

**RIVER BLACKWATER - REVIEW OF MOORINGS & LEASES FEBRUARY 2018****SCOPE OF THE REVIEW**

- To provide an overview of the different types of legal agreement in use
- To provide an understanding of the management of various lease and licence areas including Hythe Quay and their respective requirements
- To provide background to the current mooring charges and comparative mooring areas
- Income and opportunities

**BACKGROUND**

Maldon District Council is unique as a local authority in that it owns title to the river bed for the greater part of the upper reaches of the River Blackwater. In most other areas title to the area below the Mean High Water Mark (MHWM) is owned and managed by the Crown Estates. The Crown Estate Commissioners in this area are Whybrow, Riches and Dodds of Colchester.

Title to the river bed enables Maldon District Council to levy charges on users of the area it owns for moorings, lease and licence areas, developmental charges such as the building or improvement of jetties, and for launching ramps. It also confers the usual rights associated with land ownership such as the ability to make decisions as the landowner or in the case of lease areas, the landlord.

The area of ownership extends from an imaginary line between Marconi Sailing Club on the south bank of the River Blackwater to Gore Saltings on the northern bank of the river and up to its navigable head at Heybridge Creek, an area of 1770 hectares.

**The map attached to this report shows the extent of the area of the Councils ownership of the River Blackwater**

**LEASE AND LICENCE INFORMATION****Explanation**

There are two types of legal agreement that regulate the management of areas within the River Blackwater. In addition to these are the 'Annual Mooring Licences'. These are not actual licences in the full sense of the meaning and no physical licence is actually issued. However, they are referred to as 'mooring licences' as mooring invoices are sent out annually and the holder must abide by a set of regulations.

**Leases** – These are granted by the landlord and are usually for longer periods. Maldon District Council would generally grant leases for seven years, but in some cases have granted leases for considerably longer. Leases of longer than seven years duration will be determined by the appropriate committee and will confer certain rights on the holder such as the right to renew. Those agreements that have a right to renew will be reviewed every five years, and a valuation report commissioned, but those that have contracted out of the Landlord and Tenant Act will go to the relevant committee for approval.

All of the mooring areas that are managed by Maldon District Council are subject to lease agreements. Lease agreements are legally binding documents that set out how each

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respective party, the landlord and lease-holder, should conduct their business and what the penalties are if they step outside the framework of that lease.

Leases are generally subject to the protection of the Landlord & Tenant Act and have a right of tenure, which in short means that they have a right to renew under the existing terms of that agreement. In some cases, the lease-holder waives their option to renew under the Act and in this respect, the agreement may be terminated and the area offered for tender. This will be a Committee decision.

During the negotiation stage of a new lease, the Council would have the ability to impose new terms and conditions. **At no other time would the Council have the legal ability to impose new terms or conditions into an existing agreement.**

Should a lease-holder wish to include new terms within their agreement during the life of a lease, the Council would have the option to refuse, or advise the existing lease-holder that the agreement would be terminated and offered for tender as if the agreement had expired.

**Licences** – These agreements are generally less than five years duration and do not confer any rights of renewal etc. Reviews will take into consideration any changes to the licence area, the terms of the agreement or legislative changes and will include an independent valuation of the agreed area.

**Mooring licences** are reviewed annually by comparison with other locations offering a similar product. A set of *Mooring Regulations* is issued to every mooring holder at the time of application, a copy of these can be found at the back of this report.

The three flow charts at the back of this report show the **Rent Review Process**, the **Lease Renewal Process** and the **Licence Review and Renewal Process**

Licences provide the landlord with the ability to terminate a licence, subject to providing written notice of the agreement and giving the agreed notice period.

The legal agreements that are in place for the areas owned by Maldon District Council have a common thread, in that they;

- Guarantee income from that property for the duration of the agreement
- Ensure the Council, as Landlord is indemnified in the event of loss, damage or claim
- Restrict the applicant to a specific activity within that area
- Protect the landlord's right to enter that property
- Ensure regular reviews and valuations are carried out
- Ensure the landlords rights in respect of ownership, and
- Require the holder provides certain information to the landlord when requested.

The recent sinking of the vessel 'Llys Helig' in Burnham on Crouch has highlighted the importance of ensuring a seamless transition from one lease/licence-holder to the next, and a reinforcement of the requirement for any changes to areas that are subject to legal agreements to be decided and agreed before the lease-holder is allowed to vacate the premises and terminate that agreement.

In light of the above, all lease-holders, mooring holders and operators of vessels on Council owned property were written to or contacted and asked to provide evidence of insurance in respect of total loss and wreck removal.

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Houseboat Associations, Sailing Clubs, Mooring-holders and Barge operators have been forthcoming and provided this assurance in the majority of cases. In those that are outstanding, the River Bailiff is following them up. Mooring-holders have been informed that insurance will be a requirement of obtaining a Council mooring and those that cannot provide evidence of insurance will not be issued with a mooring for 2018, or until they can provide that evidence.

**MANAGEMENT OF LEASE & LICENCE AREAS**

In the event of a renewal, review or dispute in connection with an agreement, the Councils Asset officer will generally meet with and discuss the area with the River Bailiff and solicitor, and other officers as required. A decision will be taken at that time as to the next appropriate course of action and the wheels are set in motion to bring about a successful conclusion to the dispute. The Asset Management Working Group will be informed of the dispute.

Lease and licence areas are overseen on the river by the River Bailiff as the Councils eyes and ears on the ground. Any demonstrable alteration to, or detracting from what has been agreed is acted upon and the appropriate course of action is reported to the Asset Officer, and the lease or licence holder is contacted and required to explain themselves.

Legal work in connection with agreements is undertaken by the Council's solicitor and income, invoicing and monitoring by the Finance Team. Regular monthly accounts are disseminated by the Finance Officer to raise awareness of potential disputes involving late payments etc. In some instances it may be necessary to enter into arbitration with the lease holder and at this point, the Valuation Office, or similar independent Valuer is brought in to provide their opinion.

In instances when a review of charges may be required, such as wharfage at Hythe Quay, the use of pontoons or moorings. The River Bailiff will obtain charging schedules from similar areas around the coast. This is generally undertaken at the end of each year in preparation for submission to the appropriate Committee when deciding discretionary Fees and Charges through the budget setting process.

The flow chart at the end of this report shows the renewal processes of Leases and Licences

**COMPARATIVE MOORING AREAS**

The moorings managed by Maldon District Council, whilst not being unique by any means, are not a much sought after product in today's leisure market. Since the late 1990's the boating industry has spent many millions of pounds providing new marinas and locations that offer the convenience of 'step-aboard' berths with the facilities that those locations can provide, such as parking, showers, toilets, waste disposal and winter storage and haul out..

This has had a knock on effect with mooring areas such as those, managed by the Council in the River Blackwater, where mooring numbers have dwindled from 560 in 1993 to approximately 65 today.

Boat owners and insurers prefer the convenience and security of berths similar to those mentioned above, and no longer wish to go to the trouble of having a tender and having to

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row out to a boat on a swinging mooring. Tenders must be stored on a beach, and are easily stolen or lost and moorings corrode rapidly and require regular maintenance.

To obtain accurate quotes for mooring areas from locations up and down the coast one must first identify similar products in a similar environment. The moorings managed by the Council in the Blackwater are tidal which means access is governed by the tides and spend a percentage of the day aground, they are swinging moorings which means they are attached by one mooring chain and swing about in different positions when they float, and they are not maintained, which means the maintenance of the mooring is the sole responsibility of the mooring holder. The Council does not offer anything else for the cost of the mooring, such as haul out, winter storage or maintenance facilities, which keeps the annual cost low to the end user and also restricts the market appeal to a greater part of that leisure market.

The table below and titled '***Survey of Swinging Mooring Charges 2017/18***' highlights a lack of similar mooring areas within an approximate one hour drive of the River Blackwater. I have also included locations that offer moorings providing a greater range of facilities to show the difference in cost to the user.

I have not included a table showing the charges in respect of Marina berths as there is no correlation between what the two types of mooring offer.

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**Survey of Swinging Mooring charges 2017/18**

Location	Charging period/Type of mooring	Cost per metre(Incl vat)	7mtr vessel(Incl vat) (22ft)	10mtr vessel(Incl vat) (32ft)	Additional facilities/charges to be included
<b>Southend (Two Tree)</b>	Annual/Maintained/ Half tide	No	£230	£230	None
<b>MDC Blackwater</b>	Annual/Unmaintained/half tide	No	£140	£320	None
<b>Hadleigh</b>	Annual/Maintained/ Half Tide	No	£250	£250	None
<b>PLA Two Tree</b>	Annual/Maintained/ Half tide	No	£350	£350	None
<b>Brightlingsea(St Osyth)</b>	Annual/Maintained/ afloat whole tide	£12.13p /ft	£266.86	£388.16	Harbour Dues
<b>Orford</b>	Annual/Maintained/ afloat whole tide	£20 p/ft	£440	£600	Single use of slipway
<b>West Mersea (Ray Channel)</b>	Annual/monthly charge/Maintained/ afloat whole tide	No	£1871.40	-	Winter storage. Haul out additional. parking
<b>Suffolk Yacht Harbour</b>	April-October only	£148.26	£1037.82(£2075.64 per annum)	£1482.60(£2965.20 per annum)	Parking. Haul out. Jet wash. Chandlery etc

*Maldon District Council is the only mooring authority that does not offer maintained moorings – see below*

**Management of Moorings Review 2009**

During March 2009, as part of the then 'Continuing Improvement Plan' the management of Council moorings was looked at with a view to licensing out that role.

Three companies were written to and invited to engage in the process by providing a breakdown of what their charges would be, not only to the Authority, but also to the end user, the mooring-holder.

Two of those companies were grateful that the Council had considered this move, but ultimately did not submit a price, and the third suggested that the minimum price for a maintained mooring would be several hundred pounds a starting price. The Council's lowest charge for a mooring at that time was £110 Inclusive of VAT.

The decision was taken not to proceed

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**INCOME AND OPPORTUNITIES****Hythe Quay Wharfage Charges 2017**

The present daily rate for a vessel using Hythe Quay Maldon as its home port is £21.00 per day inclusive of VAT.

It had previously been agreed by Committee some years ago that operators of Fully Ripped Thames Sailing Barges operating from Maldon as their home port would be offered a 50% discount if they agreed to enter into the Quarterly Berthing arrangement whereby they were invoiced quarterly regardless of the number of days that vessel was alongside Hythe Quay. With the exception of the 'Sailorman', a Thames Lighter barge owned by the Thames Barge Sailing Trust, all Thames Sailing Barges alongside Hythe Quay are on the 'Quarterly Berthing' rate.

At the Full Council meeting held on the 17th February 2017 it was agreed that the 50% discount would continue to be offered as in previous years. Table 1 below shows the wharfage charges at Hythe Quay in comparison with other similar areas and highlights the discounts offered elsewhere

A telephone and website survey of berthing areas was been undertaken by the River Bailiff in September 2017 to ascertain the discounts offered to large vessels. None of the areas that were canvassed offer discounts of any significance. One offered a 5% discount for prompt payment of the annual berthing fee.

The table below shows comparative mooring areas capable of offering berths for Thames Sailing Barges for 2017. All prices shown are inclusive of VAT unless otherwise stated .

**Table 1**

	<b>Daily Charge</b>	<b>Monthly charge</b>	<b>Quarterly charge</b>	<b>Annual charge</b>	<b>Discounts offered</b>
<b>Hythe Quay Maldon</b>	£21.00(no discount)	£630.00	£812.50.00(with 50% discount)	£3250.00	50%
<b>Ramsgate</b>	£79.92	£459.81	£1379.43	£5517.72	None
<b>Swale</b>	N/A	£498.75	£1495.29	£5981.18	None
<b>Brightlingsea</b>	£26.00	£520.00	£1560.00	£6240.00	None
<b>Shotley</b>	£71.55	£1647.00	£4941.00	£9315.00	5% for early payment of full annual charge
<b>Limehouse</b>	N/A	£1377.00	£2721.00	£9434.00	None
<b>Ipswich Dock</b>	£68.04	£1144.36	£3433.10	£13,732.41	None
<b>St Katherine's London</b>	£170.10	£5103.00	£15,309.00	£61,236.00	None

**NB. One 27 metre barge in St Katherine's Dock in London for one year is equivalent to the cost of eight barges at Maldon for three years**

The 50% discounted Quarterly Berthing rate offered to our existing customers is more generous by some margin, than any other port, Marina or berthing area around the South

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East of England. The only discount offered by any of the berthing areas canvassed was 5% for early payment, in full.

**Proposal:**

- ***To redress the charging gap for vessels paying wharfage at Hythe Quay with the 50% discounted berthing rate, and the full daily wharfage rate shown in table 1 above. It is proposed that an annual reduction of the discount of say 10% per annum be imposed, or a notice period given to all operators informing them of the removal of the discounted rate in its entirety.***

*To keep this in perspective, the full 'Daily' berthing rate of £17.50 + VAT, would be approximately 33% of Ipswich Dock, the nearest comparable location offering similar facilities to those at Hythe Quay.*

**Annual income per barge – Hythe Quay**

Charge Discounted	Ex VAT= £3250	Inc VAT= £3900
Charge No Discount	Ex VAT =£6500	Inc VAT=£7800

**Electrical supply****Background**

Vessels that are berthed alongside the quay for any length of time, or use Hythe Quay as their home port, have their own supply and Maldon District Council does not involve itself in this. However, from time to time a vessel visiting the quay may wish to plug into a supply. There are two 32amp supplies on the rear of the River Bailiff's workshop which are used on an ad-hoc basis by visiting barges. The supply can be isolated from inside the River Bailiffs workshop and is done so when there is no demand to avoid casual use by barges.

In April 2018 a new charge of £4.00 per day was introduced for the 240v/32Amp supply. This charge will be revised in 2018.

**Table 2** below highlights other ports charges for a 240v/32 Amp electrical supply

**Table 2**

	<b>Flat rate(32Amp)</b>	<b>Other charge</b>
<b>Hythe Quay Maldon</b>	£4.00 inc VAT	
<b>Ipswich Dock</b>	No	£21.64 p/qtr + £0.10 p/unit
<b>St Katherine's, London</b>	£9.20 p/day summer	£10.60 p/day winter
<b>Shotley, Suffolk</b>	£2.60 p/day	£18 p/qtr + £0.1212 p/unit
<b>Limehouse, London</b>	Electricity cards	
<b>Ramsgate, Kent</b>	£6.82 p/day or £34.54 p/wk	
<b>Swale, River Medway</b>	£6.00 p/day	

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## PARKING PERMITS

## Background

Parking permits were introduced for Hythe Quay in the late 1990's. These are enforced by the Councils parking Enforcement Officers using the off-street parking order for that area.

Given the limited number of spaces available on the quay, a strict number of permitted bays are allocated to each barge operator every year, generally two per barge. However, these are sometimes made available by one operator to another, to assist with bookings, that does not affect the overall number of vehicles on the quay at any one time.

With the exception of the Maldon Little Ship Club all parking bays are issued to barge operators using Maldon as their home port. At the time of introduction, it was agreed by Committee that only barge operators would be given a discount from the normal charge.

Table 3

Hythe Quay	Charge	VAT	Total
Season Ticket	£45.83	£9.17	£55.00
*SBA Discount	£25.00	£5.00	£30.00
Residents permit(locally)	£60.00	£12.00	£72.00

## Proposal

*Given the exclusive nature of Hythe Quay, the amenity value to the businesses that use of the quay offers, the generous discounts given to barge operators through the Quarterly berthing scheme and the limited number of spaces available on the quay it is proposed*

- ***that Hythe quay parking permits be charged at the same cost as has been proposed for residents parking permits for Maldon, and that***
- ***the current discounted cost of a permit for the Sailing Barge Association be discontinued***

## FEES AND CHARGES 2017/18

## Hythe Quay, Maldon &amp; Burnham Town Pontoon

WHARFAGE -HYTHE QUAY MALDON & BURNHAM TOWN PONTOON			
Daily charge	£17.50	£3.50	£21.00
Quarterly Fees ( Sailing Thames Barges only)	£812.50	£162.50	£975
Electricity 240v/32A supply - Daily	£3.33	£0.67	£4.00
Static events on vessels - Hythe Quay & Burnham Town Pontoon	£100	£20	£120
Exclusive use of Hythe Quay visitor pontoon	£100	£20	£120
Hythe Quay Visitor pontoon – Winter charge Oct - April	£25	£5	£30



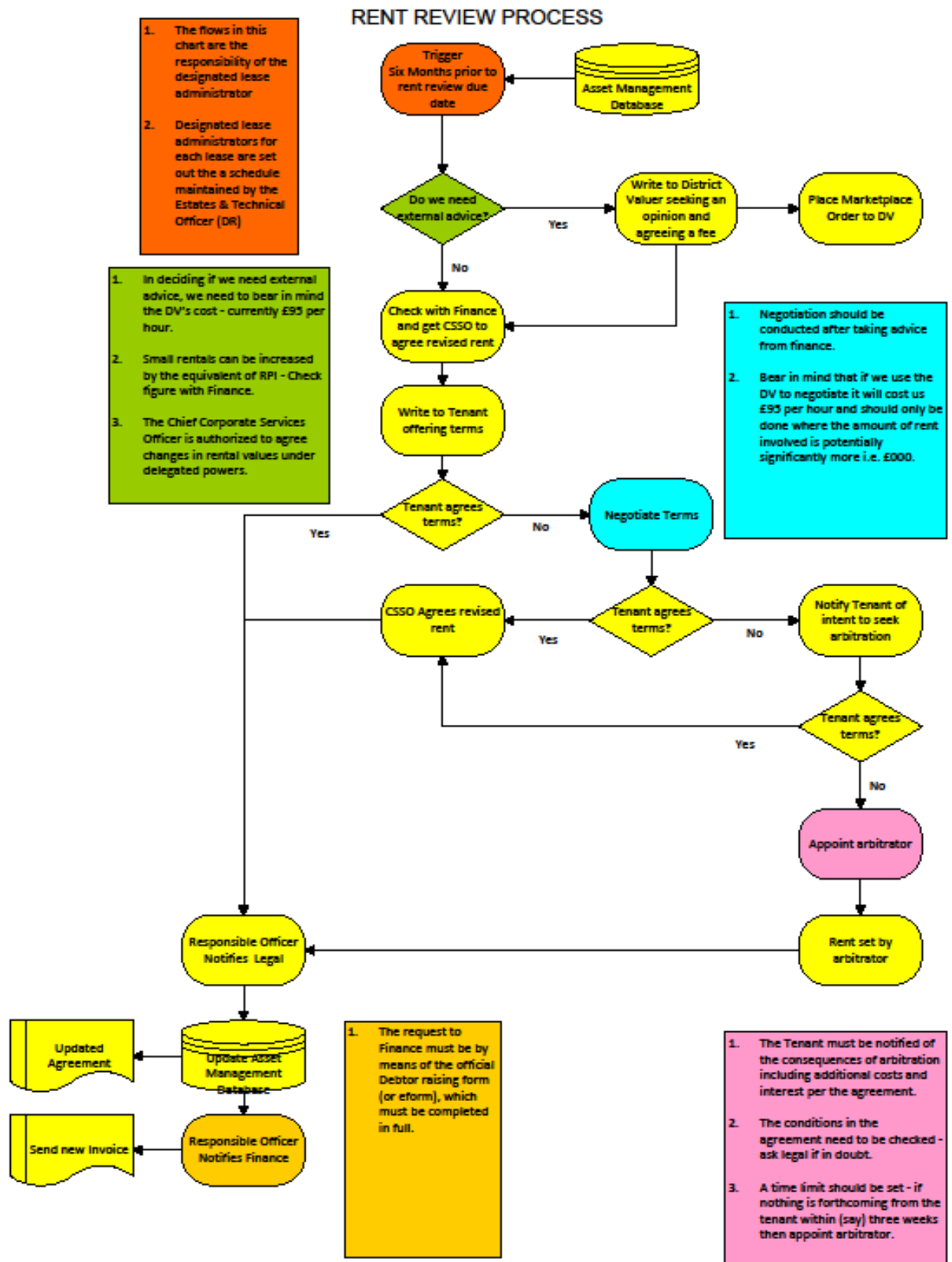
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<b>MOORINGS Annual charge</b>	<b>Ex VAT</b>	<b>VAT</b>	<b>Total cost</b>
Up to 7.99 metres	£110	£22	£132
Up to 9.99 metres	£183.33	£36.67	£220
Up to 14.99 metres	£247.50	£49.50	£297
15 metres and over	£320.83	£64.17	£385
<b>Mooring Registration Fee</b>	£104.17	£20.83	£125

# APPENDIX 1

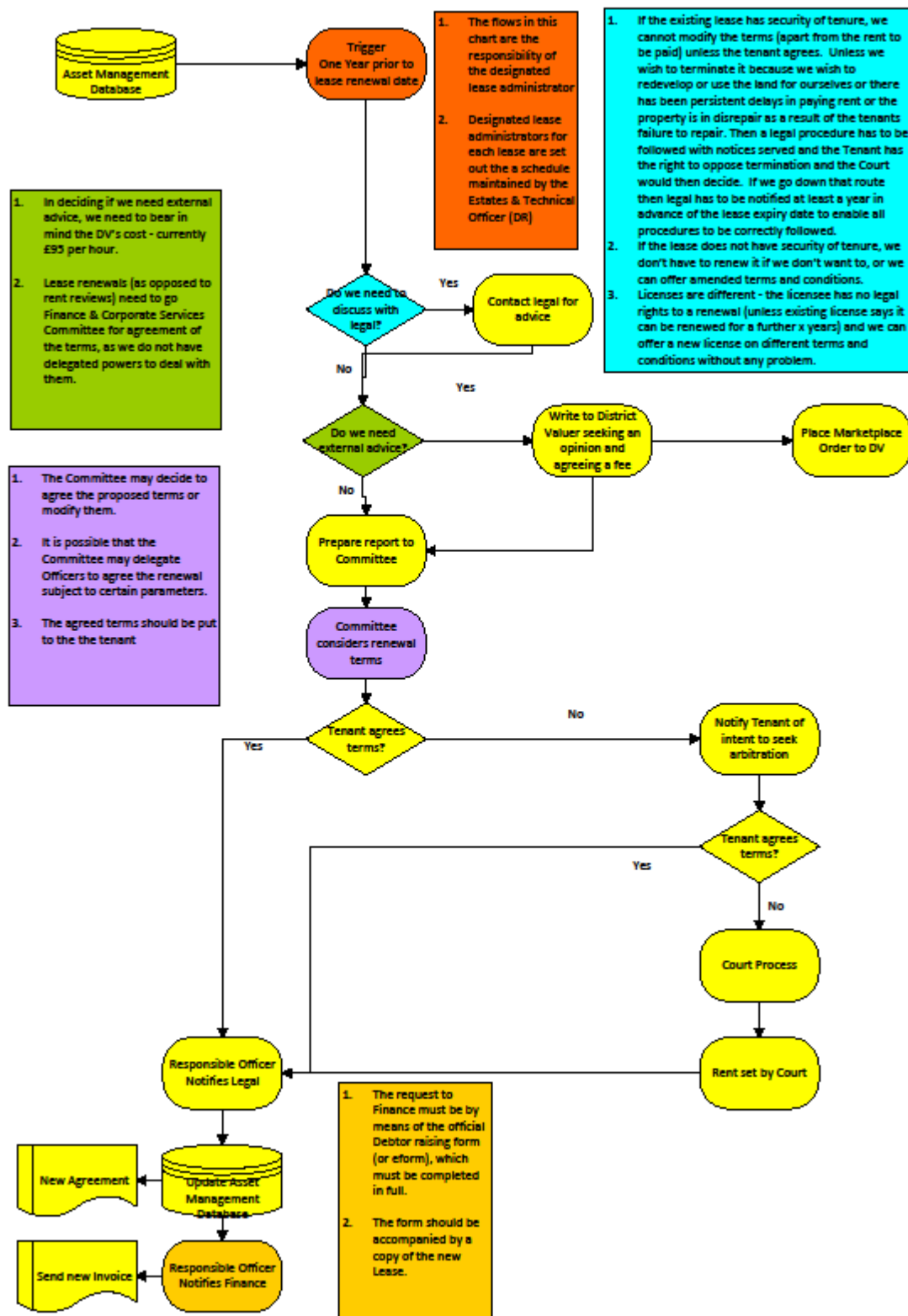
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# APPENDIX 1

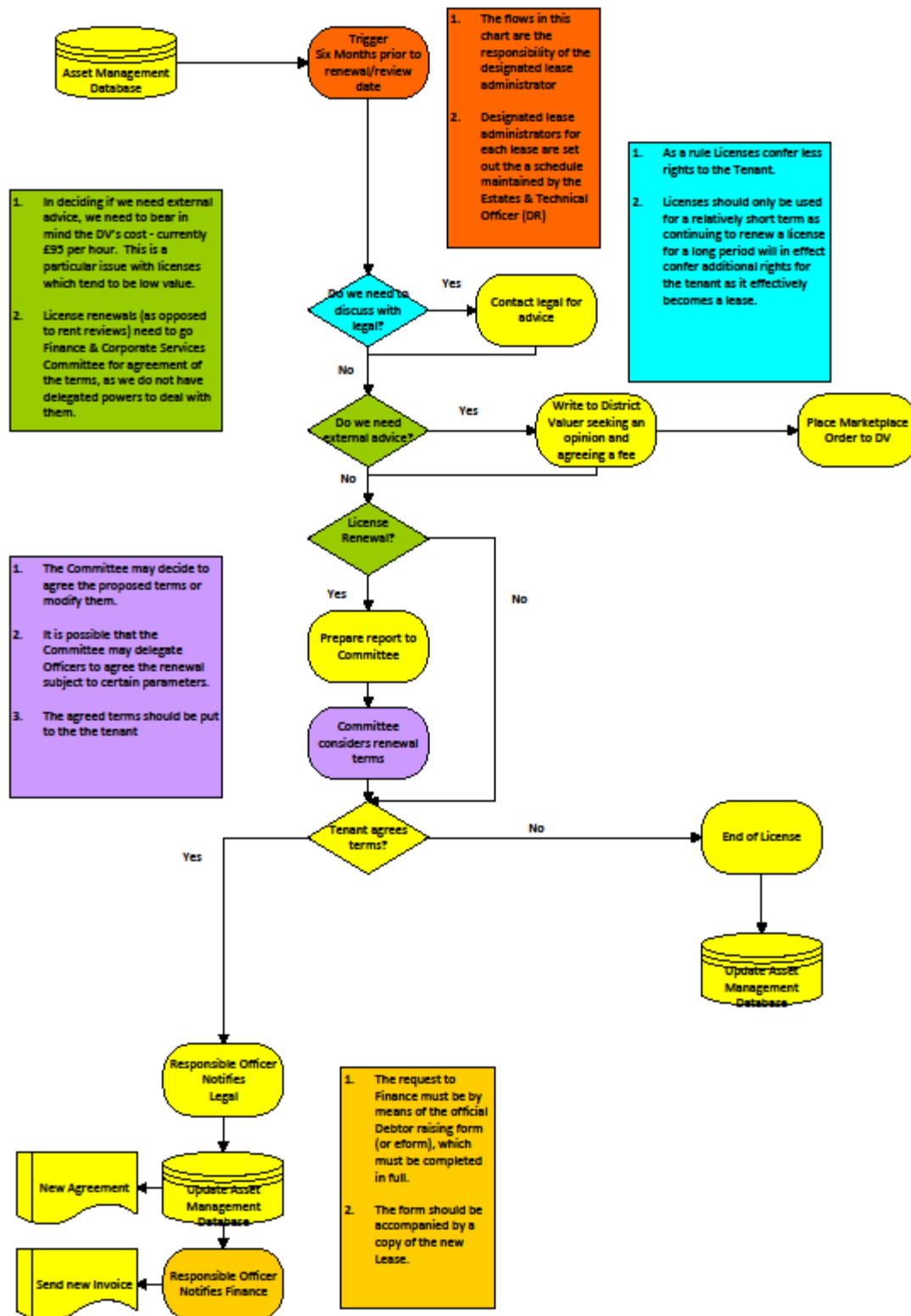
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### LEASE RENEWAL PROCESS



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## LICENSE RENEWAL/REVIEW PROCESS



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## MOORING REGULATIONS

*It is the responsibility of the mooring holder to ensure that their vessels and moorings are kept to a reasonable and seaworthy standard.*

**Mooring fees.** These must be paid in accordance with the terms on the invoice (28 days). If a mooring holder has not received an invoice, it shall be the responsibility of the mooring holder to inform Maldon District Council. Please inform Maldon District Council of any changes to your personal details held.

Maldon District Council reserves the right to remove moorings without further notice upon default.

- An applicant who requests and installs a mooring in the last quarter of the calendar year, but does not use that mooring for the intended purpose, shall be invoiced for the registration fee of the mooring.
- An applicant who installs a mooring during the last quarter of the calendar year (October to December) and uses that mooring for the storage of a vessel shall be charged the full amount.
- An applicant who applies for a mooring, but neither installs that mooring, nor, at that time is able to provide details of a vessel, shall be advised to re-apply when the mooring can be installed, or when the applicant is in a position to provide details of the vessel.
- An applicant who does not own a vessel, but requires a mooring, shall be charged the registration fee and the minimum mooring charge until details of the vessel can be provided.
- Mooring holders shall not be charged for the storage of small tenders on the foreshore.
- Applicants without a registered mooring wishing to store small rowing or sailing vessels on the foreshore shall be charged 50% of the annual minimum mooring charge.

**Cancellation of Mooring:** Full refunds will be made within 28 days of the date of the initial invoice. 50% refund of the mooring fee will be made if cancellation of the mooring is received within 3 months of the date of the initial invoice. No refund will be given if notification of cancellation is made after three months from the date of the initial invoice or in the event that the mooring remains in place.

**Mooring Identification.** Mooring buoys must be clearly marked with the Registration Number at all times. A registration number will be allocated once an application form has been submitted to the River Bailiff.

**Mooring Buoys.** Mooring buoys must be at least thirty centimetres in diameter if adjacent to the navigation channel. In all other cases a Thirty centimetre 'Pick-up' buoy will suffice. All Maldon District Council moorings must be **Yellow**.

**All motor driven vessels** with a speed of over TEN KNOTS must display their mooring registration number clearly on both sides of the vessel in black or white lettering not less than 15 centimetres high. All lettering must be in contrast to the colour of the vessel

**Insurance.** Maldon District Council requires that all vessels moored on Council moorings be insured. The Mooring Holder will indemnify the Council in respect of a claim arising from his/her mooring or the vessel using that mooring.

**Costs.** All costs will be sought by the Authority in respect of sinking, stranding, pollution or breaking adrift.

**Agreement.** Your payment to Maldon District Council in respect of a mooring invoice is your agreement of the Mooring Regulations herewith.

## GENERAL CONDITIONS

All moorings within the Maldon District Council Several Fishery are controlled by the Council and no person may lay or maintain a mooring in this area without the Council's permission. There is no right of transfer of a mooring to a new owner. All applicants are required to make an application to moor a vessel on the river.

Any mooring or vessel not clearly marked, inadequately buoyed, or in a dangerous or unseaworthy condition, will be removed and the Council will not be held liable for any loss or damage caused by such removal. All associated costs will be sought by the Council from the owner.

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All tackle or vessels removed by the Council will be held for a period of 28 days following date of removal. Any vessel or equipment removed may be disposed of. Any monies obtained by the Council for vessels or equipment will be deposited in a Council held account and will become the property of the Council after a further period of twenty eight days. All costs incurred by the Council in the disposal of the forfeited equipment will be sought.

**BE ADVISED THAT AN INFRINGEMENT OF THE BYELAWS MAY RESULT IN YOUR MOORING BEING REMOVED BY THE COUNCIL.**

**Further information on this or any other subject relating to the River Blackwater can be obtained from the River Bailiff.**

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