the Government. Reports should take account of medium-term prospects, where appropriate.

2.10.2 To determine the detailed form of revenue estimates and the methods for their preparation.

2.10.3 To advise on the medium-term implications of spending decisions.

2.10.4 To encourage the best use of resources and value for money by working with Directors to identify opportunities to improve economy, efficiency and effectiveness, and by encouraging good practice in conducting financial appraisals of development or savings options, and in developing financial aspects of service planning.

2.10.5 To advise the Council on proposals in accordance with his/her responsibilities under section 151 of the Local Government Act 1972.

B.2.11 Responsibilities of Directors

2.11.1 To prepare estimates of income and expenditure, in consultation with the Director of Finance.

2.11.2 To prepare budgets that are consistent with any relevant financial limits, with the Council's annual budget cycle and with guidelines issued by the Director of Finance.

2.11.3 To integrate financial and budget plans into business planning, so that budget plans can be supported by financial and non-financial performance measures.

2.11.4 In consultation with the Director of Finance and in accordance with the laid-down guidance and timetable, to prepare detailed draft revenue and capital budgets for consideration by the Strategy and Resources Committee.

2.11.5 When drawing up draft budget requirements, to have regard to:

a) spending patterns and pressures revealed through the budget monitoring process;

b) legal requirements;

c) requirements as defined by the Council in the Strategic and Financial Policy Process;

d) initiatives already under way and any new service requirements that are likely to require funding within the financial year in question.

B.2.12 Resource allocation

2.12.1 Why is this important?

2.12.1.1 A mismatch often exists between available resources and required resources. A common scenario is that available resources are not adequate to fulfil need/desire. It is therefore imperative that needs/desires are carefully prioritised, taking account of the Council's legal responsibilities and that resources are allocated to meet the urgent priorities. Resources may include staff, money, equipment, goods and materials.

B.2.13 Key controls

2.13.1 The key controls for resource allocation are:

a) resources are acquired in accordance with the law and allocated using an approved authorisation process;

b) resources are used only for the purpose intended, to achieve the approved policies and objectives, and are properly accounted for;

c) resources are securely held for use when required;

d) resources are used in the most efficient manner.

B.2.14 Responsibilities of the Director of Finance

2.14.1 To coordinate the Strategic and Financial Planning process to ensure that resources are devoted to the Council's stated priorities.

2.14.2 To advise on methods available for the funding of expenditure plans.

B.2.15 Responsibilities of Chief Executive and Directors

2.15.1 To deliver the Council's key objectives within budget limits and to utilise resources allocated, and further allocate resources, in the most efficient, effective and economic way.

2.15.2 To identify opportunities to minimise or eliminate resource requirements or consumption without having a detrimental effect on service delivery.

B.2.16 Capital programmes

2.16.1 Why is this important?

2.16.1.1 Capital expenditure involves acquiring or enhancing fixed assets with a long-term value to the Council, such as land, buildings, and major items of plant, equipment or vehicles. Capital assets shape the way services are delivered in the long term and create financial commitments for the future in the form of financing costs and revenue running costs.

2.16.1.2 The Government controls the financing capacity of the Council through the CIPFA Prudential Code. This means that capital expenditure should be integrated into the Council's Treasury Management Strategy and should be carefully prioritised in order to maximise the benefit of scarce resources.

B.2.17 Key controls

2.17.1 The key controls for capital programmes are:

a) the development and implementation of asset management plans;

b) specific approval by the Council for the programme of capital expenditure;

c) a scheme and estimate, including project plan, progress targets and associated revenue expenditure is prepared for each capital project, for approval by the Strategy and Resources Committee;

d) proposals for improvements and alterations to buildings must be approved by the relevant Director;

e) accountability for each capital project is accepted by a named manager;

f) monitoring of progress in conjunction with expenditure and comparison with approved budget;

g) capital spending plans are to be in line with the approved Capital Strategy.

B.2.18 Responsibilities of the Director of Finance

2.18.1 To prepare the capital programme and estimates jointly with Directors and to report them to the Strategy and Resources Committee for approval. The Strategy and Resources Committee will make recommendations on the capital programme and on any associated financing requirements to the Council.

2.18.2 To prepare and submit reports jointly with the officers defined as accountable for capital projects to the Strategy and Resources Committee on the progress of the capital programme compared with the approved estimates.

2.18.3 Having regard to regulations determine the definition of 'capital'.

B.2.19 Responsibilities of Cheif Executive and Directors

2.19.1 To comply with guidance concerning capital schemes and controls issued by the Director of
Finance

2.19.2 To prepare and submit quarterly reports jointly with the Director of Resources to the Strategy and Resources Committee on the the progress of the capital programme compared with the approved estimates.

2.19.3 To prepare regular reports reviewing the capital programme provisions for their services. In consultation with the Director of Resources, to obtain authorisation from the Strategy and Resources Committee and/or the Council for individual schemes where the estimated expenditure exceeds the capital programme provision by more than a specified amount (see **Appendix F**).

2.19.4 To ensure that all capital proposals have undergone a project appraisal in accordance with guidance issued by the Director of Finance.

2.19.5 To ensure that adequate records are maintained for all capital contracts.

2.19.6 To proceed with projects only when there is adequate provision in the capital programme.

2.19.7 To prepare and submit reports, jointly with the Director of Finance, to the Strategy and Resources committees, of any increase in contract costs in excess of the approved scheme and estimate, unless the excess can be met by virement from elsewhere within the capital programme. The authorisation limits for capital virements are set out in **Appendix F**.

2.19.8 To prepare and submit reports, jointly with the Director of Finance, to the Strategy and Resources Committee, where it appears that the final cost of a revenue or capital contract will exceed the approved contract sum by more than a specified financial limit (see **Appendix F**).

2.19.9 No leasing arrangements as defined by the Director of Finance shall be entered into without prior approval.

B.3. MAINTENANCE OF RESERVES

B.3.1 Why is this important?

3.1.1 The Council must decide the level of general reserves it wishes to maintain before it can decide the level of council tax. Reserves are maintained as a matter of prudence. They enable the Council to provide for unexpected events and thereby protect it from overspending, should such events occur. Reserves for specific purposes may also be maintained, such as the purchase or renewal of capital items.

B.3.2 Key controls

3.2.1 To maintain reserves in accordance with the Code of Practice on Local Authority Accounting in the United Kingdom and agreed accounting policies.

3.2.2 For each reserve established, the purpose, usage and basis of transactions should be clearly identified and approved by the Strategy and Resources Committee.

B.3.3 Responsibilities of the Director of Finance

3.3.1 To advise the Strategy and Resources Committee and/or the Council on prudent levels of reserves for the Council.

B.3.4 Responsibilities of Chief Executive and Directors

3.4.1 To ensure that resources are used only for the purposes for which they were intended.

C. RISK MANAGEMENT AND CONTROL OF RESOURCES

C.1. RISK MANAGEMENT

C.1.1 Why is this important?

1.1.1 All organisations, whether private or public sector, face risks to people, property and continued operations. Risk is the chance or possibility of loss, damage, injury or failure to achieve objectives caused by an unwanted or uncertain action or event. Risk management is the planned and systematic approach to the identification, evaluation and control of risk. Its objectives are to secure the assets of the organisation and to ensure the continued financial and organisational well-being of the organisation. In essence it is, therefore, an integral part of good business practice. Risk management is concerned with evaluating the measures an organisation already has in place to manage identified risks and then recommending the action the organisation needs to take to control these risks effectively.

1.1.2 It is the overall responsibility of the Council to approve the Council's risk management strategy, and to promote a culture of risk management awareness throughout the Council.

C.1.2 Key controls

1.2.1 The key controls for risk management are:

a) procedures are in place to identify, assess, prevent or contain material known risks, and these procedures are operating effectively throughout the Council;

b) a monitoring process is in place to review regularly the effectiveness of risk reduction strategies and the operation of these controls;

c) managers know that they are responsible for managing relevant risks and are provided with relevant information on risk management initiatives;

d) provision is made for losses that might result from the risks that remain;

e) procedures are in place to investigate claims within required timescales

f) acceptable levels of risk are determined and insured against where appropriate;

g) the Council has identified business continuity plans for implementation in the event of disaster that results in significant loss or damage to its resources.

C.1.3 Responsibilities of the Director of Strategy and Improvement

1.3.1 To prepare and promote the Council's Risk Management Policy.

1.3.2 To develop risk management controls in conjunction with Directors.

C.1.4 Responsibilities of the Director of Finance

1.4.1 To include all appropriate employees of the Council in a suitable fidelity guarantee insurance.

1.4.2 To effect corporate insurance cover, through external insurance and internal funding, and to negotiate all claims in consultation with other officers, where necessary.

C.1.5 Responsibilities of Chief Executive and Directors

1.5.1 To notify the Director of Finance immediately of any loss, liability or damage that may lead to a claim against the Council, together with any information or explanation required by the Council's insurers.

1.5.2 To take responsibility for risk management, having regard to advice from the Director of Finance and other specialist officers (e.g. fire prevention, health and safety).

1.5.3 To ensure that there are regular reviews of risk within their Service.

1.5.4 To notify the Director of Finance promptly of all new risks, properties or vehicles that require insurance and of any alterations affecting existing insurances.

1.5.5 To consult the Director of Finance and the Council's legal advisors on the terms of any indemnity that the authority is requested to give.

1.5.6 To ensure those employees, or anyone covered by the Council's insurances, do not admit liability or make any offer to pay compensation that may prejudice the assessment of liability in respect of any insurance claim.

C.2. INTERNAL CONTROLS

C.2.1 Why is this important?

2.1.1 The Council is complex and beyond the direct control of a single individual. It therefore requires internal controls to manage and monitor progress towards strategic objectives.

2.1.2 The Council has statutory obligations, and, therefore, requires internal controls to identify, meet and monitor compliance with these obligations.

2.1.3 The Council faces a wide range of financial, administrative and commercial risks, both from internal and external factors, which threaten the achievement of its objectives. Internal controls are necessary to manage these risks.

2.1.4 The system of internal controls is established in order to provide measurable achievement of:

a) efficient and effective operations;

b) reliable financial information and reporting;

c) compliance with laws and regulations;

d) risk management.

C.2.2 Key controls

2.2.1 The key controls and control objectives for internal control systems are:

a) key controls should be reviewed on a regular basis;

b) managerial control systems, including defining policies, setting objectives and plans, monitoring financial and other performance and taking appropriate anticipatory and remedial action. The key objective of these systems is to promote ownership of the control environment by defining roles and responsibilities;

c) financial and operational control systems and procedures, which include physical safeguards for assets, segregation of duties, authorisation and approval procedures and information systems;

d) an effective internal audit function that is properly resourced. It should operate in accordance with the principles contained in the Auditing Practices Board's auditing guideline Guidance for Internal Auditors, CIPFA's Code of Practice for Internal Audit in Local Government in the United Kingdom and with any other statutory obligations and regulations.

C.2.3 Responsibilities of the Director of Finance

2.3.1 To assist the Council to put in place an appropriate control environment and effective internal controls which provide reasonable assurance of effective and efficient operations, financial stewardship, probity and compliance with laws and regulations.

C.2.4 Responsibilities of Chief Executive and Directors

2.4.1 To manage processes to check that established controls are understood and being adhered to and to evaluate their effectiveness, in order to be confident in the proper use of resources, achievement of objectives and management of risks.

2.4.2 To review existing controls in the light of changes affecting the Council and to establish and implement new ones in line with guidance from the Director of Finance. Directors should also be responsible, after consultation with the Director of Finance, for removing controls that are unnecessary or not cost or risk effective – for example, because of duplication.

C.3. AUDIT REQUIREMENTS

C.3.1 Internal audit

3.1.1 Why is this important?

3.1.1.1 The Accounts and Audit Regulations 2015 (para 5) require that a "relevant authority must undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards or guidance".

3.1.1.2 Internal Audit must be seen as independent. This is achieved through operating within a framework that allows unrestricted access to senior management, reporting in its own name and segregation as far as practical from line operations. The function reports directly to the Director of Finance (also the officer designated under Section 151 of the Local Government Act5 1972 as responsible for ensuring the proper administration of the Authority's financial affairs). Internal Audit also reports directly to the Performance, Governance and Audit Committee.

C.3.2 Key controls

3.2.1 The key controls for internal audit are:

a) that it is independent in its planning and operation;

b) the Audit Manager has direct access to the Director of Finance, all levels of management and directly to elected Members;

c) Internal Auditors work towards complying with the UK Public Sector Internal Audit Standards (PSIAS), and effort is made to preserve objectivity by ensuring staff are free from conflicts of interest. Therefore as far as is practical, Internal Audit will not participate in the day to day operation of any systems of internal financial control.

C.3.3 Responsibilities of the Director of Finance

3.3.1 To ensure that internal auditors have the authority to:

a) access Council premises at reasonable times;

b) access all assets, records, documents, correspondence and control systems ;

c) receive any information and explanation considered necessary concerning any matter under consideration;

d) require any employee of the Council to account for cash, materials or any other asset under his/her control;

e) access records belonging to third parties, such as contractors, when required;

f) obtain direct access to the Strategy and Resources Committee and the Performance, Governance and Audit Committee.

3.3.2 To approve the annual audit plans, prepared by the Audit Manager, and present to the Performance, Governance and Audit Committee for their approval.

3.3.3 To prepare terms of reference for the internal audit function, for approval by the Performance, Governance and Audit Committee.

3.3.4 To ensure that effective procedures are in place to investigate promptly any fraud or irregularity.

C.3.4 Responsibilities of Chief Executive and Directors

3.4.1 To ensure that internal auditors are given access at all reasonable times to premises, personnel, documents and assets that the auditors consider necessary for the purposes of their work.

3.4.2 To ensure that auditors are provided with any information and explanations that they seek in the course of their work.

3.4.3 To respond to internal and external audit reports in writing, within a timescale agreed by the appropriate Director and the Director of Finance or External Auditor, detailing the action intended to address any recommendations.

3.4.4 To ensure that any agreed actions arising from audit recommendations are carried out in a timely and efficient fashion.

3.4.5 To ensure that their staff report any suspicion of fraud, corruption or other financial irregularity in respect of Council funds, either directly, or via the Directors to the Director of Finance for investigation.

3.4.6 The Director of Finance must then arrange for appropriate investigation of the matter. The relevant Director must agree any further investigative action with the Director of Finance before proceeding.

3.4.7 The Director of Finance, in consultation with the relevant Director and the Monitoring Officer will advise whether any matter should be referred to the police for further investigation.

3.4.8 To ensure that the Director of Finance is given an opportunity, in a timely manner before live operation, to evaluate the adequacy of new systems for maintaining financial records, or records of assets, or changes to such systems.

C.3.5 External audit

3.5.1 Why is this important?

3.5.1.1 Under Schedule 1 of the Local Audit and Accountability Act 2014 all contracts for audit and related services, previously let by the Audit Commission, were transferred to Public Sector Audit Appointments Ltd on 1 April 2015. The external auditor has rights of access to all documents and information necessary for audit purposes (para 22 2014 Act).

3.5.1.2 The general duties of the external auditor are defined in the Local Audit and Accountability Act 2014 (para 20) and the Local Government Act 1999. In particular, Schedule 6 of the 2014 Act sets out that the Comptroller & Auditor General is responsible for preparing a code of audit practice, which external auditors follow when carrying out their duties. Schedule 1 of the code of audit practice sets out the auditor's statutory responsibilities across 3 main headings:

a) Audit Scope;

b) Reporting;

c) Additional powers and duties.

3.5.1.3 The Council's accounts are scrutinised by external auditors, who must be satisfied that the Statement of Accounts 'presents a true and fair view' (Para 20 2014 Act) of the financial position of the Council and its income and expenditure for the year in question and complies with the legal requirements.

C.3.6 Key controls

3.6.1 External auditors were initially appointed by Public Sector Audit Appointments Ltd, however subsequent appointments are to be made by the Local Authority for a maximum period of five years. The Comptroller & Auditor General (National Audit Office) prepares the code of audit practice, which external auditors follow when carrying out their audits.

C.3.7 Responsibilities of the Director of Finance

3.7.1 To ensure that external auditors are given access at all reasonable times to premises, personnel, documents and assets that the external auditors consider necessary for the purposes of their work.

3.7.2 To work with the external auditor and advise the Council, and Directors on their responsibilities in relation to external audit.

3.7.3 To ensure there is effective liaison between external and internal audit.

C.3.8 Responsibilities of Chief Executive and Directors

3.8.1 To ensure that external auditors are given access at all reasonable times to premises, personnel, documents and assets which the external auditors consider necessary for the purposes of their work.

3.8.2 To ensure that all records and systems are up to date and available for inspection.

C.4. PREVENTING FRAUD AND CORRUPTION

C.4.1 Why is it this important?

4.1.1 The Council will not tolerate fraud and corruption in the administration of its responsibilities, whether from inside or outside the Council.

4.1.2 The Council's expectation of propriety and accountability is that Members and staff at all levels will lead by example in ensuring adherence to legal requirements, rules, procedures and practices.

4.1.3 The Council also expects that individuals and organisations (e.g. suppliers, contractors, service providers) with whom it comes into contact will act towards the Council with integrity and without thought of or actions involving fraud and corruption. It must guard against the possibility that these expectations will not be fulfilled in all respects.

C.4.2 Key controls

4.2.1 The key controls regarding the prevention of financial irregularities are that:

a) the Council has an effective Anti-Fraud and Anti-Corruption Policy and maintains a culture that will not tolerate fraud or corruption;

b) all Members and staff act with integrity and lead by example as per the relevant Code of Conduct;

c) Managers are required to deal swiftly and firmly with those who defraud or attempt to defraud the Council or who are corrupt;

d) high standards of conduct are promoted amongst Members by the standards committee;

e) the maintenance of a register of interests in which any hospitality or gifts accepted must be recorded;

f) "whistle blowing" procedures are in place and operate effectively;

g) legislation including the Public Interest Disclosure Act 1998 is adhered to.

C.4.3 Responsibilities of the Director of Legal and Governance.

4.3.1 To maintain and review an Anti-Fraud Policy.

C.4.4 Responsibilities of the Director of Finance

4.4.1 To maintain adequate and effective internal control arrangements.

4.4.3 To ensure that all suspected irregularities are investigated, and all proven irregularities reported to the Monitoring Officer and Section 151 Officer.

C.4.5 Responsibilities of Chief Executive and Directors

4.5.1 To ensure that all suspected irregularities are reported to the Director of Finance

4.5.2 To instigate the Council's disciplinary procedures where the outcome of an audit investigation indicates improper behaviour.

4.5.3 To ensure that where financial impropriety is discovered, the Director of Finance is informed. Where sufficient evidence exists to believe that a criminal offence may have been committed, after consultation with the Director of Finance, the Chief Executive or relevant Director willensure that the Police are called in.

C.4.6 Responsibility of the Monitoring Officer

4.6.1 To maintain a register of interests.

C.5. ASSETS

C.5.1 Security

5.1.1 Why is this important?

5.1.1.1 The Council holds assets in the form of property, vehicles, equipment, furniture and other items worth millions of pounds. It is important that assets are safeguarded and used efficiently in service delivery, and that there are arrangements for the security of both assets and information required for service operations. An up-to-date asset register is a prerequisite for proper fixed asset accounting and sound asset management.

C.5.2 Key controls

5.2.1 The key controls for the security of resources such as land, buildings, fixed plant machinery, equipment, software and information are:

a) resources are used only for the purposes of the Council and are properly accounted for;

b) resources are available for use when required;

c) resources no longer required are disposed of in accordance with the law and the regulations of the Council so as to maximise benefits;

d) an asset register is maintained for the Council, assets are recorded when they are acquired by the Council and this record is updated as changes occur with respect to the location, value and condition of the asset;

e) all staff are aware of their responsibilities with regard to safeguarding the Council's assets and information, including the requirements of the Data Protection Act and software copyright legislation;

f) all staff are aware of their responsibilities with regard to safeguarding the security of the Council's Information Communication Technology (ICT) Systems, including maintaining restricted access to the information held on them and compliance with the Council's Information Communication Technology and internet security policies.

C.5.3 Responsibilities of the Director of Finance

5.3.1 To ensure that an asset register is maintained in accordance with good practice for all fixed assets with a value in excess of a specified financial limit (see **Appendix F**). The function of the asset register is to provide the Council with information about fixed assets so that they are:

a) safeguarded;

b) used efficiently and effectively;

c) adequately maintained.

5.3.2 To receive the information required for accounting, costing and financial records from each Director.

5.3.3 To ensure that assets are valued in accordance with the Code of Practice on Local Authority Accounting in the United Kingdom.

C.5.4 Responsibilities of Directors

5.4.1 A property database shall be maintained by the Director of Finance for all properties, plant and machinery and moveable assets currently owned or used by the Council subject to the minimum values specified in **Appendix F**. Any use of property by a service other than for direct service delivery should be supported by documentation identifying terms, responsibilities and duration of use.

5.4.2 To ensure that lessees and other prospective occupiers of council owned land are not allowed to take possession or enter the land until a lease or agreement, in a form approved by the Council's legal advisor, has been established.

5.4.3 To ensure the proper security of all buildings and other assets under their control in accordance with laid down guidelines.

5.4.4 Where land or buildings are surplus to requirements, a recommendation for sale should be the subject of a joint report by the Director and the Director of Finance (see **Appendix F**).

5.4.5 To pass title deeds to the Monitoring Officer who is responsible for maintaining the central repository of all title deeds.

5.4.6 To ensure that no Council asset is subject to personal use by a Member or employee without prior agreement of the relevant Director.

5.4.7 To ensure the safe custody of vehicles, equipment, furniture, stock, stores and other property belonging to the Council.

5.4.8 To ensure that an inventory is maintained of moveable assets (subject to limits in **Appendix F)** in accordance with arrangements defined by the Senior Leadership Team.

5.4.9 To ensure that assets are identified, their location recorded and that they are appropriately marked and insured.

5.4.10 To consult the Chief Executive in any case where security is thought to be defective or where it is considered that special security arrangements may be needed.

5.4.11 To ensure cash holdings on premises are kept to a minimum.

5.4.12 To ensure that keys to safes and similar receptacles are carried on the person of those responsible at all times; loss of any such keys must be reported to the Director of Neighbourhood Services and Communities as soon as possible.

5.4.13 To record all disposals or part exchange of assets that should normally be by competitive tender or public auction in accordance with ***Contract Procedure Rules***, unless, the Strategy and Resources Committee agrees otherwise.

5.4.14 To ensure that all employees are aware that they have a personal responsibility with regard to the protection and confidentiality of information, whether held in manual or computerised records. Information may be sensitive or privileged, or may possess some intrinsic value, and its disclosure or loss could result in a cost to the Council in some way.

5.4.15 To maintain inventories and record an adequate description of furniture, fittings, equipment, plant and machinery above a specified financial limit in value (see **Appendix F**).

5.4.16 To carry out an annual check of all items on the inventory in order to verify location and condition and to take action in relation to surpluses or deficiencies, annotating the inventory accordingly. Attractive and portable items such as computers and cameras should be identified with security markings as belonging to the Council.

5.4.17 To make sure that property is only used in the course of the Council's business, unless the Director concerned has given permission otherwise.

C.5.5 Asset disposal

5.5.1 Why is this important?

5.5.1.1 It would be uneconomic and inefficient for the cost of assets to outweigh their benefits. Obsolete, non-repairable or unnecessary resources should be disposed of in accordance with the law and the regulations of the Council.

C.5.6 Key controls

5.6.1 Assets for disposal are identified and are disposed of at the most appropriate time, and only when it is in the best interests of the Council, and best price is obtained in accordance with ***Contract Procedure Rules*** and bearing in mind other factors, such as environmental issues.

5.6.2 Procedures protect staff involved in the disposal from accusations of personal gain.

C.5.7 Responsibilities of the Director of Finance

5.7.1 To issue advice on disposal in accordance with ***Contract Procedure Rules***.

5.7.2 To ensure appropriate accounting entries are made to remove the value of disposed assets from the Council's records and to include the sale proceeds if appropriate.

C.6. TREASURY MANAGEMENT

C.6.1 Why is this important?

6.1.1 Millions of pounds pass through the Council's accounts each year. This requires the establishment of codes of practice. These aim to provide assurances that the Council's money is properly managed in a way that balances risk with return, but with the overriding consideration being given to the security of the Council's investment.

C.6.2 Key controls

6.2.1 That the Council's borrowings and investments comply with the CIPFA Code of Practice on Treasury Management and with the Council's treasury management practices (TMP's).

6.2.2 That the Strategy and Resources Committee receives reports on Treasury activity at least twice a year in accordance with the code of practice and that the Treasury Management Strategy is subject to annual scrutiny before it is agreed.

C.6.3 Responsibilities of Director of Finance – treasury management and banking

6.3.1 To arrange the borrowing and investments of the Council in such a manner as to comply with the CIPFA Code of Practice on Treasury Management and the Council's treasury management practices and strategy.

6.3.2 To prepare reports for the consideration of the Strategy and Resources Committee and other Committees as required.

6.3.3 To operate bank accounts as are considered necessary – opening or closing any bank account shall require the written approval of the Director of Finance in accordance with the Banking Mandate (**Appendix G**).

C.6.4 Responsibilities of Chief Executive and Directors – treasury management and banking

6.4.1 To follow the instructions on banking issued by the Director of Finance.

C.6.5 Responsibilities of Director of Finance – investments and borrowing

6.5.1 To ensure that all investments of money are made in the name of the Council.

6.5.2 To ensure that all securities that are the property of the Council and the title deeds of all property in the Council's ownership are held in the custody of the Monitoring Officer or under arrangements approved by the Director of Finance

6.5.3 To effect all borrowings in the name of the Council.

6.5.4 To maintain records of all borrowing of money by the Council.

C.6.6 Responsibilities of Directors – investments and borrowing

6.6.1 To ensure that loans are not made to third parties and that interests are not acquired in companies, joint ventures or other enterprises without the approval of the Council.

C.6.7 Responsibilities of Directors – funds held for third parties

6.7.1 To arrange, where funds are held on behalf of third parties, for their secure administration, approved by the Director of Finance, and to maintain written records of all transactions.

C.6.8 Responsibilities of the Director of Finance – imprest accounts

6.8.1 To provide employees of the Council with cash imprest accounts to meet minor expenditure on behalf of the Council and to prescribe rules for operating these accounts. Minor items of expenditure should not exceed the prescribed amount.

6.8.2 To determine the petty cash limit and to maintain a record of all transactions and petty cash advances made, and periodically to review the arrangements for the safe custody and control of these advances.

6.8.3 To reimburse imprest holders, as often as necessary, to restore the imprests.

C.6.9 Responsibilities of Chief Executive and Directors – imprest accounts

6.9.1 To ensure that employees operating an imprest account:

a) obtain and retain vouchers to support each payment from the imprest account. Where appropriate, an official receipted VAT invoice must be obtained;

b) make adequate arrangements for the safe custody of the account;

c) produce upon demand by the Director of Finance cash and all vouchers to the total value of the imprest amount;

d) record transactions promptly;

e) reconcile and balance the account at least monthly; reconciliation sheets to be signed and retained by the imprest holder;

f) provide the Director of Finance with a certificate of the value of the account held at 31 March each year;

g) ensure that the float is never used to cash personal cheques or to make personal loans and that the only payments into the account are the reimbursement of the float and change relating to purchases where an advance has been made.

C.7. STAFFING

C.7.1 Why is this important?

7.1.1 In order to provide the highest level of service, it is crucial that the Council recruits and retains high calibre, knowledgeable staff, qualified to an appropriate level.

C.7.2 Key controls

7.2.1 The key controls for staffing are:

a) procedures are in place for forecasting staffing requirements and cost;

b) controls are implemented to ensure that staff time is used efficiently and to the benefit of the Council;

c) checks are undertaken prior to employing new staff to ensure that they are appropriately qualified, experienced, lawfully resident and trustworthy.

C.7.3 Responsibilities of the Director of Finance

7.3.1 To act as an advisor to Directors on areas such as Income Tax, National Insurance and pension contributions, as appropriate.

7.3.2 To ensure that staff costs are charged accurately to allow Directors to monitor staffing budgets effectively.

C.7.4 Responsibilities of Chief Executive and Directors

7.4.1 To monitor staff activity to ensure adequate control over such costs as sickness, overtime, training and temporary staff.

7.4.2 To ensure that the staffing budget is not exceeded without due authority and that it is managed to enable the agreed level of service to be provided.

7.4.3 To ensure that the Director of Finance is immediately informed if the staffing budget is likely to be materially over- or under-spent.

D. FINANCIAL SYSTEMS AND PROCEDURES

D.1. GENERAL

D.**1.1 Why is this important?**

1.1.1 Services have systems and procedures relating to the control of the Council's assets. Services are reliant on computers for their financial management information. The information must therefore be accurate and the systems and procedures sound and well administered. They should contain controls to ensure that transactions are properly processed and errors detected promptly.

1.1.2 The Director of Finance is responsible for ensuring that the authority's financial systems are sound and should therefore be notified of any new developments or changes.

D.1.2 Key controls

1.2.1 The key controls for systems and procedures are:

a) basic data exists to enable the Council's objectives, targets, budgets and plans to be formulated;

b) performance is communicated to the appropriate managers on an accurate, complete and timely basis;

c) early warning is provided of deviations from target, plans and budgets that require management attention;

d) operating systems and procedures are secure.

D.**1.3 Responsibilities of the Director of Finance**

1.3.1 To make arrangements for the proper administration of the Council's financial affairs, including to:

a) issue advice, guidance and procedures for officers and others acting on the Council's behalf;

b) determine the accounting systems, form of accounts and supporting financial records;

c) establish arrangements for audit of the Council's financial affairs;

d) approve any new financial systems to be introduced;

e) approve any changes to be made to existing financial systems.

1.3.2 To ensure that effective contingency arrangements, including back-up procedures, exist for computer systems. Wherever possible, back-up information should be securely retained in a fireproof location, preferably off site or at an alternative location within the building.

1.3.3 To ensure that, where appropriate, computer systems are registered in accordance with Data Protection legislation and that staff are aware of their responsibilities under the legislation.

D.**1.4 Responsibilities of Chief Executive andDirectors**

1.4.1 To ensure that accounting records are properly maintained and held securely.

1.4.2 To ensure that vouchers and documents with financial implications are not destroyed, except in accordance with arrangements approved by the Director of Finance.

1.4.3 To ensure that a complete management trail, allowing financial transactions to be traced from the accounting records to the original document, and vice versa, is maintained.

1.4.4 To incorporate appropriate controls to ensure that, where relevant:

a) all input is genuine, complete, accurate, timely and not previously processed;

b) all processing is carried out in an accurate, complete and timely manner;

c) output from the system is complete, accurate and timely.

1.4.5 To ensure that the organisational structure provides an appropriate segregation of duties to provide adequate internal controls and to minimise the risk of fraud or other malpractice.

1.4.6 To ensure there is a documented and tested disaster recovery plan to allow information system processing to resume quickly in the event of an interruption.

1.4.7 To ensure that systems are documented and staff trained in operations.

1.4.8 To consult with the Director of Finance before changing any existing system or introducing new systems.

1.4.9 In consultation with the Director of Finance to establish a scheme of delegation identifying officers authorised to act upon the Directors behalf in respect of payments, income collection and placing orders, including variations, and showing the limits of their authority.

1.4.10 To supply lists of authorised officers, with specimen signatures and delegated limits, to the Director of Finance, together with any subsequent variations.

1.4.11 To ensure that relevant standards and guidelines for ICT systems issued by the Director of Finance or Lead Specialist ICT are observed.

1.4.12 To ensure that computer equipment and software are protected from loss and damage through theft, vandalism, etc.

1.4.13 To comply with the copyright, designs and patents legislation and, in particular, to ensure that:

a) only software legally acquired and installed by the Council is used on its computers;

b) staff are aware of legislative provisions;

c) in developing systems, due regard is given to the issue of intellectual property rights.

D.2. INCOME AND EXPENDITURE

D.2.1 Income

2.1.1 Why is this important?

2.1.1.1 Income can be a vulnerable asset and effective income collection systems are necessary to ensure that all income due is identified, collected, receipted and banked properly. It is preferable to obtain income in advance of supplying goods or services as this improves the Council's cash-flow and also avoids the time and cost of administering debts.

D.**2.2 Key controls**

2.2.1 The key controls for income are:

a) all income due to the Council is identified and charged correctly, in accordance with an approved charging policy, which is regularly reviewed;

b) all income is collected from the correct person, at the right time, using the correct procedures and the appropriate stationery;

c) all money received by an employee on behalf of the Council is paid in without delay through the Council's payment facility, as the Director of Finance directs, to the Council's bank account, and properly recorded. The responsibility for cash collection should be separated from that:

i. for identifying the amount due
ii. for reconciling the amount due to the amount received

d) effective action is taken to pursue non-payment within defined timescales;

e) formal approval for debt write-off is obtained;

f) appropriate write-off action is taken within defined timescales;

g) appropriate accounting adjustments are made following write-off action;

h) all appropriate income documents are retained and stored for the defined period in accordance with the document retention guidelines;

i) money collected and deposited is reconciled to the bank account by a person who is not involved in the collection or banking process.

D.2.3 Responsibilities of the Director of Finance

2.3.1 To agree arrangements for the collection of all income due to the Council and to approve the procedures, systems and documentation for its collection.

2.3.2 To approve all debts to be written off in consultation with the relevant Director and to keep a record of all sums written off up to the approved limit and to adhere to the requirements of the Accounts and Audit Regulations 2015.

2.3.3 To obtain the approval of the Strategy and Resources Committee in consultation with the relevant Director for writing off debts in excess of a specified financial limit (see **Appendix F**)

2.3.4 To ensure that appropriate accounting adjustments are made following write-off action.

2.3.5 To order and supply to services all receipt forms, books or tickets and similar items and to satisfy himself/herself regarding the arrangements for their control.

D.**2.4 Responsibilities of Directors**

2.4.1 To implement the charging policy for the supply of goods or services, including the appropriate charging of VAT (in consultation with the Director of Finance where appropriate), and to review it regularly, in line with corporate policies.

2.4.2 To separate the responsibility for identifying amounts due and the responsibility for collection, as far as is practicable.

2.4.3 To establish and initiate appropriate recovery procedures, including legal action where necessary, for debts that are not paid promptly.

2.4.4 To issue official receipts or to maintain other documentation for income collection.

2.4.5 To ensure that at least two employees are present when post is opened so that money received by post is properly identified and recorded.

2.4.6 To hold securely receipts, tickets and other records of income for the appropriate period in accordance with the documentation retention policy.

2.4.7 To secure all income to safeguard against loss or theft, and to ensure the security of cash handling.

2.4.8 To ensure that income is paid fully and promptly into the appropriate Council bank account in the form in which it is received. Appropriate details should be recorded on paying-in slips to provide an audit trail. Money collected and deposited must be reconciled to the bank account on a regular basis.

2.4.9 To ensure personal cheques or other payments are not en-cashed.

2.4.10 To supply the Director of Finance with details relating to work done, goods supplied, services rendered or other amounts due, to enable the Director of Finance to record correctly the sums due to the Council and to ensure accounts are sent out promptly. Directors have a responsibility to assist the Director of Finance in collecting debts that they have originated***,*** by providing any further information requested about the debtor, and in pursuing the matter on the Council's behalf.

2.4.11 To notify the Director of Finance of outstanding income relating to the previous financial year as soon as possible after 31st March in line with the timetable determined by the Director of Finance and not later than 15th April.

D.3. ORDERING AND PAYING FOR WORK, GOODS AND SERVICES

D.**3.1 Why is this important?**

3.1.1 Public money should be spent with demonstrable probity and in accordance with the Council's policies. Authorities have a statutory duty to achieve best value in part through economy and efficiency. The Council's procedures should help to ensure that services obtain value for money from their purchasing arrangements. These procedures should be read in conjunction with the Council's ***Contract Procedure Rules***.

D.**3.2 General**

3.2.1 Every Officer and Member of the Council has a responsibility to declare any links or personal interests that they may have with purchasers, suppliers and/or contractors if they are engaged in contractual or purchasing decisions on behalf of the Council, in accordance with appropriate codes of conduct.

3.2.2 Official orders must be in a form approved by the Director of Finance. Official orders must be issued for all work, goods or services to be supplied to the Council, except for supplies of utilities, periodic payments, petty cash purchases or other exceptions specified by the Director of Finance.

3.3.3 Each order must conform to the guidelines approved by the Council on procurement Standard terms and conditions and must not be varied without the prior approval of the Director of Finance.

3.3.4 Apart from petty cash, the normal method of payment from the Council shall be by BACS drawn on the Council's bank account by the Director of Finance. The use of direct debit shall require the prior agreement of the Director of Finance The use of Council procurement/business cards by non card holders shall require the prior agreement of the Director of Finance

3.3.5 Official orders must not be raised for any personal or private purchases, nor must personal or private use be made of Council contracts, except where there is a specific Council policy to the contrary.

3.3.6 Detailed regulations relating to Procurement are set out in the Council's ***Contract Procedure Rules.***

3.3.7 Where an order is not appropriate as discussed in section 3.2.2, authorisation must be provided on the specified form and attached to the invoice for payment. Authorisation thresholds for Officers are set out in **Appendix H.**

D.**3.3 Key controls**

3.3.1 The key controls for ordering and paying for work, goods and services are:

a) all goods and services are ordered only by authorised persons and are correctly recorded;

b) all goods and services shall be ordered in accordance with the Council's ***Contract Procedures Rules***;

c) goods and services received are checked to ensure they are in accordance with the order;

d) payments are not made unless goods have been received by the Council to the correct price, quantity and quality standards;

e) all payments are made to the correct person, for the correct amount and are properly recorded, regardless of the payment method;

f) all appropriate evidence of the transaction and payment documents are retained and stored for the defined period, in accordance with the document retention guidelines;

g) all expenditure, including VAT, is accurately recorded against the right budget and any exceptions are corrected by journal;

h) in addition e-commerce requires that processes are in place to maintain the security and integrity of data for transacting business electronically.

D.**3.4 Responsibilities of the Director of Finance**

3.4.1 To ensure that all the Council's financial systems and procedures are sound and properly administered.

3.4.2 To approve any changes to existing financial systems and to approve any new systems before they are introduced.

3.4.3 To approve the form of official orders and associated terms and conditions in consultation with the Council's legal advisors.

3.4.4 To make payments from the Council's funds on the Chief Executive or Director's authorisation that the expenditure has been duly incurred in accordance with financial regulations.

3.4.5 To make payments, whether or not provision exists within the estimates, where the payment is specifically required by statute or is made under a court order.

3.4.6 To make payments to contractors on the certificate of the appropriate Chief Executive or Director, which must include details of the value of work, retention money, amounts previously certified and amounts now certified.

3.4.7 To provide advice and encouragement on making payments by the most economical means, in accordance with the Council's Procurement Strategy and associated guidance.

3.4.8 To ensure that payment is not made unless a proper VAT invoice, where appropriate, has been received, checked and coded, confirming:

(a) that the invoice has not previously been paid;

(b) that expenditure has been properly incurred;

(c) that prices and arithmetic are correct;

(d) correct accounting treatment of tax;

(e) that discounts have been taken where available;

(f) that appropriate entries will be made in accounting records.

3.4.9 To ensure that payments are not made on a photocopied or faxed invoice, statement or other document other than the formal invoice, except where the original invoice has been lost, in which case a check must be made to see if payment has been made and if it has not the copy annotated accordingly prior to payment.

D.**3.5 Responsibilities of Chief Executive and Directors**

3.5.1 To ensure that official orders are issued via the e-procurement system for all goods and services, other than the exceptions as specified in 3.2.2.

3.5.2 To ensure that orders are only used for goods and services provided to the service. Individuals must not use official orders to obtain goods or services for their private use (see 3.3.5).

3.5.3 To ensure that only staff authorised to raise orders (Buyers) via the e-procurements system have access to the system. To ensure that only staff authorised to approve orders above the specified limit have access to the system. Buyers and Approvers should be satisfied that the goods and services ordered are appropriate and needed, that there is adequate budgetary provision and that quotations or tenders have been obtained if necessary. Best Value principles should underpin the Council's approach to procurement. Value for money should always be achieved.

3.5.4 To ensure that goods and services are checked on receipt to verify that they are in accordance with the order. This check should, where possible, be carried out by a different officer from the person who authorised the order. Appropriate entries should then be made in inventories if necessary.

3.5.5 To ensure that the e-payment system is updated to show the receipt of goods, immediately after the goods are received.

3.5.6 Wherever possible to ensure that two authorised members of staff are involved in the ordering and receiving process.

3.5.7 To encourage suppliers of goods and services to receive payment by the most economical means for the Council. It is essential, however, that payments made by direct debit have the prior approval of the Director of Finance.

3.5.8 To ensure that the service obtains best value from purchases by taking appropriate steps to obtain competitive prices for goods and services of the appropriate quality. Due regard to be taken of the Council's procurement strategy and associated procurement guidance.

3.5.9 To ensure that employees are aware of the national code of conduct for local government employees specified in personnel policies.

3.5.10 To ensure that, loans, leasing or rental arrangements are not entered into without prior agreement from the Director of Finance.

3.5.11 To notify the Director of Finance of outstanding expenditure relating to the previous financial year as soon as possible after 31st March in line with the timetable determined by the Director of Resources.

3.5.12 With regard to contracts for construction and alterations to buildings and for civil engineering works, to document and agree with the Director of Finance the systems and procedures to be adopted in relation to financial aspects. This includes certification of interim and final payments, checking, recording and authorising payments, the system for monitoring and controlling capital schemes and the procedures for validation of subcontractors' tax status.

3.5.13 To notify the Director of Finance immediately of any expenditure to be incurred as a result of statute/court order where there is no budgetary provision.

3.5.14 To ensure that all appropriate payment records are retained and stored for the defined period, in accordance with the document retention guidelines.

D.4. PAYMENTS TO EMPLOYEES AND MEMBERS

D.**4.1 Why is this important?**

4.1.1 Staff costs are the largest item of expenditure for most Council services. It is therefore important that payments are accurate, timely, made only where they are due for services to the Council and that payments accord with individuals' conditions of employment. It is also important that all payments are accurately and completely recorded and accounted for and that Members' allowances are authorised in accordance with the scheme adopted by the Council.

D.**4.2 Key controls**

4.2.1 The key controls for payments to employees and Members are:

(a) proper authorisation procedures are in place and that there is adherence to corporate timetables in relation to:

i. starters
ii. leavers
iii. variations
iv. enhancements
v. and that payments are made on the basis of timesheets or claims;
vi. frequent reconciliation of payroll expenditure against approved budget and bank account;

(b) all appropriate payroll documents are retained and stored for the defined period in accordance with the document retention guidelines;

(c) that HM Revenues and Customs regulations are complied with.

D.**4.3 Responsibilities of the Director of Finance**

4.3.1 To arrange and control the secure and reliable payment of salaries, compensation or other emoluments to existing and former employees, in accordance with procedures prescribed by him/her, on the due date.

4.3.2 To ensure that all appropriate payroll documents are retained and stored for the defined period in accordance with the document retention guidelines.

4.3.3 To record and make arrangements for the accurate and timely payment of tax, pensions and other deductions.

4.3.4 To make arrangements for payment of all travel and subsistence claims.

4.3.5 To make arrangements for paying Members travel or other allowances upon receiving the prescribed form, duly completed and authorised.

4.3.6 To ensure that adequate and effective systems and procedures are operated, so that:

(a) payments are only authorised to bona fide employees;

(b) payments are only made where there is a valid entitlement;

(c) conditions and contracts of employment are correctly applied, employees' names listed on the payroll are checked at regular intervals to verify accuracy and completeness.

4.3.7 To ensure that the Director of Finance is notified of the details of any employee benefits in kind, to enable full and complete reporting within the income tax self-assessment system (P11d).

D.4.4 Responsibilities of Chief Executive and Directors

4.4.1 To send an up-to-date list of the names of officers authorised to sign records to the Director of Finance, together with specimen signatures.

4.4.2 To ensure that payroll transactions are processed only through the payroll system. Directors should give careful consideration to the employment status of individuals employed on a self-employed consultant or subcontract basis. HM Revenues and Customs applies a tight definition for employee status, and in cases of doubt, advice should be sought from the Director of Finance.

4.4.3 To certify travel and subsistence claims and other allowances. Certification is taken to mean that journeys were authorised and expenses properly and necessarily incurred, and that allowances are properly payable by the Council, ensuring that cost-effective use of travel arrangements is achieved. Due consideration should be given to tax implications and the Director of Finance is informed where appropriate.

4.4.4 To make, having regard to the particular circumstances of each case, ex gratia payments not exceeding a specified financial limit (see **Appendix F**) in any one case, subject to consultation with the Director of Finance. The circumstances of the proposed payment must not have the effect of circumventing other Council pay and allowance policies, tax rules or other legislation.

4.4.5 To notify the Director of Finance of all appointments, terminations or variations that may affect the pay or pension of an employee or former employee, in the form and to the timescale required by the Director of Finance.

4.4.6 To ensure appointments are made in accordance with the regulations of the Council and approved establishments, grades and scale of pay and that adequate budget provision is available.

D.**4.5** Responsibilities of Members and Officers

4.5.1 To submit claims for travel and subsistence allowances on a monthly basis and, in any event, within one month of the year end.

D.5. TAXATION

D.**5.1** Why is this important?

5.1.1 Like all organisations, the Council is responsible for ensuring its tax affairs are in order. Tax issues are often very complex and the penalties for incorrectly accounting for tax are severe. It is therefore very important for all officers to be aware of their role.

D.**5.2** Key controls

5.2.1 The key controls for taxation are:

(a) Finance staff remain abreast of tax legislation, in particular that relating to PAYE, NICs, CIS and VAT.

(b) budget managers are provided with relevant information and kept up to date on tax issues;

(c) budget managers are instructed on required record keeping;

(d) all taxable transactions are identified, properly carried out, accounted for within stipulated time-scales and paid through appropriate financial systems;

(e) records are maintained in accordance with instructions;

(f) returns are made to the appropriate authorities within the stipulated timescale.

D.5.3 Responsibilities of the Director of Finance

5.3.1 To complete all HM Revenues and Customs returns regarding PAYE and NIC's.

5.3.2 To complete a monthly return of VAT inputs and outputs to HM Revenues and Customs.

5.3.3 To provide details to HM Revenues and Customs regarding the construction industry tax deduction scheme in accordance with their deadlines.

5.3.4 To provide guidance for Council employees on taxation issues (including VAT).

D.5.4 Responsibilities of Directors

5.4.1 To ensure that the correct VAT liability is attached to all income due and that all VAT recoverable on purchases complies with HM Revenues and Customs regulations.

5.4.2 To ensure that, where construction and maintenance works are undertaken, the contractor fulfils the necessary construction industry tax deduction requirements.

5.4.3 To follow any guidance on taxation issued by the Director of Finance.

D.6. TRADING ACCOUNTS AND BUSINESS UNITS

D.6.1 Why is this important?

6.1.1 Trading accounts have become more important as local authorities have developed a more commercial culture.

D.6.2 General

6.2.1 Trading activities must operate within the Council's overall arrangements and rules for financial, personnel and resource management. Exceptionally, where it can be demonstrated that this would lead to a unit being uncompetitive and losing work, special arrangements can be considered. While the Programme committees have an overall responsibility for the operations of trading activities, clearly trading activities need freedom within this framework to operate on a commercial basis. Trading activities must adhere to Financial Regulations, unless alternative arrangements are explicitly identified and agreed in writing with the Director of Finance.

D.**6.3 Responsibilities of the Director of Finance**

6.3.1 To advise on the establishment and operation of trading accounts.

D.**6.4 Responsibilities of Directors**

6.4.1 To ensure that the control of the trading activity will be to the financial target (the 'bottom line') rather than to individual expenditure and income estimate headings

6.4.2 To ensure that as a minimum, a break even position should be achieved.

6.4.3 To report to the Strategy and Resources Committee, where a trading activity plans a significant item of expenditure (e.g. a capital scheme, the purchase of a major item of computer software or the creation of a major ongoing revenue commitment), prior to the expenditure being committed, unless already in an approved capital programme

6.4.4 To make a full report to the Strategy and Resources Committee, as soon as it is known that the trading activity may make a deficit.

6.4.5 To make a report to the Strategy and Resources Committee on the outturn of each trading activity compared to the financial plan.

6.4.6 To consult with the Director of Finance and the Council's legal advisors where a trading activity wishes to enter into a contract with a third party where the contract expiry date exceeds the remaining life of their main contract with the Council. In general, such contracts should not be entered into unless they can be terminated within the main contract period without penalty.

E. EXTERNAL ARRANGEMENTS

E.1. PARTNERSHIPS

E.**1.1 Why is this important?**

1.1.1 Partnerships are likely to play a key role in delivering community strategies and in helping to promote and improve the well-being of the area. Local authorities are working in partnership with others – public agencies, private companies, community groups and voluntary organisations. Local authorities still deliver some services, but their distinctive leadership role is to bring together the contributions of the various stakeholders. They therefore need to deliver a shared vision of services based on user wishes.

1.1.2 Local authorities usually act as an "enabler" and will mobilise investment, bid for funds, champion the needs of their areas and harness the energies of local people and community organisations. Local authorities will be measured by what they achieve in partnership with others.

E.**1.2 General**

1.2.1 The main reasons for entering into a partnership are:

a) the desire to find new ways to share risk;

b) the ability to access new resources;

c) to provide new and better ways of delivering services;

d) to forge new relationships.

1.2.2 A partner is defined as either:

a) an organisation (private or public) undertaking, part funding or participating as a beneficiary in a project or;

b) a body whose nature or status give it a right or obligation to support the project.

1.2.3 Partners participate in projects by:

a) acting as a project deliverer or sponsor, solely or in concert with others;

b) acting as a project funder or part funder;

c) being the beneficiary group of the activity undertaken in a project.

1.2.4 Partners have common responsibilities:

a) to be willing to take on a role in the broader programme appropriate to the skills and resources of the partner organisation;

b) to act in good faith at all times and in the best interests of the partnership's aims and objectives;

c) be open about any conflict of interests that might arise;

d) to encourage joint working and promote the sharing of information, resources and skills between public, private and community sectors;

e) to hold confidentially any information received as a result of partnership activities or duties that is of a confidential or commercially sensitive nature;

f) to act wherever possible as ambassadors for the project.

E.**1.3 Key controls**

1.3.1 The key controls for Council partners are:

a) if appropriate, to be aware of their responsibilities under the Council's financial regulations and procedures together with ***Contract Procedure Rules***;

b) to ensure that risk management processes are in place to identify and assess all known risks;

c) to ensure that project appraisal processes are in place to assess the viability of the project in terms of resources, staffing and expertise;

d) to agree and accept formally the roles and responsibilities of each of the partners involved in the project before the project commences;

e) to communicate regularly with other partners throughout the project so that problems can be identified and shared to achieve their successful resolution.

E.**1.4 Responsibilities of the Director of Finance**

1.4.1 To advise on effective controls that will ensure that resources are not wasted.

1.4.2 To advise on the key elements of funding a project. They include:

a) a scheme appraisal for financial viability in both the current and future years;

b) risk appraisal and management;

c) resourcing, including taxation issues;

d) audit, security and control requirements;

e) carry-forward arrangements.

1.4.3 To ensure that the accounting arrangements are satisfactory.

1.4.4 To maintain a register of all contracts entered into with external bodies.

1.4.5 To ensure that spending has occurred in line with the terms and conditions and any eligibility criteria.

E.**1.5 Responsibilities of Chief Executive and Directors**

1.5.1 To ensure that, before entering into agreements with external bodies the Council's legal advisors are consulted.

1.5.2 To ensure that, before entering into agreements with external bodies, a risk management appraisal has been prepared.

1.5.3 To ensure that such agreements and arrangements do not impact adversely upon the services provided by the Council.

1.5.4 To ensure that all agreements and arrangements are properly documented.

1.5.5 To provide appropriate information to the Director of Finance to enable a note to be entered into the Council's Statement of Accounts concerning material items.

E.2. EXTERNAL FUNDING

E.**2.1 Why is this important?**

2.1.1 External funding is potentially a very important source of income, but funding conditions need to be carefully considered to ensure that they are compatible with the aims and objectives of the Council. Local authorities are increasingly encouraged to provide seamless service delivery through working closely with other agencies and private service providers. Funds from external agencies provide additional resources to enable the Council to deliver services to the local community. However, in some instances, although the scope for external funding has increased, such funding is linked to tight specifications and may not be flexible enough to link to the Council's overall plan.

E.**2.2 Key controls**

2.2.1 The key controls for external funding are:

a) to ensure that key conditions of funding and any statutory requirements are complied with and that the responsibilities of the accountable body are clearly understood;

b) to ensure that funds are acquired only to meet the priorities approved in the policy framework by the Council;

c) to ensure that any match-funding requirements and future revenue implications are given due consideration prior to entering into long-term agreements and that future revenue budgets reflect these requirements.

E.**2.3 Responsibilities of the Director of Finance**

2.3.1 To ensure that all funding notified by external bodies is received and properly recorded in the Council's accounts.

2.3.2 To ensure that the match-funding requirements are considered prior to entering into the agreements and that future revenue budgets reflect these requirements.

2.3.3 To ensure that audit requirements are met.

E.**2.4 Responsibilities of Chief Executive and Directors**

2.4.1 To ensure that all claims for funds are made by the due date.

2.4.2 To ensure that the project progresses in accordance with the agreed project and that all expenditure is properly incurred and recorded.

E.3. WORK FOR THIRD PARTIES

E.**3.1 Why is this important?**

3.1.1 Legislation enables the Council to provide a range of services to other bodies. Such work may enable a unit to maintain economies of scale and existing expertise. Arrangements should be in place to ensure that any risk associated with this work is minimised and that such work is intra vires.

E.**3.2 Key controls**

3.2.1 The key controls for working with third parties are:

a) to ensure that proposals are costed properly in accordance with guidance provided by the Director of Resources;

b) to ensure that contracts are drawn up using guidance provided by the Director of Finance and that the formal approvals process is adhered to;

c) to issue guidance with regard to the financial aspects of third party contracts and the maintenance of the contract register.

E.**3.3 Responsibilities of Director of Finance**

3.3.1 To issue guidance with regard to the financial aspects of third party contracts and the maintenance of the contract register.

E.**3.4 Responsibilities of Chief Executive and Directors**

3.4.1 To ensure that the approval of the relevant committee is obtained before any negotiations are concluded to work for third parties.

3.4.2 To maintain a register of all contracts entered into with third parties in accordance with procedures specified by the Director of Finance

3.4.3 To ensure that appropriate insurance arrangements are made.

3.4.4 To ensure that the Council is not put at risk from any bad debts.

3.4.5 To ensure that no contract is subsidised by the Council.

3.4.6 To ensure that, wherever possible, payment is received in advance of the delivery of the service.

3.4.7 To ensure that the service has the appropriate expertise to undertake the contract.

3.4.8 To ensure that such contracts do not impact adversely upon the services provided for the Council.

3.4.9 To ensure that all contracts are properly documented.

3.4.10 To provide appropriate information to the Director of Finance to enable a note to be entered into the Statement of Accounts.

Appendix F

F. FINANCIAL LIMITS

F.1. General

F.1.1 Throughout these regulations, there are references to financial limits. These limits will need to be reviewed on a regular basis and, consequently, the latest figures have been consolidated in this appendix in order to facilitate any future changes. The regulations which contain financial limits are listed below:

F.1.2 Virements between Directorates require the approval of the Strategy and Resources Committee subject to the authorisation limits set out below. For the purpose of virements, salaries are to be considered as a Directorate in their own right and are under the control of the Chief Executive.

F1.3 The use of reserves is to be approved through the same authorisation process as virements where not approved as part of the annual budget or accounts processes, or have specific delegation.

F.1.4 The financial limits for approval of revenue virements and revenue supplementary estimates are set out below:

(a) Virements within same Directorate

Relevant Director and Director of Finance

(b) Virements between different Directorates

(i) Up to **£20,000** – Director and Director of Finance and reported quarterly to members via email.

(ii) Over **£20,000** up to **£50,000** - Director, Director of Finance in consultation with relevant Committee Chairperson; and reported to the next Strategy and Resources Committee meeting;

(iii) Over **£50,000** - the Strategy and Resources Committee.

(c) Supplementary Estimates

(i) Up to **£20,000** – Director and Director of Finance in consultation with the Chairperson of the Strategy and Resources Committee and the Leader and reported to the next Strategy and Resources Committee;

(ii) Over **£20,000** – the Strategy and Resources Committee.

NB One of the Council's budget policies is to only agree supplementary estimates in exceptional circumstances.

F.1.5 A capital scheme (an identifiable project) is where expenditure exceeds £**10,000**.

F.1.6 The financial limits for approval of capital virements and capital supplementary estimates are the same as for revenue.

F.1.7 Any excess expenditure over the approved contract sum of more than **5%** or **£10,000** whichever is the greater must be reported to the relevant committee (Appendix B paragraph 2.19.8).

F.1.8 The asset register shall contain all assets with a value in excess of **£10,000** (Appendix C paragraph 5.3.1).

F.1.9 All items with a value in excess of **£500** shall be included in inventories (Appendix C paragraph 5. 4.15). IT assets (laptops, monitors, printers etc but excluding IT peripherals) are an exception to this limit as are more desirable, and are all recorded on the IT inventory.

F.1.10 Strategy and Resources Committee approval is required to declare land surplus to requirements where the value exceeds **£10,000** (Appendix C paragraph 5.4.4).

F.1.11 Strategy and Resources Committee approval is required to write-off bad debts in excess of **£10,000** (Appendix D paragraph 2.3.3), in the case of Non Domestic Rates Debts this is increased to **£20,000.**

F.1.12 Strategy and Resources Committee approval is required to make ex-gratia payments in excess of **£2,000** (Appendix D paragraph 4.4.4).

F.1.13 Finance limits relating to contracts are contained in the Council's ***Contract Procedure Rules***.

Appendix G

G. BANK MANDATE

G.1. Cheques are only to be issued in emergencies and will be from the contingency cheque book.

G.2. Cheques above £10,000 shall be countersigned by the Director of Finance or, in his/her absence, the Chief Executive.

G.3. Amendments to cheques can be countersigned by the above and additionally the Lead Finance Specialist for cheques up to £10,000.

G.4. Manual CHAPS payments shall be signed by any of the following:

a) Director of Finance

b) Chief Executive

*G.*5. All arrangements with the Council's financial institutions shall be made by the Director of Finance who shall be authorised to operate such banking accounts/investments/financial instruments as he/she may consider necessary.

*G.*6. All cheques shall be ordered only on the authority of the Director of Finance or under arrangements made by him/her.

*G.*7. All cheques shall be ensured are kept in safe custody by the Director of Resources until issue.

*G.*8. All instructions relating to the Council's banking accounts, shall be authorised by the Director of Finance or Officers authorised by him or her.

*G.*9. Payments may be made by BACS or CHAPS electronic transmission subject to two electronic signatures; and submission by an authorised card holder authentication. Responsibility for the delegation of authorisation below Director level and limits applicable is set by the Director of Finance.

H. AUTHORISATION ARRANGEMENTS

Total Value	Category	Authorisation Level
Up to £5,000	Electronic Orders	*Authorised buyer*
£5,001 to £50,000	Invoice Authorisations, Electronic Order Approvals, Mileage and Expenses Claims	*Line Manager*
Above £50,001*	Invoice Authorisations and Order/Contract Approvals	*Chief Executive or Director*

* Note requirement for written contracts above £50,000 – See Section 13.7 of Contract Procedure Rules.

Definitions (as per Contract Procedure Rules)

Approved Buyer- An Officer designated by a Director who is authorised to generate electronic orders on behalf of the Council.

Line Manager - An *Officer* designated by the *Director to* exercise the role reserved to the line manager by the contract procedure rules, this will be a Level 2 Manager.

Director- *The Chief Executive or one of five Directors*

I. DELEGATIONS

I.1.1 Introduction

1.1.1. The Status of financial regulations section (Section one in this document) refer to Directors and Officers delegating their responsibilities per these financial regulations. Delegation should be given in writing, however there are instances where this isn't necessary or not possible due to sickness/leave. These delegations are only applicable where decisions/actions are required urgently and the relevant officer is not available and written delegation has not been made as not known required.

1.1.2. There are statutory delegations for statutory posts, the Monitoring Officer and Returning Officer, who have a Deputies. Written delegation is not required for these posts to act in the full capacity.

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Contract Procedure Rules

MALDON
DISTRICT COUNCIL

Approved by Council 13th February 2025

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INTRODUCTION

These Contract Procedure Rules apply to all officers, members and agents acting on behalf of the Council involved in Procurement and Contract Management and are issued in accordance with section 135 of the Local Government Act(1972) and section 1-29 of Local Government Act (1999). These rules 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 procurement and contract management activities and decision making must be fully aware of and comply with these rules. Officers have a duty to report breaches of these Contract Procedure Rules to an appropriate Director, the Monitoring Officer, and Lead Specialist Procurement.

Should a conflict be found between these rules, the law and procurement guidance, the order of precedence shall be the law, these rules, and any guidance. The Chief Finance Officer in consultation with the Lead Specialist Procurement 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.

Legislation

The Councils procurements are regulated by the Procurement Act 2023 and the Procurement Regulations 2024. There is other legislation that needs to be considered such as the Social Value Act 2012 and the Transparency Code 2015, which will impact on procurement, and it is important that officers are aware of the wider legislative framework.

Where a procurement was started under the Public Contracts Regulations (2015) then that procurement or contract will continue to be under these regulations until the end of the contract or framework.

Objectives

The Procurement Act 2023 sets out a series of objectives which procurements must have regard to they are;

- Delivering value for money
- Maximising public benefit
- Sharing information for the purposes of allowing suppliers and others to understand the Councils policies and decisions
- Acting and being seen to act with integrity.

Procurements must also have regard to the National Procurement Policy statement which sets out national priorities for procurement;

- Value for money
- Social Value
- SMEs

It is important that procurements support the delivery of the Councils wider ambitions

1. BASIC PRINCIPLES

All procurement 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.
- Support the council's corporate and departmental objectives, plan and policies
- Consider the Councils duty to have regard to the fact that SMEs may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced, before commencing the procurement

2. OFFICER RESPONSIBILITIES

2.1 Responsible Officers

2.1.1 Officers 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. (Section 16)

2.1.2 Officers must:

- obtain all appropriate authorisations and check that appropriate budget provisions exist before the procurement commences
- have regard to the Procurement guidance
- have a business case completed and approved prior to commencing on contracts with a value of £50,000 or above
- consider whether the procurement constitutes a key decision. If so, approval must be sought from the Corporate Leadership Team (CLT), Project board and from the relevant committee.
- 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 and valid reason not to do so.
- Follow the council's duty to have regard to the fact that SMEs may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced, before commencing the procurement.
- Take all necessary Procurement, legal, financial, and professional advice.
- Officers must ensure that the contracts for which they are responsible are effectively managed and monitored to ensure they deliver the requirement as intended and to address any performance issues as soon as possible.

- must keep a record of decisions made in connection with the procurement, this should include minutes from any meetings held.

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 these rules at all times
- Appoint a Contract Manager for the lifetime of all contracts
- Ensure that all Exemption requests have followed the correct procedure.

3. EXEMPTIONS, COLLABORATIVE ARRANGEMENTS

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

3.2 Where a proposed contract is likely to exceed the UK Threshold, There are no delegated powers, and the matter has to be determined by the council.

3.3 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to life and/or safety of people or property arising from unforeseen events or incidents 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 Procurement guidance. Exemptions shall be signed by the Officer and countersigned by the S151 Officer and the Chief Executive in consultation with the Chairperson of the Strategy and Resources Committee.

3.5 Grant Allocations; where the Council has been allocated a grant and there has been no time to procure during the grant application process or because the grand conditions required spend in too short a time period. Evidence of the application process will be required with the exemption. If the grant spend is not required within a twelve (12) month period, then an exemption may not be used.

3.6 Financial Officers must monitor the use of all exemptions.

3.7 All purchases made via a local authority 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, The Council must be satisfied of this requirement by letting their contract in accordance with the UK Procedures on behalf of the authority and other members.

3.8 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.

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:
  - 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.
- Membership/Subscriptions (not applicable to software licensing) where the Council makes an arrangement to receive goods or services regularly by paying in advance and competition is absent for technical reasons.
- Any contract between the Council and another Contracting Authority where the contract has the aim of achieving public function related objectives and is solely in the public interest.

4.3 **Contract Value Calculation**

- Contract value means the estimated aggregate or recurring value payable inclusive of Value Added Tax over the entire contract period including any extensions of the contract.
- Contracts must not be artificially underestimated or disaggregated into two or more separate contracts where the effect is to avoid the application of the rules.
- 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.
- Where the estimated value cannot be determined, the procurement must be managed as though it was over the relevant UK Procurement Threshold

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 Procurement 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, 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.
- Allowing time to obtain approvals and the time necessary to complete a tender process.
- Consider the whole life cycle of the contract including any maintenance or service requirements once the contract is in place.
- 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. FRAMEWORK AGREEMENTS, DYNAMIC MARKETS, DYNAMIC PURCHASING SYSTEM

6.1 A framework, Dynamic Market or Dynamic Purchasing System is considered compliant when;

- It has been entered into by the Council in compliance with these rules, or;
- Another contracting authority, purchasing consortium or central government.

Officers should ensure the rules as set by the framework are followed.

Further guidance and details on Frameworks, Dynamic Markets and Dynamic Purchasing systems can be found in the Procurement guidance

6.2 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 Most Advantageous Tender on the basis of the Award Criteria set out in the specifications of the Framework Agreement

.

6.3 **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. 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 from Procurement.

7.2 Assets for Disposal

7.2.1 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. (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 relevant Director.

7.2.2 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.

7.2.3 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.

7.3 Providing Services to External Purchasers

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

7.4 The Appointment of Consultants to Provide Services

7.4.1 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.

7.4.2 The Officer 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]

7.4.3 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.

7.4.4 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. PRE-MARKET ENGAGEMENT

8.1 Officers must engage with procurement prior to commencing Market engagement.

Market engagement is permitted for the purposes of:

- Developing the Council's requirements and approach to the procurement
- Designing a procedure, conditions of participation or award criteria
- Preparing the tender notice and associated tender documents
- Identifying suppliers that may be able to supply the requirement (understanding the market).
- Identifying contractual terms
- Building capacity amongst suppliers in relation to the contract.

8.2 Market engagement must not have the effect that suppliers participating are put at an unfair advantage or that competition is otherwise distorted. If an officer deems that a supplier has been put at an unfair advantage, they must contact Procurement and Legal Services before progressing further with the procurement.

8.3 If the procurement is valued over the relevant UK procurement threshold, a preliminary market engagement notice must be published on the government's Central Digital Platform/Find a Tender.

9. STANDARDS AND AWARD CRITERIA

9.1 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 to describe the required quality. .

9.2 The Officer must define award criteria that are appropriate to the requirement and designed to secure an outcome giving Value for Money for the authority. Where The award criteria;

- Is the 'Most Advantageous Tender' where considerations other than price also apply.
- Savings over the life of the contract
- Sustainable Procurement
- Social Value
- The subject matter of the contract

9.3 Award Criteria must not include:

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

10. INVITATIONS TO TENDER / QUOTATIONS

10.1 **Procurements £5,000 up to £50,000**

The Officer responsible must ensure they have the budget and appropriate approvals in place to commence the quote process. Where the value of the contract exceeds

£50,000 then a tender process must be followed using the Councils nominated e-tendering portal via Procurement. Guidance should be sought from the Lead Specialist Procurement as to the correct process to follow at the earliest stage.

10.2 Where possible the Council shall ensure that for purchases of a value of up to £50,000 that at least two SME/Local supplier is invited to quote 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.

10.3 Once approval to proceed has been obtained by the necessary delegated authority the process should include the following:

- Details of the goods, services or works to be supplied;
- Where and when delivery is to take place;
- The total value of the contract; and
- The terms and conditions to apply including the price and payment terms.
- The terms of the purchase order should suffice for a contract.
- Use of the correct templates found on freshservice or obtained from Procurement

10.4 Where a quote is of a value of £30,000 and above then a below threshold tender notice must be published on the Central Digital Platform via the Council's e-tendering solution. All documentation/evidence and approval to award must be retained by the officer and forwarded to Procurement.

10.5 **Procurements valued between £50,000 up to UK Threshold**

Prior to commencing a tender process, the Responsible Officer should engage with procurement at the earliest opportunity and ensure;

(a) Approval to proceed to a procurement and award of contract in compliance with the Councils internal governance policies has been obtained. A business case/procurement plan will be required.

(b) Responsible Officers must create a robust risk assessment as part of the procurement planning process in conjunction with Procurement.

(c) Ensure there is no existing Council contract, framework, Dynamic Market or Dynamic Purchasing System before procuring the requirement.

(d) Have a specification that describes the authority's requirements in sufficient detail to enable the submission of competitive offers has been completed. The inclusion of social value criteria should also be considered.

(e) An open tender process must be followed, for the avoidance of doubt it is not possible to restrict the submission of tenders by reference to an assessment of suppliers' suitability to perform the contract.

(f) All relevant procurement documentation, including details of the evaluation criteria, will be developed by the Responsible Officer and Procurement.

(g) The Council must have regard to the fact that small and medium sized enterprises may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced

(h) Tenders must be evaluated according to the advertised evaluation criteria. clarification questions may be asked of bidders providing the response would not have the effect of materially changing the tender received.

(i) A tender report will be prepared by Procurement for approval to award the contract.

(j) Following approval to award the contract, a contract details notice must be published on the Central digital platform via the Councils e-tendering solution.

(k) All bidders will be notified of the outcome via the e-tendering solution.

(l) The contract must be signed by both parties prior to the contract commencing.

(m) Where appropriate and relevant to the contract it must be managed and have a risk register throughout the life cycle of the contract. Contracts excluded from this are for example;

- Software Licences,
- SLAs with other Local Authorities if not applicable

See section 14 of these rules for Contract Management.

10.6 **Procurements valued over the UK threshold**

The Responsible Officer must engage with Procurement at the earliest opportunity. There are strict deadlines and requirements for all over threshold procurements which are legal requirements under the Act.

(a) Approval to proceed to a procurement and award of contract in compliance with the Councils internal governance policies has been obtained. A business case/procurement plan will be required.

(b) Responsible Officers must create a robust risk assessment as part of the procurement planning process in conjunction with Procurement.

(c) The risk assessment must be reviewed and updated regularly during the procurement process and through the contract term.

(d) Procurement will confirm the most appropriate procurement process to use

(e) Where preliminary market engagement is used to inform the procurement process, a preliminary market engagement notice must be published on the Central Digital Platform via the Council's e tender solution.

(f) All relevant procurement documentation, including details of the evaluation criteria, will be developed by the Responsible Officer in consultation with the Procurement

(g) A tender notice must be published on the Central Digital Platform via the Council's e tender solution with associated tender documents

(h) Tenders must be evaluated according to the published evaluation criteria. Clarification questions may be asked of bidders as long as the response would not have the effect of materially changing the tender received

(i) The bidder with the highest evaluation score will normally be awarded the contract, if this is not the case further advice must be sought from the Procurement and Legal Services

(j) An award report will be prepared by Procurement for approval to proceed to awarding the contract

(k) All bidders must be notified of the award decision simultaneously via the Council's e tender solution whether or not their tender was successful, Procurement will prepare the relevant assessment summaries. Once assessment summaries have been sent to bidders a Contract Award Notice must be published on the Central Digital Platform via the Council's e tender solution.

(l) The publication of the Contract Award Notice starts the mandatory eight (8) working days standstill period. If, during the standstill period, a challenge or request for feedback is received from an unsuccessful bidder, the standstill period must be paused until the matter is successfully resolved. No contract award can take place in the intervening period

(m) A Contract Details Notice must be published within thirty (30) days of the contract being entered into. Where the value of the contract is more than £5m, a redacted copy of the contract must be published within ninety (90) days of the contract being entered into and the Notice must contain details of the KPIs (at least three (3)) that will be used to monitor the contract.

(n) The contract must be signed or sealed by both parties before contract delivery starts. The Responsible Officer must ensure that procurement is in receipt of a copy of the fully signed contract.

(o) Where appropriate and relevant to the contract it must be managed and have a risk register throughout the life cycle of the contract. Contracts excluded from this are for example;

- Software Licences,
- SLAs with other Local Authorities if not applicable

See section 14 of these rules for Contract Management.

10.7 **Light Touch Contracts**

Light touch contracts cover certain social, health, education or other public services provided directly to individuals or groups of individuals and therefore have some differences such as threshold limits and a greater flexibility. Contracts of this nature with a value below the threshold are subject to the remainder of the rules. The Council still remains bound by the requirement to ensure procurements do not result in non-compliance with the Act.

Where a Responsible Officer considers their contract may fall under the Light Touch regime, they should contact procurement in the first instance.

10.8 **Concession Contracts**

Concession contract is a contract that is concluded in writing where the consideration for the contract is the concessionaires right to profit from the works/services that are the subject of the contract.

Where a Responsible Officer considers their contract may fall under the Concession regime, they should contact procurement in the first instance.

11. TENDER EVALUATION

11.1 Tenders received after the fixed closing date and time or tenders which are not submitted in accordance with these rules and any criteria set out in the procurement documentation will be disqualified unless otherwise agreed by Procurement and where appropriate Legal Services.

11.2 If there is an obvious ambiguity or error in the tender and that ambiguity or error has a simple explanation, bidders may be invited to correct their tender.

11.3 Bidders may seek clarifications throughout the procurement process, such clarification requests must be recorded in writing and where the response may be of value to potential bidders, the anonymised response must be circulated to all those potential bidders. Under no circumstances can clarification processes be used as an opportunity to conduct negotiations.

11.4 Evaluation must be conducted in accordance with the published criteria. Evaluations will be by way of individual evaluation and where appropriate include a final moderation meeting.

12.5 The Procurement Act 2023 places an obligation on the Council to notify a bidder if it considers a price to be abnormally low and give the bidder reasonable opportunity to demonstrate that it will be able to perform the contract for the price offered. If the bidder is unable to demonstrate that, its tender may be disregarded

12. BONDS AND PARENT COMPANY GUARANTEES

12.1 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.

12.2 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.

13. CONTRACT DOCUMENTS

13.1 All Contracts that exceed £50,000 shall be in writing.

13.2 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.

13.3 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.

13.4 The formal advice of Procurement and Legal Services 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.

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

13.6 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.

13.7 **Contract Authorisation**

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

Total Value	Method of Completion	By
Up to £5,000	Electronic order	*Authorised buyer*
£5,001 to £50,000	Electronic order	*Line Manager*
Above £50,001	Signature on written contract	*Chief Executive or Director*

Approved Buyer- An Officer designated by a Director who is authorised to generate electronic orders on behalf of the Council.

Line Manager - An Officer designated by the Chief Executive to exercise the role reserved to the line manager by the contract procedure rules, this will be a Level 2 Director.

Chief Executive - responsible for delivery of services

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

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

13.10 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.

14. CONTRACT MANAGEMENT

14.1 The Procurement Act 2023 now specifies a number of requirements in terms of Contract Management. All contract performance requirements throughout the life cycle of the contract must be considered at pre-tender stage and included in the tender documents. Contract performance requirements should be proportionate to the individual contract.

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14.2 Contract Managers must keep a record of key dates with the lifecycle of a contract including but not limited to the dates of reviews, insurance renewals, any contractual ability to extend a contract, the notice periods required and the expiry of the term of contract.

14.3 At least six months prior to the expiry of a contract the contract manager should consult with procurement to agree if there is an option to extend and if taking up that option or renewal of a contract.

14.4 Contract managers are responsible for contract management on a day to day basis and in addition to contract inception meetings, and agreed implementation plans, as required shall be responsible for the regular review and monitoring of a contract with the supplier, and on an annual basis ensuring that all required insurances are renewed and that Business continuity plans, if used are reviewed.

14.5 For all contracts at or above the UK threshold value, information has to be published on the Councils e-tendering solution annually throughout the life cycle of the contract, including performance against any Key Performance indicators (KPIs) (a minimum of 3 KPIs should be set) and on termination of the contract

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

14.7 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 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.

15. MODIFYING A CONTRACT

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 and has an approved budget allocation
- Legal advice must be sought before assignments or novation's are entered into;

For the avoidance of doubt, extensions are not permitted where they are not provided for in the original contract.

If the contract is valued over the relevant UK Procurement Threshold, advice from the Procurement and Legal should be sought before a substantial modification is made. A substantial modification is one which would;

- Increase or decrease the term of the contract by more than 10% of the maximum term provided for,
- Materially change the scope of the contract, or
- Materially change the economic value of the contract in favour of the supplier.

Before modifying a contract valued over the relevant UK procurement threshold or when a modification takes the value over the relevant UK procurement threshold, a Contract Change notice must be published except where:

- The modification increases or decreases the estimated value of the contract in the case of goods/services by less than 10% or in the case of works by less than 15%, or
- The modification increases or decreases the term of the contract by less than 10%.

If the value of the contract is over £5m a redacted copy of the modified contract must be published via an updated Contract Details Notice on the Central Digital Platform via the Council's e-tendering solution.

16. CONFLICTS OF INTEREST

16.1 Officers must take all reasonable steps to identify and keep under review any conflicts of interest or potential conflicts of interest.

16.2 Any person who influences a decision must be included in the conflict of interest review.

16.3 Officers must take all reasonable steps to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage. If the officer deems that the advantage or disadvantage cannot be avoided, they should contact the Procurement and Legal Services before progressing further with the procurement. This obligation starts when the need for the procurement is first identified and continues until the termination of the contract.

16.4 Where the procurement is valued over £100,000, a conflicts assessment must be prepared by the Responsible Officer in conjunction with Procurement before the procurement is published. This should include details of all conflicts or potential conflicts of interest and any steps that the Council has taken or will take to mitigate that conflict of interest. This may include any steps taken to demonstrate that there is no conflict of interest where one might be perceived.

16.5 The conflicts assessment must be kept under review and revised as necessary during the procurement and contract term.

16.7 Officers and Members involved in a procurement will, at all times, act in a way that is consistent with their Code of Conduct.

17. DECLARATION OF INTERESTS

17.1 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.

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

17.3 The Monitoring Officer shall ensure that the attention of all members is drawn to the Council's Code of Conduct when taking office.

17.4 Any officer or Member who fails to declare a conflict of interest may be subject to disciplinary proceedings and risks being prosecuted under the Bribery Act 2010.

18. PREVENTION OF CORRUPTION

1.1 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.

18.2 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."

DEFINITIONS APPENDIX

Agent	A person or organisation acting on behalf of the council or on behalf of another organisation.
Director	Responsible for operational delivery of services and designated as such in the constitution
Approved Buyer	Officer Designated by a Director who is authorised to generate electronic orders on behalf of the Council.
Award Criteria	The criteria by which the successful Quotation or Tender is to be selected
Award Procedure	The procedure for awarding a contract
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 Quotation 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.
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.
Corporate Contract	A contract let by the Council to support the council's aim of achieving Value for Money.
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 Chief Executive
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.
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
Procurement 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.
Procurement Act 2023	An Act of the parliament of the United Kingdom to simplify procurement processes, become more transparent and deliver better value for money.
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).
Strategy & 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 two directorate.
Solicitor	Any Solicitor designated by the Council's Chief Executive or the Monitoring Officer.
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 conducting 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.

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PART 4 – RULES OF PROCEDURE

OFFICER EMPLOYMENT AND DISCPLINARY PROCEDURE RULES

CONTENTS

1. **Recruitment and appointment (Declarations)**
2. **Seeking support for appointment**
3. **Recruitment and appointment of Chief Officers**
4. **Appointment of Head of Paid Service, Monitoring Officer and S151 Officer ('Statutory Officers') and Chief Officers**
5. **Other Appointments**
6. **Disciplinary Action**
7. **Other staff**

1. RECRUITMENT AND APPOINTMENT (DECLARATIONS)

1.1 The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the partner of such persons.

1.2 No candidate so related to a Councillor, or an officer will be appointed without the authority of the Head of Paid Service or an officer nominated by that person.

2. SEEKING SUPPORT FOR APPOINTMENT

2.1 The Council will disqualify any applicant who directly or indirectly seeks the support of any councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

2.2 No councillor will seek support for any person for any appointment with the Council.

3. RECRUITMENT AND APPOINTMENT OF CHIEF OFFICERS

3.1 Chief Officers are those posts designated as such in Article 10 of the Council's Constitution.

3.2 Where the Council proposes to appoint a Chief Officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

a) draw up a statement specifying:

(i) the duties of the officer concerned; and

(ii) any qualifications or qualities to be sought in the person to be appointed;

b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it in line with employee recruitment policies and practices; and

c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.

4. APPOINTMENT OF HEAD OF PAID SERVICE, MONITORING OFFICER, S151 OFFICER ('STATUTORY OFFICERS') AND CHIEF OFFICERS

4.1 The Appointments Board will recommend to the Council on the appointment of the Head of Paid Service and the Chief Executive.

4.2 The other Statutory Officers will be appointed by the Appointments Board.

4.3 Appointment of Directors below the Chief Officer, will be appointed by the Appointments Board.

For clarity the Directors which are appointed under rule 4.3 are:

- Director of Finance
- Director of Legal and Governance
- Director of Neighbourhood Services and Communities
- Director of Strategy and Improvement
- Director of Place, Planning and Growth

5. OTHER APPOINTMENTS

5.1 **Other Officers**

5.1.1 Appointment of all other officers or, assistants to political groups, is the responsibility of the Chief Officer or their nominee and may not be made by councillors.

5.2 **Assistants to Political Groups**

5.2.1 Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group.

6. DISCIPLINARY ACTION

6.1 **Head of the Paid Service, Monitoring Officer and S151 Officer and Chief Officers not in a statutory role**

6.1.1 The dismissal of or taking disciplinary action against the Head of the Paid Service, Monitoring Officer and S151 Officer, and a Chief Officer not in a statutory role, shall be exercised by the Council through its Investigating and Disciplinary Committee (and Panel). Any of those Officers may be suspended whilst an investigation takes place into the particular allegation. That suspension will be on full pay and terminate no later than two months from the day on which the suspension takes effect unless the Designated Independent Person appointed in connection with the investigation

directs that the suspension should be continued beyond that point or should be otherwise varied in some way.

6.2 **Dismissal of Officers, and the involvement of Independent Persons.**

6.2.1 No decision to dismiss may be taken by the Council in respect of any of the above officers except in accordance with a recommendation of the Council's Investigating and Disciplinary Panel constituted in accordance with the Local Authorities (Standing Orders) England (Amendment) Regulations 2015 and including at least two Independent Persons appointed by the Council under appointed under the Localism Act 2011. No notice of dismissal shall be given to any of those officers unless the dismissal is first approved by a meeting of full Council.

7. OTHER STAFF

7.1 Councillors will not be involved in the disciplinary or dismissal action against any officer not in a Statutory role except where such involvement is necessary for any investigation or inquiry into alleged misconduct. In all other respects such action will be taken by the Head of Paid Service or an officer nominated by them. The Council's disciplinary, capability and related procedures, as adopted from time to time, may allow a right of appeal to Councillors in respect of disciplinary or dismissal action.

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PART 5 – CODES AND PROTOCOLS

INTRODUCTION

An effective local authority is one where Members and Officers understand their different roles and responsibilities and have an effective working relationship to ensure quality service delivery to the community. The way in which Members and Officers interact and behave is core to the ethical framework of public service. There are established codes of conduct for both Members and Officers, some embodied in statute and others developed locally. These govern conduct and form the basis of the working relationship between Members and Officers.

The Council strives to maintain the highest possible ethical standards in order to ensure lasting public confidence in all of its activities. The various codes of conduct, protocols and procedures governing the activities of both Members and Officers have been brought together in an overarching framework as part of the Council's Constitution.

The Member Code of Conduct is embodied in statute. Many of the other codes and protocols do not have such a clear statutory basis but they build upon the Nolan Principles of Public Life and Section 28(1) of the Localism Act 2011, which is appended to the Code. These standards reinforce the basic principles of individual ethical behaviour and both Members and Officers working in partnership to serve the community at the same time as upholding the integrity, values and ideals of public service.

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Local Government Association

Councillor Code of Conduct 2020

(Adopted by Maldon District Council in March 2022 to take effect on 4 July 2022)

Joint statement

The role of councillor across all tiers of local government is a vital part of our country's system of democracy. It is important that as councillors we can be held accountable and all adopt the behaviours and responsibilities associated with the role. Our conduct as an individual councillor affects the reputation of all councillors. We want the role of councillor tobe one that people aspire to. We also want individuals from a range of backgrounds and circumstances to be putting themselves forward to become councillors.

As councillors, we represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent our localarea, taking decisions fairly, openly, and transparently. We have both an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations.

Importantly, we should be able to undertake our role as a councillor without being intimidated, abused, bullied, or threatened by anyone, including the general public.

This Code has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.

PART 5 – CODES AND PROTOCOLS

LOCAL CODE OF CONDUCT

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PART 5 – CODES AND PROTOCOLS

INTRODUCTION

The Local Government Association (LGA) has developed this Model Councillor Code of Conduct, in association with key partners and after extensive consultation with the sector,as part of its work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance. It is a template for councils to adopt in whole and/or with local amendments.

All councils are required to have a local Councillor Code of Conduct.

The LGA will undertake an annual review of this Code to ensure it continues to be fit- for-purpose, incorporating advances in technology, social media and changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code and the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.

DEFINITIONS

For the purposes of this Code of Conduct, a "councillor" means a member or co-opted member of a local authority or a directly elected mayor. A "co-opted member" is defined in the Localism Act 2011 Section 27(4) as "a person who is not a member of the authority but who:

(a) is a member of any committee or sub-committee of the authority, or;

(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee".

For the purposes of this Code of Conduct, "local authority" includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

PURPOSE OF THE CODE OF CONDUCT

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set outthe type of conduct that could lead to action being taken against you. It is also to protectyou, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

GENERAL PRINCIPLES OF COUNCILLOR CONDUCT

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles.

Building on these principles, the following general principles have been developedspecifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

APPLICATION OF THE CODE OF CONDUCT

This Code of Conduct applies to you as soon as you sign your declaration of acceptance ofthe office of councillor or attend your first meeting as a co-opted member and continues toapply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillorwhich may include when:

- you misuse your position as a councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements andcomments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

PART 5 – CODES AND PROTOCOLS

STANDARDS OF COUNCILLOR CONDUCT

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

General Conduct

1. Respect

As a councillor:

1.1 I treat other councillors and members of the public with respect.

1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.

2. Bullying, harassment and discrimination

As a councillor:

2.1 I do not bully any person.

2.2 I do not harass any person.

2.3 I promote equalities and do not discriminate unlawfully against anyperson.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might bea regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarmor distress or puts people in fear of violence and must involve such conduct on at least two

occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in anyreasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex andsexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

3 Impartiality of officers of the council

As a councillor:

3.1 I do not compromise, or attempt to compromise, the impartialityof anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

4 Confidentiality and access to information

As a councillor:

4.1 I do not disclose information:

- **(a) given to me in confidence by anyone**
- **(b) acquired by me which I believe, or ought reasonably to be aware,is of a confidential nature, unless**
  - **(i) I have received the consent of a person authorised to give it;**
  - **(ii) I am required by law to do so;**
  - **(iii) the disclosure is made to a third party for the purpose of obtainingprofessional legal advice provided that the third party agrees not todisclose the information to any other person; or**
  - **(iv) the disclosure is:**
    1. **reasonable and in the public interest; and**
    2. **made in good faith and in compliance with the reasonable requirements of the local authority; and**
    3. **I have consulted the Monitoring Officer prior to its release.**

4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members,my employer or my business interests.

4.3 I do not prevent anyone from getting information that they are entitled to bylaw.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

5. Disrepute

As a councillor:

5.1 I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken bythe council whilst continuing to adhere to other aspects of this Code of Conduct.

6. Use of position

As a councillor:

6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

7. Use of local authority resources and facilities

As a councillor:

7.1 I do not misuse council resources.

7.2 I will, when using the resources of the local authority or authorising their useby others:

(a) act in accordance with the local authority's requirements; and

(b) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or ofthe office to which I have been elected or appointed.

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers

- transport
- access and use of local authority buildings and rooms

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

8 Complying with the Code of Conduct

As a Councillor:

8.1 I undertake Code of Conduct training provided by my local authority.

8.2 I cooperate with any Code of Conduct investigation and/ordetermination.

8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.

8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

It is extremely important for you as a councillor to demonstrate high standards, for you tohave your actions open to scrutiny and for you not to undermine public trust in the localauthority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your MonitoringOfficer.

Protecting your reputation and the reputation of the local authority

9. Interests

As a councillor:

9.1 I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish andmaintain a register of interests of members of the authority.

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as setout in **Table 1**, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If indoubt, you should always seek advice from your Monitoring Officer.

PART 5 – CODES AND PROTOCOLS

10. Gifts and hospitality As a councillor:

10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.

10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.

10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

APPENDICES

Appendix A – The Seven Principles of Public Life

The principles are:

Selflessness
Holders of public office should act solely in terms of the public interest.

Integrity
Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

Objectivity
Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability
Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness
Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty
Holders of public office should be truthful.

Leadership
Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Appendix B - Registering interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests**).

"Disclosable Pecuniary Interest" means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

"Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.

2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.

3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

5. [Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it].

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which ***directly relates*** to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in **Table 2**), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

7. Where a matter arises at a meeting which ***directly relates*** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a

dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

8. Where a matter arises at a meeting which ***affects*** –

   a. your own financial interest or well-being;

   b. a financial interest or well-being of a relative or close associate; or

   c. a financial interest or wellbeing of a body included under Other Registrable Interests as set out in **Table 2**.

   you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter (referred to in paragraph 8 above) ***affects*** the financial interest or well-being:
   (a) to a greater extent than it affects the financial interests or **well-being** of the majority of inhabitants of the ward affected by the decision and;
   (b) a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

   You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

   If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

11. [Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it]

PART 5 – CODES AND PROTOCOLS

Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during theprevious 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/herelection expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and LabourRelations (Consolidation) Act 1992.
Contracts	Any contract made between the councillor or his/her spouse or civil partners or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporatedbody of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council — (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged
Land and Property	Any beneficial interest in land which is within the area of the council. 'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.
Licenses	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer
Corporate tenancies	Any tenancy where (to the councillor's knowledge)- (a) the landlord is the council; and (b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.

Subject	Description
Securities	Any beneficial interest in securities* of a body where— (a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and (b) either— (i)) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners have a beneficial interest exceeds one hundredth of the total issued share capital of that class.

* 'director' includes a member of the committee of management of an industrial and provident society.

* *'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Table 2: Other Registrable Interests

You must register as an Other Registerable Interest:

(a) any unpaid directorships

(b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority

(c) any body
- (i) exercising functions of a public nature
- (ii) directed to charitable purposes o
- (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

of which you are a member or in a position of general control or management.

Appendix C – the Committee on Standards in Public Life

The LGA has undertaken this review whilst the Government continues to consider the recommendations made by the Committee on Standards in Public Life in their report on Local Government Ethical Standards. If the Government chooses to implement any of the recommendations, this could require a change to this Code.

The recommendations cover:

- Recommendations for changes to the Localism Act 2011 to clarify in law when theCode of Conduct applies
- The introduction of sanctions
- An appeals process through the Local Government Ombudsman
- Changes to the Relevant Authorities (Disclosable Pecuniary Interests)Regulations 2012
- Updates to the Local Government Transparency Code
- Changes to the role and responsibilities of the Independent Person
- That the criminal offences in the Localism Act 2011 relating to DisclosablePecuniary Interests should be abolished

The Local Government Ethical Standards report also includes Best Practicerecommendations. These are:

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors.

Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

Best practice 4: An authority's code should be readily accessible to both councillors andthe public, in a prominent position on a council's website and available in council premises.

Best practice 5: Local authorities should update their gifts and hospitality register at leastonce per quarter, and publish it in an accessible format, such as CSV.

Best practice 6: Councils should publish a clear and straightforward public interest testagainst which allegations are filtered.

Best practice 7: Local authorities should have access to at least two Independent Persons.

Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismissas being without merit, vexatious, or trivial.

Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged bythe

allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

Best practice 10: A local authority should have straightforward and accessible guidanceon its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council, rather than the clerk inall but exceptional circumstances.

Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training,corporate support and resources to undertake this work.

Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps shouldinclude asking the Monitoring Officer from a different authority to undertake the investigation.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide bythe Nolan principle of openness and publish their board agendas and minutes and annualreports in an accessible place.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

The LGA has committed to reviewing the Code on an annual basis to ensure it is stillfit for purpose.

ANNEXE TO CONSTITUTION

Part 5

CODE OF GOOD PRACTICE AND GUIDANCE ON THE THE CONDUCT OF PLANNING MATTERS

October 2026

PART 5 – CODES AND PROTOCOLS

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PART 5 – CODES AND PROTOCOLS

1 BACKGROUND AND INTRODUCTION

1.1 This document sets out the way in which the Maldon District Council ("the Council") will discharge its planning functions and responsibilities, in particular the determination of planning applications and related matters.

1.2 This document applies to Members and Officers at all times when involved in the planning process. (This includes, where applicable, when part of decision-making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers, the public and consultative meetings). It applies as equally to planning enforcement matters as it does to planning applications.

1.3 This Guidance supplements the Members' Code of Conduct. It is unlikely that there will be any conflict between the two documents but, if there is, the provisions of the Members' Code of Conduct will take precedence.

1.4 One of the key purposes of the planning system is to manage development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that the local planning authority, both planning officers and the planning committee, make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well founded in any way.

1.5 An important reference document is Probity in Planning for Councillors and Officers (April 2013) issued jointly by the Local Government Association and the Planning Advisory Service.

2 COUNCILLORS AND OFFICERS – ROLES, RELATIONSHIPS AND CONDUCT

Please note: There is also a full Member Officer Protocol which should be read in conjunction to this section.

2.1 The successful operation of the planning system relies on mutual trust between Members and Officers, and an understanding of each other's roles. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so. Councillors and Officers have different but complementary roles. While both serve the public in different ways, Councillors are elected and therefore have a responsibility towards the electorate. Officers are employed by and therefore responsible to the Council as a whole. It follows that although Officers will advise Councillors, both individually and collectively, they may only take instructions from the Council or a Committee. Officers are responsible for the implementation of decisions of the Council and its Committees.

2.2 Both Councillors and Officers are guided by codes of conduct. Councillors have signed up to the Council's own Local Code of Conduct and must have regard to and follow this in all their official actions. Breaches of the Code may result in complaints to the Council's Monitoring Officer who may decide to refer the matter to the Joint Standards Committee. Should a breach of the Code be found, sanctions may be imposed on the Councillor concerned. Breaches of the code may also result in complaints of maladministration to the Local Government Ombudsman.

2.3 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of this Code may result in disciplinary action by the Institute. The Council also has in place a Code of Conduct for its staff. In addition to these Codes, its Council and Committee Procedural Rules govern the conduct of Council business, and the Protocol on Member/Officer Relations sets out in greater detail and provides guidance on how the working relationship between Councillors and Officers should operate.

2.4 Councillors must not instruct officers to make a particular recommendation nor to take a particular course of action other than through a decision of the Council or one of its committees. Officers must give objective, impartial planning advice, based on their professional judgement and not be compromised or influenced by political considerations. Chartered Town Planners may only advocate their own professional view. Under the Local Government and Housing Act 1989 the Council is able to place restrictions on the outside activities of senior and other designated Officers, particularly in relation to membership of political parties and other Councils.

2.5 The Council's Maldon District Local Development Plan 2014-2029 is approved in the interests of the whole community, following public consultation. It therefore reflects the overall public interest, rather than those of individuals or organisations. Councillors and Officers must support the Council's planning policies and make decisions in accordance with them, unless there are sound planning reasons for not so doing.

2.6 In dealing with planning applications, Councillors will be acting both as representatives of the people and also as decision makers, objectively considering all relevant issues and deciding upon them. Councillors will justifiably take into account matters of public concern, representations they have received and an assessment of what may or may not be appropriate for the area.

2.7 Not all planning decisions are a matter of planning law or policy. Many decisions require an element of judgment, and therefore Councillors need to retain a fair and open-minded approach to the decision-making process. So too will Officers in determining applications under delegated powers. In addition, Officers through their professional responsibilities will be involved in the processing of planning applications including negotiating with and providing assistance to applicants and their agents and also members of the public.

2.8 While Councillors may sense a particular responsibility to serve their Ward electors, they have an overriding duty to the people of the Maldon District as a whole. It follows that since planning decisions are being taken on behalf of the Maldon District Council, they must be reflective of the interests of the District community as a whole. The decision-making process is covered in greater detail in section 6 of this document.

3 COUNCILLORS' TRAINING

3.1 Planning is a complex area, and planning decisions are open to challenge both on appeal and in the courts. It has long been a constant theme of national advice, that all Councillors regardless of their experience should receive adequate training to assist them in the performance of their duties.

3.2 All Councillors will be required to have completed an agreed programme of training prior to being able to take part in decision making in planning applications and related matters. Once this training has been completed, it will remain valid for a period of one year and then refreshed. Councillors who have not undertaken the agreed training programme will be able to participate in the discussion but not vote on planning applications and related matters.

3.3 The training programme in planning will be determined by the Director of Place, Planning and Growth, in consultation with the Chairperson and Vice-Chairperson of the Planning Committee.

3.4 In addition, all Councillors will be given regular updates to keep them informed of important changes in legislation, procedures or practices. Officers will also arrange training on more specialised planning issues, and all members of the Council will be strongly encouraged to attend.

3.5 All Members of the Planning Policy Working Group will be required to have completed an agreed programme of training.

4 PROBITY IN THE PLANNING PROCESS

4.1 Involvement in the planning process creates considerable potential for conflicts of interest, whether it is through an issue directly affecting a Councillor or an Officer, or indirectly in terms of family, friends or possibly an organisation with which they are associated. It is a fundamental principle that decisions should not be made by those who have a pecuniary interest in the outcome. This is vital to avoid public confidence in the planning system being eroded.

4.2 The general rule is that a Councillor or Officer should not use their position to further a private or personal interest, rather than the general public interest, or give grounds for any suspicion. The key issue is whether a member of the public would reasonably think that they might be influenced by their interest.

4.3 Councillors engaged in the determination of planning applications must ensure that they do not use their position improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.

Pre-determination / Pre-disposition

4.4 Councillors taking planning decisions are required to have an ‘open mind’ and listen to all the evidence before taking a decision. The Localism Act 2011 (S25) provides Members with a degree of assurance should they wish to indicate their views in advance without fear of being regarded as having pre-determined the issue and subsequently excluded from the decision making. To do so may still indicate pre-judgment of the application and expose the Council to the possibility of legal challenge.

4.5 The intended effect of the Localism Act provision has still to be determined in the courts, but even if it were held to reduce the prospect of or prevent a legal challenge to the validity of a decision it offers no protection against allegations of maladministration or a breach of the Local Code of Conduct. Members should not make up their minds until they have read the relevant Committee reports, heard the evidence and considered the representations, including any public speakers. It is

important that Members hear all the evidence and representations prior to reaching a decision.

4.6 The concept of pre-determination is different to that of pre-disposition. While carefully wishing to avoid any show of bias of view, it is acceptable for a Member to indicate a view, and even campaign, on planning issues in a general way. This is relevant where Members of the Planning Committee are also Parish / Town Councillors and where they may wish to contribute to a particular discussion at a more local level. Members must still avoid specific statements on how they will vote on individual planning applications or types of planning application prior to the Planning Committee meeting to avoid any impression of bias and pre-determination. If such statements have been made, the Member should declare an interest, withdraw from the Chamber and not take part in the debate or vote.

4.7 Councillors on the Planning Committee who are also members of Town or Parish Councils may speak and vote at Town or Parish and District levels if they are genuinely willing to listen to the later debate and weigh the considerations material to the later decision.

Interests and the Local Code of Conduct

4.8 Membership of another body would constitute a non-pecuniary interest, particularly if it is an organisation whose primary purpose is to lobby to promote or oppose planning proposals. Depending on the degree of involvement there is the prospect of fettering a Councillor's discretion and limiting the ability to participate in the consideration and determination of a planning application.

4.9 Members of the Planning Committee who are also Parish / Town Councillors should be aware of the potential repercussions of their involvement in the consideration of planning proposals at Parish / Town Council level. They should make it clear at that time that any views they may express, including the exercise of a vote, on the comments to be made to the District Council, can only be based on the information available to the Parish / Town Council at that time.

4.10 Members of the Planning Committee not affected by an interest through being Parish / Town Councillors are equally advised to take great care about responding to local opinion and publicly declaring a firm view on a proposal at an early stage. It is important that they do not 'fetter their discretion' but rather leave themselves free to reach a view at District Council level, based on all the facts and information.

4.11 The Local Code of Conduct sets out requirements and guidance for Councillors, for the registration and declaration of interests. These must be followed scrupulously, and Councillors should review the situation regularly. It must be borne in mind that not only should impropriety be avoided but also any appearance, or grounds for suspicion, of improper conduct.

4.12 It is for the individual Councillor to decide whether they have an interest in any matter considered by the Planning Committee, and if so whether that interest is a pecuniary or non-pecuniary or other one. Councillors with a pecuniary interest must not speak or vote in the decision-making process. The Local Code of Conduct explains the effect of interests on participation.

4.13 When declaring an interest at a Committee meeting this should be done at the relevant point in the meeting or as soon during the consideration of the matter that the interest becomes apparent. Councillors should be clear and specific in identifying the item on the agenda in which they have an interest and, if so, the nature of that

interest. Councillors do not need to declare interests that are not covered by the Code of Conduct, e.g. that they know the applicant, agent or an objector, or that they use the premises the subject of the application. If they feel that such an interest is material, they should explain the nature and relevance of it.

4.14 Officers must declare any personal or financial interest in any planning matter before the Council, must not deal with such matters on behalf of the Council and must not give advice to Councillors or other Officers on them. An Officer with a personal or financial interest in a planning matter must withdraw from any relevant committee meeting whilst that matter is discussed. Planning Officers must maintain their professional integrity and should avoid becoming associated in the public mind with representatives of the development industry or environmental or other pressure or amenity groups.

Gifts and Hospitality

4.15 Councillors and Officers should be very cautious about accepting gifts and hospitality and must follow their respective Codes of Conduct.

5 PRE-DISCUSSION AND LOBBYING

5.1 This theme is closely linked to issues covered in the previous Probity section. It is inevitable that Councillors will be subject to lobbying, particularly on planning applications. Again, it is emphasised that great care needs to be taken to maintain the integrity of the planning process, the Council, and the Councillor concerned. Lobbying can lead to the impartiality of a Councillor being called into question and could even cause public mistrust of the Council.

Lobbying

5.2 Lobbying is an attempt to influence Councillors' views in order to achieve a particular decision. It can be by applicants, agents or objectors or by other Councillors. Lobbying may be verbal or by the circulation of letters or documents to all or some Councillors. Planning decisions must be made strictly on the facts and policies relating to each application. Lobbying can, unless care and common sense are exercised by all parties concerned, lead to the impartiality and integrity of a Councillor being called into question.

5.3 Notwithstanding the provisions of s.25 of the Localism Act 2011 (as mentioned in 4.2 above) when being lobbied, Councillors, and members of the Planning Committee in particular, should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such circumstances they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying that they should speak or write to the relevant Officer in order that their opinions can be included in the Officer's report to the Committee. If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having received and considered all the relevant evidence and arguments at the Committee meeting.

5.4 A Committee member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If a Member responds to lobbying by deciding to go public in support of, or against, a particular outcome it would be very difficult for that Member to argue

convincingly when the Committee takes its decision that he / she has carefully weighed the evidence and arguments presented at committee. Although not amounting to a disclosable or other pecuniary interest according to the Code of Conduct the proper course of action for such a Member would be to make an open declaration not to vote. However, this is a severe restriction on the Member's wish - duty, even – to represent the views of the electorate. Councillors should therefore generally avoid organising support for or opposition to a planning application and avoid lobbying other Councillors. Such actions can easily be misunderstood by parties to the application and by the public.

5.5 Councillors should not excessively lobby fellow Councillors regarding their concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

5.6 Individual Councillors should avoid visiting application sites upon the request of applicants or objectors as this may result in those parties attempting to unduly influence the views of Councillors and give the impression of bias. It is important however that the parties are clear in the understanding that the reason for Councillors' involvement in this way is purely to gather information. Where this occurs, Councillors should advise the Director of Place, Planning and Growth and make known their involvement at the relevant Committee meeting at which the application is considered. An approved protocol for site visits organised by the Planning Committee is at **Appendix 1**.

Pre-application discussion

5.7 It is likely that in certain cases discussions will take place between potential applicants and Officers prior to the submission of a planning application. Such discussions may be beneficial in terms of applications being prepared for submission which can then proceed without undue delay to determination. Potential appeals may be avoided by good communication at an early stage of the process. Advice given should be consistent and based on the development plan and material considerations. An approved protocol for Pre-Application Discussions is at **Appendix 2**.

5.8 If Councillors receive information that is relevant to a prospective planning decision, they must declare that information to the relevant planning officers and to the committee. Discussions with applicants, agents or objectors should be reported and any correspondence made available to officers before the committee meeting. Where information has been provided to Councillors or Officers on a confidential basis, it shall not be disclosed to third parties.

5.9 Where Councillors are acting as agents for people pursuing a planning matter with the Council or submitting planning applications on behalf of their employers as part of their job, they should make it clear to their clients that they cannot and will not use their position as a Councillor to influence the outcome of an application.

5.10 Councillors should not meet applicants or agents or third parties in connection with a current application. If Councillors do agree to meet, they should only do so in the presence of a planning officer. Councillors should listen and may ask questions but should not comment nor seek to negotiate. They must make clear that any views they express are personal, rather than those of the Council. A note should be taken of the meeting and placed on the application file. The fact that a Councillor has discussed any proposal with the applicant, agent, supporters or objectors must be made clear when the application is before the Committee for determination.

Planning Enforcement

5.11 Councillors may also become involved in matters that are the subject of a complaint or investigation, and on which enforcement or other legal action may be under consideration. In these circumstances, Councillors are strongly advised to ensure that any action on their part does not prejudice the Council's position, that any enquiries on specific issues are restricted to matters of fact or general case progress and acknowledge that enforcement cases will be dealt with in accordance with the Council's Planning Enforcement Policy (see **Appendix 3**).

Contact with Application Case Officer

5.12 Councillors will often need to contact the Planning Case Officer on development proposals. Contact should however be limited to requests for factual information and the seeking of advice on progress and the nature of consultation responses received. While Councillors are encouraged to discuss their concerns with Officers, they must not attempt to influence or pressure Officers in the making of particular recommendations. If a Councillor is unhappy with the way in which a case is progressing, the matter should be discussed with a senior officer of at least Team Leader level.

5.13 Officers should remain free of any outside influence to make recommendations on planning matters based on their own professional judgements and having regard to all material and other considerations. Councillors should not put improper pressure on Officers for a particular recommendation and as required by the Code of Conduct, should not do anything which compromises, or is likely to compromise, their impartiality.

Availability and Veracity of Information

5.14 Planning applications must be determined on the basis of the documents and information formally submitted. Any submissions from applicants' agents or objectors which are formally received by the Council can properly be taken into account in making a decision. It can cause problems if Councillors are given information or assurances by applicants which are not part of the formal application and which are not, therefore, enforceable. Problems can also arise if Councillors are given information by objectors which may be misleading, untrue or irrelevant. It can be problematical if officers are unaware of submissions by applicants and objectors and are therefore unable to consider them and advise the Committee about their relevance or enforceability. Councillors should forward such information to the officers for consideration prior to the Committee meeting.

6 PLANNING DECISION MAKING AND RELATED PROCESSES

Gateway Test

6.1 Please note information regarding the Gateway Test will be added, once confirmed.

Committee Decisions

6.2 All planning applications to be determined by the Planning Committee will be the subject of comprehensive, written reports from Officers. These reports will describe the site and the proposal, relevant planning history, development plan policies and other material considerations including, where appropriate, national or local

guidance, and also representations made by statutory consultees, local residents and other interested parties. They will also contain an assessment of the proposal against those considerations and a reasoned recommendation. Reports will contain all the relevant material known at the time when produced and published as part of the Agenda for a particular meeting. Councillors should endeavour to obtain factual information from officers prior to the meeting. This can assist in reducing delays which may be caused by deferment to obtain further information.

6.3 Sometimes applicants and objectors write directly to Committee Members, after the report has been published, commenting on the report, or providing further material. If Planning Services have not been copied into the correspondence, Committee Members should forward any correspondence to the Case Officer as soon as possible.

6.4 Any information material to the decision-making process that is received subsequent to the publication of the Committee Agenda and no later than noon on the last working day prior to the meeting will be reported to the Committee at its meeting. At the meeting, the Planning Officer will advise if the late material raises any matters which should be taken into account by the Committee. The Officer report and last-minute papers should be read and plans / photographs seen before decisions are made. Councillors will also have an opportunity to put questions to Officers and hear the views of their fellow Councillors, the Applicants and other third parties during the course of the debate.

6.5 The law requires that where the Development Plan is relevant to a decision, then that decision should be taken in accordance with it, unless material considerations indicate otherwise (s54A, Town and Country Planning Act, 1990). The Development Plan is therefore the starting point of the decision-making process. Proposals having been identified as amounting to a departure from the Development Plan need to be advertised as such. An Officer recommendation to approve contrary to the Development Plan would need to be justified in the most careful terms, and if the Committee is mindful to approve then the application may then need to be referred to the Secretary of State.

6.6 Planning decisions will not always be dictated by planning law or policy. They will sometimes be matters of fine judgment where the balancing of considerations may be difficult. The Officer's report and recommendation will be founded on adopted planning policy and guidance. Planning Committee Members should take care, if expressing any opinion on the planning applications before them, that they confine their comments to matters which are material planning considerations. Regardless of any political group discussion prior to the Committee meeting, Committee Members must consider applications on their merits and not simply feel bound by decisions made at group meetings. Committee Members cannot be "whipped" to vote in a particular way; this advice is supported by the Local Government Ombudsman. Any decisions taken in this way may be viewed as maladministration and could be subject to legal challenge.

6.7 Where Councillors disagree with the Officer recommendation, a proposition can be made to overturn that recommendation (however, see paragraph 6.7 below). The Committee remains bound by law to make decisions in accordance with the Development Plan and all other material planning considerations. It will therefore need to demonstrate that this requirement has been met in its deliberations, making clear what material considerations are leading it to a decision contrary to professional advice. Failure to do so could result in an appeal against the decision, with potential for an award of costs against the Council in the event that unreasonable behaviour

on its part is found. It could also render a decision subject to legal challenge (judicial review).

6.8 A proposition contrary to an Officer recommendation, together with the reasoning behind it, needs to be clearly presented and will be recorded in the Minutes. It must then be seconded. Before any debate, the Chairperson shall afford the Officers an opportunity to respond to the proposition by way of advice on the implications in terms of risk. If, after debate, the Committee is minded to refuse an application contrary to the recommendation of Officers to approve and without having moved to a vote, then (unless it is agreed upon the advice of Officers that no useful purpose would be served) any further consideration **will** be deferred to enable Officers to consider all relevant implications of that proposed decision and report back to the Committee. This should occur only once as part of an individual application decision process. In any other case, depending on the circumstances and complexity of a proposed decision it may be that Officers will need to consider those implications in greater detail and report back. Any proposal for deferment must be disposed of ahead of any conclusion being reached on the decision itself. The Chairperson will summarise, or cause to be summarised, the salient points of the debate and will seek to ensure the terms of the proposition are clearly understood before putting the matter to the vote.

6.9 Whilst the Committee must clearly set out the reasons for its decisions contrary to Officer recommendation, the final drafting of conditions and reasons will normally be carried out by Officers. Reasons for refusal must be clear, unambiguous and justified by the evidence of the case. Conditions attached to permissions should be necessary, relevant to planning and the proposed development, enforceable, precise and reasonable in all other respects. The text of non-standard conditions and reasons will be determined by the Director of Place, Planning and Growth or other authorised Officer in consultation with the Committee Chairperson (or Vice-Chairperson in their absence) following the meeting. The same mechanism will be used for the updating of any planning conditions agreed by the Planning Committee which may be required through the passage of time between the Committee decision and the issue of a decision notice consequent upon completion of a S106 agreement / planning obligation.

6.10 During Committee Meetings, everything said may be scrutinised by Applicants, objectors, legal advisers and the Press, so Councillors and Officers should be circumspect. Councillors who serve on the Planning Committee should ensure they do not speak to members of the public, or pass or accept notes from them, during the course of a meeting. Councillors who leave the room during the meeting should avoid speaking to any Applicants or objectors / supporters who may be waiting outside the room. Councillors who leave the room during debate or whilst an application is before the Committee will not take part in the debate or vote on that application.

6.11 Given the nature of the decisions to be taken, it is vital that the means by which decisions are reached are clear and understood by everyone present. The role of the Chairperson is therefore important. Although the Council's Procedure Rules allow decisions to be reached through general assent of the Councillors present at a meeting, best practice with regard to decisions on Planning Applications suggests that a show of hands is far preferable.

<u>Decisions delegated to Officers</u>

6.12 Not all decisions on planning applications and related matters will be taken by a Committee. The Council has agreed, and will keep under review, a Scheme of Delegation (alongside the Terms of Reference of Committees) which enables

decisions to be taken by responsible Officers. Decisions taken under delegated powers will be subject to the same process and analysis of the facts and all material considerations, as if they were referred to a Committee for determination. A statement to support each delegated decision will be produced and placed on the case file as a matter of record and also for the benefit of interested Councillors and the public.

6.13 Officers take instructions from Councillors only through a decision of the Council or one of its Committees. In the exercise of delegated powers, Officers may in certain cases be required to consult with individual Councillors and take the views of those individual Councillors into consideration. Officers must always act impartially and advise the Council according to their own professional opinion.

Deferments

6.14 A decision on an application should not be deferred without proper justification. For example, the justification might be to ensure that all the proper information is to hand, and this might include a site visit. The reason for requesting a deferment must be clearly set out by the proposer and recorded in the Minutes.

Public Attendance at Committee Meetings

6.15 All planning applications referred to a Committee for determination will be considered in public session and all background information will be made available for public inspection upon publication of the agenda papers, unless there are specific reasons for not disclosing or publishing 'exempt information' in accordance with the Local Government Act 1972. Applicants, agents and members of the public, representatives of Parish / Town Councils and Ward Councillors who are not members of the Planning Committee may speak on planning applications being considered at the meeting. The Council's public participation scheme is at **Appendix 4**.

7 DEVELOPMENT PROPOSALS BY THE COUNCIL, COUNCILLORS AND OFFICERS

7.1 Committee Terms of Reference provide for the determination of planning applications, where objections have been raised, for the District Council's own development or affecting Council land and applications submitted by Council Members or Officers, by the Planning Committee rather than under delegated powers.

7.2 Such applications will be processed and handled no differently to any other application and the requirements of the Town and Country Planning legislation and ministerial guidance will be followed in the usual way. Officer recommendations and Committee decisions will be made strictly on planning merits without regard to any financial or other gain which might accrue to the Council if the development is permitted, or to other issues which may need more properly to be considered by another Committee of the Council. It is important that the Council not only treats but is seen to treat such applications the same as any other.

7.3 Councillors or Officers proposing to submit a planning application should notify the Monitoring Officer. If a Councillor or Officer submits a planning application, they should take no part in its processing by the authority at any point. It is important that neither Councillors nor Officers take any part in the preparation of Local

Development Plan policy or supplementary planning guidance they may influence, or be seen as influencing, with a view to future planning proposals they may wish to submit.

8 PLANNING APPEALS

8.1 A Planning Appeals Protocol has been approved and is at **Appendix 5**. In the event of a decision taken to refuse contrary to the recommendation of the Officers, the Committee may nominate a Member to assist in agreeing the precise reasons for refusal and with the preparation and presentation of the Council's case should the decision be appealed.

8.2 As referred to earlier, Officers must always act impartially and advise the Council of their professional opinion. Chartered Town Planners are obliged to follow the Royal Town Planning Institute's Code of Professional Conduct. Whilst Chartered Town Planners appearing as the Council's expert witnesses at planning inquiries and hearings have a duty to set out the Council's case, they must, if asked, give their own professional view in accordance with that Code.

8.3 The Council is at risk of an award of costs against it if the Planning Inspector finds that there has been unreasonable behaviour. Common examples of unreasonable behaviour are failure to comply with procedural requirements for inquiries or hearings, failure to provide planning evidence to support reasons for refusal, and failure to take into account relevant policy statements in departmental guidance.

9 COMMITTEE SITE VISITS

9.1 Committee site visits can cause delay and additional costs and should only be used when the expected benefit is substantial. A site visit is only likely to be necessary if the impact of the proposed development is difficult to assess from the plans and any supporting material, including any photographs taken by Officers. Site visits may be arranged following publication of the agenda and before the actual meeting.

9.2 Where requested at the actual meeting, the reason must be clearly set out by the proposer and recorded in the Minutes. All site visits must be carried out in accordance with the Council's agreed guidelines set out in **Appendix 1** to this document.

9.3 Site visits are not part of the formal committee proceedings and are not a forum for debate or making planning decisions. Site visits are not open to the public and should not be used to canvass local opinions or as an opportunity for lobbying or advocacy. Councillors should not express personal opinions during site visits.

10 PLANNING OBLIGATIONS

10.1 Under section 106 of the Town and Country Planning Act 1990, the Council as local planning authority may seek planning obligations in connection with grant of planning permission. Planning Obligations may be given by way of unilateral undertaking or agreement, and for the most part will regulate the use or development of land as distinct from the controls that may be available through the imposition of planning conditions. In addition, they may be used to secure off-site improvements or financial contributions towards local infrastructure provision.

10.2 To avoid any public mistrust or suspicion, it is important that arrangements in connection with planning obligations are operated in accordance with the principle that planning permission may not be bought or sold. The Council must conduct any negotiations and arrangements in a way which is seen to be fair, open and reasonable.

10.3 If a planning obligation is created in isolation or before a planning application is determined, a copy will be placed as required in Part 1 of the statutory Planning Register and therefore made available for public inspection. Similarly, if a planning obligation is created following determination of an application, a copy will be placed in Part 2 of the Register.

11 ADMINISTRATION

Monitoring of Decisions

11.1 The Council should monitor planning decisions taken, on an annual basis, both in terms of quality and consistency. Annually, Councillors will visit a sample of implemented planning permissions to assess the quality of the decisions. The committee should formally consider the annual report and decide whether it gives rise to the need to review any policies or practices. The review may include information identifying the number of cases where Officers' recommendations were not accepted and the outcome of any related appeal decisions. The results of the monitoring will be reported to Councillors along with any recommendations to improve quality, consistency or performance.

Records management

11.2 The planning application files should be complete and accurate containing sufficient information and a record of events so that the decision and the process leading to it can be easily understood. Only "background papers" as defined in the Local Government Act 1972 (and listed in committee reports) are automatically available to the public. These would include, in addition to the application document, associated letters and supporting information, replies from consultees and letters from supporters and objectors. The same principles apply to applications determined under Officers' delegated powers. Such decisions should be as well documented and recorded in the same way as those taken by Committees. These principles apply equally to enforcement and development plan and associated policy matters.

Complaints

11.3 Any complaints received about the way in which a planning application or other planning matter has been dealt with in terms of procedures or fairness will be investigated under the Council's complaints procedures. The fact that someone may disagree with the decision the Council has reached is not a complaint which will normally necessitate investigation, although Officers will explain the reasons for the Council's decision in such a case.

12 INTERPRETATION

12.1 The Director of Place, Planning and Growth in consultation with the Chief Executive and a legal Officer, as appropriate, will provide advice or clarification on any matters of a planning nature contained within this document or otherwise. Issues of probity or otherwise requiring interpretation should be referred to the Monitoring Officer.

Appendix 1

MALDON DISTRICT COUNCIL PLANNING SERVICES

GUIDELINES FOR COMMITTEE SITE VISITS

1) Committee site visits may be arranged following publication of the Committee report but prior to the meeting following consultation between the Director of Place, Planning and Growth and the Chairperson of the Planning Committee. Site visits will only be arranged when the Committee at the meeting cannot fully assess the implications of a development proposal on the basis of the information provided at the Committee meeting and individual Members' informal inspections of the site.

2) The time and date will be agreed with the Chairperson of the Planning Committee.

3) The applicant / agent will be contacted to obtain permission to enter the land and to ensure that the time proposed is convenient. The applicant / agent will be advised of the purpose of the visit and the way in which the visit will be conducted.

4) Having confirmed the time and date all Members of the Planning Committee will be advised in writing of the time and date of the visit together with a note (or map) of the suggested assembly point.

5) Upon arrival at the site the visit will be led by the Chairperson or the Vice-Chairperson of the Committee. A Planning Officer will be present with the case file and necessary drawings to illustrate the proposal.

6) In the event of the applicant, agent or landowner being present the purpose of the visit will be explained and the Committee will request that it be allowed to conduct its visit unaccompanied.

7) At no time during the Committee site visit shall the merits of the proposal be discussed with either the applicant, agent, landowner or any third party who may have an interest in the proposal.

8) After the site visit, a note of the Members' attendance will be placed on the file.

9) The application will be referred direct to the next available meeting of the Planning Committee for determination.

(Approved by the Planning and Licensing Committee 22 August 2002 (Minute No.222 refers))
(Updated January 2017, November 2019 and November 2026)

Appendix 2

MALDON DISTRICT COUNCIL PLANNING APPEALS PROTOCOL

1. ROLE OF MEMBERS IN COMMITTEE PLANNING APPEALS

1.1 Householder Appeal

1.1.1 The Member role is a collective Committee responsibility given that the critical factor with householder appeals, which do not involve providing any additional supplementary statements, is to ensure that the Committee's reasons for overturning Officer report recommendations are clear and based on sound planning reasons.

1.2 Member Involvement in Written Representation, Informal Hearing and Public Inquiry Appeals

1.2.1 Where the Committee overturns a recommendation, in addition to agreeing the reasons for refusal it would be sensible for the Committee to identify which member(s), subject to being suitably briefed, should be involved with any subsequent appeal to help strengthen the Councils case. There are three options available to Committee any of which may be selected at the time the Committee decision is taken and thereby recorded in the Minutes. The Member(s) nominated by the Committee to engage with any subsequent appeal include:

- The Chairperson of the Committee.
- The Chairperson of the Committee, and a local ward Member.
- The proposer /or seconder of the motion at the Committee.

1.2.2 It should be made clear that the nominating of a Member is not mandatory and entirely at the discretion of the Planning Committee. Where a Member is nominated, it is important that they understand the nature of the role as set out below, and that their appearance at a hearing or inquiry will be wholly as a representative of the Council to support the case around the Committee's decision.

1.3 Written Representation Appeal

1.3.1 Written representation appeals are the quickest and simplest appeals requiring Member involvement. They require a statement and site visit, but these appeals are usually for smaller scale development such as a single dwelling or change of use.

1.3.2 Where the Committee overturns the recommendation the nominated Member will be engaged with the following:

- Letter sent to advise the nominated Member about the appeal, the name of the case officer and the date the Statement is due;
- Nominated Member should liaise with the case officer if required to discuss the policies, content to provide the outline for the Council Statement and cost claim (if relevant). Members' comments need to be made in writing to the case Officer.
- Typed statement with any necessary appendices to be prepared by the case officer. The nominated Member to review the Councils statement and make amendments where required and send back to the Officer.
- Nominated Member to be advised of the date of the site visit.

Appendix 2

1.4 Informal Hearing Appeal

1.4.1 Where the Committee overturns the recommendation the nominated Member(s) will be engaged with the following:

- Letter sent to advise the nominated Member about the appeal, the name of the case officer and the date the Statement is due;
- The nominated Member should liaise with the case officer if required to discuss the policies, content to provide the outline for the Council Statement and cost claim (if relevant). Member comments where required need to be made in writing and forwarded to the case Officer.
- Typed statement with any necessary appendices to be prepared by the case officer or planning consultant. The nominated Member to review the Council's statement and make amendments where required and send back to the Officer.
- Prior to the hearing, a meeting will be held between the Member and case officer and external witnesses and solicitor if necessary to consider the issues and the appellant's case.
- Nominated Member to attend the Informal Hearing either in an observer or as part of the Council team.
- Nominated Member to be advised of the date of the site visit.

1.5 Public Inquiry

1.5.1 Where the Committee overturns the recommendation the nominated Member(s) will be engaged with the following:

- Letter sent to advise the nominated Member about the appeal, the name of the case officer and the date the Statement is due.
- The nominated Member should liaise with the case Officer to discuss the policies, content to provide the outline for the Council's Statement and cost claim (if relevant). Member comments where required need to be made in writing and forwarded to the case Officer.
- Typed statement with any necessary appendices to be prepared by the case officer or planning consultant. The nominated Member to review the Council's statement and make amendments where required and send back to the officer.
- Prior to the Public Inquiry, a meeting will be convened by the Council's legal representative between the Member, the case officer and any external witnesses / experts where necessary to consider the issues / tactics and the appellant's case.
- Nominated Member to attend the Public Inquiry either in an observer or as part of the Council team.
- Nominated Member to be advised of the date and attend the site visit where required.

Appendix 2

1.6 Management of Appeal Process

1.6.1 In managing the Planning Appeal process the Director of Place, Planning and Growth will:

- determine on a case by case basis where it would be necessary to either seek the nominated Member or an external planning consultant to represent the Council at either an Informal Hearing or Public Inquiry.
- wherever practical seek to recover the Council's costs from applicants in preparing for and undertaking an appeal.
- where required, request the local Ward Member assistance in circumstances where local knowledge is paramount and invaluable to the appeal including appeals that may arise from planning enforcement action and a refusal of a Certificate of Lawfulness.

1.7 The Role of Members as Private Individuals and Parish / Town Councillors

1.7.1 In situations where Members have clearly demonstrated a 'closed mind' on a planning application prior to consideration by Committee, they will not be permitted to be involved in the determination of that application or the subsequent appeal statement or process. In this case, or where a member does not support the Council decision irrespective of the type of appeal, a member may decide to make their submissions to an appeal which will be in either a personal capacity only or in their role as a Town / Parish Councillor.

1.7.2 It may be that on occasions electors may expect that their Ward Member(s) will attend a hearing or inquiry to further represent their interests and view. This can be seen as part of the democratic process, and a Ward Member wishing to do so should take the opportunity of first being fully briefed by Officers on all the issues the subject of the appeal.

2. REVIEW OF REASONS FOR REFUSAL

2.1 On occasions during the course of an appeal the Council may formally be requested by or on behalf of the appellant to reconsider its reasons for refusal. Any review shall be undertaken at the level the original decision was made and on report of the Director of Place, Planning and Growth only.

2.2 Where a Committee has not formally reconsidered its reasons for refusal, and there is insufficient time to do so, then in order to ensure the Council minimises its exposure to cost awards against it, the Director of Place, Planning and Growth in managing the appeal process will act in consultation with the Leader of the Council, the Chairperson of the Planning Committee and the nominated Member.

Originally endorsed by Planning and Licensing Committee - November 2012

Appendix 3

ENFORCEMENT POLICY

PLANNING ENFORCEMENT
POLICY, PRACTICE and GUIDANCE

MALDON DISTRICT COUNCIL

March 2018

Appendix 3

Maldon District Council

Planning Policy Enforcement Guidance

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Appendix 3

1.0 INTRODUCTION

1.1. The Town and Country Planning Acts give discretion to the Local Planning Authority (LPA) in the exercise of its powers for the control of unauthorised development. This document sets out the context for the operation of the planning enforcement service in Maldon District Council, and the approach that the District Council will take in promoting compliance with planning requirements and dealing with breaches of planning control.

1.2. Paragraph 207 of the National Planning Policy Framework (NPPF) states that:

"*Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate the alleged cases of unauthorised development and take action where it is appropriate to do so.*"

1.3. In the light of the above Framework, this policy statement has been prepared to outline the approach that will usually be adopted by the Council in resolving how will deal with unauthorised development and sets out the procedures that will expect to follow. This guide will enable us to work in a proportionate way according to the breach or offence committed.

1.4. This policy and guidance is in accordance with the National Planning Policy Framework (NPPF) by establishing a formal planning enforcement policy which provides a clear statement of the decision-making framework in dealing with alleged breaches of planning control, explaining the Council's enforcement procedures and practices.

Maldon District Council – Enforcement Objectives

1.5. The District Council is committed to effective enforcement of planning control and when considering what action to take, regard will be paid in each instance to the prevailing circumstances and the particular impact of the unauthorised development in question. The Council views breaches of planning control very seriously and has an enforcement team within the Development Management section of the Planning and Regulatory Services to investigate and take action against unauthorised development. The service seeks to achieve the following objectives:

1.6. These objectives are:

- To promote compliance with planning requirements
- To remedy the undesirable effects of unauthorised development
- To bring unauthorised activity under control to maintain the credibility and achieve the purpose, of the planning system
- To strike an acceptable balance between protecting the amenity of the citizens of Maldon and other interests of acknowledged importance, and allowing development to take place
- To provide a service that will pursue pro-active initiatives that would improve the environment and built heritage, safeguard the amenities of the area and support the policies of the development plan

Expediency and the Public Interest

1.7. In considering whether to take any enforcement action, the determining issue for the Council will be whether the breach of planning control causes significant harm and it is in the public interest to take enforcement action.

1.8. Severe harm to public amenity will normally arise through those breaches of planning control which involve unauthorised works to a Listed Building, unauthorised works within a Conservation Area and unauthorised development which is contrary to Development Plan Policies. Action can also be taken to require owners to improve the appearance and condition of land and property, in the interests of local amenity.

The Council's Enforcement Objectives

1.9. An owner or occupier of land can, without a specific planning permission or certificate of lawful use, be at a disadvantage if they subsequently intend to dispose of their interest in the land in question and have no evidence of any permission having been granted for development. The Council appreciates that some developments have occurred over time and have gone unnoticed, but it has to investigate when complaints are made or consider through their own investigations that matters need to be formalised.

1.10. The Council will be responsive to all potential enforcement matters and will pursue the following key objectives:

- Respond to complaints about potential unauthorised development
- Ensure that development is carried out in accordance with planning approvals
- Be fair and take action that is proportionate to the breach or offence, in a responsive, helpful and consistent manner

Appendix 3

2.0 POLICY POSITION National Policy

2.1. The Council is mindful that enforcement action is a discretionary power, but it is important that Local Authorities develop their own policy on enforcement matters. The Council will take action when it is expedient to do so, and any action will be commensurate with the seriousness of the breach of control.

2.2. It is only an offence to carry out development without planning permission in certain instances. Section 73A of the Town and Country Planning Act 1990 (as amended) specifically provides that planning permission may be granted to regularise development already carried out.

2.3. Government Policy Guidance makes it clear that enforcement action should not be taken simply to remedy the absence of a planning permission where development is otherwise acceptable on its planning merits. However, it is important that the Council responds to complaints and seeks to remedy breaches of planning control.

Other Planning Policy Guidance

2.4. Some breaches are more serious than others, and some require immediate action, for example, to prevent the destruction of an historic fabric or structure, an important tree or belowground archaeology. Apart from the seriousness of the breach, the following matters have to be taken into consideration:

- The approved Maldon District Local Development Plan 2014-2029 constitutes the Development Plan for the District.

- Through the Localism Act 2011, the Government has introduced a new tier of planning at the neighbourhood level. Local communities will be able to prepare a Neighbourhood Development Plan for their area which sets out specific planning policies.

- Although they are not part of our statutory development plan, Supplementary Planning guidance Documents (SPDs) (such as planning frameworks and briefs and conservation area appraisal and management strategies) play an important role in our planning decisions.

- The National Planning Policy Framework (NPPF) was published on 27 March 2012. Amongst other things, the new guidance replaces many existing Planning Policy Statements (PPSs), Planning Policy Guidance notes (PPGs) and Circulars. The guidance is a material consideration in planning decisions.

- The Planning Practice Guidance was first published on 6 March 2014. It was a result of a commitment to reform the Planning system to make it simpler, clearer and easier for people to use, allowing local communities to shape where development should go and not go.

- The provisions of the Human Rights Act 1998 when making decisions relating to planning enforcement.

- The principles of the Enforcement Concordat; Good Practice Guide for Small Businesses 1998 are proposed to continue to be applied. These principles include:

    - There will be openness in dealing with business and others.
    - Enforcers will be helpful, courteous and efficient.
    - Complaints procedures will be publicised.
    - Enforcement decisions will be taken in a proportionate manner.
    - Enforcement officers will strive for high standards of consistency.
    - To take into consideration the planning history of the site
    - To seek specialist help from legal, trees and conservation experts.
    - To be aware of relevant appeal decisions and case law decisions.
    - To note information provided by the owner/occupier or interested parties.

2.5 Government has given Councils the primary responsibility of taking whatever enforcement action may be necessary, in the public interest, within their administrative area. A private individual cannot initiate planning enforcement action, so they often look to the Council to act to remedy any concerns that they may raise.

Appendix 3

3.0 ESTABLISHING A BREACH OF PLANNING CONTROL

3.1 A breach of planning control is defined in the Town and Country Planning Act 1990 as:

"the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted."

3.2 A breach of planning control is normally a form of development (a building/engineering operation, use or other activity) that is unauthorised, in that it does not have the benefit of planning permission or other required consent. It includes development not carried out in accordance with a planning permission, and any breach of condition. The fact that something is unauthorised does not, in itself, amount to an offence.

3.3 This contrasts with other elements of planning law, where certain works and activities are in fact offences that can be prosecuted in the courts. These include:

- Unauthorised works to listed buildings
- Unauthorised works to or the removal of protected trees
- Unauthorised advertisements

3.4 Underpinning all of this is a large body of case law. There is a range of powers available to Local Planning Authorities to take enforcement action to deal with breaches of planning control and these are contained in the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act, 1991), the Planning (Listed Buildings and Conservation Areas) Act 1990 and related Regulations

Appendix 3

4.0 THE COUNCIL'S INITIAL INVESTIGATION

How to report a suspected breach

4.1 Most investigations into breaches of planning control result from complaints received from members of the public or from Ward Councillors. The Council can be contacted by letter, using the on-line form or email. It is essential that complainants submit details in writing as this avoids ambiguity and provides the Council with an accurate basis on which to proceed with an investigation.

4.2 Complaints should be addressed to Planning Services Directorate, Maldon District Council, Princes Road, Maldon, Essex, CM9 5DL (or as stated on the Council's web site) who will then ensure it is dealt with by the appropriate investigating officer(s).

4.3 The Council will need the following information before any investigation will take place:

- The precise location of the site or property to which the complaint relates.
- The exact nature of concern, i.e. the potential breach of planning control.
- An indication of any harm caused by the breach.

4.4 The following information will assist the Council in investigating the alleged breach:

- When the breach occurred.
- Any information on the identity of the person(s)/organisation responsible, if known.

Confidentiality

4.5 All investigations are carried out in strictly confidential basis and the investigation team will not reveal the complainants' details. On serious breaches of planning control, which may warrant prosecution, or result in an appeal, the complainant may be invited to give a witness statement. However, such occasions are rare and involvement in those cases is on a voluntary basis.

Anonymous Complaints

4.6 Anonymous complaints will not normally be investigated.

Recording Complaints

4.7 All complaints of potential breaches are entered onto the enforcement records system upon receipt, and a unique reference is created so that progress on each complaint received can be monitored. The name, address and telephone number of the complainant and the details of the complaint are logged.

4.8 The initial investigation will usually involve checking the planning and any building regulation history of the particular site to establish any relevant development history and whether any conditions have been attached to any approval granted. Sometimes it is also necessary to check other records held by the Council such as council tax or business rates, environmental health records or outside organisations in order to get a complete understanding of events.

4.9 A site inspection may prove necessary to establish further facts and evidence. Investigation Officers identify themselves when on site and explain the reasons for the visit. The owner/occupier or people working on the site will be interviewed to obtain factual information and photographs and measurements may also need to be taken. A detailed note is made of the findings in the investigation file, which is used to record all visits and discussions at meetings or on the telephone.

Informing Complainants

4.10 Following an initial acknowledgement the Council will keep all complainants informed of progress at the following key stages of the process including, where relevant:

- The initial assessment, advising what action will be taken
- Any Issue of enforcement notice, or outcome of other action
- If an appeal has been lodged against a formal notice
- Closure of the investigation

Rights of Entry

4.11 Investigation officers have the immediate right of entry onto sites under the provisions of S196A, S196B and 196C of the Town and Country Planning Act 1990, to all non-residential land and buildings. Twenty four hours' notice must be given if access is required to a residential property. If access is denied for any reason, a formal Right of Entry Notice can be served. If entry is subsequently refused, a warrant to effect entry can be applied for from a serving Magistrate.

Obtaining additional information

4.12 In some circumstances, when it has not been possible to establish the facts through normal investigation, or when the co-operation from the owner/occupier is not forthcoming, a formal Planning Contravention Notice (PCN) may be served. This requires the recipient to provide information relating to the breach within 21 days from the date of service of the Notice.

4.13 The complainant may occasionally be asked to assist with the investigation, for example, by keeping a diary of events relating to the breach. This is helpful where problems occur in the evenings or at weekends or outside normal working hours. Such help is voluntary, but the evidence may be crucial when assessing whether a breach has occurred and whether further action is considered expedient to remedy the breach.

4.14 If there is no breach of planning control evident, then an explanation will be given to the complainant, and the file will be closed.

4.15 The impact of some developments and activities are more harmful than others. The Council will nevertheless seek to ensure that all reported breaches of planning control are resolved as quickly as possible. The Council, however, needs to ensure that full and proper consideration is given to the matter and this can often take several weeks, occasionally months, prior to resolving whether a breach of planning control has occurred and determining what further action is merited.

4.16 When there is enough evidence to establish whether a breach has taken place, the investigation officer will advise on the most appropriate course of action or, no further action, in some cases. The investigation officer will contact the complainant to inform them of the outcome.

Appendix 3

5.0 PRIORITIES FOR ACTION

5.1 Some complaints will be more urgent than others and these will need to be given a higher priority including:

- Works to listed buildings, below ground archaeology and works to protected trees that cause immediate and irreversible harm, including any advertisement that may be affixed to them or other operational development such as builders' storage, temporary buildings or parking areas that may be positioned next to them and likely to cause harm
- Councillor, MP enquiries and formal Parish Council complaints
- Operational development/building works where substantial and ongoing loss of amenity is likely to occur
- Fly posting which appears to be intensive and is likely to cause an amenity or public safety issue
- Breaches of planning control that are likely to be immune from enforcement within six months
- Changes of use affecting residential amenity
- Other development (e. g building works/changes of use and untidy condition of land/buildings)
- Building works affecting the character and appearance of a Conservation Area.
- Other advertisements and satellite dishes attached to protected trees or listed buildings

5.2 On receipt of a complaint, it will be prioritised, as discussed below, and a preliminary investigation will be undertaken to establish whether a breach of planning control has, or is likely to, have occurred.

5.3 **Complaints classified as 'Immediate' – investigation within 1-2 working days**

- Works to listed buildings
- Works to protected trees
- Demolition of important unlisted buildings in conservation areas
- Significant unauthorised building works
- Breach of conditions where there is likely to be irreversible harm, e.g. contaminated land, archaeology and flood defence or drainage works

Appendix 3

5.4 **Complaints classified as 'Urgent' - investigation within 15 working days**

- Councillor or MP complaints and formal Parish Council complaints.
- Operational/building works / change of use / compliance with conditions / obligations affecting residential amenity where ongoing severe neighbour disturbance is being caused
- Operational development within conservation areas
- Where immunity rules are likely to shortly apply if action is not taken

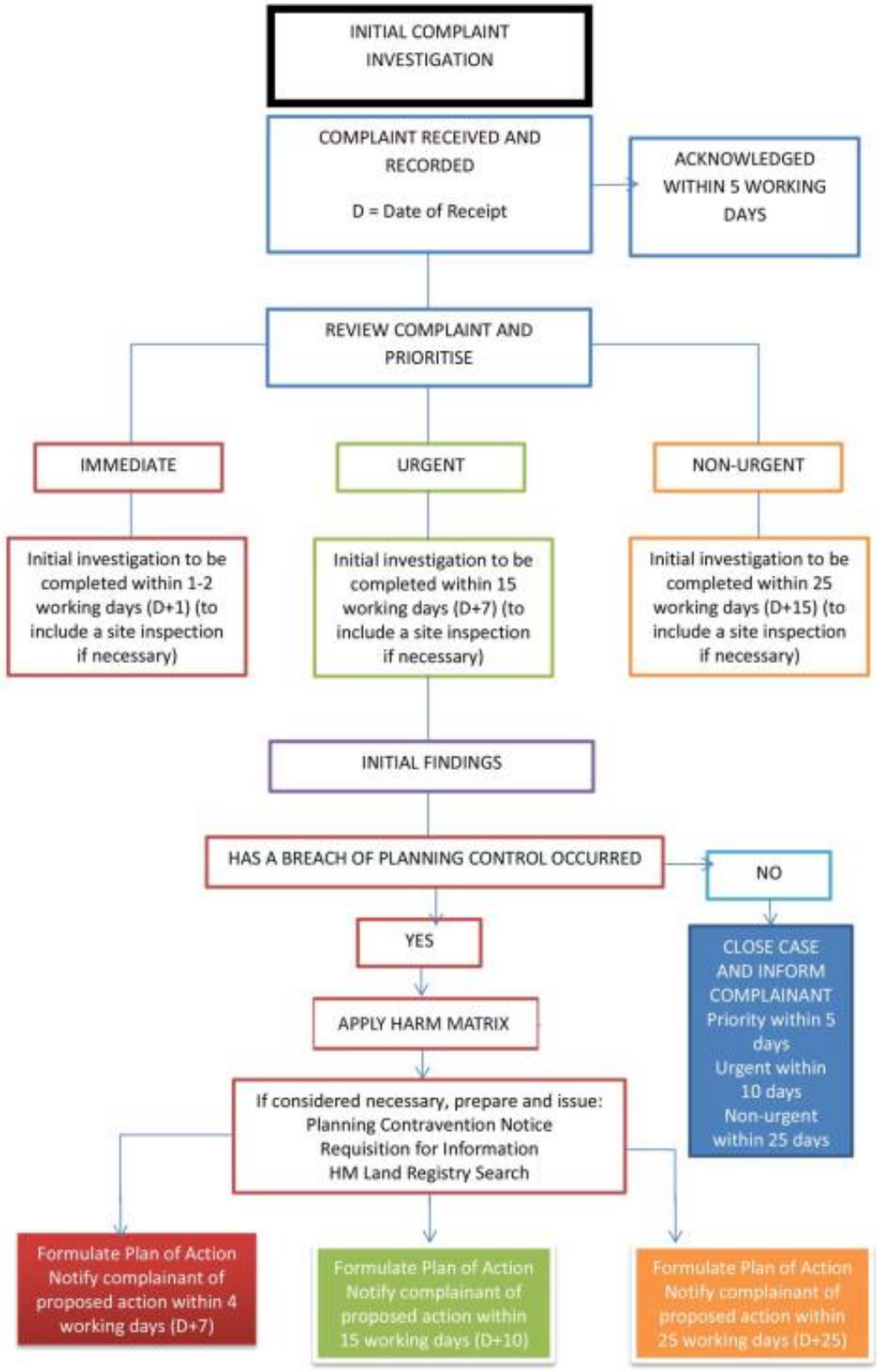
5.5 **Complaints classified as 'Non-Urgent' – investigation within 25 working days**

- Other changes of use
- Other building works/condition of land/compliance with conditions
- Advertisements and satellite dishes (not attached to trees or listed buildings) (conservation areas to be prioritised)

Appendix 3

Initial Investigation Flow Chart

5.6. The following flow chart shows the procedure followed when investigating complaints.



Appendix 3

6.0 ASSESSING THE COMPLAINT

6.1 An important element of the Council's Enforcement Policy is a prioritisation or **Harm Assessment Matrix**. A number of local authorities have adopted an approach which attracts scores depending on the nature and location of an alleged breach of planning control. Maldon Council first adopted this approach in April 2014. Following an initial site visit by an officer, an assessment of the breach is carried out in order to determine what level of officer time will be dedicated to investigating the breach further.

6.2 The matrix sets out a minimum score which needs to be achieved in order to justify further investigations. A score below 5 would normally result in no further action by the Planning Enforcement Team other than an invitation to submit a retrospective in an attempt remedy / regularise the breach.

6.3 As detailed in the next section scores are based on matters of fact i.e. does it relate to a listed building or if the site is in a conservation area, plus matters of judgement i.e. whether the breach would result in irreversible harm or if permission was granted, would the development result in an undesirable precedent.

HARM ASSESSMENT CRITERIA

1. IS THE BREACH?

For **operational development** - are the works ongoing, stopped, complete or stable?

For **change of use -** is the use intensifying, is there an increase in activity, is there a change in appearance/ activity. Is residential occupation involved?

2. HIGHWAY SAFETY

YES = New/altered access to a highway, significant increase in use of access, creates on street stopping and or parking

3. OTHER SAFETY ISSUES

YES = Hazardous materials stored, potential fire risk, interference with safety of other uses/users

4. CAUSING STATUTORY NUISANCE

YES = Where dust, vibration, smell, fumes, light creating adverse physical effect upon health, and or where Environmental Health are taking action

5. COMPLAINANT

Self-explanatory

Appendix 3

6. AGE OF BREACH

Self-explanatory taking into account the '4 year' or the '10 year' rule.

7. DEGREE OF HARM

Is the harm widespread or localised?

Widespread – more than 10 residential properties directly affected, major policy breach, i.e. dwelling in countryside or commercial operation in countryside, can be seen over several tens of metres, pollution is air borne and carried over neighbourhood.

Local – this is where there is harm but only to immediate neighbours affected.

8. IRREVERSIBLE HARM

YES = effectively a planning judgement as to whether retention of operational works or change of use can be permitted without causing permanent damage to the environment or living conditions. Would an application be refused planning permission?

9. FLOOD RISK

Development within its respective Flood Risk Zone [graded 1 (low risk to 3 high risk]

10. BREACH OF PLANNING CONDITION, ANY ARTICLE 4 DIRECTION, OR LIMITATIONS IMPOSED BY PERMITTED DEVELOPMENT RIGHTS

This will be a matter of fact and thus either yes or no

11. AFFECT ON THE CHARACTER OR APPEARANCE OF A CONSERVATION AREA

This will be a matter of fact and degree and a matter of either yes or no

12. LISTED BUILDING OR AFFECTING THE SETTING

This will be a matter of fact and degree and a matter of either yes or no

13. SPECIAL AREAS

This relates to whether the breach lies within a specific special project area such a the Maldon central regeneration area and is part of a specific proactive enforcement project

Appendix 3

14. SENSITIVE AREAS

This will be a matter of fact and thus either yes or no. These special areas include:

Area of Outstanding Natural Beauty (AONB), Site of Special Scientific Interest (SSSI), Ramsar Convention Site, Area of Archaeological Importance, Scheduled Ancient Monument

15. UNDESIRABLE PRECEDENT

A matter of judgement i.e. if similar work or a change of use has occurred would this undermine an important planning principle for the area or cumulatively cause harmful change to character of the area?

Appendix 3

7.0 WHAT HAPPENS WHEN BREACHES OF PLANNING CONTROL ARE CONFIRMED?

7.1. The majority of breaches of planning control are resolved informally and by negotiation with the owner/occupier. Formal action only takes place when it is expedient, and where other means to resolve the problem have failed. **It is a last resort**. The Council will take effective enforcement action when it is essential to protect the amenity of the area, the public or highway safety, and to maintain the integrity of the development management process within the District. The impact of some developments are more harmful than others and therefore action will be in the public interest and commensurate with the breach of planning control.

7.2. Authorised officers will normally decide whether formal notices are justified, in accordance with agreed policies, and action will be approved under the powers delegated to The Director of Place, Planning and Growth or through the relevant Committee / Councillor involvement according to the Council's Constitution at the time.

7.3. When it is clear that there is a breach of planning control, the Council will draw this to the attention of the person responsible and advise them of the most appropriate course of action. These may be:

- If the breach is minor with no significant effects – no further action required.
- If the development is such that it is in line with relevant local plan policies – the Council will usually invite a 'retrospective' application for planning permission.
- If the breach is likely to be immune from enforcement action due to the passage of time – an application for a Certificate of Lawfulness will be invited if permission is unlikely to be granted – the Council will ask for the use to cease, or unauthorised development to be removed. A suitable period of time is allowed, depending on what needs to be done. For example, tenants must be allowed reasonable time to find somewhere else to live.
- As a last resort, formal notices can be issued, such as a Breach of Condition Notice or Enforcement Notice, if it is considered expedient having regard to the development plan policies and other material considerations. This is a discretionary decision, which is made on a case by case basis. The Council must be able to justify taking formal action and be sure that the steps specified in the notice and the period for compliance with each step, are reasonable.
- In extreme cases, the Council can serve a notice to require any relevant activity to cease (a Stop Notice or Temporary Stop Notice) and there is provision to obtain a planning enforcement injunction to restrain an actual or apprehended breach of planning control.

- When a Breach of Condition Notice has been served and has not been complied with, the person who has been served with the notice can be prosecuted in the Magistrates Court.

- When an Enforcement Notice takes effect but is not complied with, any owner/occupier or person who has control of, or has an interest in the land, can be prosecuted in the Magistrates Court.

- Where appropriate, and if other means have not secured a cessation of the breach being enforced against it, the Council will consider using its default powers to take direct action to remedy the breach of planning control, recovering the cost from the owner or placing a legal charge on the land.

- When it is considered expedient not to pursue enforcement action against a breach of planning control, so no further action will be taken.

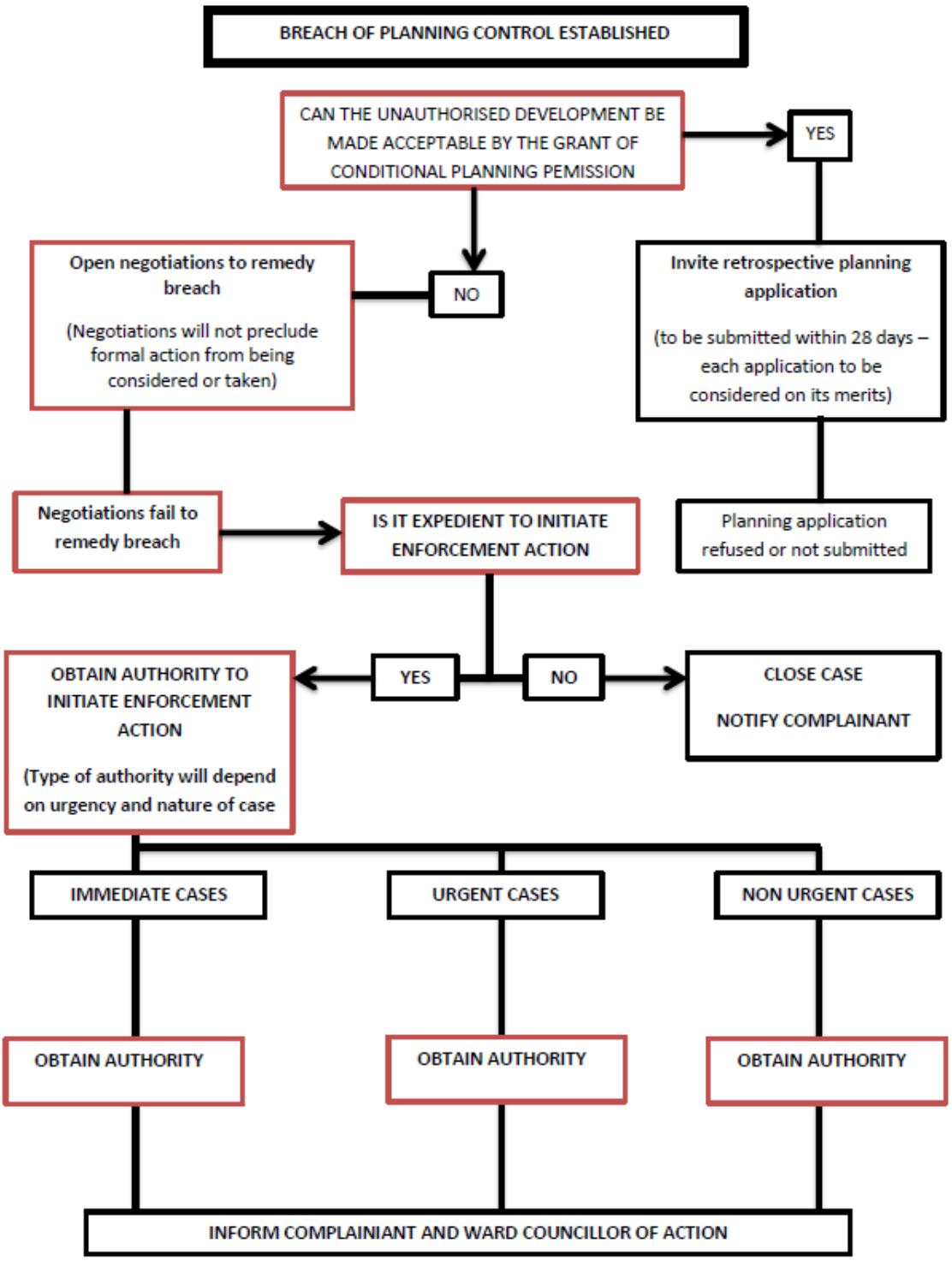
7.4. A robust case supported by evidence needs to be made to ensure any subsequent appeal and prosecution can be supported.

Breach of Planning Control Confirmed

7.5. Once a breach has been established, further investigation may be required and a timetable to be followed to resolve the breach according to its priority classification.

Appendix 3

ENFORCEMENT PROCEDURES FLOW CHART



Appendix 3

8.0 SECURING COMPLIANCE WITH AN ENFORCEMENT NOTICE

8.1 An offence occurs when an owner/occupier fails to comply with the requirement of an enforcement notice.

8.2 The Council will take action when the terms of an enforcement notice have not been complied with. Such action may involve:

- Prosecution of the parties concerned in the local courts
- The issue of an injunction through the court system
- Direct, or 'default' action

8.3 The Council will usually seek to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the courts. If someone is found guilty of failing to comply with the terms of an enforcement notice, a maximum fine of £20,000 may be imposed by the court. If the Notice is still not complied with, a further prosecution may be brought, and this is likely to continue until the Notice has been complied with.

8.4 The Council will not necessarily withdraw from taking action in the courts once this has commenced, and this may apply even where the breach of planning control may be rectified before the case is heard.

8.5 In the case of a persistent offence against an unauthorised activity, an injunction may be sought through the County Court or High Court. More severe penalties may be imposed in these circumstances if the offence continues.

8.6 In exceptional circumstances, the Council will consider taking direct or default action to remedy a breach of planning control. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work. Such circumstances are likely to arise for example when the breach of planning control has not been remedied, despite the imposition of fines by the Courts or for continued breaches of planning control. In such cases, the Council will seek to recover its costs, in the form of a charge on the land for example, or by other means.

8.7 If an enforcement notice is served against a development, which is subject to a planning or listed building appeal which is currently under consideration by the Planning Inspectorate, the outcome of such an appeal may be awaited before taking further action to secure compliance with an enforcement notice. When an appeal has been dismissed, compliance with the requirements of an enforcement notice will then be pursued.

8.8 When the Council believes that an enforcement notice has been complied with, the fact will be confirmed to the owner/occupier of the land and to anyone who has complained about the development or activity.

Appendix 3

9.0 ENFORCEMENT APPEALS

9.1 S174 of the Town and Country Planning Act 1990 (as amended) provides a right of appeal against an enforcement notice. The Planning Portal (web site) provides a link to relevant information.

9.2 An appeal must be made before the notice takes effect (normally 28 days after the date of issue of the notice). An appeal cannot be entertained if it is made after the date the notice takes effect.

9.3 An owner, occupier or any other person, who has an interest in the land, even if a copy of the notice has not been issued on that person, may make an appeal.

Grounds of Appeal

Ground A – that planning permission ought to be granted (or a condition or Limitation be discharged)

9.4 This is the 'deemed application' seeking planning permission and requires payment of a fee both to the Council and the Planning Inspectorate. The Council will ensure that the reasons for issuing the notice are well founded and in accordance with the development plan (where appropriate). The Council will then be able to argue on the planning merits of the case that planning permission should not be granted, or that permission should only be granted subject to conditions.

Ground B – that as a matter of fact the alleged unauthorised development has not taken place

9.5 The Council will, by investigating the breach of planning control and through collection of appropriate evidence, ensure that the matter alleged in the notice has occurred and has, in fact, taken place.

Ground C – that the development (if it has taken place) does not constitute a breach of planning control

9.6 Enforcement action will only be taken when it appears to the Council that there may have been a breach of planning control. Before taking action, the Council will consider:

- Whether the alleged breach constitute development
- If it does constitute development, does it need planning permission
- Whether planning permission been granted

Ground D – that the time limit for taking enforcement action has passed

9.7 When there is any doubt about when the breach of control first took place, before taking enforcement action, the Council will initiate an investigation to establish when the breach first occurred. This investigation may include the service of a Planning Contravention Notice, a Requisition for Information and an HM Land Registry search. Evidence may also be sought from neighbours, previous owners and any other person with personal knowledge of the history of the site. This will ensure

from the evidence available that the development has not achieved immunity from enforcement action due to the passage of time.

9.8 The immunity from taking enforcement action will be four years in respect of unauthorised building works or for the making of a material change of use of any building for use as a dwelling house, or non-compliance with a planning condition which prohibits the use of a building as a dwelling house.

9.9 In all other cases, the period from immunity will be ten years.

Ground E – that copies of the notice were not properly served

9.10 The Council will take all reasonable steps to issue a copy of the enforcement notice on every person with an interest in the land as required by the legislation based on the information obtained by a Requisition for Information, a Planning Contravention Notice or HM Land Registry search or by such other means necessary.

9.11 Notices will be issued by Recorded Delivery mail or by hand.

Ground F – that the steps required by the notice exceed what is necessary to remedy any injury to amenity

9.12 The Council will ensure that the steps required to be taken are both necessary and the minimum required in order to remedy the breach of planning control. The steps will be stated clearly so that there is no doubt about what has to be done.

Ground G – that the period for compliance is too short

9.13 The period for compliance will be a reasonable period having regard to the particular circumstances of the case and the actual or potential harm being caused to the amenity of the area by the unauthorised development.

9.14 When particular personal family hardship will result in order to comply with an enforcement notice, the Council will ensure an adequate period for compliance is granted.

An appeal made under Ground A

9.15 This ground of appeal relates solely to the planning merits of the case. If an appeal is successful under this ground, planning permission can be granted for the development enforced against.

An appeal made under Grounds B, C, D and E

9.16 An appeal made under any or all of Grounds B, C, D and/or E are grounds often referred to as the ‘legal grounds’ of appeal.

An appeal made under Grounds F and G

9.17 An appeal made under either Grounds F and/or G are not concerned with the planning merits of the case or legal issues but regards to the requirements of the Notice itself.

Appeal Methods

9.18 An appellant may elect an appeal to be heard at a public inquiry, an informal hearing or by way of an exchange of written statements.

9.19 It is the Planning Inspectorate who will make the final decision as to the appropriate method of appeal.

9.20 Unless complex planning issues or legal issues are involved, the Council will normally request enforcement appeals to be dealt with by way of an exchange of written statements.

Award of Costs

9.21 Costs can be awarded against both parties whichever method of appeal is used if either the Council or the appellant is found to have acted unreasonably in accordance with statutory procedures.

9.22 When it appears to the Council that an appeal has been made simply to delay or prolong the requirements of a notice taking effect, or if Ground A has been cited where the development is clearly contrary to planning policy, or some other ground is cited which clearly has no chance of success, the Council will apply for an award of costs against the appellant.

Appendix 3

10.0 OTHER PLANNING ENFORCEMENT POWERS

10.1 Some breaches of planning control are the subject of separate legislative codes.

10.2 These include:

- Listed Buildings
- Advertisements
- Trees
- Condition of land or buildings affecting the amenity of an area

10.3 Where the legislative requirements are the same, this enforcement policy will form the basis for any action taken by the Council on these matters.

Listed Buildings

10.4 The Council attaches particular importance in ensuring that any alterations to listed buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Planning (Listed Buildings and Conservation Areas) Act 1990. It is an offence under Section 9 of the Act to carry out unauthorised works to a listed building which would affect its character. The owner of a listed building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory. A person found guilty of an offence may be liable to a fine of up to £20,000 and/or a term of imprisonment of up to two years. There is no time limit upon the District Council to pursue listed building enforcement action.

10.5 A Listed Building Enforcement Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal but failure to comply with the Notice is an offence, where a penalty of up to £20,000 may be imposed.

Advertisements

10.6 The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended) and the Anti-Social Behaviour Act 2003 (part C) Penalty Notices for Graffiti and Fly Posting.

10.7 Advertisements are divided into three main groups:

- Those advertisements that are expressly excluded from local planning authority control
- Those that have ‘deemed consent’ so that the local planning authority’s consent is not required provided the advertisement is displayed under certain rules
- Those advertisements that require the local planning authority’s consent

10.8 The rules are complicated and seek to control amongst other things, the height, size and illumination of the advertisement.

10.9 Any person who displays an advertisement, without consent, is acting illegally. It is open to the Council to take a prosecution in the Magistrates Court for an offence under Section 224 of the Town and Country Planning Act 1990 (as amended).

10.10 The Council can issue a Fixed Penalty Notice in relation to the display of an advertisement to any person that there is reason to believe that that person personally affixed or placed the advertisement to, against or upon the land or object on which the advertisement is or was displayed under the Anti- social, Crime and Behaviour Act 2014; this is discussed further below.

10.11 Unless the offence is particularly flagrant or repeated, the planning authority may not initially consider it necessary to prosecute for an advertisement offence. Instead, they may invite the advertiser to apply for the consent required and if refused, there will be a right of appeal. The continued display of an advert after consent has been refused, and any subsequent appeal dismissed, may well result in prosecution. The maximum fine on conviction is currently £1,000 with an additional daily fine of one-tenth of the maximum penalty of a continuing offence.

10.12 Any display of an advertisement without consent is an offence which is immediately open to prosecution, or in some cases to the removal or obliteration if the Council decide to take such action. If the advertisement identifies the advertiser, the Council must give 48 hours before obliteration or removal takes place, where the regulations apply.

10.13 Some advertisement may be displayed on highway land in which case there are powers that Essex County Council (ECC) has to remove these directly. The Council will seek ECC to remove these where complaints are received but in some cases, such as fly posting joint action may be necessary.

Action available to Councils either as the Local Planning Authority (LPA) and / or the Highway Authority

10.14 The Council could take a number of actions including:

1. Remove the signs directly (with or without an attempt to attempt to recover the costs)
2. Proceed to prosecute in the magistrate's court
3. Where the signs are on highway land or fixtures seek Essex County Council to take direct action using their highways powers.
4. Possible use of a Fixed Penalty Notice under the Anti- social, Crime and Behaviour Act 2014.
5. Do nothing (depending on the scale of the matter)

10.15 The only two reasons local authorities can take into account in dealing with advertisements under the Advertisement Regulations are public safety an amenity.

10.16 Failure to comply with these conditions will allow the LPA to immediately serve a removal notice giving a reasonable time for such signs to be removed otherwise the LPA could undertake the work and recover the costs.

10.17 **Removal (as the Local Planning Authority):** Local planning authorities have specific powers to deal with unauthorised advertisements under planning legislation and allows local planning authorities to remove and dispose of any display structure which, in their opinion, is used for the display of illegal advertisements. This provision does not apply to signs in a building to which the public have no right of access. Where possible, the owners / advertisers should be notified before removal.

10.18 **Prosecution (as the Local Planning Authority):** The local planning authority is empowered to prosecute those who display advertisement signs without consent including the beneficiary of such advertisement signs. The fine for displaying without consent is up to £1,000 (level 3 of the standard scale) and £100 per day as fine if after conviction, the advertisement continues to be displayed. A person shall be deemed to have display an advertisement if is:

(a) The owner of the property or the occupier of the land on which the advertisement is displayed

(a) The advertisement gives publicity to his goods, trade, business or other concerns

10.19 Notices should be served on both the owner / occupiers of land on which the advertisement is displayed as well as the beneficiaries of the advertisement unless:

(a) They have no knowledge of the advertisement displayed

(b) They have not given consent to the advertisement displayed

10.20 The local planning authorities do not need to give notice of removal if the advertisements are displayed on land or properties belonging to the Council.

10.21 **Removal (by the Highway Authority).** The Highway Act 1980 makes provisions for Highway Authorities to remove advertisement signs, painting, etc. affixed to the surface of Highway or any other structure in the Highway. Illegal signs can be removed without giving notice to the perpetrators.

10.22 **Prosecution (by the Highway Authority).** Prosecution under the Highway Act1980 attracts a fine of up to £1000.

10.23 **Anti – social behaviour orders (ASBOs).** This was new measure introduced in 1999. Graffiti and flyposting are defined as an offence and a Penalty Notice can be served. 14 days' notice is required to be given of impending action. This type of action is considered more appropriate where there is an extensive problem of illegal fly posting.

Trees

1.24 Under Section 198 of the Town and Country Planning Act 1990, the local planning authority has the right to make provision for the preservation of trees in their area by issuing a Tree Preservation Order. Any unauthorised works to such protected trees is an offence under Section 210 of the Act. It is an offence to cut down, uproot or wilfully destroy a tree, or wilfully damage, top or lop a tree in such a manner as to likely destroy it. The offence is liable on summary conviction to a fine of up to £20,000.

10.25 Trees in Conservation Areas are similarly protected subject to the size of such a tree and under Section 211 and Section 212 of the Act, the same penalties apply.

Land or buildings that adversely affect the amenity of an area

10.26 Under Section 215 of the Town and Country Planning Act 1990, the local planning authority may take steps to require land or buildings to be cleaned up when its condition adversely affects the amenity of an area. The Council may serve a notice on the owner and occupier of the land requiring steps to be taken within a specified period.

10.27 The notice takes effect after 28 days from date of service. There is a right of appeal to the Magistrates Court and then to the Crown Court, during which time the notice is of no effect. If an appeal is unsuccessful, the notice takes effect and it is an offence not to carry out the steps required. If the notice is not complied with, the Council will consider prosecution proceedings or enter the land and carry out the required works. The costs incurred in carrying out the works will be recovered from the owner of the land.

Proceeds of Crime Act - POCA

10.28 The Proceeds of Crime Act 2002 (POCA) sets out the legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. Confiscation occurs after a conviction has taken place. The aim of the asset recovery schemes in POCA is to deny criminals the use of their assets, recover the proceeds of crime and to deter criminality.

10.29 During the enforcement process the authority seeks full recovery of costs, where possible. Consideration will be given to the appropriateness and expediency of the use of POCA powers, including but not limited to the seeking of confiscation orders, in appropriate cases in which a defendant has benefited from criminal conduct or a criminal lifestyle. This will both help cover the costs of enforcement and ensure an effective disincentive to ongoing breaches of planning control.

Appendix 3

11.0 ENFORCEMENT POLICY FOR MALDON DISTRICT COUNCIL

11.1 Taking into account updated national policy guidance, local pressures and resources available the following policies will be applied across the district:

POLICY ENF1

The Council is committed to a planning enforcement function prioritised in the following order:

<u>Category 1.</u> Immediate – investigation expected within 1-2 working days

- Works to listed buildings
- Works to protected trees
- Demolition of important unlisted buildings in conservation areas
- Significant unauthorised building works
- Breach of conditions where there is likely to be irreversible harm, e.g. contaminated land, archaeology, flood defence and drainage
- Advertisements that may cause immediate harm such as 'A' boards affecting pedestrian safety, advertisements including fly posting which are intensive in scale or are affixed to trees and/or listed buildings

<u>Category 2.</u> Complaints classified as 'Urgent' - investigation within 15 working days
Councillors, formal Parish Council and MP

- Operational/ building works/ change of use/ compliance with conditions/ obligations affecting residential amenity where ongoing severe neighbour district being caused
- Operational development within conservation areas
- Where immunity rules are likely to shortly apply if action is not taken including mobile homes/ caravans

<u>Category 3.</u> Complaints classified as 'Non-Urgent' – investigation within 25 working days

- Other changes of use
- Other building works/condition of land
- Compliance with conditions unless significant harm is likely e.g. flood defence or contaminated land issues
- Advertisements and satellite dishes (not attached to trees or listed buildings) (conservation areas to be prioritised)

Appendix 3

POLICY ENF2

Complainants shall receive an email or letter of acknowledgement that the complaint is being investigated normally within 5 working days of receipt. They will receive updates based on the priority category of the investigation informing them what action the council intends to take or to close the case.

POLICY ENF3

Formal enforcement action to remedy a breach of planning control will only take place when it is considered expedient and in the public interest to do so.

POLICY ENF4

If there is severe harm to public amenity as a result of the failure to comply with planning conditions or unauthorised development, the Council will consider the use of stop notices, breach of condition notices, temporary stop notices and injunctions to speed up the effectiveness of the enforcement process.

POLICY ENF5

When investigating alleged breaches of planning control involving small business uses, the Council will take a positive approach towards the continuation of the activity and it being regularised by the grant of planning permission. If, however, there is a sustainable planning objection, the Council will endeavour to assist possible relocation to alternative premises. Provided there is not a severe impact on local amenity, the Council will seek to ensure that reasonable time is given to comply with enforcement action taken against business use activities.

POLICY ENF6

The Council will pursue, whenever possible, legal proceedings and/or the taking of direct action in the event of failure to comply with formal enforcement and related planning notices. The Council will consider the Proceeds of Crime Act for prosecutions.

POLICY ENF7

The Council will seek to address certain enforcement matters through other appropriate enforcement agencies such as the County Highway Authority (Essex County Council), Natural England and The Environment Agency where they have more immediate or effective enforcement powers.

Appendix 3
Appendix 1

APPENDIX 1 to Enforcement Policy

The following is a brief explanation of some of the more technical terms used throughout this policy document

Breach of Condition Notice (BCN)

The power to serve a BCN is contained in Section 187A of the Town and Country Planning Act 1990. A notice can be issued where a condition attached to a planning permission has not been complied with. There is no right of appeal against the serving of a BCN. Failure to comply with a BCN constitutes a criminal offence.

Breach of Planning Control

This is a term used when development has taken place that requires specific planning permission and no such permission has been granted. The term will also apply to failure to comply with a planning condition or limitation; carrying out works to a listed building; the display of illegal advertisements; unauthorised works to protected trees and trees within conservation areas and the condition of land or buildings which affect the amenity of an area.

Certificate of Lawfulness

Under Section 191 of the Town and Country Planning Act, application can be made to a local planning authority for a Certificate of Lawfulness in order to confirm whether an alleged breach of planning control is now lawful for planning purposes and therefore immune from enforcement action because of the time that has elapsed since the breach first took place. For a use to become immune from enforcement action and become lawful for planning purposes the following timescales apply:

- Erection of buildings and other works. 4 years
- Changes of use of a building to a single dwelling house. 4 years
- Changes of use of buildings or land other than a dwelling house. 10 years
- Non- compliance with a condition relating to the occupation of a building as a dwelling house 4 years
- Non-compliance with a condition other than occupation of a building as a dwelling house 10 years

(There may be exceptions and questions of interpretation that should first be discussed with the Planning Authority)

Appendix 3
Appendix 1

GLOSSARY OF TERMS

Default Powers (or Direct Action)

Under Section 178 of the Town and Country Planning Act, local planning authorities have the right to enter land or property and carry out works which the owner or occupier has failed to comply with any steps required to be taken in an effective enforcement notice. The costs are recovered from the landowner. The costs can be made as a charge on the land, to be recovered at the time of a future sale of the land or property, if the costs cannot be recovered at the time works are carried out in default.

Development Orders

The Town and Country Planning (General Permitted Development) Order 1995 grants 'deemed consent' for certain forms of development without the need to specifically apply for planning permission.

The Town and Country Planning (Use Classes) Order 1987 groups common uses together in a number of classes and confirms that changes occurring within the same Class would not normally require the submission of a planning application.

Enforcement Notice

The power granted to local planning authorities to issue and serve an enforcement notice is conferred under Section 172 of the Town and Country Planning Act 1990. The Notice must clearly state:

- The alleged breach of planning control
- The steps required to remedy the breach
- The reasons why an enforcement notice has been served
- The time available to comply with the steps

The notice has to be served on anyone having an interest in the land.

There is a right of appeal against the notice provided the appeal is lodged with the Planning Inspectorate before the date the notice takes effect. Once an appeal has been lodged, the enforcement notice no longer has any effect until such time as the appeal has been determined.

Appendix 3
Appendix 1

Fixed Penalty Notice

Under the Anti- social, Crime and Behaviour Act 2014 authorised enforcement officers of the District Council can issue a Fixed Penalty Notice for a number of offences. This includes fly-tipping, graffiti and fly posting.

Injunctions

When the Council consider it necessary or expedient for a breach of planning control to be restrained because it is causing serious harm to the amenity of an area, application can be made to the county court or high court for an injunction, whether or not they have exercised or are proposing to exercise any other powers of enforcement.

Such cases are rare but could be used for example when it is believed there is good evidence that works are likely to occur to protected tress or listed buildings which will result in irretrievable harm.

An injunction may be issued against a person whose identity is unknown, but who is able to be identified by other means.

Local Planning Authority

Maldon District Council is the local planning authority for most matters relating to the control of development within the administrative boundary except for the extraction of minerals and the deposit or waste, which is the responsibility of Essex County Council.

Planning Contravention Notice (PCN)

The power to issue a Planning Contravention Notice (PCN) is conferred by Section 171 of the Town and Country Planning Act 1990. A PCN can be served when the Council wishes to find out from the owner or occupier of the land when the suspected breach has occurred and additional information relating to the breach to enable a more detailed assessment to be made. A PCN is only served if a suspected breach has occurred and invites the owner or occupier of the land to make representations or submit a planning application.

Serving a PCN cannot rectify a breach if it has occurred. Failure to respond to a PCN within a specified time limit constitutes an offence and the recipient of the notice becomes liable to prosecution proceedings being taken.

Requisition for Information

A Requisition for Information will be served by the Council in order to establish the names and addresses or all persons who have an interest in land. A Notice is served when the Council intends to initiate formal enforcement action.

Appendix 3
Appendix 1

Standing Orders

The Council's Constitution grants certain delegated powers approved by the Council to allow the Director of Service Delivery and other officers to serve certain notices and initiate prosecution proceedings which are updated from time to time.

Stop Notices

The power to issue a Stop Notice is conferred under Section 183 of the Town and Country Planning Act 1990. A Stop Notice can be issued to support an enforcement notice and has the general effect of requiring a breach of planning control to cease almost immediately.

The issue of a Stop Notice is usually made when a breach is causing harm to the amenity of an area. Compensation is payable in some cases if the enforcement notice to which the Stop Notice relates is quashed on appeal on legal grounds.

Proceeds of Crime Act - POCA

The Proceeds of Crime Act 2002 (POCA) sets out the legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. Confiscation occurs after a conviction has taken place. The aim of the asset recovery scheme in POCA is to deny criminals the use of their assets, recover the proceeds of crime and to deter criminality.

Confiscation orders under POCA are frequently used against fraudsters and drug-dealers to deprive criminals of the financial gain they have received from their criminal conduct. Less frequently used though is the power to obtain confiscation orders against people who commit crimes under legislation administered by local authorities.

For POCA to apply there must have been a successful prosecution for the offence, and the prosecutor must have asked for the confiscation order during the proceedings, or the court otherwise believed it was appropriate to make it. The order will not be made unless the defendant has benefited from the criminal conduct.

The confiscation order must be made in the Crown Court. Before making the order, the Court must consider, on the balance of probabilities, whether the defendant has a criminal lifestyle or has benefited from the particular criminal conduct. The term 'criminal lifestyle' comes directly from the legislation. The key tests for deciding if an individual has a criminal lifestyle or has benefited from particular criminal conduct are found in section 75(2) and will frequently mean "an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence" (section 75(2)(c)). The confiscation order is in addition to any other penalty (e.g. fine) which may have been imposed by the Court.

Appendix 3
Appendix 2

APPENDIX 2 to Enforcement Policy

ENFORCEMENT HARM ASSESSMENT FORM

SHOULD BE COMPLETED BY AN OFFICER WHO HAS SEEN THE DEVELOPMENT

- All complaints arising from all retrospective refusals of planning permission will automatically receive a full investigation, so it is not necessary to mark the harm score
- All Category 1 complaints under ENF1 will be investigated
- Each new complaint will be allocated scores as set out below to assess its harm. The total will provide its harm score in which its priority will be based
- Where there is no breach of planning control found the file will be closed accordingly.

POINTS ALLOCATION		**SCORE**
Is the breach	Ongoing Development (1)	
	Recently Commenced (1)	
	Stable (0)	
** Highway safety issue	Yes (2)	
	No (0)	
**Other safety issue (e.g. contaminated land)	Yes (2)	
	No (0)	
**Causing a Statutory Nuisance	Yes (2)	
	No (0)	
Complainant where full information has been provided as referred to in section 4	Immediate neighbour (2)	
	Members, MP, MDC Officer, Parish Council (1)	
	Other neighbour or member of public (1)	
	Anonymous, Malicious (0)	
Age of breach	Within 6 months of immunity (2)	
	Less than 1 Year (1)	
	More than 1 year old (0)	
Degree of Harm	Widespread (2)	
	Local (1)	
	None (0)	
Irreversible Harm	Yes (3)	
	No (0)	
Breach of condition or Article 4	Yes (1)	
	No (0)	
** Flood risk	Zone 3 (2)	
	Zone 2 (1)	
	Zone 1 (0)	
**Conservation Area (or adjacent to)	Yes (2)	
	No (0)	
**Listed Building (or affecting character or setting of)	Yes (3)	
	No (0)	

Appendix 3
Appendix 2

POINTS ALLOCATION		SCORE
Special operations or tasks (Please provide details)	Yes (1)	
	No (0)	
**Sensitive site (please provide details)	Yes (1)	
	No (0)	
Undesirable precedent (please provide details)	Yes (1)	
	No (0)	
TOTAL POINTS (HARM SCORE)		

Only Complaints which score 5 or above will be further investigated. Those with a lesser score will be informed of the breach/ likely breach and invited to remedy/regularise it. In both cases the complainant is to be notified of our actions.

Note: ** These areas are likely to need specialist input from other agencies/organisations and therefore the time periods referred to in this document may be affected if any responses from the agencies/organisations are delayed.

Appendix 4

MALDON DISTRICT COUNCIL

PUBLIC SPEAKING AT PLANNING COMMITTEE MEETINGS

Please see Public Speaking Protocol available on the Council's website.

Appendix 5

DEVELOPMENT MANAGEMENT - PROTOCOL FOR MEMBER INVOLVEMENT IN PRE-APPLICATION DISCUSSIONS

1. PROCEDURAL ELEMENTS FOR PRE-APPLICATION DISCUSSIONS

(**i**) **Development Management forums** – Upon receipt of a formal pre-application enquiry with appropriate fee the local authority considers the proposals to be a strategic major development (see section 5). The Council request the developer to attend a forum run by the authority with Councillors, representatives of consultees and various interested parties invited to hear and comment on an officer's introduction and developer's explanation of the emerging proposal. External invitees will be selected by officers from the Council's statutory planning application consultation list. The forum can provide a clear context for Members to listen to proposals and give views as to what issues need to be addressed in any formal submission.

Such forums should be arranged, chaired and publicised by the local authority. Consultees including, parishes, amenity societies and public representatives may be invited to speak. The Officer explains the process, the context of the proposals and the Councillors' roles. Officers note the issues arising and record any actions.

2. PROTOCOL FOR PRE APPLICATION DISCUSSIONS WITH COUNCILLORS

2.1 Step 1 Initiation of pre-app process

2.1.1 For Development Management Forums a prerequisite will be that a formal pre-application enquiry shall have been submitted, and an appropriate fee shall have been paid to the Council before any forum is arranged.

2.1.2 Within five full working days of a valid Development Management enquiry the details shall be entered onto a Pre-Application Register, held by the Planning Service.

2.2 Step 2 Assessment and arrangement

2.2.1 Officers will assess the pre- application proposals against the criteria for strategically important major development as described in Section 5 of this Protocol. Should the proposals be considered to be fitting with this criteria then the case officer will approach the developer with a view to arranging a pre-application with Members. Officers shall seek / pursue two dates (convenient to the Ward Member(s)) with the developer at which a meeting with Councillors can be held (Development Management performance criteria require a first written response to developers to be returned no later than 21 days from the receipt of an enquiry). Subject to these dates being convenient to the Ward Members(s), Councillors shall be notified via an all-Member email at no fewer than five days before any meeting date. The Development Control Management Forum shall be set for whichever the greatest number of Councillors is available to attend the forum*.

** where any dispute over the date of a meeting arises then arbitration shall be given within 48 hours by e mail agreement between the Director of Place, Planning and Growth and the Chairperson of the relevant Planning Committee*

2.3 Step 3 – At the Meeting

2.3.1 Where Members are present, the meeting will be conducted as follows:

a) A senior officer will introduce the purpose of the meeting and advise how it will be conducted. Members will be advised as to the confidentiality status of the proposal. The meeting will be chaired by a senior officer. If at any time the discussion departs from these considerations, then the chair will have discretion to close the forum.

b) Introductions will then be made.

c) The potential applicant will then present their proposal (the presentation having first been viewed by a Senior Planning Officer and if necessary, a legal officer, to ensure that it will not lead Members into negotiations and to check for accuracy).

d) Members will then have the opportunity to ask questions and seek clarification, but care will need to be taken that personal views are not expressed. They may alert the developer to what they perceive as the likely view of their constituents, but this must be in the context of the Local Development Plan (LDP) or alternative policy framework.

e) The Chairperson will then conclude the meeting. Members may advise Officers of any concerns they may have with the proposal and any elements which they feel would benefit from negotiation with the developer. Officers will provide professional advice and guidance as to what negotiations would be reasonable and align with the LDP or alternative policy. Negotiations will be undertaken by Officers only.

f) A Planning Officer will record the meeting and take a note of all present, plus any issues identified. Officers will take appropriate follow up action. The note of the meeting will be placed on file at the earliest opportunity (taking account of the need for commercial confidentiality). The involvement of Members will be recorded in any subsequent committee report.

2.4 Step 4 - Pre-application Feedback

2.4.1 Written pre-application guidance will then be prepared by Planning Services and sent to the applicant. The pre-application guidance letter will be circulated to those Members who have attended the event or otherwise given a written indication to be advised of the outcome.

2.5 Step 5 Additional meetings on request

2.5.1 Further meetings with potential developers and officers may be necessary to provide further information and clarification, after the provision of pre application guidance and prior to any application.

2.5.2 These further meetings will not as a rule involve Councillors. Only at the discretion of the Director of Place, Planning and Growth or the express request by ward Member/s or relevant Committee Chairperson shall subsequent meetings be the subject of further member engagement. In such circumstances, the case officer will approach the Director for a view as to the necessity to invite members, where upon an e mail notification requesting response within 48 hours shall be circulated to Ward Member/s or relevant Committee Chairperson to ascertain any interest in the second (etc.) meeting with the developer.

2.5.3 Only in these exceptional circumstances will Officers then circulate an all-Member email to advise of these further meetings (Step 2 then applies for notification and response, i.e. five days' notice, minimum of two meeting dates).

3 PRE-DETERMINATION AND PRE-DISPOSITION

3.1 A reason given for Councillors not getting involved in schemes before a formal consideration at planning committee is the appearance of injustice, i.e. being said to have pre-determined a scheme. As long as a councillor remains clear that they have not made up their mind and that they are willing to listen to all material consideration presented to a planning Committee before voting then they cannot be said to have pre-determined the outcome. In such circumstance a Member may be said to be pre-disposed by expression of a view but clearly will remain open to consideration of other material considerations before finally making their mind up and voting at the planning committee.

3.2 The following considerations also apply:

a) Members should only attend those meetings organised in accordance with this protocol and not arrange private meetings with developers.

b) Members should promote community aspirations through the Sustainable Community Strategy and the Local Development Plan or alternative policy process.

c) Members are at the meeting to learn about an emerging proposal, to help identify issues to be dealt with by further submission and negotiation and may wish to avoid expressing any firm view on the proposal which might indicate to third parties that the Member has 'pre-determined' the application. Although the Localism Act 2011 has provided greater freedom on this, the legal position remains that if pre-determination at the planning decision stage is evident, then this could give rise to legal challenge.

d) Any Planning Committee Member who elects to express a firm view for or against the proposed development at this stage should be mindful that further opinions, advice and evidence may arise during planning application process. So long as Members clearly state that the opinion is subject to receipt of further evidence and advice, and that they have not closed their mind on the matter, this may then be seen as pre-disposition which is legitimate. Officers will be pleased to advise Members further on this prior to any meeting.

e) Training will be available on request for Members who wish to attend pre application discussions.

4. GENERAL CONCLUSIONS

4.1 Pre-application discussions should always be conducted at the appropriate officer level. However, it should be made clear that the views expressed may be subject to review by officers at a more senior level or by Members at Committee. Advice should be consistent with statutory plans, government planning policy guidance and statements and any other material considerations.

4.2 Officers should make a detailed written note of any pre-application meetings as soon as practicable. Confirmation of the advice given should always be supplied in writing when requested by or on behalf of the applicant or when deemed appropriate by the section manager.

4.3 The involvement of Members should be recorded in any subsequent committee report.

4.4 In the case of potentially contentious meetings, two or more officers will attend.

5 STRATEGICALLY IMPORTANT MAJOR DEVELOPMENT CRITERIA

5.1 Residential

- Any application of 50 dwellings or more; or any outline residential development proposals whose site is 2 hectares or more
- Any residential proposal promoted as an allocated site within the LDP.

5.2 Affordable Housing

- Any 100% Affordable Housing proposals of six dwellings or 0.3ha or more in outline form.

5.3 Non-residential development

- Any non-residential development proposal, whose floor area is 1,500 square metres or more or whose site area is 2 hectares or more.
- Any non-residential proposals relating to development proposals allocated within the LDP.

5.4 Retail

- Any retail development 1,000 square meters or more or which of 250 square metres or more and is proposed to be beyond existing town centres as defined in the local plan or emerging LDP.

5.5 Mixed use development

- Any mixed use development proposals whose site area is 2 hectares or more or is of 50 dwellings or 1,000 square metres commercial floor area or more.

5.6 Renewable Energy

- Wind Turbines
- Any wind energy proposals whose output capacity is 1Mw or more or which proposes three or more turbines of 30m or more.
- Solar energy
- Any Solar energy proposals whose output capacity is 1Mw or more or which proposes 4,000 or more solar panels.
- Energy from Waste
- Energy from Waste Scheme which is 1Mw capacity or more.

NOTE: Development Management Enquiries - Consideration of other strategic or corporate merit:

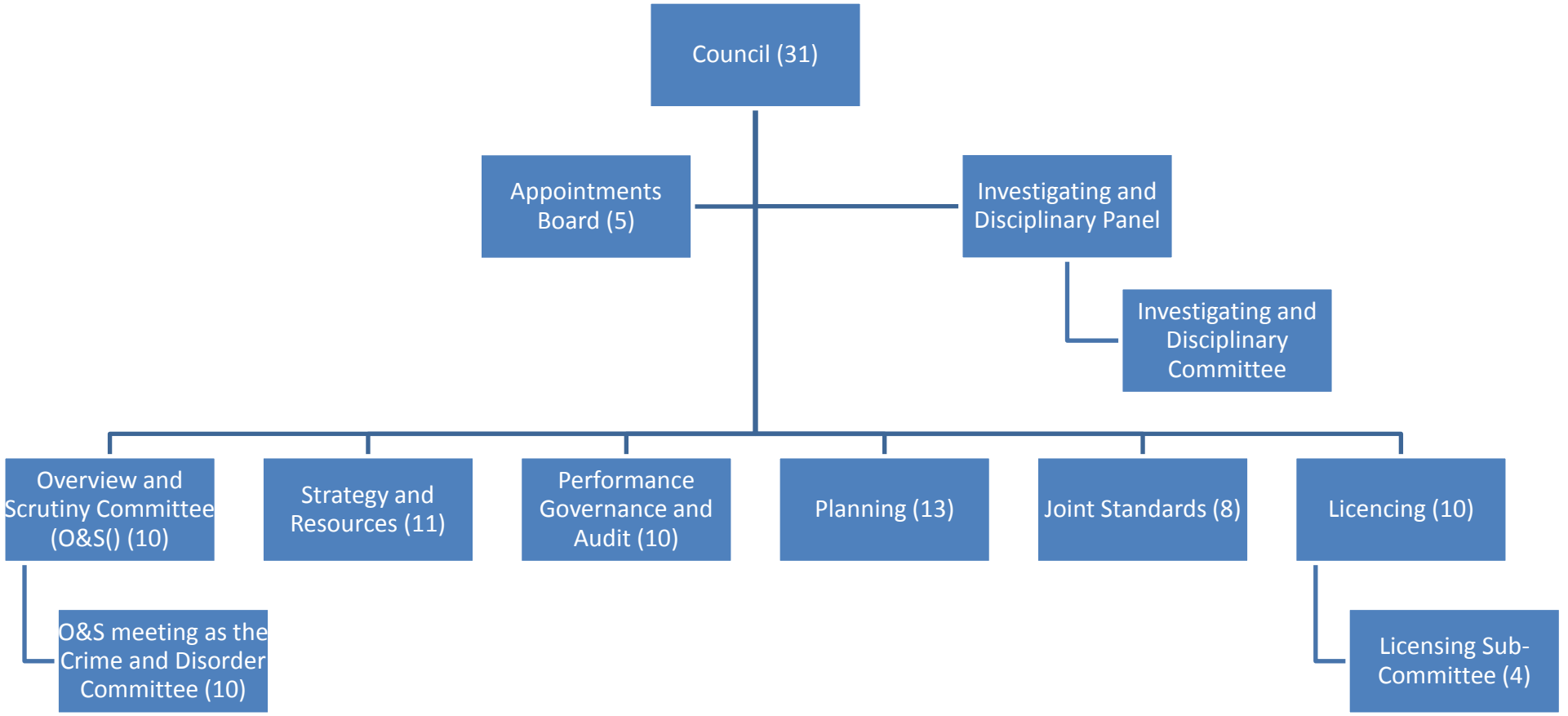
Some applications which do not fit the thresholds or development types outlined above may demand discretion to be exercised as to their specific merits. These enquiries may have a local strategic importance or in some other way make a major contribution to the delivery of corporate objectives. In such circumstances the Director of Place, Planning and Growth in consultation with the appropriate Ward Member(s) will determine whether it is appropriate to engage Members in the pre-application process.

Updated and endorsed by the Council – 21 December 2017 (further updated November 2019)

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PART 6 – MEMBERS OF THE COUNCIL, WARDS, POLLING DISTRICTS AND MEMBERSHIP OF COMMITTEES AND SUB-COMMITTEES

1. MALDON DISTRICT COUNCIL COMMITTEE STRUCTURE



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PART 6 – MEMBERS OF THE COUNCIL, WARDS, POLLING DISTRICTS AND MEMBERSHIP OF COMMITTEES AND SUB-COMMITTEES

WARDS AND POLLING DISTRICTS

CONTENTS

Maldon District Council Wards and Polling Districts

MALDON DISTRICT COUNCIL WARDS AND POLLING DISTRICTS

Maldon District Council Ward	Polling Districts Covered
Althorne	Althorne Latchingdon Maylandsea Mundon
Burnham-on-Crouch North	Burnham-on-Crouch North
Burnham-on-Crouch South	Burnham-on-Crouch South
Great Totham	Great Braxted Great Totham North Great Totham South Little Totham
Heybridge East	Heybridge East Heybridge Basin
Heybridge West	Heybridge West
Maldon East	Maldon East
Maldon North	Maldon North
Maldon South	Maldon South
Maldon West	Maldon West
Mayland	Mayland St. Lawrence Steeple
Purleigh	Cold Norton North Fambridge Purleigh Stow Maries
Southminster	Southminster
Tillingham	Asheldham Bradwell-on-Sea Dengie Tillingham
Tollesbury	Tollesbury East
Tolleshunt D'Arcy	Goldhanger Tollesbury West Tolleshunt D'Arcy Tolleshunt Knights Tolleshunt Major

PART 6 – MEMBERS OF THE COUNCIL, WARDS, POLLING DISTRICTS AND MEMBERSHIP OF COMMITTEES AND SUB-COMMITTEES

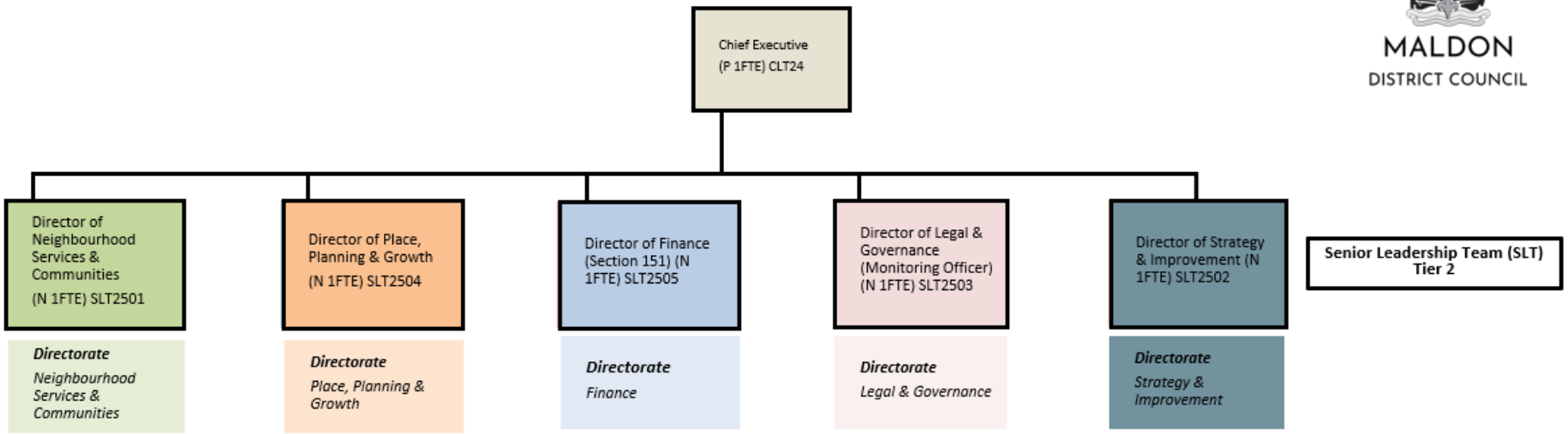
Maldon District Council Ward	Polling Districts Covered
Wickham Bishops and Woodham	Langford Little Braxted Ulting Wickham Bishops Woodham Mortimer (Hazeleigh) Woodham Mortimer Woodham Walter

PART 7 - MANAGEMENT STRUCTURE

With effect from 13 October 2025

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1. Maldon District Council Senior Leadership Structure



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