

Committee Agenda



**Epping Forest
District Council**

CONSTITUTION WORKING GROUP Thursday, 25th January, 2018

Place: Committee Room 1, Civic Offices, High Street, Epping

Room: Council Chamber

Time: 7.00 pm

Democratic Officer **Services** V. Messenger Tel: (01992) 564243
Email: democraticservices@eppingforestdc.gov.uk

Members:

Councillors M McEwen (Chairman), M Sartin (Vice-Chairman), D Dorrell, L Hughes, S Kane, J Philip, C C Pond, C P Pond, D Stallan and J H Whitehouse

MEMBERS ARE REMINDED TO BRING THEIR COPIES OF THE EXISTING CONSTITUTION DOCUMENT WITH THEM TO THE MEETINGS – FURTHER COPIES CAN BE SUPPLIED ON REQUEST.

1. APOLOGIES FOR ABSENCE

2. SUBSTITUTE MEMBERS

(Director of Governance) To report the appointment of any substitute members for the meeting.

3. NOTES OF PREVIOUS MEETING (Pages 3 - 8)

To agree the notes of the meeting of the Working Group held on 28 September 2017.

4. TERMS OF REFERENCE & WORK PROGRAMME (Pages 9 - 12)

(Director of Governance)

(a) To note the Terms of Reference (resolved by Council on 1 November 2017) attached; and

(b) To consider the current Work Programme attached.

5. PROCUREMENT RULES (Pages 13 - 50)

(Director of Communities) To consider the report on the Procurement Rules, adopted by Council in 2016, which details the review undertaken by officers after one year's operation and the Appendix, which identifies the proposed changes.

6. CONSTITUTION - REVISIONS & AMENDMENTS

(Director of Governance) An updated version of the Constitution was published on 3 January 2018, to include the minor change to the wording of the Officer Employment Rules agreed by the Council at its meeting on 21 December 2017.

No revisions or amendments have been made to the Constitution since the previous meeting of the Working Group, pursuant to the authority delegated to the Director of Governance. The Members' Allowances Scheme for 2018/19, which was also agreed by the Council on 21 December 2017, will be included in a future update of the Constitution.

7. PLANNING PROCESS REVIEW 2017/18 - DELEGATION, OBJECTIONS AND COMMITTEE SYSTEMS (Pages 51 - 66)

(Assistant Director of Governance) To consider the report attached.

8. DATE OF NEXT MEETING

To note that the next meeting of the Constitution Working Group will be held on 20 February 2018 at 7pm.

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee:	Constitution Working Group	Date:	Thursday, 28 September 2017
Place:	Committee Room 1, Civic Offices, High Street, Epping	Time:	7.00 - 8.30 pm
Members Present:	Councillors M McEwen (Chairman), M Sartin (Vice-Chairman), D Dorrell, L Hughes, S Kane, J Philip, C C Pond, C P Pond, D Stallan and J H Whitehouse		
Other Councillors:	None		
Apologies:	None		
Officers Present:	S Hill (Assistant Director (Governance)), V Messenger (Democratic Services Officer) and N Richardson (Assistant Director (Development Management))		

1. Notes of Previous Meeting

RESOLVED:

That the notes of the last meeting on 20 September 2016 be agreed as a correct record.

2. Terms of Reference & Work Programme

(a) Terms of Reference

The Assistant Director of Governance reported that the Constitution Working Group had completed its review of the Constitution and this had since been adopted by Council in 2016. Therefore, point 1 of its Terms of Reference that read, "To complete a review of the Council's Constitution by 31 March 2016 and to recommend new arrangements accordingly," should now be deleted.

Recommended:

That the Terms of reference for the Working Group be amended to remove its initial requirement to have reported to the full Council by March 2016 on the new Council Constitution as this action has now been completed as set out at Appendix 1 to this report;

(b) The Work Programme was noted as below.

- i. Review of Planning Protocol (discussion at this meeting);
- ii. Gifts and Hospitality Provisions (scheduled for 20 February 2018 meeting);
- iii. Procurement Rules (Report from Director of Communities – delayed until 20 February 2018); and

- iv. Draft Licensing Protocol (in consultation with the Licensing Committee – scheduled for 20 February 2018 meeting).

3. Constitution - Revisions & Amendments

The Assistant Director of Governance reported on the following revisions that needed to be made to the Constitution to ensure that the Constitution remained fit for purpose. A discrepancy in the provisions of Article 6 (Overview and Scrutiny), paragraph 22, and Procedure Rule Q3(1) of the Constitution was recently identified as a result of a public question submitted to the O&S Committee. While the provision in Article 6 allowed the public to ask questions of the Chairman of O&S Committee at its ordinary meetings, the provision made in Procedure Rule Q3(1) appeared to suggest that public questions could only be made to the O&S Chairman at meetings of the Council, rather than the committee itself.

Members supported the recommendations made and Councillor D Stallan asked for these to be published in the Council Bulletin.

A revised edition of the Constitution was published on 20 June 2017 to reflect changes made to Portfolio Holder responsibilities, officer delegation arrangements and the current members allowances scheme.

Agreed:

- (1) That a report be made to the Council recommending:
 - (a) That the following revisions be made to the Procedure Rules of the Constitution with immediate effect:

Q3(1) (Revised) “Members of the public may ask questions of the Leader of the Council, any Portfolio Holder, or the Chairman of the Overview and Scrutiny Committee, at ordinary meetings of the Council”;

Q3(2) (New) “Members of the public may also ask questions of any Portfolio Holder at ordinary meetings of the Cabinet and of the Chairman of the Overview and Scrutiny Committee at ordinary meetings of the Committee”; and
 - (b) That the following revision be made to Appendix 1 of Article 6 of the Constitution with immediate effect:

1(q) “to review the implications of consultation documents relating to matters affecting the Epping Forest District, where requested by members or considered appropriate by the relevant Service Director, and to respond to such matters on behalf of the Council”; and

Subject to the agreement of this proposed revision to the Constitution, the existing delegation made by the Overview and Scrutiny Committee for the Select Committees to consider consultation documents on its behalf, would also need to be revised. This would be addressed through a revision to the Terms of Reference for each Select Committee; and

- (2) That recent changes to the Constitution implemented in accordance with the authority delegated to the Director of Governance for the maintenance of the Constitution, be noted, as followed:
 - (a) A revised schedule of Portfolio Holder Responsibilities (Part 3) (Scheme of Delegation - Appendix 4);
 - (b) A revised schedule of Officer Delegation Arrangements (Part 3) (Scheme of Delegation - Appendix 5); and
 - (c) The adopted Members' Allowances Scheme and schedule of implementation for 2017/18 (Part 6 – Scheme of Allowances).
 - (d) Appropriate revisions made throughout the Constitution, to reflect changes to Portfolio Holder Responsibilities from the current municipal year.

4. New Planning Code of Practice

The Assistant Director of Governance reported on proposals for a new Code of Practice in Planning, which would replace the current Planning Protocol contained in the Constitution.

The Council had, when seeking an external review of the main Constitution document in 2016, sought guidance from Counsel on the structure of such a code. Additionally, the Standards Committee had been asked to comment on the new Code as that Committee had responsibility for Code of Conduct advice.

The Working Group considered the report and made suggested changes to the Planning Code of Practice, which would require the assent of the Council.

Recommended:

- (1) That a report be made to Council recommending the adoption of the new Planning Code of Practice; and
- (2) That subject to (1) above, the new Planning Code of Practice be published in the Council Bulletin.

5. Planning Process Review 2017/18 - Scoping and Council Referral

The Assistant Director of Governance outlined the agenda report, which concerned whether to recommend allowing members to opt in or opt out of membership of Area Plans Sub-Committee South during the municipal year or only at Annual Council. The second matter concerned the implications of an increase in planning applications to deliver the growth identified in the Draft Local Plan and how this would impact on the Council (officers and members), and how the wider review of the planning process should be phased. Counsel had commented that the Council probably had not received more pre-emptive applications because of the high percentage of green belt land in the District. The report outlined the scope of the review at points 5 and 6, and listed relevant documents. The Monitoring Officer also needed to be satisfied the Council was working within the law.

Area Plans Sub-Committee South

The Assistant Director of Governance said that this committee was significantly larger than the other two. The Area Plans Sub-Committees had been reduced to three by Ongar and Epping joining together to form Area Plans Sub-Committee East, while Area Plans Sub-Committee West had stayed the same 'area' membership. Area Plans Sub-Committee South's membership had used to be pro-rata, was then limited to seventeen members and lastly that members had to opt in or opt out at Annual Council at the beginning of each municipal year, which was then fixed for that year. Therefore, Councillor D Sunger had recently had to wait until Annual Council this year to join the membership of Area Plans Sub-Committee South.

Councillor C C Pond said that in 2007 the membership had comprised all ward councillors. He said that regarding the motion proposed by Councillor S Murray, councillors should not have the choice to opt in and it should not be possible to opt out either. The Assistant Director of Governance replied that you could have the option to opt out but only Council could re-appoint councillors. Councillor S Kane commented that this should serve for the year or term. The Assistant Director of Governance commented that Democratic Services spent a lot of time chasing members of Area Plans Sub-Committee South to opt in / opt out. Councillor M Sartin said that Area Plans Sub-Committee East would become too small a committee if members were allowed to opt out. Councillor D Stallan asked for the Constitution to be kept as it was, that Democratic Services should not have to chase councillors to opt in / opt out, but if a member was elected during the municipal year, then to be allowed to opt in at the next full Council meeting.

Councillor D Dorrell proposed removing clause (3) and inserting a clause that stated, 'Newly elected members may be allowed to opt in at the next full Council meeting, and that this could not be changed during the year'. This was seconded by Councillor C C Pond who said that another motion could be proposed at the next Council meeting.

Review and scope of the Planning Process

The Assistant Director of Governance focused on the scope of the review and that this was a place to start for the next meeting. The Council needed a requirement to work across a wider area especially when sites crossed into another authority, as with Harlow Council. This was to avoid discrepancies occurring, for instance, if Harlow dealt with a planning application relatively quickly yet this Council was still cogitating after a year. It was advisable to work with partner authorities and be mindful of similar practises, as there were a lot of strategic sites around Harlow, on which there would need to be discussions. He would ask the Monitoring Officer to speak to the Harlow Council Monitoring Officer.

Councillor J H Whitehouse asked how members would be involved in masterplanning. N Richardson replied that the masterplan would be situated around Harlow and encouraged members to get involved by attending any presentation meetings. Members would also be kept up to date as a masterplan evolved regarding the mix, type, density of housing and infrastructure (better / bigger roads, GP surgery, schools etc). Members would want to get the best deal for their electorate. Councillor M Sartin said that masterplan meetings would be very useful. N Richardson added that there would be a quality review panel, a panel of experts, that would have a say on design and layout.

Members gave guidance on the areas where such a review should begin at the next meeting.

Recommended:

That a report be made to the Council recommending the Article 10, Changes to Membership of Area Plans Sub-Committees, as below:

- (1) That the existing paragraph (3) of Article 10 of the Constitution be deleted and substituted with the words “(3) Newly elected members maybe appointed to the relevant Area Plans Sub-Committee at the next ordinary meeting of the Council” as set out in the revised Article 10 attached at Appendix 3 to this report;
- (2) The Assistant Director of Governance to ask the Monitoring Officer (Director of Governance) to speak to the Harlow Council Monitoring Officer on similarities in practises; and
- (3) That for the next meeting a report be made on:
 - (i) Officer delegations;
 - (ii) How objections are considered and resolved;
 - (iii) How objections trigger a member review;
 - (iv) Committee systems for members considering planning applications; and
 - (v) Style of officer reports.

6. Date of Next Meeting

It was noted that an extra meeting of the Working Group would be held on 4 December 2017 at 7pm.

CHAIRMAN

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CONSTITUTION WORKING GROUP

TERMS OF REFERENCE

Title: Constitution Working Group
Status: Working Group
Terms of Reference: (1) To review any aspect of the authority's constitutional arrangements as requested by the Council; (2) To undertake general reviews of specific elements of the Constitution in order to ensure that the authority's constitutional arrangements complement current legislative requirements and decisions made by the Council; and (3) To consider any proposals of the Director of Governance for necessary revision to any element of the Constitution. Reporting: The Working Group shall report directly to the Council in connection with its Terms of Reference and the achievement of its work programme.
Chairman: Councillor M McEwen

S. Hill (November 2017).

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Constitution Working Group (Chairman – Cllr M McEwen)

Work Programme

Item	Starting Dates	Progress
(1) Constitution – proposed minor amendments	28 September 2017	Article (6) O&S – Q3(1), Q3(2) and Appendix 1, 1(q). Article 10 (Membership of Area Plans Sub-Committees) – paragraph 3 replaced. Completed (Adopted by Council on 1 November 2017).
(2) Planning Code of Practice	28 September 2017	Completed (Adopted by Council on 1 November 2017).
(3) Planning Process Review 2017/18	25 January 2018	Report to review: (i) Officer delegations; (ii) How objections are considered and resolved; (iii) How objections trigger a member review; (iv) Committee systems for members considering planning applications; and (v) Style of officer reports.
(4) Procurement Rules	25 January 2018	To review after one year's operation. (Adopted by Council – April 2016).
(5) Review of Audit & Governance / standards	20 February 2018	Review required after two years at members' request.
(6) Gifts and hospitality advice	20 February 2018	

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Report to Constitution Working Group

Date of meeting: 25th January 2018



**Epping Forest
District Council**

Subject: Review of Procurement Rules

Responsible Officer: Alan Hall – Director of Communities (01992) 564004

Democratic Services Officer: Vivienne Messenger (01992) 564265

Recommendations:

- (1) That the outcome of the 12-Month Review of the Council's Procurement Rules by the Procurement Rules (officer) Working Party and the Corporate Governance Group be noted;**
- (2) That, as a result of the Review, the proposed changes to the Procurement Rules shown in the revised document attached as an Appendix be approved for submission to the next meeting of the Council for adoption; and**
- (3) That no changes be made to the Total Contract Values thresholds set out in Appendix 1 of the Procurement Rules.**

Report

1. In March 2016, the Working Group considered and agreed to recommend to the full Council a new set of Procurement Rules, to replace the Council's former Contract Standing Orders. The purpose of the new Procurement Rules is that they:

- Adopt a more modern and flexible approach than previously;
- Are simpler to understand and comply with than the former Contract Standing Order;
- Are more responsive to the current and future procurement needs of the Council;
- Meet the Public Contracts Regulations 2015; and
- Ensure appropriate controls and probity to safeguard the use of public money.

2. The new Procurement Rules were adopted by the Council in April 2016, following which they became effective in June 2016. In accordance with good practice, officers have undertaken a review of the Procurement Rules after one year's operation, initially through the Procurement Rules Working Party (that formulated the new Rules in the first instance), chaired by the Director of Communities, with the recommendations of the Working Party considered by the (officer) Corporate Governance Group, chaired by the Chief Executive.

3. Generally, both the Working Party and the Corporate Governance Group felt that the introduction of the new Procurement Rules had been very successful and had been welcomed by officers across the Council. It was felt that staff better understood the Council's requirements and that the Procurement Rules were easier to follow than the previous Contract Standing Orders and had resulted in far fewer breaches.

4. However, the Working Party did identify a small number of suggested minor changes, the main ones of which are summarised below.

- Section 2(d) - some slight revisions are proposed, requiring Spending Control Officers to consult the Council's Legal Team on the use of all Framework Agreements, to ensure that Spending Control Officers do not by-pass the Legal Team before using Framework Agreements and issue purchase orders instead of contracts.
- Section 21 of the Procurement Rules authorises Spending Control Officers to extend existing contracts, where the contract allows an extension, up to the maximum period allowed by the contract. However, following comments received from some members, a proposed change is proposed to require that reports to Portfolio Holders and Cabinet about tender awards also include details within the recommendations about any proposed contract extensions.
- Similarly, a new requirement has been included to consult the relevant Portfolio Holder by email on their views about proposed extensions of contracts with values over £1million, before contracts are extended. This would also ensure that Spending Control Officers consider whether or not contracts should be extended well in advance of the contract end date, in case a decision is made to procure a new contract.
- Based on the experience of officers over the review period, the Corporate Governance Group has concluded that it is not worth the Council incurring the cost of requiring contractors to take on Performance Bonds since, despite the cost having to be met by the Council, they are reliant on the contractor's choice of bond company and the bond company meeting the contractor's obligations if the contractor goes into liquidation. Furthermore, since many contractors do not have parent companies, it is felt that the alternative requirement to provide a parent company guarantee should not apply either.

A proposed change has therefore been made to the Procurement Rules to no longer require either a Performance Bond or a Parent Company Guarantee, with a proviso that Spending Control Officers may consider it appropriate to use one of these arrangements for certain types of contracts where they are considered to be both appropriate and beneficial for the Council (e.g. for long term, high value service contracts).

- Section 4.5 of the Procurement Rules currently requires Spending Control Officers to seek advice from the Accountancy Team regarding the calculation to be used to assess Liquidated and Ascertained Damages. Since this is a standard calculation, it is proposed that Spending Control Officers should calculate the appropriate level of Damages themselves, using the standard spreadsheets that are available, without reference to the Finance Team.
- Section 4.8 - The Working Party concluded that the level of cover for insurances did not require amendment. However, in order to aid reading, the different insurance cover requirements have been provided in bullet point form within this section.
- Section 24.1 currently requires the Corporate Procurement Manager to obtain procurement information required by Part 2.1 of the Local Government Transparency Code from Spending Control Officers every 3 months, and to ensure that the information is published every 3 months in accordance with the Code. Since the Procurement Manager obtains this information from a variety of sources, and publishes the information every 3 months, there is no need for this information to be sought from Spending Control Officers every 3 months as currently required

by the Procurement Rules. It is therefore suggested that the requirement for the Corporate Procurement Manager to solicit information from Spending Control Officers every 3 months be deleted.

5. The Working Party also considered whether or not the thresholds for the Total Contract Values within the 5 contract categories listed in Appendix 1 of the Procurement Rules should be amended, but concluded that no changes should be made.

6. The proposed draft revised Procurement Rules, incorporating the proposed changes are provided as an Appendix to this report.

7. The Working Group is asked to note the outcome of the Review, consider the proposed changes to the Procurement Rules and, subject to any views of the Working Group, recommend the adoption of the updated Procurement Rules to the next meeting of the Council.

8. Once the new Procurement Rules have been adopted, further training sessions will be held for relevant staff to provide a refresher and to advise them of the changes.

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Procurement Rules

May 2017

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10. Rules for inviting Tenders where more than one Tender is required
11. Additional rules for inviting and accepting Tenders based on the Most Economically Advantageous Tender (MEAT) (i.e. price and quality) and/or a Schedule of Rates
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Appendix 1 Table of Tendering Requirements for Nos. of Tenders, Returns and Openings

Appendix 2 Glossary and Definitions of Terms used in the Procurement Rules

Documents referred to in (and that support the Operation of) these Procurement Rules:

- | | |
|--|---|
| (a) Council's Procurement Toolkit | [Available here] |
| (b) Council's Corporate Procurement Checklist | [Available here] |
| (c) A Basic Guide to Public Sector EU Procurement Legislation | [Available here] |
| (d) Council's Standard Pre-Qualification Questionnaire (PQQ) | [Available here] |
| (e) Council's Procedure Note on Financial Checks for Tender Processes | [Available here] |
| (f) Crown Commercial Service's Guidance on Electronic Procurement & Electronic Communication | [Available here] |
| (g) Council's EFDC Guidance of Electronic Tendering | [Not yet available] [Available here] |
| (h) Council's Tender Return Label | [Available here] |
| (i) Council's Certificate of Bona Fide Tendering | [Available here] |
| (j) Council's Formal Declaration of Tender Offer | [Available here] |
| (k) EFDC Corporate MEAT Assessment Methodology | [Available here] |
| (l) Standard Procurement Process ("Regulation 84") Report | [Available here] |
| (m) Council's Standard Consultants Agreement | [Available here] |

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(Note: A Glossary and Definitions of Terms used in these Procurement Rules is provided at Appendix 2. Reference to such terms in these Procurement Rules are denoted with a capital letter)

1. Introduction

- 1.1 These Procurement Rules set out the procedures that must be followed by all officers for the procurement of Contracts for any Works, Supplies or Services on behalf of the Council, including Official Orders issued through the Council's Marketplace electronic ordering system. A serious/wilful failure to comply with these Procurement Rules could result in disciplinary action being taken.
- 1.2 They seek to adopt a modern and flexible approach to procurement, that is easy to follow and comply with, and are responsive to the Council's current and future procurement needs, whilst ensuring appropriate controls and probity to safeguard the use of public money. They are also set out in a logical, sequential order to help lead officers through the procurement process.
- 1.3 These Procurement Rules also relate to certain disposals of land and property, and other property transactions, which are covered in Section 25 below. Associated delegations to officers are covered by the Schedule of Officer Delegations within the Council's Constitution. However, these Procurement Rules do not relate to the acquisition of land or properties, which must be authorised through reports to the relevant Portfolio Holder or Cabinet as appropriate.
- 1.4 The transitional arrangements to apply when these Procurement Rules are first introduced is that, wherever possible, any procurement activities for procurements commenced before the adoption of these Procurement Rules must comply with these Procurement Rules. For example, if a Select List was formulated before the adoption of these Procurement Rules (under the Council's previous Contract Standing Orders), but Tenders had not been invited at the time of adoption, the Tenders should still be invited in accordance with these Procurement Rules.
- 1.5 These Procurement Rules represent the Council's Contract Standing Orders for the purposes of Section 135 of the Local Government Act 1972. The Council's useful Procurement Toolkit can be [\[downloaded here\]](#).

2. General rules

(a) Responsibility

- 2.1 It is the responsibility of the designated Spending Control Officer for the budget that will be used to fund the resultant Contract to ensure that these Procurement Rules are followed.
- 2.2 When the Total Contract Value of a Contract or Official Order to be issued is less than the minimum for Contract Category 1 at Appendix 1, subject to the requirements at Section 2.9 below (Total Contract Values over a 12-month period), these Procurement Rules do not have to be followed. However, it is the responsibility of all Spending Control Officers to try to obtain value for money, in terms of price and quality, through any Contract or Official Order that they issue, irrespective of its value. Spending Control Officers should therefore be aware of what constitutes appropriate price and quality for the Works, Supplies or Services sought.

(b) Approach to procurement

- 2.3 In order to help ensure compliance, and to provide a documented audit trail, Spending Control Officers must use and complete the Council's "Corporate Procurement Checklist" which can be [\[downloaded here\]](#) throughout the procurement process for any Contracts with a Total Contract Value within Category 2 of Appendix 1 or higher. They must also keep a copy of the completed "Corporate Procurement Checklist" on

the relevant Contract file, both throughout the procurement process and for at least 3 years after the completion of the Contract.

- 2.4 Reference to “Directors” throughout these Procurement Rules also includes the relevant Assistant Director responsible for providing the service to which the relevant procurement relates, except where an Assistant Director is also the Spending Control Officer responsible for undertaking the procurement. Where a Director is responsible for a procurement, the Chief Executive will take the role of the Director.

(c) Compliance with EU Regulations additional to these Procurement Rules

- 2.5 These Procurement Rules do not set out or duplicate the legal requirements that must be followed for EU Regulated Contracts with Total Contract Values above the value thresholds set out in the Public Contracts Regulations 2015. For such EU Regulated Contracts, officers must comply with the requirements of the Public Contracts Regulations 2015. If there is any conflict between these Procurement Rules and the Public Contracts Regulations 2015 or any other legislation, then the relevant legal requirements take precedence. Advice on the Public Contracts Regulations 2015 can be obtained from the Corporate Procurement Officer. A “Basic Guide to Public Sector EU Procurement Legislation” can be [\[downloaded here \]](#). However, these Procurement Rules do set out the Council’s own requirements for complying with EU Regulated Contracts specified within the Public Contracts Regulations 2015, which are shown in italic text. Particular attention is drawn to Section 17 of these Procurement Rules, which explains the Council’s requirements, in respect of EU Regulated Contracts, for Spending Control Officers to complete and maintain the required Procurement Process Report under Regulation 84 of the Public Contracts Regulations 2015 throughout the procurement process.

(d) Framework Agreements

- 2.6 Where appropriate, Spending Control Officers are encouraged to use central contracts and existing Framework Agreements – either through the Essex Procurement Hub or with other organisations to which the Council has access. Where such central contracts or existing Framework Agreements are used, [Spending Control Officers must inform the Council’s Legal Team of their proposed use, so that they can provide guidance and advice on the Council’s corporate legal requirements.](#) Some parts of these Procurement Rules do not have to be followed – except where competitive tendering is undertaken amongst Contractors on Framework Agreement Select Lists. Spending Control Officers should seek advice, and receive confirmation in writing, from the Council’s Corporate Procurement Officer on which parts of these Procurement Rules do not have to be followed in such circumstances.

(e) Exemption from Procurement Rules

- 2.7 These Procurement Rules do not have to be followed in the following circumstances:
- (a) Where the relevant Director or Asst. Director obtains formal approval from the relevant Portfolio Holder or the Cabinet, confirming that he/she/it is satisfied that the work required could reasonably only be undertaken by one specialist contractor/supplier, together with the reasons.

Such approval is required from:

- (i) A Portfolio Holder for Contracts with a Total Contract Value within Contract Categories 1-3 at Appendix 1; and
- (ii) The Cabinet for Contracts with a Total Contract Value within Contract Category 4.

This provision does not apply for EU Regulated Contracts with a Total Contract Value within Contract Category 5 (i.e. above the EU Procurement Thresholds); or

(b) Where it is essential to meet an immediate need, subject to the Spending Control Officer seeking advice from the Corporate Procurement Officer where the Total Contract Value is within Contract Category 5 at Appendix 1 (i.e. above the EU Procurement Thresholds), which;

- (i) Has been created by a sudden emergency; or
- (ii) Is outside the Council's control (e.g. by order of the Courts or another body with an equivalent power), or
- (ii) Has some other over-riding urgency.

In such circumstances, the Spending Control Officer must provide a report to the next available meeting of the Corporate Governance Group explaining the reasons why the matter had to be treated as a matter of urgency and why these Procurement Rules could not be followed.

If it is necessary to incur expenditure outside of the Council's budgetary framework, Spending Control Officers must comply with the additional relevant requirements within the Council's Financial Regulations

- 2.8 In other circumstances, where a Spending Control Officer feels that there are good reasons why specific parts of these Procurement Rules should not be followed for a particular procurement, they may seek a waiver from compliance with that part of the Procurement Rules. Requests for such waivers must be made in writing by the Spending Control Officer. Approvals can only be given in writing (or through a Portfolio Holder Decision or Cabinet minute as appropriate) by the relevant person/body listed at Appendix 1 who is responsible for accepting Tenders for the Contract Category relating to the Total Contract Value of the proposed Contract.

(f) Cumulative value of Contracts

- 2.9 When seeking to procure a Contract, Spending Control Officers must:

- (a) Consider and assess the likely total value of Contracts and/or Official Orders to be provided to a potential Contractor by their Directorate over a 12 month period for similar Works, Supplies and/or Services (or over a 4-year period where the total value would exceed the thresholds for EU Regulated Contracts set out in the Public Contracts Regulations 2015 and reproduced at Appendix 1) that could, alternatively, be procured through one or more Contracts or Framework Agreements over that period; and
- (b) If the total value of such Contracts over any 12 month period is likely to be more than the threshold for Contract Category 1 listed at Appendix 1, seek Tenders and procure a Contract in accordance with these Procurement Rules.

- 2.10 Contracts must not be artificially separated to avoid compliance with either these Procurement Rules or the Public Contracts Regulations 2015.

(g) Breaches of Procurement Rules

- 2.11 If it comes to light that these Procurement Rules have not been followed, the relevant Assistant Director must submit a report to the next available meeting of the Corporate Governance Group (or successor officer group) explaining the reason for the breach and, if appropriate, the proposed remedy for correcting or mitigating the effects of the breach. The CGG will identify any breaches that it considers to be sufficiently serious to be reported to the Audit and Governance Committee (or successor member body).

- 2.12 The provision of in-house Council Services is excluded from the requirement of these Procurement Rules.

(h) Suspension of Contractors

- 2.13 Contractors can only be suspended from consideration for future contracts on the grounds of one of the mandatory and discretionary exclusions set out in the Public Contracts Regulations 2015 and only for the periods specified in the Public Contracts Regulations 2015.
- 2.14 If any Spending Control Officer considers that a Contractor should be suspended from consideration for future Contracts with the Council for a specified period, they must submit a report to the Corporate Governance Group;
- (a) Explaining the reasons for suspending the Contractor;
 - (b) Recommending a proposed period of suspension; and
 - (c) Seeking approval to such a decision.
- 2.15 If the Corporate Governance Group agrees that a Contractor should be suspended, the Spending Control Officer must:
- (a) Advise the Corporate Procurement Officer of the decision, who must in turn notify all Directors and Assistant Directors of the decision; and
 - (b) Advise the Contractor of the reasons for the suspension and the period of the suspension.

(i) Conflicts of interest

- 2.16 No person or body who has given material advice to the Council, or a Consultant acting on behalf of the Council, on a proposed Contract can then submit a Tender for that Contract, where more than one Tender is required (i.e. for Contracts with a Total Contract Value within Contract Category 1 of Appendix 1 or higher).

(j) Absence of post-holder

- 2.17 In the absence of the post-holder, the responsibilities of specifically named posts within these Procurement Rules, can be discharged by:
- (a) Their Director or Assistant Director; or
 - (b) An officer designated by them.
- 2.18 All designations of committees, portfolio holders, other bodies and officers referred to in these Procurement Rules also include successor bodies and posts.

3. Exceptions for Central Purchasing Bodies

- 3.1 These Procurement Rules do not apply for the procurement of Contracts by a Central Purchasing Body, of which the Council is a member, or under which the Council is entitled to benefit by virtue of its status as a public authority. In such circumstances, the rules for procurement that relate to the member of the Central Purchasing Body undertaking the procurement on behalf of the Central Purchasing Body will apply.
- 3.2 However, where Tenders are invited by an officer of the Council on behalf of a Central Purchasing Body, these Procurement Rules must be followed.
- 3.3 In any event, if the value of the Works, Supplies or Services that the Council will be required to fund itself through a Central Purchasing Body or collaborative arrangement is:

- (a) Within Contract Categories 1 or 2 at Appendix 1 - The relevant Director or Asst. Director must be satisfied that the terms and conditions of the proposed Contract are appropriate under all the circumstances, taking any legal advice from the Asst. Director (Legal Services) that the Spending Control Officer, Director and/or Asst. Director considers necessary.
- (b) Within Contract Category 3 at Appendix 1 or higher - The Spending Control Officer must report to the relevant Portfolio Holder on the proposed arrangements for the procurement of the Contract and obtain a formal Portfolio Holder Decision agreeing to the proposed arrangements;

3.4 Where the Council is considering sharing services with other public bodies or arranging for services to be provided to the Council by a company in which the Council has an interest, legal advice should be obtained.

4. Contract Conditions

(a) Compliance with Procurement Rules by Consultants

4.1 Where one or more Consultants are appointed to advise or act on behalf of a Spending Control Officer in respect of the procurement or administration of a Contract, the Contract for their appointment(s) must include a condition that the Consultant must comply with these Procurement Rules and the Consultant must be provided with a hard or electronic copy of these Procurement Rules.

4.2 It is the responsibility of the Spending Control Officer to ensure that Consultants appointed by them are aware of the requirements of these Procurement Rules, and that they comply with them.

(b) Standard Contract terms

4.3 If the Council's Standard Form of Contract or Official Order is used, no amendments can be made without consulting the Asst. Director (Legal Services). If the Council's Standard Form of Contract is not used, the Contract must include standard contract terms, which are available on the Council's Intranet, unless the Asst. Director (Legal Services), in consultation with the Spending Control Officer, determines that individual standard terms are not required for a particular Contract.

(c) Liquidated and Ascertained Damages

4.4 For Contracts with Total Contract Values within Contract Category 3 of Appendix 1 or higher, and where late completion or non-completion of the Contract would result in a quantifiable financial loss to the Council, the Contract must include a condition that Liquidated and Ascertained Damages will be payable in such circumstances.

4.5 In such circumstances, the Contract must set out the level of Liquidated and Ascertained Damages that will be payable, which must be the Spending Control Officer's best estimate of the loss to the Council for each week of late or non-completion. Advice regarding the calculation can be obtained from the Council's Asst. Director (Accountancy) or his/her designated officer.

(d) Performance Bonds and Parent Company Guarantees

4.6 ~~A condition must be included within all Contracts (only) for:~~

~~(i) Services with Total Contract Values within Contract Category 4 of Appendix 1 or higher; and~~

~~(ii) Works with Total Contract Values within Contract Category 5 of Appendix 1 or higher;~~

~~that requires the Contractor to provide, at its own cost, either:~~

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~~(iii) A Performance Bond for the Contract's due performance; or~~

~~(iv) With the agreement of the Asst. Director (Accountancy), either a Parent Company Guarantee or a deposit with the Council, as security, in a form agreed with the Assistant Director (Accountancy).~~

It is not a requirement of these Procurement Rules that contractors must provide either a Performance Bond for the Contract's due performance, or a Parent Company Guarantee or deposit as security. However, Spending Control Officers may consider it appropriate to use one of these arrangements for certain types of contracts - where they are considered to be both appropriate and beneficial for the Council.

If any of these arrangements are to be used, they must be arranged in consultation with the Asst. Director (Accountancy).

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(e) Retentions

4.76 Where a Contract includes provision for a Defects Liability Period, a condition must be included within the Contract allowing the Council to hold a Retention for:

- (a) At least 5% of the Contract Sum during the course of the Contract Period; and
- (b) At least 2.5% of the Contract Sum on Practical Completion;

which must not be finally released until the end of the Retention Period.

(f) Insurances

4.87 Subject to Section 4.98 below, conditions must be included within:

- (i) All Contracts that require Contractors to have in effect, at the time of signing the Contract:
 - A minimum third party insurance cover of £5 million; and
 - A minimum employer liability cover of £10 million; and
- (ii) All appointments of Consultants that require them to have in effect, at the time of signing the Contract:
 - Professional Indemnity Insurance with a minimum cover of £2million for any one claim or such other sum as may be determined.

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4.98 Subject to obtaining written advice from the Council's Insurance Officer, Spending Control Officers may include conditions within Contracts specifying lower levels of insurance than set-out at Section 4.87 above, dependent on the risk assessed by the Spending Control Officer, based on the advice of the Council's Insurance Officer.

4.109 The Contractor shall also be required:

- (i) To show to the Spending Control Officer evidence of all relevant insurance policies, both in place at the time of signing the Contract and any new policies obtained on the expiry of insurance policies, who must check that all required insurances are in effect throughout the duration of the Contract for the required levels of cover; and
- (ii) For construction contracts only, with Total Contract Values within Contract Category 4 of Appendix 1, to have the interest of the Council noted on the insurance policies.

(g) Assignment

- | 4.1~~0~~¹⁰ A condition must be included within every Contract which prohibits the Contractor from transferring or assigning (directly or indirectly) any part of the Contract to another person or body without the written permission of the Council. *It should be noted that EU Regulated Contracts may only be assigned in limited circumstances.*
- | 4.1~~2~~¹ On receipt of a request from a Contractor to assign all or part of a Contract, the Spending Control Officer must undertake the checks of the proposed assignee required by Sections 7 and 8 below, before approving the assignment.

(h) *Cancellation*

- | 4.132 All Contracts must include conditions relating to the cancellation of the Contract, in terms specified by the Assistant Director (Legal), either generally or for specific contracts.
- | 4.143 *All EU Regulated Contracts must include a condition providing an express right for the Council to terminate the contract in specified circumstances, in the form prescribed in Regulation 73 of the Public Contracts Regulations 2015.*

(i) *Appointment of Sub-Contractors and alternative suppliers*

- | 4.154 A condition must be included within every Contract which prohibits the Contractor from appointing a sub-contractor or alternative supplier to perform any part of the Contract without the prior written consent of the Council.

(j) *Access to sites and documentation for audit purposes*

- | 4.165 All Contracts must contain a provision allowing an officer designated by the relevant Director, Asst. Director and/or Chief Internal Auditor access, for audit purposes, to:
 - (i) A site where a Contract is being performed; and/or
 - (ii) Relevant documentation relating to a Contract.

(k) *Payments to Contractors*

- | 4.176 In order to comply with Regulation 113 of the Public Contracts Regulations 2015, a condition must be included within every Contract requiring that all payments made by the Council to Contractors, and by Contractors to any sub-contractors, must be made no later than 30 days from the date a valid and undisputed invoice is received. Spending Control Officers must then ensure that this Contract condition is complied with.

5. Rules for identifying and selecting Contractors/suppliers

5.1 Subject to 2.9 above, where a Total Contract Value is below Contract Category 1 at Appendix 1, there is no requirement for Spending Control Officers to obtain competitive Tenders for procurements. In such circumstances, Spending Control Officers can decide the most appropriate Contractor to select to perform the Contract. However, for the avoidance of doubt, Spending Control Officers can seek competitive Tenders if they consider it appropriate.

5.2 *Except for EU Regulated Contracts, where the procedure for inviting Tenders must comply with Public Contracts Regulations 2015, Spending Control Officers may use any of the following methods that they consider most appropriate, under all the circumstances, to determine which Contractors should form a Select List to be invited to submit Tenders, subject to a written explanation of the criteria adopted for selecting Contractors being held on the relevant Contract file and a copy being provided to the Corporate Procurement Officer at the time of formulating the Select List:*

- (a) Use of Constructionline – Spending Control Officers may reduce a Long List produced by Constructionline for the type and value of Contract required to an appropriate Short List (comprising the required number of Tenderers set out in Appendix 1) using a method previously considered appropriate, and approved in writing, by their Director or Asst. Director;
- (b) Use of an existing or new Framework Agreement – including a Framework procured by the Essex Procurement Hub;

- (c) Use of Contractors known to be able to meet the Council's requirements to a good quality and to provide good value for money;
 - (d) Use of Contractors who have previously been successful in Tendering for similar work for the Council in the past; and
 - (e) Through the formulation of a Select List by:
 - (i) The inclusion of Contractors considered to be able to perform the Contract; and/or
 - (ii) Advertising for potential Contractors as appropriate (but note 5.3 below).
- 5.3 Where Contractors are invited to express an interest in being considered for specific procurements for Contracts with a Total Contract Value in excess of £25,000, through the placement of an advertisement in any media, the Corporate Procurement Officer must be notified and provided with the details of the procurement. The Corporate Procurement Officer must then publish the required information on the Government's Contracts Finder website, in accordance with the Public Contracts Regulations 2015.
- 5.4 Unless there are good reasons, if an in-house Council service can meet the requirements of the Specification to the required quality, they must be used in preference to an external Contractor. This includes the Council's Reprographics and Building Control Services.
- 5.5 When Spending Control Officers are deciding which Contractors should be invited to provide Tenders, they must take account of the following:
- (a) *If the Contract is for a Total Contract Value in excess of the thresholds for EU Regulated Contracts set out in the Public Contracts Regulations 2015, the selection of Contractors to Invite to Tender must be in accordance with these Regulations;*
 - (b) *With the exception of EU Regulated Contracts, where appropriate and possible, at least one business with its headquarters located in the Epping Forest District should be invited to Tender;*
 - (c) Contractors who have previously provided good quality Works, Supplies or Services with good value for money should be invited to Tender in preference to Contractors with whom the Council has not had any previous experience; and
 - (d) It may be appropriate to seek references for Contractors from other local authorities or public bodies for whom they have previously undertaken Works or provided Supplies or Services.
- 5.6 In accordance with the Public Contracts Regulations 2015, Pre-Qualification Questionnaires (PQQs) must not be used for any procurement exercises that are not EU Regulated Contracts. It is still possible to ask questions relating to Contractors' suitability, provided that they are relevant to the subject matter of the procurement, are proportionate and are only used to establish whether Contractors meet minimum requirements of suitability, capability, legal status and financial standing. All candidates meeting the minimum criteria must be invited to tender.
- 5.7 *For EU Regulated Contracts, if Pre-Qualification Questionnaires (PQQs) are used, unless there are good reasons, the "Council's Standard Pre-Qualification Questionnaire (PQQ)" should be used, which can be [\[downloaded here\]](#). If a different form of PQQ is required, or the questions in the Council's Standard PQQ are not considered to be reasonable or proportionate, the amendments must be agreed with the Council's Corporate Procurement Officer.*

6. Nominated Sub-Contractors and Suppliers

6.1 Nominations made by the Council to a main Contractor for a sub-contractor or a supplier must be made following Tenders being sought in accordance with these Procurement Rules to select the Nominated Sub-Contractor or Supplier, except where a supplier has previously been used by the Council and the likely overall cost to the Council of changing supplier is considered by the relevant Director or Assistant Director to be greater than any reduced costs that could reasonably be obtained through a further Tendering process.

7. Checks to be undertaken on the experience, abilities and financial standing of Tenderers

7.1 If Tenders are to be invited from Contractors listed on Constructionline or an existing Framework Agreement no further checks are required, subject to the required checks of financial standing referred to in Section 8 below.

7.2 If Tenders are to be invited for Contracts with Total Contract Values covered by Contract Categories 1 or 2 in Appendix 1 no checks of Contractors are required, subject to:

- (a) The required checks of financial standing referred to in Section 8 below; and
- (b) If the Contract has any material health and safety implications, evidence of a good track record of health and safety and the adoption and use of satisfactory health and safety policies being obtained, to the satisfaction of the Spending Control Officer.

7.3 However, if the Spending Control Officer considers it appropriate, any (further) checks (including those listed at Section 7.3 and 7.4 below), can be undertaken for any Contracts with Total Contract Values covered by Contract Categories 1 or 2 in Appendix 1 (provided that they are in line with Section 5.6 above).

7.4 For all Contracts with Total Contract Values covered by Contract Category 3 in Appendix 1 or higher, the following checks must be undertaken of all Tenderers intended to be invited to submit Tenders, prior to issuing Invitations to Tender, in a form considered appropriate by the Spending Control Officer. *For EU Regulated Contracts, the wording provided by the Crown Commercial Service's Standard Pre-Qualifying Questionnaire (PQQ) must be used:*

- (a) Details of each potential Tenderer's previous experience and ability to undertake the work - to ensure that they are able to perform the Contract to the required standard;
- (b) If the Contract has any material health and safety implications, evidence of a good track record of health and safety and adoption and use of satisfactory health and safety policies;
- (c) The financial standing of proposed tenderers, if/as required by the Council's "*Procedures for Financial Checks of Contractors*" referred to in Section 8 below, which can be [downloaded here](#);
- (d) Details of each Contractor's approach to equality and diversity, to ensure that both the Contractor and the Council comply with the requirements of the Equality Act 2010; and
- (e) If the Contractor or their staff are likely to identify any Safeguarding issues relating to the wellbeing of either adults with care and support needs or children in the performance of the Contract, details of each Contractor's approach to Safeguarding, to ensure that the Contractor and its employees are able to assist the Council to comply with its legal requirements under the Care Act 2014 and the Children Act 2004.

8. Checks of financial standing

8.1 Checks of Contractors' financial standing should be undertaken as shown below, for the types of Contracts set out below:

- (a) Supplies Not required.
- (b) Works For all Contracts with a Total Contract Value within Contract Category 2 of Appendix 1 or higher.
- (c) Services For all Contracts with a Total Contract Value within Contract Category 5 of Appendix 1.

8.2 If checks of Contractor's financial standing are required in accordance with Section 8.1 above, the checks must be undertaken in accordance with the Council's "*Procedures for Financial Checks of Contractors*", which can be [downloaded here](#), and which sets out:

- (a) At what point in the procurement process financial checks should be undertaken;
- (b) Who has responsibility for undertaking the checks;
- (c) What checks should be undertaken and the methodology to be followed; and
- (d) What action should be taken based on the outcome of the checks.

9. Obtaining value for money for Contracts where Tenders are not required from more than one Contractor

9.1 Tenders are not required from more than one Contractor for Contracts with a Total Contract Value below the Total Contract Values of Category 1 at Appendix 1. However, Tenders can still be sought in such circumstances - with the manner in which such Tenders are sought being determined by the Spending Control Officer and which does not have to comply with these Procurement Rules.

9.2 If Spending Control Officers do not seek Tenders from more than one Contractor, they must still take reasonable and appropriate steps to ensure that the Council obtains good value for money from Contractors, in terms of price and quality.

10. Rules for inviting Tenders where more than one Tender is required

10.1 For Contracts with a Total Contract Value within Category 1 of Appendix 1 or higher (including the value of any potential Contract Extensions), Spending Control Officers must invite Tenders from at least the number of Contractors shown in Appendix 1 for the relevant Contract Category.

10.2 Where Spending Control Officers consider that increased value for money may be obtained by inviting more Contractors to Tender for a Contract than the number required for the relevant Contract Category at Appendix 1, they should invite more Contractors to Tender as appropriate.

10.3 Where the Total Contract Value (including the value of any potential Contract Extensions) is close to the upper threshold for a Contract Category in Appendix 1, Tenders should be sought based on the Contract Category with the higher Total Contract Values.

10.4 Spending Control Officers must give Tenderers sufficient time to properly complete and return Tenders before the Tender Return Date.

10.5 For EU Regulated Contracts with a Total Contract Value above the thresholds within the Public Contracts Regulations 2015 (i.e. within Category 5 of Appendix 1), Spending Control Officers must comply with the e-communication requirements of Regulations 22(8-21) and 53 of the Public Contracts Regulations 2015. With effect from 18th October 2018, Spending Control Officers must comply with the full e-communication requirements of Regulation 22 and any other provisions of the Public Contracts Regulations 2015 relating to e-communications. A copy of the Crown Commercial Service's "Guidance on Electronic Procurement & Electronic Communication", to comply with the Public Contracts Regulations 2015, can be [\[downloaded here\]](#).

10.6 Any electronic procurements undertaken by Spending Control Officers on behalf of the Council must comply with the "Council's Guidance on Electronic Tendering" ~~[which is not yet available]~~ which can be [\[downloaded here\]](#).

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10.7 For procurements within Categories 1-4 of Appendix 1, Invitations to Tender can be issued either by post or electronically. However issued, Invitations to Tender provided in accordance with this Section must:

- (a) Include a copy of the Council's standard "Tender Return Label" (which can be [\[downloaded here\]](#)) within the Tender Documents, giving:
 - (i) A brief description of the Tender;
 - (ii) The designation of the person listed in Appendix 1 to whom the Tender must be returned;
 - (iii) The time (which must be Noon) and date by which the Tender must be received by the person designated within Appendix 1; and
 - (iv) Notification in large letters that the return document is a "TENDER".
- (b) Include, in the form prescribed by the Asst. Director (Governance and Performance Management):
 - (i) A "Certificate of Bona Fide Tendering" (which can be [\[downloaded here\]](#)); and
 - (ii) A "Formal Declaration of Tender Offer" (which can be [\[downloaded here\]](#)).
- (c) Advise Tenderers that Tenders must be returned:
 - (i) In a plain envelope;
 - (ii) Which must be securely sealed; and
 - (iii) Which must not bear any distinguishing matter or mark to indicate the identity of the sender.
- (d) Advise Tenderers that details of their Tender may be published:
 - (i) In the public agenda or minutes of the Council or become available as a background paper; or
 - (ii) By means of a request under the Freedom of Information (FOI) Act 2000 or the Environmental Information (EI) Regulations 2004, in response to which the Council would provide any information which is not covered by any of the statutory exemptions of the FOI Act or EI Regulations.

10.8 At the same time as sending the Invitations to Tender, Spending Control Officers must:

- (a) Advise the person listed in Appendix 1, to whom the Tender must be returned, of the return details of the Tenders; and
- (b) Request the person to whom Tenders must be returned to arrange a time, date and venue for a Tender Opening.

(a) *Invitations to Tender by post*

10.9 Invitations to Tender must be sent to all Tenderers on the same date.

- 10.10 On the same day as sending the Invitations to Tender by post, Spending Control Officers must also send an email to all the Tenderers, but not revealing the names of other tenderers, to:
- (a) Advise them that Invitations to Tender have been despatched; and
 - (b) Request Tenderers to confirm safe receipt of the Tender Documents when received.
- 10.11 If safe receipt is not confirmed by a Tenderer within 3 working days of an Invitation to Tender being sent, Spending Control Officers must contact the Tenderer(s) concerned again to check receipt, and must continue to make appropriate periodic checks until all Tenders have been safely received.
- 10.12 Where it is apparent that Tender Documents have not been received by a Tenderer within a reasonable period, the Spending Control Officer must make appropriate arrangements to send duplicate Tender Documents as soon as reasonably possible (e.g. by hand or by courier).
- (b) Invitations to Tender by email*
- 10.13 Where Invitations to Tender are emailed to Tenderers, they must all be sent on the same date.
- 10.14 The email Invitation to Tender must require Tenderers to notify the Spending Control Officer of the safe receipt of the Tender Documents when received.
- 10.15 If safe receipt of Tender Documents is not confirmed within 24 hours of an Invitation to Tender being sent, Spending Control Officers must contact the Tenderer(s) concerned by telephone (not email) to check receipt.
- 10.16 Where it is apparent that Tender Documents have not been received by a Tenderer, the Spending Control Officer must make appropriate arrangements to immediately re-send the Tender Documents, either by email again or by post as appropriate, and then check receipt in accordance with Section 10.14 above.
11. Additional rules for inviting and accepting tenders based on the Most Economically Advantageous Tender (MEAT) (i.e. price and quality) and/or a Schedule of Rates
- (a) Most Economically Advantageous Tenders (MEATs)*
- 11.1 If the assessment of Tenders is to be based on an evaluation to assess the Most Economically Advantageous Tender (MEAT), i.e. taking account of both price and quality, Spending Control Officers must follow the Council's "Corporate MEAT Assessment Methodology", which can be [\[downloaded here\]](#).
- 11.2 Prior to Invitation of Tenders being issued, a MEAT Evaluation Assessment must be formulated by the Spending Control Officer and:
- (i) (A copy) must be provided to the Corporate Procurement Officer, prior to the Invitation of Tenders being issued, for audit purposes;
 - (ii) Must not be changed after Invitations to Tender have been issued; and
 - (iii) Must be held on the relevant Contract file for at least 1 year after the Contract has been let.
- 11.3 A copy of the MEAT Evaluation Assessment must be provided to Tenderers as part of the Tender Documents.
- (b) Schedule of Rates*
- 11.4 Where Tenders are based on a Schedule of Rates, a reasonable Pre-estimate of Quantities for each of the rates contained in the Tender must:

- (i) Be produced prior to Invitations to Tender being issued;
- (ii) Be lodged with the Corporate Procurement Officer for audit purposes;
- (iii) Not be changed after Invitations to Tender have been issued;
- (iv) Be held on the relevant Contract file for at least 6 years after the Contract has been let;
- (v) Be used to multiply the rates provided by Tenderers to reach an Estimated Tender Sum, which shall be the Tender Sum reported for consideration of acceptance by the relevant person/body specified in Appendix 1.

12. Rules for the receipt, custody and opening of Tenders with Total Contract Values within Category 1 of Appendix 1 or higher

- 12.1 All Tenders received through electronic procurements must be received, held and opened in accordance with EFDC's "*Guidance on Electronic Tendering*" ~~which is not yet available~~ [which can be downloaded here](#).
- 12.2 For Tenders with Total Contract Values within Category 1 of Appendix 1 or higher, the Assistant Director (Governance) must:
- (a) Make appropriate arrangements to hold returned Tenders in a secure location; and
 - (b) Maintain a Record of Tenders received by the Council, together with their time and date of receipt.
- 12.3 Unless it is known that all expected Tenders have been received, Tenders must not be opened on the same day as the Tender Return Date. This is to ensure that any Tenders that may have been delivered to the Civic Offices in time still reach the Asst. Director (Governance & Performance Management) before the Tender Opening.
- 12.4 Tenders must be opened, all at the same time, by the person(s) listed in Appendix 1 for the Contract Category related to the expected Total Contract Value and, if possible, the Spending Control Officer or their representative.
- 12.5 Tenders must not be accepted if they:
- (a) Are not in a plain envelope;
 - (b) Are not securely sealed;
 - (c) Do not have a "*Tender Return Label*";
 - (d) Bear any distinguishing matter or mark to indicate the identity of the sender;
 - (e) Do not include a "*Certificate of Bona Fide Tendering*"; or
 - (f) Do not include a "*Formal Declaration of Tender Offer*".
- 12.6 The Asst. Director (Governance & Performance Management) must ensure that a Democratic Services Officer maintains a record of all Tenders opened, which must be signed by all those in attendance at the Tender Opening.

13. Late receipt of Tenders

13.1 Any Tenders received after the Tender Return Date must be examined, unopened, by the person designated within Appendix 1 to open the Tenders and shall be dealt with in accordance with this section.

13.2 Where Tenders have been received after the Tender Return Date, but the other Tenders have not yet been opened, and the person responsible for opening the Tenders is satisfied that there is evidence that the Tender was sent in time for delivery by the Tender Return Date, a Late Tender can be opened at the same time as the other Tenders, provided that:

- (a) The details relating to the Late Tender are noted in the Record of Tenders kept by the Democratic Services Officer at the time the Tenders are opened; and
- (b) The circumstances are reported to the body or individual responsible for accepting the successful Tender.

13.3 Where other Tenders have already been opened or, in the opinion of the person responsible for opening the Tenders, there is no evidence that the Tender was sent in time to reach the Council by the Closing Date:

- (a) The Tender must be opened by the Asst. Director (Governance & Performance Management), in the presence of a Democratic Service Officer and, if possible, the Spending Control Officer or their representative;
- (b) The Record of Tenders received must be annotated with details that a Late Tender was received, but was disqualified;
- (c) The relevant Spending Control Officer must advise the Tenderer, as soon as reasonably possible, of the disqualification and the reason; and
- (d) The circumstances must be reported to the body or individual responsible for approval of the successful Tender.

14. Alterations

14.1 Tenders must not be altered after they have been opened. However, *except in the case of EU Regulated Contracts*, the Spending Control Officer can recommend to the person or body responsible for accepting the Tender that it is appropriate to accept the correction of Arithmetical Errors, if the Spending Control Officer is satisfied that such errors were made inadvertently. *For EU Regulated Contracts, any proposed alterations to Tenders after they have been opened must be discussed with the Council's Legal Services.*

14.2 If an error is identified within the Tender Documents before the Tender Return Date, all the Tenderers must be informed of the error and invited to adjust their Tenders prior to submission.

14.3 If an error in the Tender Documents is identified after the Tender Return Date, all Tenderers must be given details of the error and afforded the opportunity of withdrawing their Tender or submitting an amended Tender.

15. Post-Tender Negotiations

15.1 No Post-Tender Negotiations are permitted, unless the Contract has been advertised and Tendered under the Competitive Dialogue Procedure and the relevant Director or Asst. Director is satisfied, and determines, that Post-Tender Negotiations are appropriate to the procurement process.

15.2 Seeking clarification from Tenderers on queries related to their Tenders does not constitute Post-Tender Negotiations. However, the Spending Control Officer must first consult with the Corporate Procurement Officer for advice and, if necessary, seek further legal advice.

15.3 If the Specification for a Contract needs to be amended, due to the lowest Tender exceeding the available budget, or if the Council's requirements have changed since the Tenders were invited, all Tenderers must be given the opportunity to submit revised Tenders based on the revised Specification.

16. Rules for accepting Tenders

16.1 Tenders must only be accepted by the person/body listed in Appendix 1 for the relevant Contract Category relating to the Total Contract Value.

16.2 The report to the person/body listed in Appendix 1 on the proposed award of a Contract must seek approval from that person/body to the proposed arrangements for any proposed Contract extensions, including a recommendation on whether subsequent decisions to extend Contracts, in accordance with the Contract Terms, will be agreed by the:

(a) The Spending Control Officer;

(b) The relevant Director (or Assistant Director);

(c) The relevant Portfolio Holder; or

(d) The Cabinet.

16.23 Where the actual Total Contract Value of the Tender to be recommended for acceptance exceeds the expected Total Contract Value for the relevant Contract Category at Appendix 1, and results in Tenders not having been invited and/or opened in accordance with the higher Contract Category, the Tenders must be reported to, and approved by, the person/body authorised to accept Contracts for the higher Contract Category, together with an explanation of why the actual Total Contract Value is above the expected Contract Value.

16.34 For Contracts that are not EU Regulated Contracts, if a Tender, other than either:

(a) The lowest Tender (for Tenders based only on price); or

(b) The Tender with the highest weighted Tender Evaluation Score (for procurements undertaken to assess the Most Economically Advantageous Tender (MEAT))

is recommended by the Spending Control Officer, it may only be approved by:

(c) A Director or the relevant Asst. Director - where the Tender would normally be accepted by the Spending Control Officer;

(d) The relevant Portfolio Holder - where the Tender would normally be accepted by a Director, Asst. Director or the Portfolio Holder; or

(e) The Cabinet - where the Tender would normally be accepted by the Cabinet.

16.45 *For EU Regulated Contracts, there are only limited circumstances when a Tender, other than either the lowest-priced Tender or having the highest weighted Tender Evaluation Score, can be accepted. If acceptance of a different Tender is proposed, Spending Control Officers are required to seek the advice of the*

Corporate Procurement Officer and follow the requirements of the Public Contracts Regulations, and/or undertake a further Tender exercise.

- | 16.56 For audit purposes, where the circumstances in Sections 16.3 and 16.4 above apply, the Spending Control Officer must provide an explanation in writing to the person/body accepting the Tender of why the lowest Tender or highest weighted Tender Evaluation Score should not be accepted, and must retain a copy of the written explanation on the Contract file.
 - | 16.67 Prior to a Tender being accepted, evidence of valid satisfactory insurances required under Section 4.8 above to the amount, and on the terms, determined by the Council's Insurance Officer must be received from the Preferred Tenderer by the Spending Control Officer.
 - | 16.78 Spending Control Officers are authorised to enter into Contracts or issue Official Orders that have been Tendered and approved in accordance with these Procurement Rules.
 - | 16.89 For all procurement exercises with Total Contract Values in excess of £25,000, Spending Control Officers must provide details of all Tenders received, and the name of the successful Tenderer, to the Council's Corporate Procurement Officer within 5 working days of a Contract being entered into, in order to:
 - (a) Maintain a central record of all procurement exercises; and
 - (b) Enable the Corporate Procurement Officer to provide the required information to the Contracts Finder website, in order to comply with the requirements of the Public Contracts Regulations 2015.
 - | 16.910 On receipt of the information provided by the Spending Control Officer, the Corporate Procurement Officer must upload the required information to the Crown Commercial Service's Contracts Finder website as soon as reasonably possible.
17. Procurement Process ("Regulation 84") Report
- 17.1 *For EU Regulated Contracts undertaken with a Total Contract Value within Category 5 of Appendix 1, throughout the procurement process, Spending Control Officers must complete and maintain the required Procurement Process Report under Regulation 84 of the Public Contracts Regulations 2015. At the same time as informing Tenderers that their Tenders have been either successful or unsuccessful, Spending Control Officers must provide a copy of the completed Report to the Corporate Procurement Officer, in order to maintain a central record. A template for the "Procurement Process ("Regulation 84") Report" can be [downloaded here](#).*
18. Contract Documentation and retention
- 18.1 Contracts with a Total Contract Value within Contract Category 1 of Appendix 1 can be dealt with by the use of an Official Order, provided that the relevant Director or Asst. Director is satisfied that there is no need for more extensive terms and conditions to be specified in order to protect the interests of the Council. An Official Order (or formal Contract) is required for all Council Contracts.
- 18.2 All Contracts with a Total Contract Value within Contract Category 2 of Appendix 1 or higher must:
- (a) Be in a standard form of an appropriate formal legal agreement approved by the Council's Asst. Director (Legal Services); and
 - (b) Be under seal, unless the Council's Asst. Director (Legal Services), in consultation with the Spending Control Officer, determines otherwise. This would be on the basis that the period of liability for breach of contract does not need to be extended from six to twelve years.

18.3 Spending Control Officers (and their successors) must ensure that:

- (a) All appropriate Contract Documentation is retained in a secure location for a minimum period, following the date of final payment, of at least:
 - (i) Six years if the Contract is not executed as a deed under seal;
 - (ii) Twelve years if the Contract is executed as a deed under seal; and
- (b) Documentation relating to unsuccessful Tenders is retained in a secure location for a period of at least two years.

18.4 Original signed Contracts with Total Contract Values within Contract Category 2 of Appendix 1 or higher must be forwarded to the Asst. Director (Legal Services) for secure storage within 28 days of signing/sealing. Original signed Contracts with Total Contract Values within Contract Category 1 of Appendix 1 can also be forwarded to the Asst. Director (Legal Services) for secure storage if the Spending Control Officer wishes.

18.5 The Asst. Director (Governance & Performance Management) must ensure that Records of Tenders are retained indefinitely in a secure location.

19. Rules for negotiated contracts

19.1 Contracts with Total Contract Values within Contract Category 1 at Appendix 1 or higher may only be negotiated where the relevant Portfolio Holder (or, for Contracts within Contract Category 4, the Cabinet) has resolved that competitive Tenders need not be invited and that a Contract may be negotiated with just one Contractor.

19.2 In such circumstances, the reason for not inviting competitive Tenders must be set out in the report to the Portfolio Holder or Cabinet, which can be for any reason considered appropriate by the relevant Director or Asst. Director, including the following reasons:

- (a) The Contract is urgent and there is insufficient time to invite Tenders;
- (b) The requirements of the Contract are of a specialist nature, where no other Contractor is known to provide them;
- (c) No demonstrable material benefit would be obtained from inviting competitive Tenders; or
- (d) Tenders have previously been sought for a similar Contract within the previous 6 months and no Tenders were received.

19.3 *For EU Regulated Contracts, procurements must be undertaken in accordance with the Public Contracts Regulations 2015 in all circumstances.*

20. Use of Consultants

20.1 The definition of a "Consultant" is provided at Appendix 2.

20.2 The procurement of all Consultants must be undertaken in accordance with these Procurement Rules *and, where appropriate, the EU Regulations.*

20.3. Spending Control Officers are responsible for ensuring that any Consultants acting on behalf of the Council comply with these Procurement Rules in full.

20.4 Except where a recognised national Form of Contract or other accepted and standard type of agreement is used for the appointment of a Consultant, or where the Asst. Director (Legal Services) determines otherwise, the Council's "Standard Consultants Agreement" must be used for the appointment of any Consultant. A template for the "Standard Consultants Agreement" can be [downloaded here](#).

20.5 Where a national Form of Contract or other accepted and standard type of agreement is to be used for the appointment of a Consultant, Spending Control Officers must take the advice of the Asst. Director (Legal Services (or staff designated by him/her) on any specific provisions to be included or excluded within the Contract / agreement.

21. Rules for Contract Extensions

21.1 Where Contracts allow one or more Contract extensions, Spending Control Officers are authorised to extend existing Contracts where up to the maximum period allowed by the Contract in accordance with the decision of the person/body listed in Appendix 1 when they formally accepted the original Tender, as required under Section 16.2 above, the Contract allows an extension, up to the maximum period allowed by the Contract.

21.2 Where a Contract allows a Contract extension, but the original decision to award a tender did not specify the arrangements for proposed extensions in accordance with Section 16.2 above, and the Contract has a Total Contract Value within Category 4 of Appendix 1, Spending Control Officers must consult the relevant Portfolio Holder, in writing, on any intention to extend the Contract prior to the Contract being extended. In response, the Portfolio Holder may either raise no objections to the proposed extension or require that a formal decision on the proposed extension is made through a formal Portfolio Holder or Cabinet Decision.

21.2 Spending Control Officers must ensure that arrangements are made for any decisions about whether or not a contract should be extended in compliance with Sections 21.1 and 21.2 above in sufficient time to enable the works, goods, supplies or services to be procured through a new Contract, instead of through the extension of an existing Contract if that is the decision made.

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22. Contract monitoring

22.1 For all Contracts with a Total Contract Value within Category 4 of Appendix 1, the Spending Control Officer must provide a written progress report to the relevant Portfolio Holder(s) at least every three months, between the Tender Return Date and the date of Practical Completion. The Progress Report must report on the progress with the required Works or Services and the current financial position, in relation to:

- (a) Contract and fee expenditure to date;
- (b) The latest anticipated Total Contract Cost and the anticipated total cost of all fees;
- (c) Any variations between the budget approved at the time of the acceptance of the Tender and the latest anticipated Total Contract Cost and anticipated total cost of all fees; and
- (d) The use of any contingency sums to date and the amount of any contingency sums remaining.

22.2 For Contracts with Total Contract Values within Contract Category 3 of Appendix 1 or higher, where the latest anticipated Total Contract Cost is in excess of 20% of the Tender Sum, the Spending Control Officer must submit a written report to the next available meeting of the Council's Corporate Governance Group

after the date the excess has been identified, explaining the reasons for the increase and, if appropriate, any remedial action to be taken to reduce the excess.

23. Final Accounts

23.1 The Spending Control Officer responsible for any Contract with a Total Contract Value within Contract Category 4 of Appendix 1 or higher must produce a written Final Account, and provide a copy to the Asst. Director (Accountancy), within 3 months of all financial transactions relating to the Contract being completed. The Final Account must include details of the Tender Sum, Contract variations, Final Account sum, any deducted Liquidated and Ascertained Damages, any extensions of time awarded and any claims agreed with the Contractor.

23.2 If considered necessary, the Chief Internal Auditor may examine and audit the Final Account and associated Contract Documentation to satisfy that the Final Account is correct and represents an accurate and appropriate summary of Contract payments and deductions.

24. Publication of procurement information

24.1 In order to comply with the Local Government Transparency Code 2015, the Corporate Procurement Officer ~~is responsible for ensuring that the must obtain from Spending Control Officers every 3 months (who must respond within 10 working days) the information~~ required by Part 2.1 of the ~~CodeLocal Government Transparency Code and ensure that the information~~ is published every 3 months in accordance with the Code.

25. Disposal and freehold/leasehold property transaction

25.1 For the purposes of these Procurement Rules:

- (a) All disposals and freehold/leasehold property transactions, including interests in land (such as acquisitions, disposals, new lettings, lease renewals, lease surrenders, rent reviews, sub-lettings, assignments, licences, deeds of variations, easements, wayleaves and land covenants on land) must be dealt with in accordance with the Schedule of Delegation set out in Part 3 of the Council's Constitution and any procedures required by law; and
- (b) References to Total Contract Value within these Procurement Rules (including in Appendix 1) mean:
 - (i) The anticipated purchase price or premium for the disposal or freehold/leasehold property transaction; or
 - (ii) The annual rent.

25.2 Disposals or freehold/leasehold property transactions involving Council land and property may be through:

- (a) Formal tendering (providing for an initial deposit and binding contract if the Tender is successful);
- (b) Formal tendering (providing for no initial deposit and no binding contract if the Tender is successful);
- (c) Private treaty; or
- (d) Public auction.

- 25.3 These Procurement Rules must be followed in full for all disposals or freehold/leasehold property transactions where Tenders from potential purchasers are sought in accordance with Section 25.2 (a) or (b) above.
- 25.4 If the method of disposal or property transaction set-out in Section 25.2(a) or (b) above is followed, the person/body that will be asked to accept the Tender may pre-determine that the relevant sale particulars should make provision for a two-stage offer process, that provides the Council with the option of inviting best and final offers after receipt of initial offers, where this is demonstrated to them to be appropriate:
- (a) By the relevant Spending Control Officer making such a recommendation in a written report to the person/body that will be asked to accept the Tender; and
 - (b) Having considered the case for adopting this method of disposal based on an assessment of the risks involved and concluding that this procedure is the most appropriate for achieving best value.
- 25.5 Disposals or other freehold/leasehold property transactions involving Council land or property sought through the methods set-out in Section 25.2 (c) or (d) above can only be approved:
- (a) In exceptional circumstances and if the person/body that will be asked to accept the Tender has considered a report prepared by the relevant Spending Control Officer which justifies the proposed procedure as the most suitable method of achieving best consideration; and
 - (b) If the transaction is for less than the open market value, the report referred to in Section 25.5(a) above contains an estimate of what the value of the transaction would be if advertised on the open market.
- 25.6 Where disposals or other freehold/leasehold property transactions involving Council land or property are sought through the methods set-out in Section 25.2 (c) or (d) above:
- (a) The relevant Director or Asst. Director may determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 2 of Appendix 1 or lower;
 - (b) The relevant Portfolio Holder must determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 3 of Appendix 1; and
 - (c) The Cabinet must determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 4 of Appendix 1 or higher.
- 25.7 The arrangements referred to in Section 25.6 above may include:
- (a) Determining the most appropriate method of disposal to achieve the Council's statutory duty of obtaining best consideration; or
 - (b) Deciding to sell for less than the open market value, provided that all statutory procedures are complied with, including (where necessary) obtaining the consent of a Secretary of State.
- 25.8 The Chief Estates Officer or Director of Neighbourhoods may agree, on behalf of the Council, to all estates acquisitions, disposals and licences set out within the Schedule of Officer Delegations in Part 3 of the Council's Constitution, where it would be in accordance with good estate management and would not adversely affect the premises concerned.

25.9 The relevant Portfolio Holder may take decisions under delegated authority for all estates management matters that, individually, have a cumulative value of between £500,001 and £999,999, subject to all other matters within these Procurement Rules being satisfied and undertaken in accordance with Article 14 (Decision Making) of the Council's Constitution.

Alan Hall/May 2016

Table of Tendering Requirements for Nos. of Tenders, Returns and Openings

Contract Category	Total Contract Value ^(*)	Minimum no. of tenders to be invited ^{(+)(@)}	Designation of person to whom tenders must be addressed	Designation of person required to open tenders	Designation of person/body required to accept tender
1	£25,000 - £50,000	Three	Assist. Director (Governance & Performance Mgt)	Spending Control Officer ^(#) + Democratic Services Officer	Spending Control Officer ^(#)
2	£50,001 - £250,000	Three	Assist. Director (Governance & Performance Mgt)	Director or Asst. Director + Democratic Services Officer	Director or Asst. Director
3	£250,001 - £1million	Three	Assist. Director (Governance & Performance Mgt)	Portfolio Holder + Director/Asst. Director + Democratic Services Officer	Portfolio Holder
4	Over £1million	Three	Assist. Director (Governance & Performance Mgt)	Portfolio Holder + Director/Asst. Director + Democratic Services Officer	Cabinet
5	Above the relevant EU Threshold for Works, Supplies or Services	Five	As 1-4 above (dependent on contract value)	As 1-5 above (dependent on contract value)	As 1-5 above (dependent on contract value)

Notes:

(*) Total Contract Value means the total value of the Works, Services and Supplies over the total period of the Contract, including all potential Contract Extensions to the initial Contract Period.

Where the Total Contract Value is within Contract Category 5, the arrangements for Contract Category 5 should be followed, and not the arrangements for any of the other Contract Categories that may also apply to the Total Contract Value.

(+) If the estimated Total Contract Value is in excess of the value thresholds for Works, Supplies or Services, above which the Public Contracts Regulations 2015 apply, the required number of Tenders determined by the Regulations must be applied.

(@) Includes any in-house Tenders submitted.

(#) Spending Control Officer means the person who is the named person responsible for the budget heading under which payments for the contract will be made, and is responsible for all aspects of the procurement process for a Contract and for complying with these Procurement Rules.

Current EU Procurement Thresholds (1st January 2016 – 31st December 2017)

Contract Type	EU Threshold
Services / Supplies	£164,176
Works	£4,104,394
Light Touch Regime Services	£589,148

The EU Thresholds are updated at regular intervals. The latest Thresholds can be [\[downloaded here\]](#)

Glossary and Definitions of Terms used in the Procurement Rules

Term	Definition or Explanation
Arithmetical Error	An error in addition, subtraction, multiplication or division within a submitted Tender.
Cabinet	The Leader of the Council and other councillors appointed by the Leader to form a group of councillors authorised by the Council's Constitution to make decisions on certain issues.
Central Purchasing Body	A contracting authority which either: <ul style="list-style-type: none"> • Acquires supplies and/or services intended for contracting authorities; or • Awards public contracts (concludes framework agreements) for works, supplies or services intended for contracting authorities
"Certificate of Bona Fide Tendering"	A form that Tenderers must complete, sign and return with their Tender to confirm that the Tender they are putting forward is the true offer that will be available to the Council if the Tender is won by the Tenderer (i.e. to confirm that the offer is genuine and is not just a competitive offer to push them forward through the Tender process). The Council's Standard "Certificate of Bona Fide Tendering" can be obtained from the Council's Intranet, and can be [downloaded here] .
Competitive Dialogue Procedure	A formal and complex process, allowed by the Public Contracts Regulation 2015, for procuring a Contract through discussions with Contractors in a structured way.
Constructionline	The UK's leading procurement and supply chain management web-based service that collects, assesses and monitors standard company information through a question set that is aligned to the standardised pre-qualification questionnaire developed by the British Standards Institute, to reduce duplication within the construction industry.
Consultant	A person or organisation who is not employed by the Council, included on the Council's payroll or covering an establishment post, who is procured directly - through a company (or similar commercial undertaking) or an agency and is engaged to perform a specific task over a predetermined period.
Contract Award	The decision to enter into a Contract with a Contractor
Contract Documentation	All documents related to the administration of a Contract, not just the Tender Documents
Contract Extension	The continuation of a Contract for a further period of time allowed by the Contract. There can be more than one Contract Extension for a Contract.
Contracts Finder	A service provided by the Crown Commercial Service, and referred to in the Public Contracts Regulations 2015, that enables Contractors to search

	for information about Contracts worth over £25,000 with the Government, Government agencies and local government.
Contract Period	The period commencing with the date a Contract specifies that the provisions of the Contract are to start to the date the Contract comes to an end.
Contract Sum	The amount to be paid to a Contractor to perform a Contract, prior to any Contract Extensions, and referred to in the formal Contract between the Council and the Contractor.
Contracts	Contracts, agreements or orders for Works, Supplies or Services.
Contractors	Works contractors, Suppliers, Service providers and Consultants.
Corporate Governance Group	A group of officers, chaired by the Chief Executive, comprising members of Management Board, the Chief Internal Auditor and the Deputy Monitoring Officer.
Corporate Procurement Officer	The officer designated by the Director responsible for procurement arrangements within the Council, who co-ordinates procurement matters on the Director's behalf.
Crown Commercial Service	A Government Agency that brings together policy, advice and direct buying information in a single organisation and provides commercial Services to the public sector and saving money for the taxpayer. Much of the CCS's advice gives formal detailed guidance on the operation of the Public Contracts Regulations 2015.
Defects Liability Period	A set period of time after a Works Contract has been completed, during which a Contractor has the right to return to the site to remedy any defects at the Contractor's own cost.
Director	A Director, Assistant Director or the Chief Executive.
e-Communications	The method of using electronic communications, including email and web-based applications, to provide and receive documents and communications to and from Contractors, in accordance with the Public Contracts Regulations 2015 – detailed in the “ <i>Guidance on Electronic Procurement & Electronic Communication</i> ” produced by the Crown Commercial Service, which can be [downloaded here]
Essex Procurement Hub	A Central Purchasing Body of six local authorities in Essex, including Epping Forest DC, that provides strategic and operational procurement support, advice and guidance in order to add demonstrable value to the procurement process to its members. The Hub lets and manages a number of national Framework Agreements that are accessible to any UK Public Authority.
Estimated Tender Sum	A Tender Sum formulated by applying rates submitted by a Tenderer to Pre-Estimated Quantities that are estimated to apply over the Contract Period and used to compare the Tenders received from different Contractors. This is nearly always different from the Total Contract Cost.

EU Regulated Contracts	Procurements by public bodies in the UK that are above the financial thresholds for Works, Supplies and Services Contracts referred to in the Public Contracts Regulations 2015, which stipulate the way in which any procurements above the financial thresholds must be undertaken. A <i>"Basic Guide to Public Sector EU Procurement Legislation"</i> can be [downloaded here] .
Final Account	A written statement that includes details of the Tender Sum, Contract variations, Final Account sum, any deducted Liquidated and Ascertained Damages, any extension of time awarded and any claims agreed with the Contractor.
<i>"Formal Declaration of Tender Offer"</i>	The form that Tenderers must complete, sign and return with their Tender to state and confirm their Tender Sum. The form includes a number of statements that Tenderers sign to confirm their compliance. The Council's Standard <i>"Formal Declaration of Tender Offer"</i> is available on the Council's Intranet, and can be [downloaded here] .
Framework Agreement	An agreement with Contractors to establish terms governing Contracts that may be awarded during the life of the Framework Agreement, or a general term for agreements that set out terms and conditions for making specific purchases (referred to as "call-offs").
Insurance Officer	The officer designated by the Director responsible for insurance arrangements within the Council, who co-ordinates insurance matters on behalf of the Director.
Invitations to Tender	A letter, email or other communication sent to Tenderers – either by post or electronically – together with Contract Documents, that invites Tenderers to submit a Tender by the Tender Return Date.
Late Tender	A Tender that has not been received by the Asst. Director (Governance & Performance Management) by the Tender Return Date.
Light Touch Regime (LTR) / Procurement	A specific set of rules introduced by the Public Contracts Regulations 2015 for certain Services contracts that tend to be of lower interest to cross-border competition, that replace the previous distinction between "Part A" and "Part B". These include certain social, health and education services, defined by the Regulations. A relatively high financial threshold is applied to the LTR, below which contracts do not need to be advertised in the OJEU. For LTR contracts above the threshold, contracting authorities have to follow a new light-touch set of procurement rules, set out in the Regulations.
Liquidated and Ascertained Damages	Fixed damages stated in a Contract, and usually set as an amount per week (or part of a week), which the Contractor must pay the Council (or which the Council may deduct from payments to the Contractor) if completion of the Contract is delayed beyond the Contract completion date, as adjusted by any extensions of time. Note that they are void as a penalty if they are not a "genuine pre-estimate" of the Council's potential loss, in which case the Council can usually recover normal, unliquidated damages for breach of Contract.

Long List	A list of all Contractors expressing an interest in receiving an Invitation to Tender, before any selection process has been undertaken by the Council to produce a Short List.
Most Economically Advantageous Tender (MEAT)	A Tender for a Contract that has been evaluated not only on the basis of the price submitted by a Tenderer, but also on the basis of the assessed quality of both the submitted Tender and the Tenderer. This is in accordance with a pre-determined MEAT Assessment Methodology, with Tenders evaluated using a pre-determined MEAT Evaluation Assessment, which usually provides for pre-determined weightings to be applied to the price and the quality of various aspects of the Tender.
"MEAT Assessment Methodology"	The pre-determined approach agreed by the Council, and available on the Council's Intranet, to assess the Most Economically Advantageous Tender (MEAT). The Council's current Methodology can be downloaded here .
MEAT Evaluation Assessment	The document that sets out the pre-determined weightings to be applied to the price and the quality of various aspects of the Tender, and used to calculate the relative scores of all the Tenders received.
Nominated Sub-Contractors and Suppliers	Sub-contractors and suppliers that the Council requires a Works Contractor, Service provider or other Supplier to use to perform the Contract.
Official Order	A standard form of Contract placed with a Works Contractor, supplier, service provider or Consultant, that is usually issued through the Council's Marketplace System or the Northgate Open Housing Management System (OHMS)
Parent Company Guarantee	A guarantee by the parent company of a Contractor in respect of the Contractor's performance under its Contract with the Council, where the Contractor is a subsidiary of the parent company
Partnering Contract	A broad term used to describe a collaborative management approach that encourages openness and trust between the parties to a Contract. The parties become dependent on one another for success, which often requires a change in culture, attitude and procedures throughout the supply chain. Most commonly used on large, long-term or high-risk contracts, Partnering Contracts can be adopted for a one-off project, or can be a long-term relationship over a number of projects (such as a Framework Agreement).
Performance Bond	A means of insuring a Contractor against the risk of the Contractor failing to fulfil its contractual obligations to the Council. The Performance Bond provides compensation, guaranteed by a third party, up to the amount of the Performance Bond (which is typically set at 10% of the Total Contract Value), to enable the Council to overcome difficulties that have been caused by non-performance of the Contractor, such as, for example, finding a new Contractor to complete Works.
Portfolio Holder	A Councillor appointed by the Leader of the Council as a member of the Cabinet with responsibility for a particular portfolio of services, as set out

	in the Council's Constitution.
Post-Tender Negotiations	Discussions that take place with one or more Tenderers on price and/or other terms of the Contract or Specification after Tenders have been received and opened.
Practical Completion	The completion of all the Works required to fulfil a Contract.
Pre-estimate of Quantities	A Spending Control Officer's best estimate of the quantities of items relating to the Contract that will arise over the Contract Period, that are applied to rates submitted by Tenderers to produce an Estimated Tender Sum, which is used to compare the Tenders received from different Contractors.
Preferred Tenderer	A Tenderer that is being recommended to be awarded a Contract.
Procurement Toolkit	An EFDC Toolkit, that can be downloaded here , that provides advice and guidance on procurement issues, that supports and complements the Council's core financial procedures and clearly sets out the Council's corporate processes for procurement. In no circumstances should these be overlooked and all guidance should be considered alongside the relevant procedures.
"Procurement Process ("Regulation 84") Report"	A requirement of Regulation 84 of the Public Contracts Regulations 2015, relating to procurements where the Total Contract Value is above the EU thresholds for EU Regulated Contracts, which is completed throughout the procurement process and is a written statement, in a defined format, that provides information on different aspects of the procurement and must be made available to Tenderers on request. A template for the "Procurement Process ("Regulation 84") Report" can be obtained from the Council's Intranet, and can be downloaded here .
Professional Indemnity (PI) Insurance	A liability insurance that helps protect individuals and companies (usually Consultants) from bearing the full cost of defending a negligence claim in respect of professional advice provided to the Council by the Consultant.
Public Contracts Regulations 2015	Regulations made by the UK Government to exercise the powers given by the European Communities Act 1972, relating to procurements by public bodies in the UK and, in particular, for EU Regulated Contracts that are above the financial thresholds for Works, Supplies and Services Contracts referred to in the Regulations.
Record of Tenders	A record of Tenders received for every procurement, where the Total Contract Value is within Contract Category 1 of Appendix 1 or higher, listing the Tender Sums submitted by each Tenderer, together with the Tenderer's names, completed by a Democratic Services Officer and held by the Asst. Director (Governance & Performance Management).
Retention	A percentage of the amount certified as due to a Contractor following their completion of a Contract, which is deducted from the amount due and retained by the Council. The purpose of holding a Retention is to ensure that the Contractor properly completes the activities required of them under the Contract.

Retention Period	The period during which a Retention is held by the Council.
Safeguarding	Ensuring the wellbeing of either adults with care and support needs or children in accordance with the requirements of the Care Act 2014 and the Children Act 2004 respectively.
Schedule of Rates	A list of prices provided by a Tenderer against items within a list produced by the Council for Tenderers to complete. The prices are multiplied by the Pre-Estimate of Quantities to produce an Estimated Tender Sum.
Select List	A list of selected Contractors to which Invitations to Tender are issued.
Services	<i>(According to Volume 1 of the EU Public Procurement: Law and Practice)</i> In relation to public Contracts, means matters which have as their object the provision of services other than those defined as Works.
Short List	A list of Contractors that has been reduced, following a selection process, from a Long List of Contractors expressing an interest in receiving an Invitation to Tender. The Short List often then forms a Select List.
Specification	A document that sets out the detailed requirements of the Council for the undertaking or provision of Works, Supplies or Services, and forms an important part of the Tender Documents and the subsequent Contract issued to a Contractor.
Spending Control Officer	The officer designated by a Director as being responsible for a specified Council budget, from which payments for a Contract will be made, who is responsible for all aspects of the procurement process for a Contract and for complying with these Procurement Rules.
Supplies	<i>(According to Volume 1 of the EU Public Procurement: Law and Practice)</i> In relation to public contracts, means a matter that has as its object the purchase, lease, rental or hire-purchase (with or without an option to buy) of a product or products.
Tender	A written tender, quotation or fee submission submitted by a Tenderer in accordance with these Procurement Rules, that sets out the Tenderer's proposed price for performing a Contract, together with any other information required by the Council and these Procurement Rules.
Tender Documents	A set of documents sent to Contractors with an Invitation to Tender, which explains the Council's requirements for a proposed Contract and includes documents to be returned to the Council for consideration
Tenderer	A person or organisation that is invited to submit a Tender to the Council.
Tender Evaluation Score	The score that results from a MEAT Evaluation Assessment of a Tender, which is used to rank Tenders in order of the Most Economically Advantageous Tender in terms of best price and quality. A Contractor with the highest Tender Evaluation Score is usually offered the Contract.
Tender Sum	The total price set out in a Tender that a Contractor would charge to perform the required Contract, before any Contract Extensions are

	applied. An Estimated Tender Sum is calculated where a Contractor prices a Schedule of Rates.
Tender Opening	A meeting between those designated within Appendix 1 to be present when Tenders received for a Contract are opened, and which must be held no earlier than the day after the Tender Return Date.
Tender Return Date	The time and date specified within an Invitation to Tender by which Tenders must be returned and received by the Council. The time must always be specified as Noon, in order to minimise the potential for Tenders not being received by the Asst. Director (Governance & Performance Management) or his/her staff on the day of the Tender Return Date and to provide time for Tenders received at the Civic Offices before Noon to be passed to the Asst. Director (Governance & Performance Management) before the Tender Opening
"Tender Return Label"	A label provided by the Council to Tenderers to affix to the envelope in which they return their Tender - which gives details of the Contract, the Tender Return Date and the name of the officer to whom the Tender must be returned. A copy of the Council's "Tender Return Label" can be obtained from the Council's Intranet, and can be downloaded here .
Total Contract Cost	The actual total cost of the Contract at the end of the Contract Period, after any Contract Extensions have been applied.
Total Contract Value	The total value of the Works, Services, and/or Supplies over the Contract Period, including all potential Contract Extensions to the initial Contract Period.
Works	<p><i>(According to Volume 1 of the EU Public Procurement: Law and Practice)</i> means the outcome of building or civil engineering works taken as a whole, which is sufficient in itself to fulfil an economic or technical function.</p> <p>In relation to public contracts, means matters which have as their object any one of the following:</p> <ul style="list-style-type: none"> (a) The execution, or both the design and execution, of works related to one of the activities listed in Schedule 2 to the Public Contracts Regulations 2015; (b) The execution, or both the design and execution, of a work; and/or (c) The realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority "exercising a decisive influence on the type or design of the work".

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Report to Constitution Working Group

Date of meeting: 25 January 2018

Subject: Planning Process Review 2017/18 – Delegation; Objections and Committee Systems

Officer contact for further information: S Hill (01992) 564249

Democratic Services Officer: V. Messenger (01992) 564265

Recommendations:

- (1) To discuss the current delegation arrangements for Planning committees and give guidance to officers;**
- (2) To consider consultation arrangements for any proposed changes.**

Background to proposals

1. (Assistant Director, Governance/ Assistant Director Development Management)
At the last meeting in September, members agreed that at this meeting we would concentrate considerations on:

- (i) Officer delegations;
- (ii) How objections are considered and resolved;
- (iii) How objections trigger a member review;
- (iv) Committee systems for members considering planning applications; and
- (v) Style of officer reports.

Officer Delegation

2. As a reminder, the Local Plan must:
 - (i) Meet the overall requirement for housing provision (11,400 net additional homes) over the plan period; and
 - (ii) Provide a five-year supply of deliverable housing sites against the Plan's housing requirement with an appropriate additional buffer, ensuring that historic under-delivery since 2011, the start of the plan period, is addressed as quickly as practicably possible.
3. It is timely that the Council should review the current arrangements for delegation to officers and the way in which the development management function operates in order to ensure the implementation of the Local Plan. This will have considerable resource implications for all service areas within the Council. The Council will receive a significantly increased volume of work – both at pre-application and application stage and resources will need to be made available in order to accommodate this. The Cabinet considered a report on 15 June 2017 and agreed an approach to the production of Strategic Masterplans in the District and the introduction of Planning Performance Agreements and noted the corporate implications for delivery and implementation of the Local Plan. Following the Cabinet

decision the Council commissioned a skills audit to identify where additional skills and resources are likely to be required. This led to a report to Cabinet on 7 December 2017 on resourcing the delivery of the Local Plan. The Cabinet agreed to the establishment of an Implementation Team to ensure the effective delivery of the required growth in housing, employment and infrastructure proposed in the Local Plan and agreed a bid for 2 years District Development Fund to support the establishment of the team. Work is currently underway to scope the team taking account of potential future income through Planning Performance Agreements and other income sources to enable recruitment to commence as soon as possible.

4. Member involvement will be required over and above the determination of planning applications during the preparation of the strategic masterplans and concept frameworks and to be briefed on pre-application proposals in an open and transparent way in order to ensure that members are not caught by predetermination. Mechanisms for doing this need to be considered – one way is for there to be a regular briefing as part of District Development Management Committee of the status of proposals and masterplans and for presentations to be made on progress associated with key sites. Alternatively a separate arrangement could be established. Members will also no doubt wish to attend community engagement meetings that are set up in the preparation of masterplans – consideration could be given to the establishment of a Forum structure to consider such matters. Such forum have been established in many authorities and the Council will need to consider the arrangements for this District.

5. The Council, through its new Corporate Plan considerations has given a commitment to undertaking a review of its Governance arrangements (Objective: Robust Local Democracy and Governance, Plan 2018/19: a governance review to review the structure of the Council's Cabinet and committees, to increase the efficiency of decision making).

6. It is key to such a review that we consider the need to match available staffing resources to ensure that they are being used in the most effective way, and gives the councillors the ability to ensure their oversight on sites that are of concern as they too will have greater pressures placed upon them in the wider planning role envisaged.

7. The reality of the delegation processes at the moment is that many of those applications decided by members do not meet the target of determination within eight weeks of receipt. Those determined by officers do. Statutory performance reporting includes those applications where we have agreed with the applicants an extension of time so that we can take longer to determine due to one of the parameters in the constitution requiring member scrutiny.

8. The current scheme of delegation to Officers is attached at Appendix 1 to this report. It sets out those applications which can be determined by officers with a number of circumstances where member determination is required. These matters are set out in the Appendix A of that document.

9. Each item is discussed below:

Current Referral Condition

Discussion Points

(a) Applications contrary to the provisions of an approved draft Development Plan or Development Plan, and which are recommended for approval;

Could this be based on substantial (to be quantified) departures from local plan policy approved by the Council, and which are/is recommended for approval;

Current Referral Condition

Discussion Points

(b) Applications contrary to other approved policies of the Council, and which are recommended for approval;

Officers cannot recall this being used as a reason to call in applications for determination by Committee. So what does this mean in practice?

Could it be removed and the decision given to the AD Development Management to decide if development conflicts with the aims and objectives of the Council?

(c) Applications for major commercial and other developments, (e.g. developments of significant scale and/or of wide concern) and which are recommended for approval;

Article 10 of the constitution sets out the size of commercial/large scale developments that are referred to committee. Could the threshold be set at the same? DDMC >10,000sqm/.2 hectares,
Plans Subs >1,000sqm-9,999sqm/.1 hectare <2 hectares?

How deal with Local Plan sites in the delegation?

How should we deal with material planning objections to a proposal?

(d) Applications for residential development consisting of 5 dwellings or more (unless approval of reserved matters only) and which are recommended for approval);

Is this threshold too low? Article 10 suggests that major applications are in the range 10-199 or where the council is the owner is the bottom threshold. Should this be applied more generally or just for Council specific sites?

Should there be different thresholds for sites allocated in the local plan site? Would members want to see all local plan sites over a certain size? (see also note later on Local Plan sites)

(e) The Council's own applications on its land or property which are for disposal;

Would this slow down the delivery of early local plan sites we have already allocated in principal that can be developed?

Or is it still appropriate?

Are there other measures that could be relied upon?

Is this something we should be doing in the interests of openness and transparency

Current Referral Condition

Discussion Points

(f) Those applications recommended for approval where there are more than two expressions of objections received, material to the planning merits of the proposal to be approved, apart from approvals in respect of householder type developments, telecommunication masts, shop fronts and vehicular crossovers and "other" category developments (changes of use, advertisements, listed building consents), where more than four expressions of objections material to the planning merits of the proposal to be approved are received;

See discussion of Householder applications below.

Officers are of the view that this threshold could be a greater number of objections for all applications (householder and 'other' applications aside.)

Should these applications be referred to Area Subcommittees at all?

Those objections should raise material planning objections that cannot be overcome by conditions

(g) Applications including certificates of lawfulness in respect of existing use and development, recommended for approval contrary to an objection from a local council which are material to the planning merits of the proposal;

See (l) below

(h) Applications referred by a District Councillor, whose own ward must be within the remit of the relevant Area Plans Sub-Committee and who has firstly notified the relevant Ward Councillors in advance, so long as the referral has been requested in writing to Officers within 4 weeks of that applications notification in the weekly list;

The current number of call ins by members does not give rise to any significant concern as the volume is low but good practice suggests that there should be a material planning reason given for the action, in writing, for clarity for applicants/objectors.

Do members wish to continue the ward restriction?

"Any application which a Member has requested be referred to the appropriate Area Subcommittee for consideration (provided that the Member has given a reason for the request) within 4 weeks of that applications notification in the weekly list"

(i) Applications where the recommendation conflicts with a previous resolution of a Committee;

It is suggested that this should be limited to a 12 month period as it is impossible to track this over a longer period.

Current Referral Condition

Discussion Points

(j) Applications submitted by or on behalf of a Councillor of the Authority (and/or spouse/partner) or on behalf of a member of staff of Development Control Division of the Governance Directorate and the Forward Planning and Economic Development Division of the Neighbourhoods Directorate (and/or spouse/partner) and also in those cases where a councillor is an objector in a purely personal capacity;

Officers suggest that the requirements are overly onerous and suggest:

“(1) Any application made by an elected Member or senior officer (Head of Service and above) of the Council, or a close relation of either such persons, will be considered by the appropriate Area Subcommittee; and

(2) Delegation be permitted if the application is refused.”

Article 10 would need amendment

(k) Any other application which the Director of Governance considers it expedient or appropriate to present to committee for decision (e.g. those raising issues not covered by existing policies, or of significant public interest, or those with a significant impact on the environment);

No change is suggested here

(l) An application which would otherwise be refused under delegated powers by the Director of Governance but where there is support from the relevant local council and no other overriding planning consideration necessitates refusal.

It is suggested that (g) and (l) could be replaced with:

Any application which does not fall into the ‘other’ or ‘householder’ category where the Parish/Town Council has made material planning representations which are contrary to the recommendation made by Officers and where the Parish Council has confirmed in its consultation response that they will be in attendance to speak at the meeting of the appropriate Committee.

Householder Applications

10. There are three categories of development as categorised by the MHCLG.

Major Developments:-

- The provision of dwellinghouses where –
 - a) The number of dwellinghouses to be provided is 10 or more: or
 - b) The development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the number of dwellinghouses to be provided is 10 or more.
- The provision of a building or buildings where the floor space to be created by the development is 1000 square metres or more: or
- Development carried out on a site having an area of one hectare or more;

Minor Development:-

The number of dwellinghouses to be provided is between one and nine inclusive on a site having an area of less than one hectare.

Where the number of dwellinghouses to be provided is not known, a site area of less than 0.5 hectares should be used as the definition of a minor development.

For all other uses, a minor development is one where the floor space to be created is less than 1,000 square metres or where the site area is less than one hectare.

Other Development:-

Changes of use, **Householder** extensions, Advertisements, Listed building consents and demolition in a conservation area.

11. Research has been undertaken on the number of householder applications that have been referred to committee for decision for the period November 2016-October 2017 that were recommended for approval:

Committee	Date	No. of Householder	No. Householder Refused	Total No. of Applications on Meeting Agenda
	2016			
West	16 November	1	1	6
South	23 November	4	2	11
East	07 December	4	2	6
East (extra)	13 December	0	0	7
West	14 December	2	0	3
	2017			
South	04 January	4	1	10
East	18 January	4	0	9
West	25 January	2	0	9
South	01 February	5	1	13
East	15 February	1	1	6
West	22 February	0	0	5
South	01 March	6	0	10
East	15 March	4	0	7
West	22 March	0	0	8
South	29 March	7	1	11
East	12 April	3	0	8
West	19 April	1	0	5
South	26 April	1	0	3
East	10 May	1	1	5
West	17 May	5	1	14
South	31 May	2	1	8
East	14 June	4	0	11
West	21 June	1	0	7
South	28 June	6	0	11
East	12 July	3	0	12
West	19 July	2	0	7
South	26 July	7	0	12
East	09 August	4	0	8
West	16 August	2	0	4
South	23 August	8	0	13

Committee	Date	No. of Householder	No. Householder Refused	Total No. of Applications on Meeting Agenda
East	06 September	4	0	6
South	27 September	6	2	16
East	11 October	5	0	12
	TOTALS	109	14	283

12. Of 109 Householder applications referred to members, only 14 applications were then refused. This represents 13% of all referred householder applications or 0.5% of the total applications that came before members in the last year. For each these 109 applications, once representations have been received, the process to get the application to committee is outlined below. Each referral adds between three and six weeks to the determination timescale for applicants and is resource intensive. The process map is shown at Appendix 2 attached.

13. Discussion with senior presenting officers has revealed that each committee meeting takes between two and three days of preparation. Each of those 109 applications have required a Committee report to be written, reviewed and amended, all those that responded to the planning consultations are then written to advising of the date of the Committee giving representation details etc.

14. Reports are then compiled into an agenda, passed to democratic services ten working days before the agenda and published. At Committee, each application takes between 15-20 minutes (average) to discuss and determine. Discussion of applications for only those granted householder applications can therefore be estimated at 24 hours (at least) of Sub-committee time in the last year. The Officer resource required is significantly larger.

15. It is considered that this is not the most effective use of resources and that most these applications could have been, and should be, determined by officers under delegation. No changes are suggested to members call in arrangements and these could be used to bring the few applications needing member determination to committee. In a recent report to members, officers reported on recent performance against KPI GOV008 (Committee Reversals) where 5 of 16 Committee reversals were upheld at appeal, but only one of these fell into the 'householder' category.

Local Plan implementation

16. A number of issues present themselves:

- What level of member involvement in masterplans should there be?
- Community engagement/involvement – should proposals set up a Development Management Forum or mechanism for public engagement
- Which applications should be determined by officers?
- How deal with the master planning issues?
- Where would infrastructure applications go? DDMC?
- Should all larger sites go to DDMC? What should be the threshold for this?
- Should sites go only if requesting more homes than the Local Plan allocation suggests?
- Should area subcommittees have a role similar to those owned by EFDC eg referring them to DDMC if proposing refusal contrary to officer recommendations?
- What other safeguards should there be?

Committee systems for members considering planning applications

17. The current arrangements for considering applications are unusual. Most Councils' have one or two committees that deal with planning applications. Our arrangements were originally agreed by members in 1999. At that time approval was given to the creation of four area committees A,B,C and D. The original intention was to give them a wider role than just planning. Some devolved budgets were given to those committees. A review reduced those committees to three in 2007.

18. Prior to 1999, the Council operated two Planning Committees which dealt with applications as they were ready for determination on a non-geographic basis.

19. All other meetings of the Council follow the provision in the Local Government Act 1972 in that they are:

- (a) Subject to pro rata at the same proportions of seats for groups as it holds on the main council;
- (b) Maintains the overall majority for each committee that reflects that of the full Council seats;
- (c) Does not have a membership made up of one group only (Except those related to Cabinet which is allowed under the 2000 Act).

20. The Local Government (Committee and Political Groups) Regulations 1990, Section 19(c) (SI 1990, 1553), allows exceptions to pro rata where:

- (a) the voting members of the committee consists solely of persons who are elected for the electoral divisions or wards which are wholly within that part; and
- (b) the area of that part does not exceed two fifths of the total area of the authority; or
- (c) the population of that part, as estimated by the authority, does not exceed two fifths of the total population of the area of the authority as so estimated.

21. This is the basis on which the current Area Committees were formed. Each Committee considers only those which are made within its own area. For the period November 2016-October 2017 the Committee workloads were:

Area Subcommittee	Total Applications during the period
South	118
East	97
West	68

21. In summary:

- Clearly there is an imbalance in the workloads of these Sub-committees.
- Plans South now holds more than 40% of the District Population and therefore does not meet the test in 20(c) above;
- Plans East is more than 40% of the area of the District and therefore does not meet the test in 20(b) above;
- The number of household applications is greater from the more urban area of the district.
- Pro rata cannot be achieved under the current configuration of committees.

- Elections in May 2018 may also affect the balance of seats on committees and could result in 19(c) above.
- Area South does not meet tests in the Act set out in 19(a) and (b) above.

23. District Development Management Committee (DDMC) meets once every other cycle (6 meetings per annum). In the last year, two of those meetings have been cancelled due to lack of business. This Committee does have more capacity to deal with applications, possibly those relating to Local Plan allocation sites? It could meet with more frequency. Applications referred from Areas to DDMC can also wait nearly two months for determination depending on meeting cycles.

24. The following alternative options present themselves:

- (a) Do nothing at this time pending the assessment of the effect of not routinely referring 'other' category and householder applications to Sub-committees and review in a year;
- (b) Change the number of or configuration of Subcommittees (any area committees would need to meet the test in paragraph 20 above);
- (c) Change the Subcommittees to normal pro-rata committees (this would mean having a membership open to all members);
- (d) Increasing the number of DDMC meetings and altering the responsibilities of those committees relative to each other.

Style of officer reports

25. The style of officers report to planning meetings has remained ostensibly the same for a considerable time. Recent changes mean that:

- (a) Maps of sites are at the beginning of the item rather than at the back;
- (b) Hyperlinks have been added to enable easier viewing of the online application form and drawings for each item.
- (c) The contact officers name now appears on each report

26. The report each contains:

- (a) Recommendation (with suggested conditions if approval or reasons for refusal);
- (b) Site description
- (c) Proposal Description
- (d) Relevant site history
- (e) Policies applied
- (f) A summary of representations
- (g) Issues and considerations
- (h) A conclusion

27. It is officer's view that the current format works well but, as discussed earlier in the report, it is the volume of applications referred to Committee that is the cause of greater workloads. Review of other authority's agendas does reveal variations, but in general terms our reports are not overly detail heavy.

28. Members are asked to discuss whether they desire any changes to style or content of reports to members.

Meeting arrangements

29. Councillor Bedford has asked officers to look at other meetings arrangements. His correspondence is attached at Appendix 3 for consideration. These cover site visits.

Consultation Arrangements

30. Members may wish to suggest their desired level of consultation on any changes they are proposing

DEVELOPMENT CONTROL FUNCTIONS – Delegation to the Director Of Governance

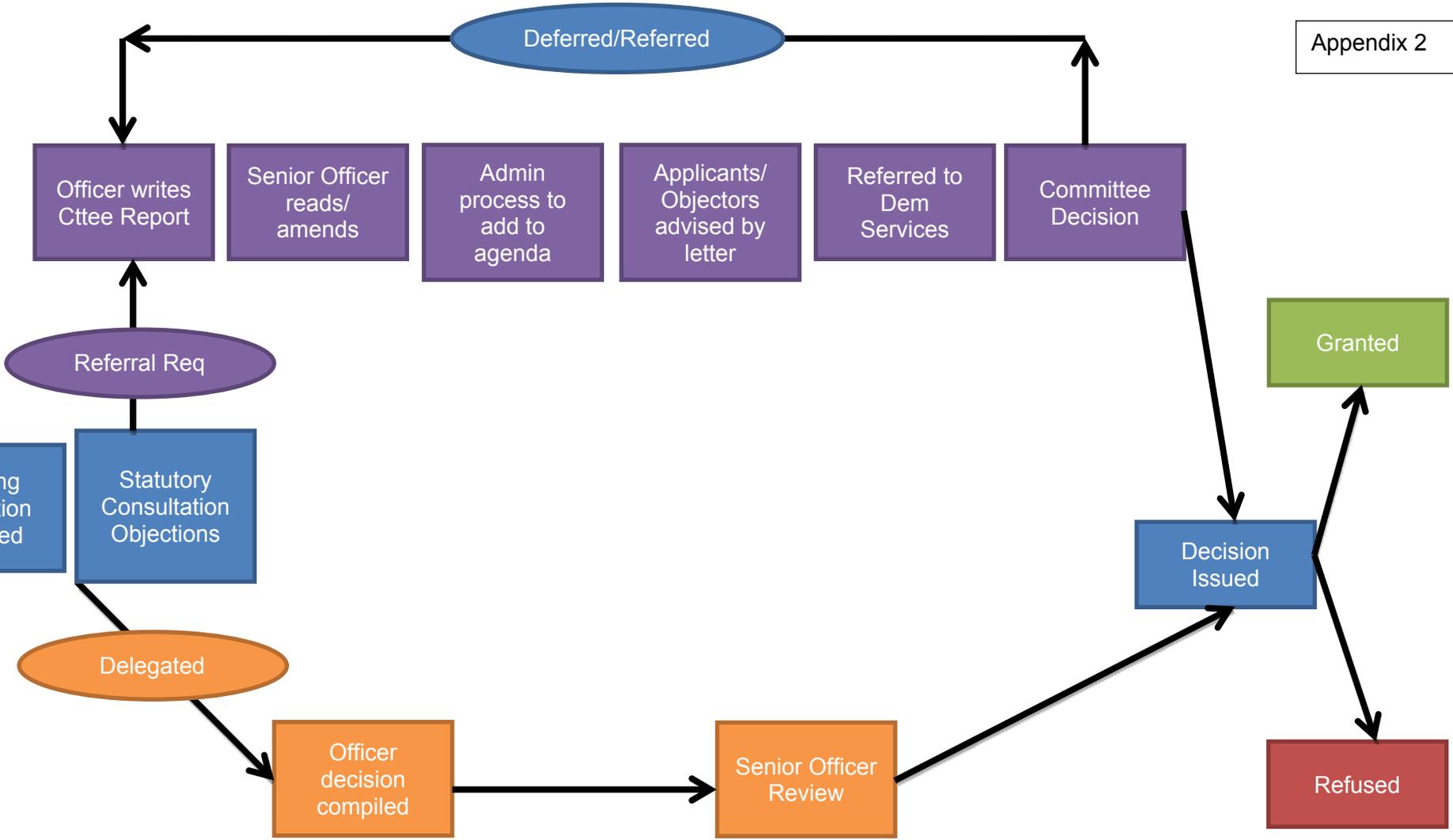
Function	Principal Relevant Legislation (*see note)	Relevant Details	Exceptions
Care of the Environment District Development Control Committee (Minute 30 – 7.12.10)	Town and Country Planning (Environmental Impact Assessments) (England and Wales) Regulations 1999 Planning (Hazardous Substances) Act 1990, Section 36, 36A and 36B Planning (Hazardous Substances) Regulations 1992	To determine the need for and scope of environmental impact assessments required under the Town and Country Planning Acts. To determine applications for hazardous substances consent except those where there are objections from interested parties, which shall be determined by the relevant Area Planning Sub-Committee. To use necessary powers of entry to the land in relation to the above and duly authorise officers and agents engaged by the Council to use the relevant powers of entry as necessary.	No
Development Control District Development Control Committee (Minute 30 – 7.2.10) Council Minute 29 – 28.6.11	Town and Country Planning Act 1990 - Section 70, 70(A), 191-3, 324, 325 Planning and Compensation Act 1991, Section 10 Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990, Part 1, Reg. 16-19 Town and Country Planning (Development Management Procedure) (England) Order 2010, Part 6, Article 35	1. Subject to Appendix A below, which are matters to be determined by Committee, to determine or decline to determine any: (a) planning applications; (b) applications for approval of reserved matters; (c) applications arising from any condition imposed on any consent, permission order or notice; (d) advertisement consents; and (e) listed buildings. 2. To agree the precise wording of additional/revised conditions to be attached to planning permissions, at members' request, and discharge of	Yes (See Appendix A to this Schedule)

Function	Principal Relevant Legislation (*see note)	Relevant Details	Exceptions
	<p>Town and Country Planning (Control of Advertisements) (England) Regulations 2007, Part 3, Reg. 14-15</p> <p>Town and Country Planning General Permitted Development Order 1995, Part 6 and Part 31 of Schedule 2</p> <p>As amended by SI2008 No. 2362 and 5</p> <p>Town and Country Planning (Development Management Procedure) (Amendment) (England) Order 2013</p>	<p>conditions.</p> <p>3. To determine whether a 28 day prior approval application of the method of any proposed demolition and any proposed site restoration is required and to give such approval where required.</p> <p>4. In relation to prior approval of telecommunications equipment, to determine, after prior consultation with ward Councillors in cases where a valid planning objection has been made, whether the prior approval of the Council should be required to the siting and appearance of notified development.</p> <p>5. In relation to agricultural development, to determine whether to require the formal submission of details.</p> <p>6. Subject to Appendix A(g), to determine applications in relation to certificates of lawful use and development.</p> <p>7. To use necessary powers of entry to the land in relation to the above and duly authorise officers and agents engaged by the Council to use the relevant powers of entry as necessary.</p> <p>8. To determine or decline to determine any non-material amendments.</p> <p>9. Subject to consultation with Ward Members in the cases where a valid objection has been made and are minded to grant, to determine applications for prior approval.</p> <p>Note: The categories of Prior Approval in operation at any particular time can be confirmed by the Assistant Director (Development Management).</p>	

Function	Principal Relevant Legislation (*see note)	Relevant Details	Exceptions
Enforcement District Development Control Committee (Minute 30 – 7.12.10)	<p>Town and Country Planning Act 1990 (as amended), Part 7, section 171-190, 196 A, B, C, 198-200 214(A)-(D), 215-219, 220 or 221, 224, 225, 325 and 330</p> <p>Town and Country Planning (Control of Advertisements) (England) Regulations 2007, Part 5, sections 27 and 30</p> <p>Planning (Listed Buildings and Conservation Areas) Act 1990, Chapter 4, sections 38, 88, 88A and 88B</p> <p>Local Government (Miscellaneous Provisions) Act 1982 (Section 37)</p>	<p>Authority for Director of Governance to:</p> <ol style="list-style-type: none"> 1. Issue Stop Notices, Temporary Stop Notices, Enforcement Notices, Breach of Conditions Notices, Building Preservation Notices, Listed Buildings Enforcement Notices, Planning Contravention Notices, Conservation Area Notices, Discontinuance Notices in respect of advertisements and Section 215-219 Notices for all breaches of planning legislation, in accordance with the Council's adopted enforcement policy. 2. Prosecute the unauthorised display of advertisements, unauthorised works to a listed building, and non-compliance where enforcement action has previously been authorised. 3. Take appropriate enforcement action, including serving an injunction where the Director of Governance or their nominee, having regard to the evidence considers the circumstances to require urgent action. 4. Investigate if a temporary market has been held in breach of Section 37 of the 1982 Act. 5. Vary the requirements for compliance with notices already authorised, including altering the period required for compliance, service of further notices and withdrawal of notices. 6. Determine when action is not expedient in relation to breaches of control considered inconsequential or insignificant. 7. To use necessary powers of entry to the land in relation to the above and duly authorise officers and agents engaged by the Council to use the relevant powers of entry as necessary. 	
	<p>Town and Country Planning Act 1990 (Section 178) (Council Minute 126 – 23.4.13)</p>	<p>8. To authorise direct action (or re-charge the cost of that action) in pursuit of a valid enforcement notice under Section 178.</p>	<p>Subject to budget provision being available and to local District Councillors being notified</p>

APPENDIX A: MATTERS TO BE DETERMINED BY THE RELEVANT COMMITTEE

- (a) Applications contrary to the provisions of an approved draft Development Plan or Development Plan, and which are recommended for approval;
- (b) Applications contrary to other approved policies of the Council, and which are recommended for approval;
- (c) Applications for major commercial and other developments, (e.g. developments of significant scale and/or of wide concern) and which are recommended for approval;
- (d) Applications for residential development consisting of 5 dwellings or more (unless approval of reserved matters only) and which are recommended for approval);
- (e) The Council's own applications on its land or property which are for disposal;
- (f) Those applications recommended for approval where there are more than two expressions of objections received, material to the planning merits of the proposal to be approved, apart from approvals in respect of householder type developments, telecommunication masts, shop fronts and vehicular crossovers and "other" category developments (changes of use, advertisements, listed building consents), where more than four expressions of objections material to the planning merits of the proposal to be approved are received;
- (g) Applications including certificates of lawfulness in respect of existing use and development, recommended for approval contrary to an objection from a local council which are material to the planning merits of the proposal;
- (h) Applications referred by a District Councillor, whose own ward must be within the remit of the relevant Area Plans Sub-Committee and who has firstly notified the relevant Ward Councillors in advance, so long as the referral has been requested in writing to Officers within 4 weeks of that applications notification in the weekly list;
- (i) Applications where the recommendation conflicts with a previous resolution of a Committee;
- (j) Applications submitted by or on behalf of a Councillor of the Authority (and/or spouse/partner) or on behalf of a member of staff of Development Control Division of the Governance Directorate and the Forward Planning and Economic Development Division of the Neighbourhoods Directorate (and/or spouse/partner) and also in those cases where a councillor is an objector in a purely personal capacity;
- (k) Any other application which the Director of Governance considers it expedient or appropriate to present to committee for decision (e.g. those raising issues not covered by existing policies, or of significant public interest, or those with a significant impact on the environment);
- (l) An application which would otherwise be refused under delegated powers by the Director of Governance but where there is support from the relevant local council and no other overriding planning consideration necessitates refusal.



Notification to Chairmen and Vice Chairmen of Planning Committees to consider the following changes to our procedure.

Reason for Change

Due to the procedures we currently follow we often listen to full explanation by the planning officer followed by representations from members of the public , finally a full debate is discussed by members – Some one then suggests that a site visit is necessary , its seconded and everyone present is notified of the deferral.

My proposal

Change the way we deal with planning presentations - to do this we would need a slight change to our agenda protocol .

Stage 1

During items on the agenda being progressed through when we come to any other business Item 6 and before item 7 we add an additional item .

That being Any recommendations for site visits by members .

If a member puts forward a site visit and this is seconded by two other members of the committee this is noted.

Stage 2

When during the course of business of item seven Development control the referral for site visit item is reached for discussion ,

- 1) The officer explains to the public that this item will not be receiving discussion from the public this evening and the matter will be listed at the next planning meeting after a site visit by members.
- 2) The planning officer will then summarise only the planning application as a briefing to members

No discussion will be entered into between members or the planning officer at this stage.

The caveat to this is that during any presentation members are still entitled to recommend any item for a site visit if they feel a benefit emerges during the presentation worthy of the site visit as already in place during current planning meetings.

Benefits .

- Reduction in double representation from members of the public .
- Reduction in time spent by officers in going through an application in detail.
- Reduction in members time in the chamber on busy evenings enabling business to be concluded in 1 session.

This may need to be referred to the constitutional working group for further consideration .

Cllr Nigel Bedford Plans East Member