

**NORTH HERTFORDSHIRE DISTRICT COUNCIL**



3 December 2020

Our Ref Council 16.01.20  
Your Ref.  
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To: The Chairman and Members of North Hertfordshire District Council

**NOTICE IS HEREBY GIVE OF A**

**MEETING OF THE COUNCIL**

to be held in the

**COUNCIL CHAMBER, DISTRICT COUNCIL OFFICES,  
GERNON ROAD, LETCHWORTH GARDEN CITY**

on

**THURSDAY, 16 JANUARY 2020**

at

**7.30 PM**

Yours sincerely,

Jeanette Thompson  
Service Director – Legal and Community

**\*\*MEMBERS PLEASE ENSURE THAT YOU DOWNLOAD ALL  
AGENDAS AND REPORTS VIA THE MOD.GOV APPLICATION  
ON YOUR TABLET BEFORE ATTENDING THE MEETING\*\***

## **Agenda**

### **Part I**

<b>Item</b>		<b>Page</b>
<b>1.</b>	<b>APOLOGIES FOR ABSENCE</b>	
<b>2.</b>	<b>MINUTES - 21 NOVEMBER 2019</b> To take as read and approve as a true record the minutes of the meeting of the Committee held on the 21 November 2019.	5 - 14
<b>3.</b>	<b>NOTIFICATION OF OTHER BUSINESS</b> Members should notify the Chairman of other business which they wish to be discussed at the end of either Part I or Part II business set out in the agenda. They must state the circumstances which they consider justify the business being considered as a matter of urgency.  The Chairman will decide whether any item(s) raised will be considered.	
<b>4.</b>	<b>CHAIRMAN'S ANNOUNCEMENTS</b> <u>Climate Emergency</u>  Members are reminded that this Council has declared a Climate Emergency. This is a serious decision and means that, as this is an emergency, all of us, officers and members have that in mind as we carry out our various roles and tasks for the benefit of our District.  <u>Declarations of Interest</u>  Members are reminded that any declarations of interest in respect of any business set out in the agenda, should be declared as either a Disclosable Pecuniary Interest or Declarable Interest and are required to notify the Chairman of the nature of any interest declared at the commencement of the relevant item on the agenda. Members declaring a Disclosable Pecuniary Interest must withdraw from the meeting for the duration of the item. Members declaring a Declarable Interest, wishing to exercise a 'Councillor Speaking Right', must declare this at the same time as the interest, move to the public area before speaking to the item and then must leave the room before the debate and vote.	
<b>5.</b>	<b>PUBLIC PARTICIPATION</b> To receive petitions, comments and questions from the public.	
<b>6.</b>	<b>ITEMS REFERRED FROM OTHER COMMITTEES</b> Any Items referred from other committees will be circulated as soon as they are available.	15 - 106

<b>7.</b>	<b>REVIEW OF PLANNING CODE OF GOOD PRACTICE</b>	107 -
	REPORT OF THE LEGAL REGULATORY TEAM MANAGER / DEPUTY MONITORING OFFICER	138

The report details changes to the council's Planning Code of Good Practice as part of its review.

<b>8.</b>	<b>REVIEW OF MEMBERS' ALLOWANCES SCHEME</b>	139 -
	REPORT OF THE DEMOCRATIC SERVICES MANAGER	156

To agree the Member's Allowances Scheme 2020/2021 having taken into account the recommendations of the Independent Remuneration Panel ('IRP').

<b>9.</b>	<b>CONSTITUTIONAL &amp; GOVERNANCE REVIEW 2019/20</b>	157 -
	REPORT OF THE SERVICE DIRECTOR: LEGAL AND COMMUNITY & MONITORING OFFICER	178

This reports sets out the review undertaken and recommends amendments to update the Council's Constitution and propose new Panels.

<b>10.</b>	<b>QUESTIONS FROM MEMBERS</b>	
	To consider any questions submitted by Members of the Council, in accordance with Standing Order 4.8.11 (b).	

<b>11.</b>	<b>NOTICE OF MOTIONS</b>	
	To consider any motions, due notice of which have been given in accordance with Standing Order 4.8.12.	

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## NORTH HERTFORDSHIRE DISTRICT COUNCIL

### MINUTES

Meeting of the Council held in the Council Chamber, Council Offices,  
Gernon Road, Letchworth Garden City  
on Thursday, 21st November, 2019 at 7.30 pm

**PRESENT:** Councillors Terry Tyler (Vice-Chairman), Ian Albert, Daniel Allen, David Barnard, Clare Billing, Judi Billing, John Bishop, Ruth Brown, Val Bryant, Paul Clark, Sam Collins, George Davies, Steve Deakin-Davies, Elizabeth Dennis-Harburg, Morgan Derbyshire, Faye Frost, Gary Grindal, Simon Harwood, Terry Hone, Keith Hoskins, Mike Hughson, Tony Hunter, Steve Jarvis, David Levett, Ian Mantle, Gerald Morris, Michael Muir, Lisa Nash, Sue Ngwala, Helen Oliver, Sean Prendergast, Mike Rice, Adem Ruggiero-Cakir, Val Shanley, Carol Stanier, Martin Stears-Handscorn, Claire Strong, Kay Tart, Richard Thake, Tom Tyson and Michael Weeks.

**IN ATTENDANCE:** David Scholes (Chief Executive), Anthony Roche (Deputy Chief Executive), Ian Couper (Service Director - Resources), Melanie Stimpson (Democratic Services Manager), Gavin Ramtohal (Legal Commercial Team Manager), Reuben Ayavoo (Policy and Community Engagement Manager) and Hilary Dineen (Committee, Member and Scrutiny Manager).

**ALSO PRESENT:** At the commencement of the meeting approximately 8 members of the public, including registered speakers.

#### 43 APOLOGIES FOR ABSENCE

*Audio recording – 34 seconds*

Apologies for absence were received from Councillor Jean Green (Chairman of the Council) as she was attending a Civic Engagement.

Apologies for absence were also received from Councillors Kate Aspinwall, Jim McNally, Ian Moody and Sam North.

Councillor Kay Tart advised that she would arrive late for the meeting.

#### 44 MINUTES - 12 SEPTEMBER 2019

*Audio recording – 1 minute 18 seconds*

It was proposed by Councillor Martin Stears-Handscorn, seconded by Councillor Paul Clark and

**RESOLVED:** That the Minutes of the Meeting of the Committee held on 12 September 2019 be approved as a true record of the proceedings and be signed by the Chairman.

#### 45 NOTIFICATION OF OTHER BUSINESS

*Audio recording – 1 minute 36 seconds*

There was no other business notified.

**46 CHAIRMAN'S ANNOUNCEMENTS**

*Audio recording – 1 minute 43 seconds*

(1) Fire Announcement

The Vice-Chairman advised that no testing of the fire alarms was expected. If the alarm did sound those attending were to leave the building by the fire exits.

(2) Mobile Phones

The Vice-Chairman reminded those present to turn off mobile phones or mute the ring tone and other sounds.

(3) Climate Emergency

Members were reminded that this Council had declared a Climate Emergency. This was a serious decision and meant that, as this was an emergency, all of us, officers and Members had that in mind as we carried out our various roles and tasks for the benefit of our District.

(4) Audio Recording

The Vice-Chairman advised that, in accordance with Council policy this meeting was being audio recorded.

(5) Declarations of Interest

Members were reminded to make declarations of interest before an item, the detailed reminder about this and speaking rights was set out under item 3 on the agenda.

(6) Refreshments

The Vice-Chairman invited all Members to refreshments after the meeting in Committee Rooms 2/3.

(7) Comfort break

The Vice-Chairman advised that, if the meeting went on beyond 9pm, he would call a 5 minute comfort break. He reminded Members to remain in the room prior to this to ensure they could vote.

(8) Councillor Helen Oliver

The Vice-Chairman, on behalf of the Council, congratulated Councillor Helen Oliver on her recent marriage.

(9) Rules of Debate

The Vice-Chairman reminded Members that in accordance with the Constitution please could Members ensure that no speech exceeded five minutes without the consent of the Chairman.

(10) Business Rate Pooling Application – Use of Urgency in Relation to Call-In

Attention was drawn to the Information note which advised Council of the use of urgency provisions, which in accordance with the Constitution must be reported to the next meeting of the Council.

(11) Order of Business

The Vice-Chairman advised that he would be taking Item 8 – Notice of Motions immediately following Public Participation.

**47 PUBLIC PARTICIPATION - CITIZENS ADVICE NORTH HERTS**

*Audio recording – 5 minutes 22 seconds*

Prior to the item be discussed Councillor Paul Clark declared a Declarable Interest in that he was a Member and for Chair of CABNH. As there was no decision required, he would remain in the room for the duration of the item.

Ms Rosie Waters, Citizens Advice North Herts, thanked the Vice-Chairman for the opportunity to address Council as follows:

- Funding from NHDC to CABNH was due to end in March 2020 and she was asking for this to be extended;
- NHDC funding covered core costs and had remained static for many years and actual costs had doubled, therefore was making a request for a £30,000 increase in year 1 and a multi-year agreement with annual increases from then on;
- Last year NHDC also funded a support worker for one year it was hoped that this funding would continue as it provided invaluable help for vulnerable people;
- The organisation needed to grow in order to meet unmet demand and help more local residents;
- Need for this service was increasing. In the first 6 months of this year there had been:
  - 895 increase in clients (34 percent)
  - 1,412 increase in advice issues (25 percent);
  - Over 1,000 more client activities.
- DWP had given funding for a Universal Credit service, however this only accounted for 157 people;
- On average 40 percent of clients could not get through on the phone lines
- This was a value for money organisation that helped the most vulnerable in society with 43 percent of clients having a disability or long term health issue;
- Last year volunteers gave £540,000 of donated hours;
- They were working on community funding, cutting costs, making efficiencies and applying for new projects.

The following Members asked questions:

- Councillor Clare Billing;
- Councillor Terry Tyler.

In response to questions Ms Waters advised:

- There was a rise in Universal Credit enquiries and family/relationship issues;
- There was a small increase in immigration issues;
- They currently received £145,000 from NHDC and were requesting an additional £30,000, which would pay for extra supervision and a further £30,000 would maintain the support worker post.

The Vice-Chairman thanked Ms Waters for her presentation.

#### **48 PUBLIC PARTICIPATION - RIVER IVEL**

*Audio recording – 13 minutes 9 seconds*

Ms Sharon Moat and Mr Richard Meredith-Hardy, RevIvel thanked the Vice-Chairman for the opportunity to address Council and gave a PowerPoint presentation regarding the River Ivel as follows:

- RevIvel was an organisation concerned about the upper River Ivel;
- There were 220 chalk streams in the world 85 percent of which were in England;
- Chalk streams were precious with their clear pure water and wonderful environment for wildlife;
- It took two months for rainfall to filter through the soil into the underground lake that sources the river;
- Abstraction was an abomination that severely affected the Ivel;
- The River had been dry for 15 months at Ivel Springs and there was no flow at Blackfriars Farm, Blackhorse Mill and Radwell;
- Ashwell Springs was being augmented, but more was needed;
- Creatures needed flowing water to exist;
- The Council needed to approach Affinity Water and the Environment Agency regarding this environmental emergency.

The following Members asked questions:

- Councillor David Barnard;
- Councillor Elizabeth Dennis-Harburg;
- Councillor Richard Thake.

In response Ms Moat and Mr Merideth-Hardy advised:

- They had been in contact with many different agencies;
- The vision was to form an aquifer wide group;
- Water companies had abstraction licences granted many years ago that were still in existence;
- Abstraction from the aquifer at any point resulted in the level of all of the rivers being desperately low.

The Vice-Chairman thanked Ms Moat and Mr Meredith Hardy for their presentation.

#### **49 NOTICE OF MOTIONS**

*Audio recording – 26 minutes 13 seconds*

The following motion had been submitted, due notice of which had been given in accordance with Standing Order 4.8.12:

##### **A River Ivel**

It was proposed by Councillor Tom Tyson, seconded by Councillor Paul Clark that:

This Council expresses its concern about the perilous state of the upper reaches of the River Ivel and other local chalk streams, including the Rivers Purwell and Hiz and St Ippolyts Brook.

Council notes that the River Ivel has been continuously dry in an area extending from the Ivel Springs Local Nature Reserve downstream to Radwell for a period of well over a year.

Council further notes that there has been no flow in the upper Ivel during half the months of the previous four years.

The River Ivel is one of the rare and ecologically important chalk streams of the Chiltern Chalk Aquifer. According to the Ivel Springs Greenspace Action Plan for 2010–2015, “Chalk rivers are extremely rare and included in the Herts Biodiversity Action Plan. The river and its wetlands are important habitats for a wide range of species”. This is a resource we should cherish and protect. Instead, the watercourses are dry, the fish are dead and other associated wildlife is gone.

Council is therefore determined to ensure that a healthy year-round water flow be restored and maintained in the upper reaches of the river from the area known as Ivel Springs down to Radwell Lake and beyond.

Furthermore, Council recognises that the disaster of the Ivel is not an isolated instance among the chalk streams of the Chiltern Chalk Aquifer: many others are suffering dangerously low levels and consequent environmental harm.

Council therefore undertakes to implement the following actions:

1. Elicit information from Affinity Water regarding their plans for reducing abstraction rates from the chalk aquifer:
  - (i) at Baldock specifically and
  - (ii) from the aquifer as a whole.
2. Elicit plans from Affinity Water with regard to use of AMP7 (2015–2020 Asset Management Plan) money to invest in effective measures to conserve and enhance the Ivel specifically and other local chalk streams generally.
3. Seek a pledge from Affinity Water that it will take the steps necessary to ensure that a specified minimum water flow is maintained in the upper Ivel throughout the year.
4. Seek assurance from the Environment Agency that it will monitor the impact of water abstraction from the aquifer on our local environment and take appropriate action where Affinity Water allows its activities to harm the environment.
5. Support and work with local interest groups, including the RevIvel Association in Radwell.
6. Support the establishment of an integrated, overarching partnership to enable all relevant agencies and organisations to collaborate with the aim of protecting the chalk streams of the aquifer in its entirety.
7. Lobby our constituency MPs for active support in all of the above.

The following Members took part in the debate:

- Councillor David Levett;
- Councillor Val Bryant;
- Councillor Elizabeth Dennis-Harburg;
- Councillor Steve Jarvis;
- Councillor David Barnard;
- Councillor Michael Muir;

- Councillor Ian Mantle;
- Councillor Richard Thake;
- Councillor Claire Strong;
- Councillor Michael Weeks.

It was proposed by Councillor Val Bryant that additional wording be added to Section 6 of the motion to read:

“To acknowledge the need for the above to be combined, an active policy for water conservation.”

That additional wording be added to Section 7 of the motion to read:

“With the intention of introducing or strengthening policies at Government level for water conservation.”

Councillor Tyson did not accept the amendments as they did not refer to water abstraction.

Councillor Tyson proposed that additional wording be added to Section 6 of the motion to read:

“Support the establishment of an integrated, overarching partnership to enable all relevant agencies, Local Authorities and organisations to collaborate with the aim of protecting the chalk streams of the aquifer in its entirety.

It was proposed by Councillor Claire Strong that Section 4 of the motion be amended to read:

“Seek assurance from the Environment Agency that it will continue to monitor the impact of water abstraction from the aquifer on our local environment and take appropriate action, including consideration of withdrawing abstraction licences, where Affinity Water allows its activities to harm the environment.”

Councillors Tom Tyson and Paul Clark accepted the amendment.

Following debate it was:

**RESOLVED:**

That this Council expresses its concern about the perilous state of the upper reaches of the River Ivel and other local chalk streams, including the Rivers Purwell and Hiz and St Ippolyts Brook.

Council notes that the River Ivel has been continuously dry in an area extending from the Ivel Springs Local Nature Reserve downstream to Radwell for a period of well over a year.

Council further notes that there has been no flow in the upper Ivel during half the months of the previous four years.

The River Ivel is one of the rare and ecologically important chalk streams of the Chiltern Chalk Aquifer. According to the Ivel Springs Greenspace Action Plan for 2010–2015, “Chalk rivers are extremely rare and included in the Herts Biodiversity Action Plan. The river and its wetlands are important habitats for a wide range of species”. This is a resource we should cherish and protect. Instead, the watercourses are dry, the fish are dead and other associated wildlife is gone.

Council is therefore determined to ensure that a healthy year-round water flow be restored and maintained in the upper reaches of the river from the area known as Ivel Springs down to Radwell Lake and beyond.

Furthermore, Council recognises that the disaster of the Ivel is not an isolated instance among the chalk streams of the Chiltern Chalk Aquifer: many others are suffering dangerously low levels and consequent environmental harm.

Council therefore undertakes to implement the following actions:

1. Elicit information from Affinity Water regarding their plans for reducing abstraction rates from the chalk aquifer:
  - (iii) at Baldock specifically and
  - (iv) from the aquifer as a whole.
2. Elicit plans from Affinity Water with regard to use of AMP7 (2015–2020 Asset Management Plan) money to invest in effective measures to conserve and enhance the Ivel specifically and other local chalk streams generally.
3. Seek a pledge from Affinity Water that it will take the steps necessary to ensure that a specified minimum water flow is maintained in the upper Ivel throughout the year.
4. Seek assurance from the Environment Agency that it will continue to monitor the impact of water abstraction from the aquifer on our local environment and take appropriate action, including consideration of withdrawing abstraction licences, where Affinity Water allows its activities to harm the environment.
5. Support and work with local interest groups, including the RevIvel Association in Radwell.
6. Support the establishment of an integrated, overarching partnership to enable all relevant agencies and organisations to collaborate with the aim of protecting the chalk streams of the aquifer in its entirety.
7. Lobby our constituency MPs for active support in all of the above.

## **50 ITEMS REFERRED FROM OTHER COMMITTEES**

*Audio recording – 58 minutes 29 seconds*

### **(A) Item Referred from Cabinet – 31 October 2019 – Hertfordshire Growth Board**

The Leader of the Council presented the referral from the meeting of Cabinet held on 31 October 2019 regarding Hertfordshire Growth Board together with the associated report considered at that meeting.

Cabinet recommended to Council that Cabinet supports the proposed Memorandum of Understanding relating to the Hertfordshire Growth Board, attached as Appendix D, and recommends to Council the signing of the agreement.

The following Member took part in the debate:

- Councillor David Levett.

It was proposed by Councillor Martin Stears-Handscorn, seconded by Councillor Paul Clark and:

**RESOLVED:** That the proposed Memorandum of Understanding relating to the Hertfordshire Growth Board, attached as Appendix D, be supported and the agreement signed.

**(B) Item Referred from Cabinet – 31 October 2019 – Council Plan and Council Objectives 2020-2025**

**RESOLVED:** That the referral from the meeting of Cabinet on 31 October 2019 regarding the Council Plan and Council Objectives be considered with Item 8 (Minute 51 refers).

**51 COUNCIL PLAN 2020-2025 AND COUNCIL OBJECTIVES 2020-2025**

*Audio recording – 1 hour 4 minutes 3 seconds*

The Leader of the Council presented the report entitled Council Plan 2020-2025 and Council Objectives 2020-2025 together with the following appendix:

- Appendix A - Council Plan 2020-2025

The Leader of the council then presented the referral from the meeting of Cabinet held on 30 October 2019 regarding the Council Plan and Council Objectives.

Cabinet recommended to Council that the following documents be adopted with the amendments as discussed:

- Appendix A – Council Plan 2020 -2025;
- Appendix B – Proposed Actions;
- Appendix C – Achievements.

It was proposed by Councillor David Levett and seconded by Councillor Claire Strong that the first Paragraph of the recommendation in the referral be amended to read:

“Subject to sustainable budget proposals and resources being agreed by Council to ensure the Plan can be delivered without impacting statutory and key services, the following documents are adopted with amendments as discussed:”

The following Members took part in the debate:

- Councillor Ian Albert;
- Councillor Martin Stears-Hanscomb;
- Councillor David Barnard;
- Councillor Claire Strong;
- Councillor Steve Jarvis;
- Councillor Daniel Allen;
- Councillor Ian Mantle;
- Councillor Judi Billing;
- Councillor Michael Muir;
- Councillor Simon Harwood;
- Councillor Sam Collins;
- Councillor Ruth Brown.

Upon the vote the proposed amendment was lost.

It was proposed by Councillor Martin Stears-Handscomb, seconded by Councillor Paul Clark and:



**RESOLVED:**

- (1) That the Council Plan; which provides a summary of objectives and of activity to support the progression of the following Council Objectives be approved:
  - Be a more welcoming and inclusive council;
  - Build thriving and resilient communities;
  - Respond to challenges to the environment;
  - Enable an enterprising and co-operative economy;
  - Support the delivery of good quality and affordable homes.
- (2) That the following document be approved:
  - Appendix A - Council Plan 2020-2025, including Proposed Actions and Achievements of the Council in 2018/19.

**REASON FOR DECISION:** The Council plan is a key element of the corporate business planning process, as a high level strategic document it sets out the Council's priorities for the next year. As an overarching policy framework document, it guides and influences the use of Council resources; providing a focus for activities, plans and services the Council provide.

**52 QUESTIONS FROM MEMBERS**

*Audio recording – 1hour 38 minutes 32 seconds*

There were no questions from Members.

The meeting closed at 9.10 pm

Chairman

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## **Items Referred from Other Committees**

- 6a Referral from Standards Committee – 22 October 2019 – Planning Code of Good Practice
- 6b Referral from Finance, Audit and Risk Committee – 5 December 2019 – Proposed Amendments to the Contract Procurement Rules
- 6c Referral from Cabinet – 17 December 2019 – Investment Strategy (Capital and Treasury) Mid-Year Review 2019/20
- 6d Referral from Cabinet 17 December 2019 – Council Tax Reduction Scheme (CTRS) 2020/2021

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**COUNCIL  
16 JANUARY 2020**

**PART 1 – PUBLIC DOCUMENT**

**ITEM 6a**

**TITLE OF REPORT: ITEM REFERRED FROM STANDARDS COMMITTEE: 22 OCTOBER 2019 – PLANNING CODE OF GOOD PRACTICE**

***Extract from the draft Minutes of the Standards Committee meeting held on 22 October 2019***

The Legal Regulatory Team Manager and Deputy Monitoring Officer presented the report entitled Planning Code of Good Conduct together with the following appendices:

- Appendix A – Amended Planning Code of Good Practice;
- Appendix B – Comparison between NHDC Planning Code of Good Practice.

The Legal Regulatory Team Manager advised that an amendment was required to the first Paragraph on page 23 so that it read words to the effect:

“Don’t agree to any formal meeting with applicants, developers or groups of objectors if you can avoid it. You may act as a Ward advocate, however where you have acted as such, then you must not sit on, or be a substitute for that item at the Committee meeting. Where you feel that a formal meeting would be useful to clarify issues, you only arrange that meeting through the Development and Conservation Manager if she/ he is able to organise one. If the meeting can be arranged, the Officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.”

The following Members asked questions and took part in the debate:

- District Councillor Judi Billing;
- District Councillor Sam Collins;
- District Councillor David Levett;
- District Councillor Richard Thake;
- District Councillor Claire Strong;
- District Councillor Mike Rice;
- Independent Person Nicholas Moss;
- Parish Councillor Julia Magill.

In response to questions the Service Director – Legal and Community advised that:

- The Code was trying to address pre-determination and bias;
- The exception was when acting as a Ward Advocate (so long as then did not sit on the Planning Control Committee or act as a substitute for that item).

Members suggested a number of amendments to the document including:

- Amending the introduction to make clear that the Code applied to all Members, whether or not they were on the Planning Control Committee, but making it clear which parts did or did not apply to Ward Advocates;
- Amending the Introduction and the document throughout, to make clear the different roles of the Planning Control Committee Member and the Ward Advocate;
- Defining gifts and hospitality in amounts rather than stating “minimal”;
- Members agreed to email any other suggested amendment to the Legal Regulatory Team Manager to be considered.

**RESOLVED:**

- (1) That Members of the Committee be requested to email any suggested amendments to the Legal Regulatory Team Manager;
- (2) That, prior to consideration by Council, the Legal Regulatory Team Manager be requested to make amendments as suggested in consultation with the Chairman and Vice-Chairman of the Standards Committee and the Independent Person;
- (3) That, prior to consideration by Council, the Legal Regulatory Team Manager be requested to amend the first Paragraph on page 23 to read words to the effect:

“Don’t agree to any formal meeting with applicants, developers or groups of objectors if you can avoid it. You may act as a Ward advocate, however where you have acted as such, then you must not sit on, or be a substitute for that item at the Committee meeting. Where you feel that a formal meeting would be useful to clarify issues, you only arrange that meeting through the Development and Conservation Manager if she/he is able to organise one. If the meeting can be arranged, the Officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.”

**RECOMMENDED TO COUNCIL:** That, subject to any amendment resulting from the resolutions above, the Planning Code of Good Practice as amended and contained at Appendix A be adopted.

**REASON FOR DECISIONS:** To ensure good governance within the Council and that the Council’s Planning Code of Good Practice remains fit for purpose and is consistent with best practice.

**(To be considered with Item 7)**

**COUNCIL  
16 JANUARY 2020**

**PART 1 – PUBLIC DOCUMENT**

**ITEM 6b**

**TITLE OF REPORT: ITEM REFERRED FROM FINANCE, AUDIT AND RISK COMMITTEE  
– 5 DECEMBER 2019 – PROPOSED AMENDMENTS TO THE CONTRACT  
PROCUREMENT RULES**

***Extract from the draft Minutes of the Finance, Audit and Risk Committee meeting held  
on 5 December 2019***

The Legal Commercial Team Manager presented the report entitled Proposed Amendments to the Contract Procurement Rule and advised the following:

- The current version of the Rules required non compliance to be reported to the Monitoring Officer and the Senior Management Team and it was proposed that non compliance be reported to the Monitoring Officer and the Monitoring Officer may consult with the Service Director - Resources if appropriate;
- The proposed new section 3.10 reflected the Council's focus on community engagement and environmental protection;
- Additional guidance had been put into the rules in order to aid Officers;
- Service Directors were now in a position to extend contracts by up to 24 months and up to a value of £200,000.

The following Members asked questions:

- Councillor Steve Jarvis;
- Councillor Michael Weeks.

The Legal Commercial Team Manager provided the following responses to questions raised:

- He had not seen any evidence of fraud being carried out in the procurement process.
- There were a number of safeguards in place within the procurement process and each process went through an intense system in order that a record was kept from start to finish which Officers were able to see; and
- All suppliers were credit checked.

**RECOMMENDED TO COUNCIL:** That the proposed changes be recommended for adoption.

***REASONS FOR RECOMMENDATIONS:*** That the Contract Procurement Rules are part of the Constitution (under Section 20) and are revised and updated periodically as part of the Council's governance and procurement review processes, contributing to effective organisational internal control. In addition, the review and adoption of the Council's Contract Procurement Rules is a key action in the Council's Procurement Strategy.



**TITLE OF REPORT: UPDATED CONTRACT PROCUREMENT RULES FOR 2019/20**

REPORT OF THE LEGAL COMMERCIAL TEAM MANAGER

EXECUTIVE MEMBER: MARTIN STEARS-HANDSCOMB

COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

**1. EXECUTIVE SUMMARY**

1.1 This report sets out the proposed changes to the Contract Procurement Rules for review and referral that, in summary, seeks to make the following changes:

- An update to section 2.4 to streamline the reporting process for non compliance with the Rules;
- A new section 3.10 which requires commissioning officers to consider how the principles of locality and environmental protection can be incorporated in procurements.
- An update to Table A on page 238 to emphasise the requirement to discuss the principles of locality and environmental protection for each procurement;
- A further update to Table A to require mandatory CreditSafe alerts for all OJEU procurements;
- A new section 17.2 to provide guidance on dealing with supplier viability and financial risk;
- An update to section 29 to give Service Directors authority to extend contracts by up to 24 months to a maximum value of £200,000;

**2. RECOMMENDATIONS**

2.1 That Committee considers the proposed changes and recommends their adoption to Full Council.

**3. REASONS FOR RECOMMENDATIONS**

3.1 That the Contract Procurement Rules are part of the Constitution (under Section 20) and are revised and updated periodically as part of the Council's governance and procurement review processes, contributing to effective organisational internal control. In addition, the review and adoption of the Council's Contract Procurement Rules is a key action in the Council's Procurement Strategy.

3.2 To reflect the Council's new focus on the principles of locality and environmental protection.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 The option of not updating the Contract Procurement Rules would prevent the Council from making improvements to the Rules and incorporating changes that reflect new priorities for the Council. Not updating the Rules also increases the risk of the Council not adhering to the latest procurement legislation and best practise and inconsistencies with the remainder of the Constitution. The Contract Procurement Rules are, in any event, reviewed annually.

#### **5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1 This report and appendices are being presented to FAR Committee for consideration, prior to referral to Council.

#### **6. FORWARD PLAN**

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

#### **7. BACKGROUND**

- 7.1 The Contract Procurement Rules are reviewed on an annual basis to ensure they remain relevant and appropriate to the Council's needs. This review has been conducted by the Contracts & Procurement Group, led by the Legal Commercial Team Manager, Procurement Officer and Service Director - Legal and Community. The Service Director – Resources has reviewed and agreed the proposed changes.
- 7.2 Full Council approved the current version of the Contract Procurement Rules on 17<sup>th</sup> January 2019.<sup>1</sup>

#### **8. RELEVANT CONSIDERATIONS**

- 8.1. The revised Contract Procurement Rules are provided at Appendix A, with all proposed changes shown as tracked changes. A summary of key changes within this new version are outlined below. There are also very minor changes to the Rules such as references to “legal and community” changing to “legal”

##### **Compliance with the Rules:**

- 8.2. The current version of the Rules requires non compliance to be reported to the Monitoring Officer and the Senior Management Team. In order to streamline this process, it is proposed that non compliance is reported to the Monitoring Officer and the Monitoring Officer may consult with the Service Director: Resources if appropriate. Given that non compliance may lead to disciplinary action, reporting only to statutory officers would maintain confidentiality.

##### **Principles of Locality:**

- 8.3. The proposed new section 3.10 reflects the Council's new focus on community engagement and environmental protection and also builds on the existing requirements to consider how the Council can promote social value in procurements. The ambition is to boost and coordinate local spending for the benefit of the community.

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<sup>1</sup> <https://democracy.north-herts.gov.uk/ieListDocuments.aspx?CId=136&MId=2011&Ver=4>

### **Supplier viability and Financial risk**

- 8.4. Table A on page 238 has been updated to require mandatory CreditSafe alerts to all procurements above OJEU thresholds. This will ensure the Council receives automatic email notification of any changes to a company's financial risk profile. Also, a new section 17.2 provides guidance on, and a process for, awarding contracts where financial and viability checks raise significant concerns regarding the financial health of a successful bidder. There is separate detailed guidance for Officers on how to carry out financial health assessments when evaluating bids for a contract, which includes use of CreditSafe reports. Financial assessment and evaluations are carried out by qualified finance staff.

### **Extension of contracts up to 24 months;**

- 8.5. Currently, Service Directors are authorised to extend contracts by up to a period of 12 months up to a contract value of £100k. Consultation with Contracts Procurement Group found that this time frame was far too restrictive and short to facilitate a sufficient number of contract extensions. This report seeks an increase from 12 to 24 months, up to a contract value of £200k. The relevant Executive Member shall be authorised to extend contracts for a period over 24 months or over 200k as applicable with the approval of the Service Director: Resources following consultation with the Finance & IT Executive Member. In all cases, an extension must be the best value option. Further safeguards have been added to the rules, namely that Service Directors must ensure that all extensions comply with the law and consider whether any extension would have a detrimental impact on the Council's strategies and plans.

## **9. LEGAL IMPLICATIONS**

- 9.1 Under section 10.1.5 (g) of the Finance Audit and Risk Committee's terms of reference it has remit "*to maintain an overview of the council's constitution in respect of Contract Procurement Rules consider any major changes and make recommendations to Council for approval*".
- 9.2 Full Council adopts and changes the Constitution and documents such as the Contract Procurement Rules that are part of the Constitution.
- 9.3 The Council must comply with the Public Contracts Regulations 2015 for all procurements above the EU thresholds. Below these thresholds, the procedures to adopt are largely for the authority to decide; the 2015 Regulations introduced some limited controls on procurements below threshold as well as authority for the Cabinet Office to introduce statutory guidance for below threshold procurements.
- 9.4 The overriding principles of transparency, non-discrimination, mutual recognition and equal treatment apply to all procurements, where there is evidence of cross-border interest, irrespective of their value. Having a robust set of Contract Procurement Rules should ensure compliance with these obligations and reduce the risk of successful legal challenge to a procurement exercise.
- 9.5 Section 135 of the Local Government Act 1972 confirms that Councils must make standing orders with respect to the making of contracts. Section 37 of the Local Government Act 2000 confirms that a Council's constitution must contain its standing orders.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 These are procedural matters that have no direct financial impact upon the Council's revenue or capital budgets.

## **11. RISK IMPLICATIONS**

- 11.1 Adoption of the proposed amendments will contribute to the Council's internal control environment and the management of risk.
- 11.2 Although the proposed new section 17.2 may assist contract managers with decision-making in relation to considering financial risk and contractor viability, there will always be a degree of financial risk with any contract award. It must be noted that a contractor's financial health may deteriorate after contract award for a variety of reasons and no contractor will achieve a perfect financial credit score. There will be situations where there is a decision to take on risk around contractor viability e.g. because all tenderers had a similar risk, the contract price or quality differentials make the risk worth it or applying the 'go-local' policy. The risks involved were considered by Finance, Audit and Risk Committee in a report in September 2016 (see background papers).

## **12. EQUALITIES IMPLICATIONS**

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.3 The Contract Procurement Rules in themselves do not generate equalities implications, however their application when considering specific procurements of goods and services, or works, must take full account of this legislation.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1 As the recommendations made in this report do not, in themselves, constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied. However, the application of the Contract Procurement Rules must take full account of this requirement when procuring a public service contract within specified parameters as laid out in the Social Value Act. Social Value is one of several factors to be considered when purchasing goods and services, or entering into a works contract.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 There are no implications, other than confirming that relevant managers will receive training on the updated procurement rules, and the Procurement Officer shall provide updates at relevant team meetings during 2020.

## **15. APPENDICES**

- 15.1 Appendix A – Draft amended Contract Procurement Rules.

## **16. CONTACT OFFICERS**

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Human Resources

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## **17. BACKGROUND PAPERS**

- 17.1 Ongoing Financial and Operational Viability of Contractors- report to Finance, Audit and Risk Committee, 22<sup>nd</sup> September 2016.

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## **PART B**

### **SECTION 20**

#### **CONTRACT PROCUREMENT RULES**

# NORTH HERTFORDSHIRE DISTRICT COUNCIL CONTRACT PROCUREMENT RULES

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## SECTION 20

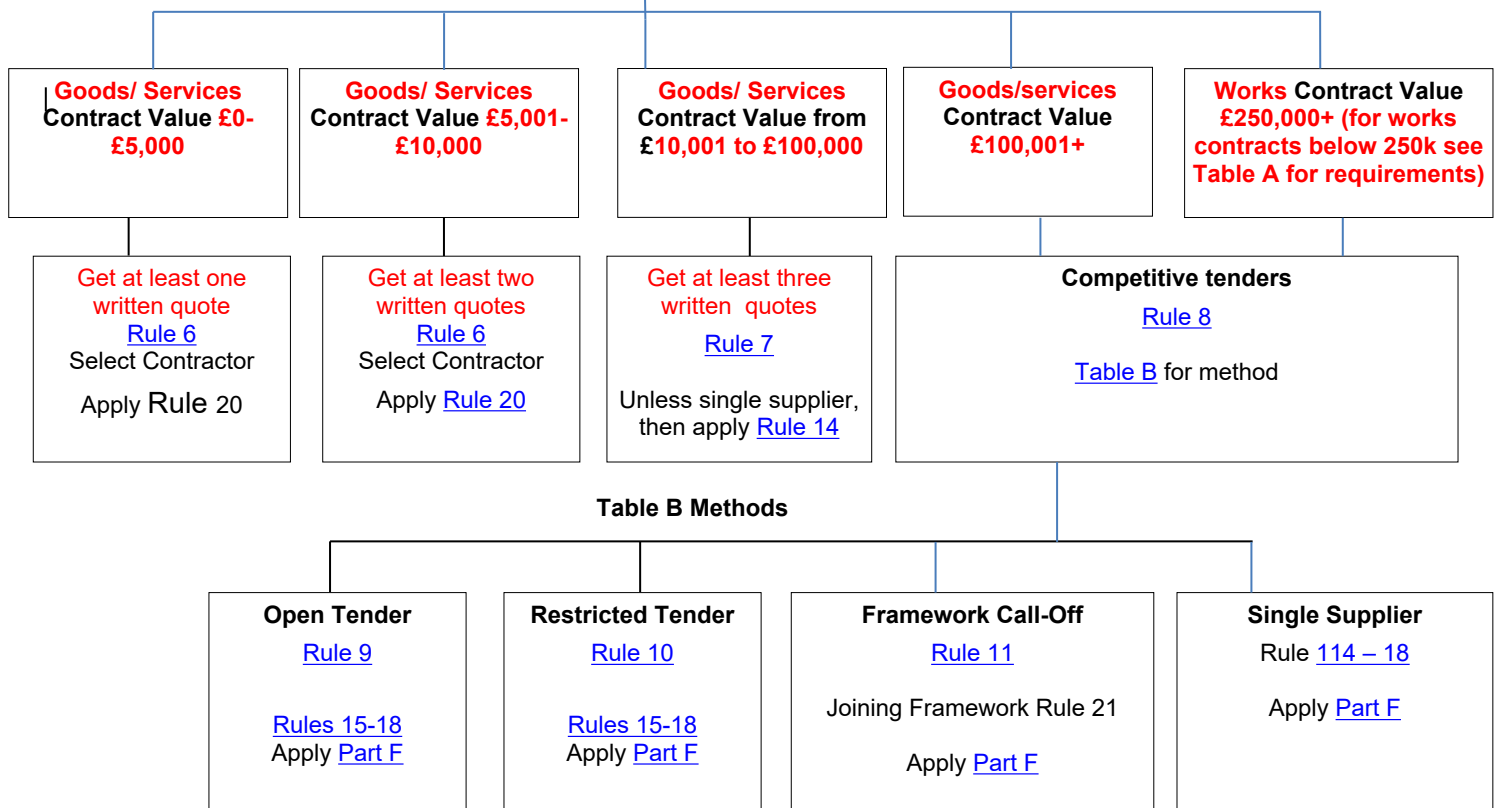
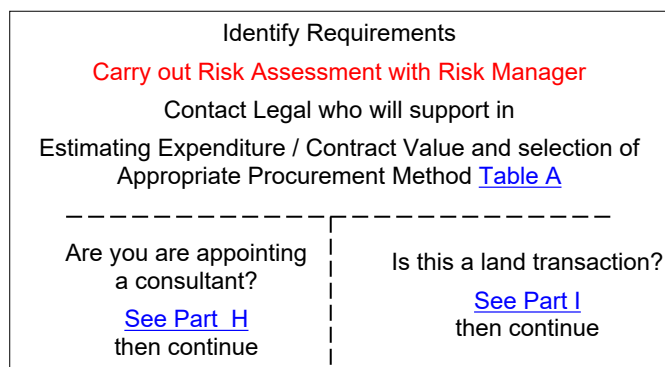
1	Part A Flowchart to show tendering options .....	232
<b>Part B</b>	<b>Background.....</b>	<b>233</b>
2	Introduction .....	233
3	Scope .....	234
<b>Part C</b>	<b>Procurement Methods.....</b>	<b>235</b>
4	Introduction .....	235
5	Contract values .....	236
5	Summary of requirements for Contract Values – Table A.....	238
6	Estimates – (Below £10,000) .....	241
7	Quotation (Goods and Services £10,000 to £100,000 / Works £50,000 to £250,000).....	241
8	Tenders (Goods and Services above £100,000 and Works above £250,000) .....	242
<b>Part D</b>	<b>Tendering Methods .....</b>	<b>244</b>
9.	Open Tender .....	244
10.	Restricted Tender.....	245
11.	Call-Off Further Competition under a Framework Agreement .....	246
11A	Dynamic Purchasing System.....	247
12.	Competitive Procedure with Negotiation .....	247
13.	Innovative Partnership procedure. ....	247
14.	Single Tender.....	247
15.	Receipt of Quotations / Tenders .....	249
16.	Opening Quotations and Tenders.....	249
17.	Evaluation Criteria for Quotations and Tenders .....	250
18.	Contract Award .....	251
19.	Standstill Period (for EU Threshold only) .....	251
20.	Contracts.....	252
21.	Joining a Framework Agreement .....	252



<b>Part E</b>	<b>Procurement Issues .....</b>	<b>253</b>
22.	Waivers .....	253
23.	Arithmetic Errors .....	254
24.	Post Tender Negotiation .....	254
<b>Part F</b>	<b>Specific Rules of Contract.....</b>	<b>255</b>
25.	Contractual Terms.....	255
26.	Specification.....	255
27.	Payment.....	256
<b>Part G</b>	<b>Ongoing Requirements.....</b>	<b>256</b>
28.	Variations .....	256
29.	Extensions.....	257
30.	Contract Management.....	258
<b>Part H</b>	<b>Appointment of Consultants .....</b>	<b>258</b>
31.	Consultants .....	258
32.	Project Details .....	259
<b>Part I</b>	<b>Land Transactions.....</b>	<b>260</b>
33.	Land Transactions.....	260
<b>Part J</b>	<b>Other Information .....</b>	<b>262</b>
34.	Glossary of Terms.....	262
35.	Key Contacts .....	264

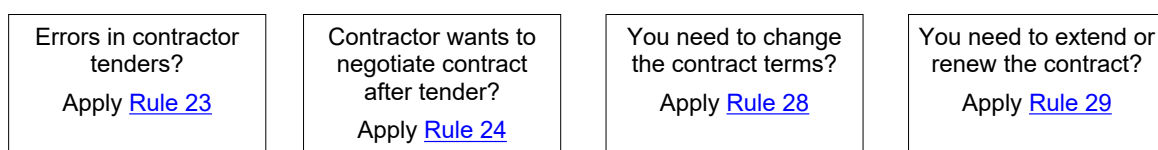
## Part A Flowchart to show tendering options

### New Contracts



### Ongoing Contracts / Problems

Have you spoken to Legal?



## Part B Background

### 2 Introduction

- 2.1 These Contract Procurement Rules (the **Rules**) provide a structure for the procurement of works, goods and services. Following them will ensure value for money, propriety and the proper expenditure of public funds. Officers must remember that their budgets are made up of public money and must ensure that they are spent correctly, fairly and transparently.
- 2.2 These Rules have been split into a number of Parts which you must comply with:
- (a) Part C Procurement Methods – relates to new procurements; and
  - (b) Part F Specific Rules of Contract – which details the terms and conditions of contract that should apply; and
  - (c) Part G Ongoing Requirements – which details the procedures that must be followed if you need to vary, extend or terminate your contract; and
  - (d) Part H Appointment of Consultants – which details the special procedures that should be followed regarding the appointment of consultants; and
  - (e) Part I Land Transactions – which details the special procedures that should be followed regarding the acquisition or disposal of any interest in land.
- 2.3 Procurement decisions are amongst the most important decisions an Officer will make because the money involved is public money. Efficient use of scarce resources is therefore vital. Equally as important is the Council's reputation, which should be safeguarded from any suspicion of dishonesty or corruption. Officers must ensure that they are able to account for all the actions and decisions they take, and that all processes are transparent and can be audited. Following these Rules will ensure that Officers meet these requirements.
- 2.4 Failure to comply with the Rules will result in Officers conduct being examined and may be a breach under the [Council's Managing Misconduct Policy](#). It is a potential disciplinary offence to fail to comply with these Rules when letting contracts and employees have a duty to report breaches of these Rules to the Service Director: Legal and Community, who is also the Council's Monitoring Officer ([monitoring.officer@north-herts.gov.uk](mailto:monitoring.officer@north-herts.gov.uk)). The Monitoring Officer will then report the matter to the relevant officer's line manager and may consult with the Service Director: Resources. .
- 2.5 The Rules have been adopted in accordance with the requirements of Section 135(2) of the Local Government Act 1972.
- 2.6 The Council's Contracts and Procurement Group is responsible for reviewing and providing guidance on all procurement and contractual matters.
- 2.7 You should ask for advice from Legal, as per the contacts list at the end of these Rules, if any aspect of these rules is unclear. You should also seek Legal advice at the indicated stages of any procurement process, and at any other time should you wish to do so.
- 2.8 Officers have a responsibility to read and be familiar with these Rules.
- 2.9 Capitalised words usually have a particular defined meaning which is either explained elsewhere within these rules or else defined in another document. Common contract and procurement defined words are defined in the Contract Procurement Rules Jargon Busting Guide. Please contact Legal if the meaning of any of these Rules is unclear.

- 2.10 In these Rules, unless otherwise stated, references to a Service Director are to the Service Director of the department responsible for the contract in question or such senior officer of that department to whom the Service Director has delegated in writing the powers in question.

### **3 Scope**

- 3.1 These Rules apply to all contracts for works or the supply of goods or services to North Hertfordshire District Council save as set out in rule 3.4.
- 3.2 You must not enter into any contract until all necessary approvals, sanctions and consents have been obtained and ensured these Rules have been followed.
- 3.3 No tender or quotation may be accepted unless the necessary approval, sanction and consent have been obtained.
- 3.4 These Rules apply to all contracts with third parties and all sub-contracts where the Council nominates a sub-contractor or supplier, or where we appoint a consultant (refer to Part H) to act on behalf of the Council. They also apply, in appropriate circumstances, to the sale of assets, goods or services by the Council. They do not apply to:
- contracts of employment
  - purchases made at public auction
  - contracts with other local authorities or Central Government (this can refer to collaborative working such as consortia arrangements, where the Procurement rules of the lead authority apply)
  - contracts which are exempt under the Public Contracts Regulations 2015
- 3.5 There are particular requirements in relation to the appointment of consultants, (Part H Appointment of Consultants) and transactions involving land, (Part I Land Transactions).
- 3.6 These Rules are made up of two intersecting sets of rules: EU and UK public procurement law; and competition law; and the Council Constitution. The Council Constitution applies to procurements of any value and has four levels depending on the Contract Value. EU and UK public procurement law applies in addition to the Council Constitution in relation to procurements above the EU Threshold.
- 3.7 The principles of the Public Services (Social Value) Act 2012 will be applied to all relevant procurements and contract management required by the legislation and in any event will be applied to all procurement contracts above the EU threshold including capital works and goods supply. Additionally a “go local” policy applies to all contracts valued below £50,000, to first attempt to locate those goods, services or works from a supplier located within the North Herts District Council geographical area. Advice on these policies and the toolkits available to assist you should be sought from Legal.
- 3.8 These Rules will be reviewed regularly. Responsibility for this lies with the Service Director: Legal and Community (or relevant delegated officer) in consultation with the Contracts and Procurement Group. The Legal and Community Directorate includes both Legal and Procurement Officers.
- 3.9 These Rules do not apply to Concession Contracts (*see Glossary of Terms in section 34*). For Concession Contracts equal to or greater than the sum specified in Article 8(1) of the Concessions Directive, please follow the processes set out in the Concession Contracts Regulations 2016. Seek advice from Legal.

- 3.10 For all relevant procurements (see Table A), you must consider the extent to which environmental protection and the following principles of locality could be incorporated and promoted in both the contract award criteria and performance of contract.
- Increase local spend to invest in the local economy
  - Co-ordinate services at a neighbourhood level
  - Think about the whole system not individual service silos
  - Focus on early intervention now to save costs tomorrow
  - Commit to your community and proactively support local organisations
  - Commission services simply and collaboratively so they are “local by default”
  - Physical environmental impacts

## Part C Procurement Methods

### 4 Introduction

- 4.1 The nature of the Council's activities often calls for a close working relationship with commercial organisations and without making any implication of improper conduct by either Officers or contractors, it is in your interests to ensure that there cannot even be a suspicion of a conflict of interest.
- 4.2 This Rule is of particular importance to staff who are in close contact with commercial firms seeking the opportunity to tender for the Council's services. It is important that the actions of such staff should be manifestly above suspicion of bias in favour of a particular firm and every care must be taken not to disclose 'in confidence' information e.g. tender prices.

#### Personal Interests

- 4.3 No contract may be awarded to an Officer of the Council, or to any partnership of which they, or any member of their family are a member (except for a corporation in which they are a shareholder) or to any company of which they or any member of their family are a director unless a relevant conflict of interest form has been completed and authorisation obtained from the officer's Appropriate Officer<sup>1</sup> for the award of the contract to proceed.
- 4.4 No Officer may accept a directorship in any company unless approved under the Employee Conflicts of Interest Policy. Permission should be sought from their Appropriate Officer, as detailed in the Employee Conflicts of Interest Policy<sup>2</sup>. All Officers are expected to be aware of and comply with the requirements of the Council's policy.
- 4.5 The exception to this rule is if two Officers of the Council put in an expression of interest to supply a service through the Community Right of Challenge Act 2012. Information on this Community Right is available on the Council's website<sup>3</sup>. Any Officers that have put in an expression of interest cannot take part in the tendering process from a Council perspective, e.g. they cannot participate in tender evaluation.

#### Prevention of Corruption

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<sup>1</sup> Officers to review Conflicts of Interest Policy and complete form 3 : <http://intranet.north-herts.gov.uk/home/about-me/hr-policies/conflicts-interest>

<sup>2</sup> *Ibid*

<sup>3</sup> <https://www.north-herts.gov.uk/home/community/community-right-challenge>  
CPR Full Council approved version XX

- 4.6 All contracts should ensure that suppliers are under a contractual obligation to adhere to the requirements of the Bribery Act 2010 and the Councils' requirements as set out in the Councils' Anti – Bribery Policy.
- 4.7 No Officer may purchase goods from or use the services of a contractor on preferential terms for private purposes if these terms are given either directly or indirectly because of the potential or actual contractual or other official business relationship between the contractor and the Council.

#### Hospitality

- 4.8 The utmost discretion must be exercised if offers of hospitality, gifts etc. are received from contractors with whom staff deal in the course of their official duties. Dealings must be kept strictly on a business footing and the highest standard of watchfulness and integrity must be maintained at all times. See also the Council Employee Gift's and Hospitality Policy:

<http://intranet.north-herts.gov.uk/home/about-me/hr-policies/gifts-and-hospitality>

Councillors who exercise their functions under these rules are also obliged to following their Code of Conduct, the NHDC Member Protocol for Gifts & Hospitality and declare any relevant interests<sup>4</sup>.

#### Record of Interests

- 4.9 All interests in contracts must also be declared in writing in register (Interests in Contracts form 3) held by the Service Director: Legal and Community and all interests registered are open to inspection by members and the public:

<http://intranet.north-herts.gov.uk/home/about-me/hr-policies/conflicts-interest>

#### Whistleblowing

- 4.10 When a Member, employee or a contractor raises concerns about the activities of the Council which are ethically questionable, this is known as whistleblowing and is covered by the Councils' "Whistleblowing Policy". The Policy applies to all employees and those contractors working for the Council on Council premises, for example, agency staff. It also covers suppliers and those providing services under a contract with the Council on their own premises. Further information is available at:

<http://intranet.north-herts.gov.uk/home/finance-and-procurement/corporate-governance/whistleblowing-policy>

## **5 Contract values**

- 5.1 The estimated annual and total aggregate values of any contract (whether for works, goods or services – see below and Table A) should be established prior to going to the market and should be recorded in writing.

The aggregate value of any contract is calculated on the basis of the total value of the consideration including any options for extensions or renewals (usually the cost payable but may include any benefit in kind or other benefit to the contractor) estimated to be payable over the entire contract period. Where the contract provides for an option to renew or extend, then the estimate should be based on the assumption that the option is exercised.

Some contracts might be indefinite in length. In relation to services, the value shall be the total expenditure incurred over a four year period. In relation to supply of goods the value shall be the total expenditure incurred over a twelve month period. Note works contracts cannot be indefinite as they end when the works are complete.

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<sup>4</sup> <https://www.north-herts.gov.uk/home/council-and-democracy/councillors/councillors-code-conduct-and-declaration-interests>  
CPR Full Council approved version XX

- 5.1.1 The aggregate value of any works contract shall include not only the value of the works themselves over the entire estimated length but also all the related services, equipment and materials which the contractor will be expected to provide under the contract, so it is vital that the specification of the contract is comprehensive. If other contractors are providing separate services, i.e. Quantity Surveyors or Architecture Consultancy in relation to works contracts, these are not included and are treated as separate contracts to the main contract.
- 5.1.2 (a) "Works Contract" means a contract which has as its object construction, demolition of buildings, civil engineering, earthworks and associated requirements such as re-roofing, re-surfacing, design services etc.
- (b) "Services Contract" means a contract which has as its object a service of some sort, e.g. courier services, street cleansing, training etc.
- (c) "Goods Contract" means a contract which has as its object the supply of some tangible items e.g. photocopiers, refuse bins, consumables etc.
- (d) "Consultancy Services" (see Part H) means a contract to provide specialist advice or support to the Council. This does not cover training providers.
- 5.2 The estimate is in Pounds Sterling exclusive of Value Added Tax. This value does not include any saving to the Council. This estimate is the **Contract Value**.
- 5.3 Contract Values must not be artificially under or over estimated or divided where the effect is to avoid the Rules.
- 5.4 The Contract Value determines which of the four levels of the Rules are applicable. However, if the preliminary estimate is within 10% of a higher category value, then the provisions for the higher level should be applied. This allows for any potential overspend on the Contract which would otherwise have meant that the final value of the contract was above the threshold for the type of procurement used.
- 5.5 In all cases a procedure applicable to a higher value contract may be used if it is considered to be in the Council's best interests or is considered to be best practice.
- 5.6 If there is any conflict or if it is unclear which procedure should apply, you should as a default method, apply the rules as if your procurement was a tender, i.e. Rule 8 (Tender). Please ask Legal for advice.
- 5.7 If there is an intention to use indices for calculating any contract uplift, please ask Finance (Resources Directorate) for advice.

## 5 Summary of requirements for Contract Values – Table A

PROCUREMENT – TABLE OF REQUIREMENTS – GOODS AND SERVICES					
UNDER 5K	£5K-£10K	£10K - £50K	£50K - £100K	£100K - EU	EU PROCUREMENTS
1 Quote	2 Quotes	3 Quotes	Open Advert	Open Advert	Restricted, Open or Negotiated Process
Apply Go Local Policy	Apply Go Local Policy	Apply Go Local Policy			
-	Keep records of offers invited, method of inviting offers, basis of selecting contractors, staff authorised to accept offers, correspondence with suppliers.	- Discussion with Legal before starting procurement including discussion on incorporating environmental protection and locality	Discussion with Legal before starting procurement including discussion on incorporating environmental protection and locality	- Initial procurement meeting held with Legal before starting the procurement including discussion on incorporating environmental protection and locality.	Initial procurement meeting held with Legal before starting the procurement including discussion on incorporating environmental protection and locality.
-	-	Standard Quotation Documents	Standard Quotation Documents	Standard Tender Documents	Standard Tender Documents
-	-	Must use e - Tendering	Must use e- Tendering	Must use e- Tendering	Must use e - Tendering
-	-	-	Carry out Risk Assessment	Carry out Risk Assessment	Carry out Risk Assessment
-	-	-	Consider Social Value	-Consider Social Value	Must consider Social Value
-	-		Standard decision letter templates	Standard decision letter templates.	Standard decision letter templates
-	-	-	-	Detailed Feedback	Detailed Feedback
-	-	-	-	Observe 10 day Standstill	Observe 10 day Standstill.
			Standard Award letters.	Standard Award letters.	Standard Award letters.
-	-	-	Contracts must be completed and signed by both parties prior to commencement where practical. Where this is unlikely to take place, notification should be provided to the Service Director: Legal and Community prior to the start date with a plan to achieve contract signing.	Contracts must be completed and signed by both parties prior to contract commencement where practical. Where this is unlikely to take place, notification should be provided to the Service Director: Legal and Community prior to the start date with a plan to achieve contract signing.. Consider if contract should be sealed as a deed.	Contracts must be completed and signed by both parties prior to contract commencement where practical. Where this is unlikely to take place, notification should be provided to the Service Director: Legal and Community prior to the start date with a plan to achieve contract signing. Consider if contract should be sealed as a deed.
-	-	-	Must complete Decision Notice	Must complete Decision notice	Must complete Decision Notice
-	Must provide details for	Must provide details for	Must provide details for	Must provide details for Contract	Must provide details for Contract Register.



	Contract Register.	Contract Register	Contract Register.	Register.	
-	-	-	Must post award notice within 30 days of Contract Award.	Must post award notice within 30 days of Contract Award.	Must post award notice within 30 days of Contract Award.
-	-	Must consider setting up Google alerts/ Creditsafe alerts.	Must consider setting up Google alerts/ Creditsafe alerts.	Must consider setting up Google alerts/ Creditsafe alerts.	Must consider setting up Google Alerts. Mandatory Creditsafe alerts.

PROCUREMENT – TABLE OF REQUIREMENTS – WORKS					
EMERGENCY UP TO £2.5K	UNDER £10k	£10K - £50K	£50K - £250K	£250K - EU	EU PROCUREMENTS
1 Verbal Quote	1 Written Quote	3 Quotes	3 Quotes	Restricted Process or Open Advert	Restricted, Open or Negotiated Process
Apply Go Local Policy	Apply Go Local Policy	Apply Go Local Policy	-	-	-
-	Must keep records of offers invited, method of inviting offers, basis of selecting contractors, staff authorised to accept offers, correspondence with suppliers.	Must keep records of suppliers invited, method of inviting offers, basis of selecting contractors, staff authorised to accept offers, correspondence with suppliers, evaluation record sheets.	- Discussion with Legal before starting procurement including discussion on incorporating environmental protection and locality.	Initial procurement meeting held with Legal before starting the procurement. including discussion on incorporating environmental protection and locality.	Initial procurement meeting held with Legal before starting the procurement. including discussion on incorporating environmental protection and locality.
-	-	Standard Quotation Documents	Standard Quotation Documents	Standard Tender Documents	Standard Tender Documents
-	-	Consider e - Tendering	Must use e- Tendering	Must use e- Tendering	Must use e - Tendering
-	-	-	Carry out Risk Assessment	Carry out Risk Assessment	Carry out Risk Assessment
-	-	-	Consider Social Value	Consider Social Value	Must consider Social Value
-	-		Standard decision letter templates	Standard decision letter templates.	Standard decision letter templates
-	-	-	-	Detailed Feedback	Detailed Feedback
-	-	-	-	Observe 10 day Standstill	Observe 10 day Standstill.
			Standard Award letters.	Standard Award letters.	Standard Award letters.
-	-	-	Contracts must be completed and signed by both parties prior to any works commencing. Where this is unlikely to take place, notification and a	Contracts must be completed and signed by both parties prior to any works commencing. Where this is unlikely to take place, notification and a waiver should be provided to the	Contracts must be completed and signed by both parties prior to any works commencing. Where this is unlikely to take place, notification and a waiver should be provided to the Service Director: Legal and

			waiver should be provided to the Service Director: Legal and Community prior to the start date with a plan to achieve contract signing.	Service Director: Legal and Community prior to the start date with a plan to achieve contract signing Consider if contract should be sealed as a deed.	Community prior to the start date with a plan to achieve contract signing. Consider if contract should be sealed as a deed.
-	-	-	Must complete Decision Notice	Must complete Decision notice	Must complete Decision Notice
-	Must provide details for Contract Register.	Must provide details for Contract Register	Must provide details for Contract Register	Must provide details for Contract Register	Must provide details for Contract Register
-	-	-	Must post award notice within 30 days of Contract Award.	Must post award notice within 30 days of Contract Award.	Must post award notice within 30 days of Contract Award.
-	-	Must consider setting up Google alerts/ Creditsafe alerts.	Must consider setting up Google alerts/ Creditsafe alerts.	Must consider setting up Google alerts/ Creditsafe alerts.	Must consider setting up Google Alerts. Mandatory Creditsafe alerts.

## **6 Estimates – (Below £10,000)**

- 6.1 Service Directors must ensure that appropriate mechanisms are in place within their Directorate to ensure value for money.
- 6.2 The Council has adopted a Go Local Policy for all procurements below £50,000. Officers should always seek to obtain local quotes where available. A record should be kept of the decision making process, as this may be required for audit purposes.. (See Glossary of Terms for description of Go Local and link to Cabinet report)
- 6.3 Officers should demonstrate that value for money has been obtained and should maintain records accordingly, in line with the Document Retention Schedule.
  - 6.3.1 Such records should contain, as a minimum:
    - (a) the number of estimates or offers invited; and
    - (b) the method of inviting estimates or offers; and
    - (c) the basis of selecting suppliers/contractors; and
    - (d) the staff authorised to accept estimates or offers.
- 6.4 Official Purchase Orders must be raised through the Council's electronic ordering system in accordance with Financial Regulations.
- 6.5 You must follow Rule 20 (Contracts).

## **7 Quotation (Goods and Services £10,000 to £100,000 / Works £50,000 to £250,000)**

- 7.1 All Quotations should take place using the Council's E – Tendering system. Contact Procurement for assistance.
- 7.2 Prior to starting your quotation you should contact Legal to discuss you planned procurement.
- 7.3 Once a quotation process has started, there must be no contact with any of the bidders unless it is through a clarification process. Clarification questions usually relate to the contract or the specification and responses are time sensitive. Clarification responses are the responsibility of the Project Manager and Legal.
- 7.4 Service Directors must ensure that appropriate mechanisms are in place within their Directorate to ensure value for money, that any selection process used is fair and equitable, and that no positive or negative favouritism is shown to any contractor.
- 7.5 Please see Table A under Rule 5 for contract notice requirements. In addition, the project manager may also place an advert in a trade publication (please be aware that some publications charge for adverts).
- 7.6 You must have a specification of requirements. See
- 7.7 Part F Specific Rules of Contract, in particular Rule 26 (Specification).
  - 7.7.1 You must not change the specification after requesting quotations.
- 7.8 You must follow the procedures in Rule 17 (Evaluation Criteria for Quotations and Tenders).
  - 7.8.1 You must not change the scoring method after requesting quotations.

- 7.9 You may approach only a single supplier if the conditions in Rule 14 (Single Tender) are met. This process may only be used where there are compelling reasons for it being required and must not be applied solely because it is convenient to do so. Otherwise you should invite a minimum of three formal quotations. (Please check with Legal before proceeding).
- 7.9.1 Where you can demonstrate that there are insufficient suitably qualified contractors or suppliers to meet the requirements for a minimum of three quotations, both suitably qualified candidates must be invited and this approach agreed under Rule 22 (Waivers).
- 7.9.2 At least two satisfactory responses (i.e. responses which meet a minimum quality standard under which the Council could award the contract) must be received. If the Council receives only one satisfactory response, the Officer must obtain an additional quote or tender or obtain a waiver under Rule 22 (Waivers).
- 7.10 You must follow the procedures outlined in:
- (a) Rule 15 (Receipt of Quotations / Tenders); and
  - (b) Rule 16 (Opening Quotations and Tenders); and
  - (c) Rule 20 (Contracts).
- 7.11 The Council has adopted a Go Local Policy for all procurements below £50,000. Officers should always seek to obtain local quotes where available. A record should be kept of the decision making process, as this may be required for audit purposes. (See the Glossary of Terms for a description of Go Local and link to Cabinet Report).
- 7.12 For Contracts over £25,000 you must post an award notice to Contract Finder using the Councils E-Tendering system, even if the procurement was not advertised. This is a Government requirement for Transparency purposes.
- 7.13 For contracts above £50,000 you must publish an official NHDC Decision Notice on the Councils' website. The Decision Notice template is available on the following page on the Intranet.  
<http://intranet.north-herts.gov.uk/home/doing-business/procurement/standard-procurement-templates>

## **8 Tenders (Goods and Services above £100,000 and Works above £250,000)**

- 8.1 Service Directors must ensure that appropriate mechanisms are in place within their Directorate to ensure value for money, that any selection process used is fair and equitable, and that no positive or negative favouritism is shown to any contractor.
- 8.2 Prior to starting your quotation you should contact Legal to discuss you planned procurement.
- 8.3 You must have a specification of requirements. See
- 8.4 Part F Specific Rules of Contract, in particular Rule 26 (Specification).
- 8.4.1 It is important that all documentation and specifications are completed before proceeding to advert. If this is not done in the initial stages, officers may find that they have placed themselves under unnecessary pressure to meet the timescales they have set. In addition, please ensure that all Project meetings (e.g. evaluation and moderation) are timetabled well in advance to ensure resource availability at key points, and no diary clashes).
- 8.4.2 For all procurements which require Member input, you must consult on the specification with the Executive Member prior to going out to quotation or tender.

- 8.4.3 You must not change the specification once the Invitation to Tender (ITT) has been sent to interested bidders.
- 8.5 You must follow the procedures in Rule 17 (Evaluation Criteria for Quotations and Tenders).
- 8.5.1 For all procurements which require Executive Member input, you must consult on the scoring method with the Executive Member prior to going out to quotation or tender.
- 8.5.2 You must not change the scoring method once Selection Questionnaire or Invitations to Tender (ITT) have been sent to interested bidders.
- 8.6 You must have a contract prepared in advance in a form approved by the Service Director: Legal and Community. See
- 8.7 Part F Specific Rules of Contract.
- 8.7.1 Contact Legal for advice if you need to negotiate or amend the contract during the tender process.
- 8.8 If you are unable, or if your Service Director decides that it is not feasible to meet these requirements you must obtain a waiver under Rule 22 (Waivers).

#### Tendering Options

- 8.9 Service Directors should select one of the tendering methods described in Table B. Alternative methods of tendering may be used with approval of Cabinet in advance. Contact Legal for advice.

**Table B**

<u>Tender Option</u>	<u>Description</u>
Open tender Rule 9	This process should be used when there are only a small number of suppliers competing for the business. There is no pre-qualification. Any interested supplier may tender.
Restricted tender Rule 10	This process should be used if there are a large number of suppliers competing for the business. <b>It can only be used for above OJEU procurements.</b>  Suppliers are pre-qualified as to their suitability as contracting partners. They are assessed as to whether they have the capability to provide the works, goods or services.  Qualified suppliers are invited to tender and are assessed as to how they will provide works, goods or services.
Framework Agreement Rule 11	This process may be used if we are named or named via a link (e.g. Supply Herts) as a member of an appropriate Framework Agreement, or if it is an Open Framework. The procedure is that defined by the Framework Agreement but generally invites supplier members to tender prices against a specification. There is not normally any negotiation on terms or conditions.
Competitive procedure with Negotiation and Competitive Dialogue Rule 12	These processes can be used when it is not possible to adapt readily available solutions or design / innovation may be required.  Rules 29 and 30 of the Public Contract Regulations set out the requirements.

Innovation Partnership Rule 13	These processes can be used when it is not possible to adapt readily available solutions or design / innovation may be required.  Rule 31 of the Public Contract Regulations sets out the requirements
Single tender Rule 14	You approach only a single supplier for their tender.  This process may only be used where there are compelling reasons for it being required and must not be applied solely because it is convenient to do so.  (Contact Legal for advice)

## Part D Tendering Methods

Rule 40 of The Public Contract Regulations 2015 expressly allows opportunities for Pre Tender market consultation. Please consult with Legal and Procurement on its use as the rules must be carefully followed.

### 9. Open Tender

Once a tender process has started, there must be no contact with any of the bidders unless it is through a clarification process. Clarification questions usually relate to the contract or the specification and responses are time sensitive. Clarification responses are the responsibility of the Project Manager and Legal, although please keep Procurement Services informed of progress.

9.1 All adverts and contract award notices must be published as per Table A requirements.

9.1.1 See Rule 34 (Glossary of Terms) for the meaning of “EU Threshold” and “OJEU”.

#### Invitation to Tender (ITT)

9.2 The Council has a standard ITT template which will be tailored for each procurement. Please contact Legal for the current version.

9.2.1 The ITT is a document that details the goods or services we require, in sufficient detail for the interested contractors to give us an accurate quotation of price and how they will meet our minimum expected service levels. The ITT incorporates the form of contract that we intend to contract under, as well as the detailed specification which is probably the most important element. The ITT for every specific procurement must be “owned” by the Project or Service Manager leading the procurement exercise. See also Rules 23 (Contractual Terms) and 24 (Specification).

9.3 You must send all interested suppliers a copy of the ITT. You should seek advice from Legal in creating your ITT. Your ITT should contain questions that assess the supplier’s ability to provide the services and their suitability to be contracting partners to the Council. This is done by assessing (where relevant):

- a) the suppliers ability to perform their obligations against the specification; and
- b) financial standing; and
- c) technical standards; and
- d) insurance; and
- e) health and safety; and

- f) environmental and economic (e.g. employment) factors: and
- g) social value, and
- h) compliance with any other relevant statutory obligation; (including equalities) and
- i) references.

9.4 You must follow the procedures outlined in:

- a) Rule 15 (Receipt of Quotations / Tenders); and
- b) Rule 16 (Opening Quotations and Tenders); and
- c) Rule 17 (Evaluation Criteria for Quotations and Tenders); and
- d) Rule 18 (Contract Award); and
- e) Rule 19 (Standstill Period) it is highly recommended that this is observed for all tenders unless timescales are prohibitive.

## 10. Restricted Tender

Once a tender process has started, there must be no contact with any of the bidders unless it is through a clarification process. Clarification questions usually relate to the contract or the specification and responses are time sensitive. Clarification responses are the responsibility of the Project Manager and Legal.

10.1.1 All adverts and contract award notices must be published as per the requirements in Table A.

10.2 The restricted tender procedure splits the procurement process into two stages: the SSQ and then the ITT. **This process can only be used for procurements above the OJEU threshold for services.**

10.2.1 See Rule 34 (Glossary of Terms) for the meaning of “SSQ” and “ITT”.

### Standard Selection Questionnaire (SSQ)

10.3 You should use the approved starting point SSQ. Contact Legal for the current version.

10.4 You must send all interested suppliers a copy of the SSQ. You should seek advice from Legal when creating your SSQ.

10.5 The SSQ stage involves assessing the general capability of a company as a contracting party to provide the services. This is done by assessing:

- a) financial standing; and
- b) technical standards; and
- c) environmental and economic (e.g. employment) factors; and
- d) compliance with any other relevant statutory obligation; and
- e) references; and
- f) and other matters that do not relate to the quality of their services, just their ability to provide the service.
- g) The following may be assessed at SSQ or ITT stage – Social Value and Equalities impacts.

10.6 This assessment is designed to fail those companies that we could not contract with and allow to ITT all companies we could contract with.

- 10.7 It is important not to assess aspects of quality at SSQ otherwise you cannot ask the same question at ITT. A supplier's quality of service should only be assessed by their tender (following ITT).
- 10.8 The process for selecting and short listing contractors must be transparent, fair and auditable.

#### Invitation to Tender (ITT)

- 10.9 You should use the approved starting point ITT. Contact Legal for the current version.
- 10.9.1 The ITT is a document that details the goods or services we require in sufficient detail for the interested contractors to give us an accurate quotation of price and how they will meet our minimum expected service levels. The ITT incorporates the form of contract that we intend to contract under as well as the detailed specification which is probably the most important element. The Evaluation Criteria must also be included in this document. See also Rules 25 (Contractual Terms) and 26 (Specification).
- 10.10 You must send all short listed suppliers a copy of the ITT. You should seek advice from Legal when creating your ITT.
- 10.11 Your ITT should contain questions that assess the supplier's ability to provide the services and their suitability to be contracting partners to the Council. This is done by assessing the supplier's ability to perform their obligations against the specification. You should not include any question you have assessed in your SSQ.
- 10.12 You must follow the procedures outlined in:
- a) Rule 15 (Receipt of Quotations / Tenders); and
  - b) Rule 16 (Opening Quotations and Tenders); and
  - c) Rule 17 (Evaluation of Quotations / Tenders ); and
  - d) Rule 18 (Contract Award); and
  - e) Rule 19 (Standstill Period) - it is highly recommended that this is observed for all tenders unless timescales are prohibitive.

### **11. Call-Off Further Competition under a Framework Agreement**

- 11.1 The full tendering procedures within the Rules will not apply to a contract where Legal, advises it is appropriate to purchase from suppliers through an approved external Framework Agreement.
- 11.2 See Rule 34 (Glossary of Terms) for the meaning of "Framework Agreement".
- 11.3 This Rule only applies if the Council is already named or named via a link (e.g. Supply Herts) unless using a consortium framework. i.e. ESPO (Eastern Shires Purchasing Organisation) or it is an Open Framework. If there is no appropriate Framework Agreement in place see Rule 21 (Joining a Framework Agreement).
- 11.4 Each Framework Agreement has its own procedures in relation to purchasing from a Supplier under the agreement. These must be followed exactly. See Legal for advice. These procedures may be quicker and more straightforward than full procurements. As with all Frameworks, it is important to consider whether it provides the best Value for Money outcome.

### **11A Dynamic Purchasing System**

- 11A.1 The tendering procedures in these Rules will not apply to a contract if Legal advises it is appropriate to purchase from suppliers through a Dynamic Purchasing System.



- 11A.2 See Rule 34 (Glossary of Terms) for the meaning of “Dynamic Purchasing System”
- 11A.3 Dynamic Purchasing Systems (“DPS”) can provide all the benefits of a Framework Agreement but are more flexible. The key benefits compared to a Framework Agreement are no limits on duration and suppliers can join and leave at any time.
- 11A.4 A DPS is generally appropriate for purchasing simple and commoditised goods. Please seek advice from Legal.

## **12. Competitive Procedure with Negotiation**

- 12.1 All adverts and contract award notices must be published as per the requirements in Table A
- 12.2 The Competitive Procedure with Negotiation splits the procurement process into initial receipt of ITTs, a negotiation stage and final submission of bids from Suppliers.
- 12.3 Competitive Procedure with Negotiation is subject to detailed rules and Legal must be consulted if this option is selected.
- 12.4 As in 8.6 the approval of Cabinet must be obtained in advance if this method is selected.

## **13. Innovative Partnership procedure.**

- 13.1 All adverts and contract award notices must be published as per the requirements in Table A
- 13.2 This procedure may only be used where it has been identified that there is a need for innovative goods, services or works which cannot be met by the existing market.
- 13.3 The Innovative Partnership procedure is subject to detailed rules, and Legal must be consulted if this option is selected.
- 13.4 As in 8.6 the approval of Cabinet must be obtained in advance if this method is selected.

## **14. Single Tender**

Please liaise with Legal in the first instance, as pre-authorisation for this approach is required as per Rule 14.2.

### Below EU Threshold

- 14.1 A single tender may be obtained when:
- a) Prices are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available; or
  - b) The works, goods, or services to be supplied consist of repairs to or the supply of parts or upgrading of existing proprietary machinery, equipment, software, hardware or plant and the repairs or the supply cannot be carried out practicably by alternative contractors; or
  - c) Specialist consultants, suppliers, agents or professional advisors are required and:
    - (i) Evidence that there is no satisfactory alternative; or
    - (ii) evidence indicates that there is likely to be no genuine competition; or
    - (iii) it is in the Council’s best interest to engage a particular consultant, supplier, agent or advisor; (Contact Legal for advice) or
  - d) Products are sold at a fixed price and market conditions make genuine competition impossible.

- 14.2 You must have prior written approval of the Service Director responsible, the Service Director: Legal and Community and the Service Director: Resources. Contact Legal for advice on preparing your Single Tender Option report.
- 14.3 In the event that approval has not been obtained for a single tender in accordance with section 14.2, and a contract has been awarded, the Service Director: Resources and the Service Director: Legal and Community may grant retrospective approval provided the following conditions are met:
- (i) Expenditure is within approved budgets or overspend has been reported
  - (ii) Contract award was approved under Section 14 of the Council's Constitution (Responsibility for Functions)
  - (iii) The Service Director: Resources and the Service Director: Legal and Community are satisfied that an application for a single tender would have been approved under section 14.2.
  - (iv) The commissioning officer completes an application for retrospective approval to the Service Director: Resources and the Service Director: Legal and Community.

#### Above EU Threshold

Please liaise with Legal and Procurement in the first instance.

- 14.4 A single tender may only be obtained if:
- a) No tenders or no appropriate tenders were received in response to a previous tender; or
  - b) The contract involved is purely for the purpose of research, experiment, study or development under specific conditions; or
  - c) The works/goods/services can be provided only by a particular tenderer for reasons that are:
    - (i) Technical; or
    - (ii) Artistic; or
    - (iii) Connected with the protection of exclusive rights; or
  - d) Because of extreme urgency brought about by events unforeseeable by the contracting authority and in accordance with strict conditions; or
  - e) Additional works/deliveries/services are ordered under strict conditions; or
  - f) New works/services, constituting a repetition of existing works/services are ordered in accordance with strict conditions; or
  - g) Service contract awarded to the successful candidate or one of them after a design contest; or
  - h) For supplies quoted and purchased on a commodity market; or
  - i) For the purchase of supplies on particularly advantageous terms:
    - (i) From a supplier which is definitely winding up its business activities; or
    - (ii) From the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure; or
  - j) All tenders submitted in reply to an open procedure, or a restricted procedure were irregular or unacceptable. Only those tenderers who satisfied the qualitative selection criteria (i.e. PQQ) may be included in the negotiations.
- 14.5 You must have prior written approval of the Service Director responsible, the Service Director: Legal and Community and the Service Director: Resources. Contact Legal for advice on preparing your Single Tender Option report.

- 14.6 A “voluntary ex transparency notice” (VEAT) must be published in the OJEU giving reasons for negotiating with a single supplier. This takes the place of the “contract award notice” described by Rule 18 (Contract Award).
- 14.7 You must follow Rule 19 (Standstill Period).
- 14.8 In the event that approval has not been obtained for a single tender, in accordance with section 14.5, and a contract has been awarded, the Service Director: Resources and the Service Director: Legal and Community may grant retrospective approval provided the following conditions are met:
- (i) Contract award was compliant with EU procurement law
  - (ii) Expenditure is within approved budgets or overspend has been reported
  - (iii) Contract award was approved under Section 14 of the Council’s Constitution (Responsibility for Functions)
  - (iv) The Service Director: Resources and the Service Director: Legal and Community are satisfied that an application for a single tender would have been approved under section 14.5
  - (v) The commissioning officer completes an application for retrospective approval to the Service Director: Resources and the Service Director: Legal and Community.
- 14.9 In respect of both retrospective approvals detailed under 14.3 and 14.8, you must also remember to publish a delegated decision for any contract award with an total value of £50,000 and above exclusive of options to extend.

## **15. Receipt of Quotations / Tenders**

- 15.1 All quotations and tenders should be received electronically via the Councils E-tendering system. The documents cannot be accessed until the closing date and time has passed.
- 15.2 Where the circumstances so warrant, a Service Director may postpone for a reasonable period the closing time and date for the receipt of quotations and tenders, provided that all persons from whom tenders have been invited are notified by the same method, and given the same information and that no quotations or tenders have been opened. Bidders must be notified in reasonable time through the E-Tendering System.
- 15.3 Contact Legal for advice if there are any problems with receiving quotations or tenders.

## **16. Opening Quotations and Tenders**

- 16.1 Quotations and Tenders must be submitted through the Councils’ e-tendering system. It will automatically record the receipt of the quotation or tender for audit purposes. Each document submitted will be deposited securely in the system to which only the project team and Legal will have access. Once the quotation or tender has been awarded, the documents will be kept securely until the expiry of the retention period.

## **17. Evaluation Criteria for Quotations and Tenders**

- 17.1 The appropriate Service Director, or delegated officer, shall evaluate all the tenders or quotations received in accordance with the evaluation criteria set out in the bid documentation (either the

invitation to quote or ITT). The Project/ Service manager leading the procurement is responsible for organising all the project meetings necessary to complete the procurement process.

17.2 The risk of the contract (e.g. in terms of value, length of contract and the impact of the service being provided) will determine the level of financial and viability checks undertaken on the tenderers (as distinct from the financial evaluation of the tender). Where these findings raise significant concerns then they will be discussed by the Contract Manager, Procurement and Finance, who will jointly determine the course of action to take. This decision will consider procurement legislation and the balance of risk. The decision can still be made that the risk will be tolerated

17.3 You must clearly explain your evaluation scheme to suppliers in your bid documentation.

17.4 You should contact Legal who will advise on the appropriate criteria for your procurement.

#### Price alone

17.5 This assesses the price and not the quality (subject only to minimum levels of quality as defined in your specification) of quotations or tenders. This method is appropriate for supply of goods or simple services and is not normally appropriate for complex services or works. A Price only evaluation must not be used for above OJEU tenders.

17.6 The Council will accept the quotation or tender that offers the best price (either the cheapest where the Council pays money or the highest when the Council receives money).

17.7 Tenders or quotations exceeding the approved budget may only be accepted once the budget holder has liaised with the Accountancy Manager to determine whether, and how, the budget can be increased.

17.8 The acceptance of a tender or quotation that is not the lowest priced tender or quotation shall only be accepted if:

- a) the Cabinet has considered a written report from the appropriate Service Director; or
- b) in cases of urgency, the Chief Executive may use Urgency powers as set out in the Constitution. The appropriate Service Director shall report tenders or quotations accepted in this way to the next meeting of the Cabinet.

17.9 Where post tender negotiations have been undertaken in accordance with Rule 24 (Post Tender Negotiation), the appropriate Service Director shall only accept the lowest priced tender received. A tender other than the lowest must not be accepted until the Cabinet has considered a written report from the appropriate Service Director and recommended acceptance of a tender other than the lowest.

#### Most economically advantageous tender

17.10 This Rule does not provide comprehensive or exhaustive procedures for the application and evaluation of tenders using most economically advantageous tender criteria. It aims to provide officers with practical advice on suggested evaluation methods to ensure that the aims of NHDC can be achieved and demonstrated taking into account value for money.

17.11 The approved starting point ITT includes most economically advantageous tender criteria. Contact Legal for advice on using most economically advantageous tender criteria.

17.12 In its simplest form, the most economically advantageous tender criteria includes a balance between the price and quality aspects of your procurement so that the Council achieves the best product for the best price. Common balances are between 70–30 to 60-40 with the weighting towards either price or quality depending on whether price or quality is more important. The weighting decision is made by the Project/ Service Manager leading the procurement.

- 17.13 Most economically advantageous tender criteria must be set before the tender process commences and should include the following elements:
- a) a point scoring system for individual quality / best value considerations set at the commencement of the procurement process with weightings applied to quality / best value issues in accordance with their importance to the contract; and
  - b) a 'quality threshold' which sets the minimum standards expected. Tenders which fall below this will be excluded from consideration; and
  - c) an assessment of the price using either of the Council's "standard" price assessment methods.

## **18. Contract Award**

- 18.1 Following assessment and the selection of the winning tender each of the losing tenderers must be:
- a) informed of the identity of the successful tenderer; and
  - b) informed of the reasons why the Council selected that winning tender; and
  - c) provided with a brief summary of the relative advantages of that tender compared with their own.
- 18.2 You should contact Legal for assistance in preparing these letters to failed tenderers.
- 18.3 All letters and documents must be uploaded through the Councils' e-tendering system and advice is available from Legal.
- 18.4 A "contract award notice" must be published in the OJEU, Contract Finder (and on the NHDC website) following procurements where the Contract Value is over the EU Threshold. All contract award notices should be published via the Councils' e-tendering system within 30 days of contract award. Again, Legal can assist with this.
- 18.5 An official NHDC Decision notice must be prepared by the Project Manager and sent to Member Services to be published on the Councils website. Templates are available on the Legal procurement resource pages of the Intranet at the following link.
- 18.6 <http://intranet.north-herts.gov.uk/home/doing-business/procurement/standard-procurement-templates>  
The Service Director: Legal and Community maintains a Contract Register showing all contracts entered into by the Council. Once awarded, all new contracts over £5,000 must be confirmed to Legal so they can be recorded on the Contracts Register. A standard template which captures contract details can be found on the Legal procurement resource pages of the intranet at the link below.

<http://intranet.north-herts.gov.uk/home/doing-business/procurement/standard-procurement-templates>

## **19. Standstill Period (for EU Threshold only)**

- 19.1 Before a contract for value above the EU threshold can be signed, the Council must wait a minimum of 10 calendar days. This "standstill period" allows a losing supplier to challenge the award decision.
- 19.2 The standstill period must be built into the procurement timetable and immediately follows notification to all tenderers regarding the proposed Contract Award.
- 19.3 You must inform Legal if any failed potential contractor challenges a contract award as soon as possible.
- 19.4 You must not sign a contract during the standstill period or after any challenge without specific advice in writing from the Service Director: Legal and Community.

## 20. Contracts

- 20.1 All contracts must be in writing and follow the requirements of  
20.2 Part F Specific Rules of Contract.
- 20.2.1 Contracts under £10,000 must, as a minimum, be in the form of an official order, issued and approved by an authorised officer in accordance with the Council's Financial Regulations.
- 20.2.2 Contracts in excess of £10,000, or in any other case where the responsible Service Director decides it is necessary or desirable, must be drawn up in a form approved by the Service Director: Legal and Community.
- 20.3 For all works contracts over £50,000, documents must be completed and signed by both parties prior to any works commencing.
- 20.4 For goods and services contracts over £50,000, contracts should be executed before commencement where practical. As soon as you become aware that this is not feasible, notification should be provided to the Service Director: Legal and Community with the reasons why this shall not take place and likely timescale and plan for any delays in execution.
- 20.5 Where the contract value exceeds £100,000 you should consider whether the contract should be sealed as a deed. Sealing as a deed offers a number of technical advantages over contracts under hand (i.e. just signed by an appropriate person). The main relevant advantage for the Council is that it can sue under the contract for 12 years (against the normal 6 years). This is most relevant for works or significant services contracts where latent defects or incorrect advice may only cause problems years later. Please contact Legal for advice if you are unsure.
- 20.6 A contract of any value may be sealed if requested by the responsible Service Director or the Service Director: Legal and Community. Please contact Legal for advice.

## 21. Joining a Framework Agreement

In some instances, a Framework Agreement can offer the most cost effective and appropriate means by which to procure. However, this may not necessarily be the case and so should be regarded as one potential means by which to proceed and should be compared to the alternatives. Procurement will research framework agreements to ensure that they are available for use by NHDC and Legal will check the terms and conditions of the call off agreement, if one exists. The Project manager should ensure that it is fit for purpose for their needs.

- 21.1 A Framework Agreement is “an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged”.
- 21.2 This means that the Framework Agreement is a pre-agreed set of terms and conditions that establishes the terms and conditions that will apply to subsequent contracts (a **Call-Off** contract) created under the Framework Agreement but it does not itself do anything except explain how Call-Off contracts are made.
- 21.3 Frameworks can cover supply of works, goods or services. They are useful because once a Framework Agreement has been set up to cover a particular type of works, goods or service you do not need to carry out a full procurement exercise each time you need that supply. Dependant on how the framework has been set up, you can either purchase directly from a supplier, or carry out a mini competition amongst the suppliers. Some consortia require an access agreement to be completed. If there is no appropriate Framework Agreement in place, you can consider whether your procurement

is suitable to be a Framework Agreement with other authorities. Procuring supply through a Framework Agreement may lead to price efficiencies due to increased purchasing power.

- 21.4 The maximum duration of a Framework Agreement is four years. The term of a framework agreement may not exceed four years, save in exceptional cases, duly justified. Contact Legal who will provide advice and guidance.
- 21.5 Call-Off contracts may extend beyond the life of the Framework Agreement. The terms of the Framework and the maximum length of call off will need to be considered on a case by case basis.
- 21.6 Useful Framework Agreements include Eastern Shires Purchasing Organisation (ESPO), the Crown Commercial Service (CCS), Hertfordshire Business Services, Supply Hertfordshire, Yorkshire Purchasing Organisation (YPO) North East Purchasing Organisation (NEPO Pro 5 or through any consortia of Local Authorities.

## **Part E Procurement Issues**

### **22. Waivers**

In certain circumstances, it may be necessary to request a variation to these Contract Procurement Rules. Such a request is referred to as a waiver. You must seek advice from Legal in the first instance.

- 22.1 Waivers are not to be used as an alternative to a lack of forward planning. Where a waiver is needed due to unforeseen circumstances, it will be expected that the waiver will be for a short period of time to allow for a tender/quotation process to be carried out. Waivers which have been submitted to extend contracts or for reasons of extreme urgency must have a timetable attached to highlight when the procurement process is going to be undertaken within the framework of the Contract Procurement Rules.
- 22.2 In relation to procurements above the EU Threshold, few elements of these Rules may be waived. Please contact Legal for advice as the general law of public procurement is more complicated than can be summarised in these Rules. Approval must be obtained from the Service Director: Legal and Community and the Service Director: Resources but they may refer the matter to Cabinet for approval.
- 22.3 In relation to procurements below the EU Threshold only, any individual provision in these Rules may be waived. The waiver has to be agreed by:
  - a) a Service Director, in consultation with the Service Director: Resources and the Service Director: Legal and Community, if the Contract Value is £100,000 or less (whether for goods, services or works); or
  - b) the Service Director: Legal and Community and the Service Director: Resources in consultation with the appropriate Executive Member for contracts over £100,000 however they may refer the matter to Cabinet for approval; or
  - c) the Chief Executive activating the Council's 'Major Incident Plan' or a business recovery plan (as outlined in the business continuity management strategy).
- 22.4 All waivers other than a major incident, require a written report being submitted in advance by the authorised officer explaining that the waiver is justified because either:
  - a) the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procurement Rules is justifiable; or
  - b) the contract is for supplies, works or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or

- c) the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or UK law); or
  - d) where it is in the Council's overall interest; or
  - e) there are other circumstances which are genuinely exceptional.
- 22.5 A record of the decision and the reasons for it must be kept by the Service Director: Legal and Community.

## **23. Arithmetic Errors**

- 23.1 Contractors can alter their tenders or quotations after the date specified for their receipt, but before the acceptance of the tender or quotation, where examination by officers of the tender or quotation reveals arithmetic errors or discrepancies which affect the tender or quotation figure.
- 23.2 The contractor should be given details in writing of all such errors or discrepancies and afforded an opportunity of confirming, amending or withdrawing their offer in writing.

## **24. Post Tender Negotiation**

- 24.1 In evaluating tenders, the appropriate Service Director, or delegated officer, may invite one or more contractors who have submitted a tender to submit a revised offer following post-tender negotiations.
- 24.2 All post-tender negotiations shall:
- a) only be undertaken where permitted by law and where the appropriate Service Director, together with the Service Director: Legal and Community and the Service Director: Resources consider additional financial or other benefits may be obtained which over the period of the contract shall exceed the cost of the post-tender negotiation process; and
  - b) be conducted by a team of officers approved in writing by the appropriate Service Director, Service Director: Legal and Community and Service Director: Resources; and
  - c) be conducted in accordance with guidance issued by Legal and in compliance with current EU legislation; and
  - d) not disclose commercially sensitive information supplied by other bidders for the contract.
- 24.3 Post tender negotiations shall not be used to degrade the original specification unless the capital or revenue budget is exceeded, or the appropriate Service Director considers other special circumstances exist. This process must not put other tenderers at a disadvantage, distort competition or affect adversely trust in the competitive tendering process.
- 24.4 The appropriate Service Director or delegated officer shall ensure that minutes of all post-tender negotiation meetings are properly taken with all savings and benefits offered clearly costed. Following negotiations, but before the letting of the contract, amendments to the original tender submitted shall be put in writing by the contractor and shall be signed by them.
- 24.5 There are restrictions on the use of post tender negotiations on procurements over the EU Threshold, which follow the open or restricted procedures. The European Commission specifically rules out any negotiation on price:

*"In open and restricted procedures, all negotiations with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, shall be ruled out. However, discussions with candidates or tenderers may be held only for the purpose of clarifying, or supplementing the content of their tenders or the requirements of the contracting authorities, and provided this does not involve discrimination."*



## **Part F Specific Rules of Contract**

### **25. Contractual Terms**

- 25.1 The Council has a number of different standard contractual terms and conditions depending on the nature of the goods, services or type of works you require. These may require additional elements depending on the complexity, risk and importance of the contract. You should ask Legal for advice on the appropriate terms and conditions as early as possible.
- 25.2 If your contractor requests or demands that the Council contracts on their standard terms and conditions, you should contact Legal who will advise you in relation to these terms. In many cases a Suppliers' terms can be acceptable but sometimes negotiation is required.
- 25.3 If your procurement is a Call-Off under a framework agreement there is usually no scope for negotiation on the terms and conditions of that contract. The terms were pre-agreed when the framework agreement was signed. Under a Call-Off contract the only terms that are negotiated are: when and where the work will start; how much will be paid; and when the work will be completed.

### **26. Specification**

- 26.1 A specification is a description of what the Council requires in as much detail as possible. This description should include all the supply that the contractor will provide and it should list all our requirements so that any quotation / tender prices reflect as fully as possible what the Council requires. Contact Legal for assistance with preparing your specification.
- 26.2 Contracts must be consistent with the delivery of the Council's approved policies, service plans and budgets. If for any reason a proposed contract appears likely to require a change to any policy, service plan and/or budget approval of those changes must be obtained in accordance with the Constitution prior to procurement being initiated.
- 26.3 Specifications should have regard to all of the Council's priorities and policies, as well as any legislative requirements. In the specification (and/or award criteria) consideration should be given to factors such as the method of working or production, sourcing of materials, packaging, or type of fuel employed, whole life costing including disposal and environmental issues, which may impact on those wider policies and priorities. These factors should not be applied as a means to stifle competition and be commensurate with potential costs.
- 26.4 Whenever a contract is re-let, the opportunity should be taken to revise the specification to achieve better value, where necessary, seeking approvals as above.

### **27. Payment**

- 27.1 Payment to contractors on account of works contracts should only be made on receipt of a payment certificate, or equivalent under the JCT, NEC, ICE or other industry standard form contract (whether of staged or complete works).
- 27.2 Payment terms applied to all contracts will be within 30 days of receipt of goods or satisfactory completion of services and will be made by BACS, unless there are exceptional circumstances such as stage payments, or there is a benefit to the council to reduce the payment terms.

- 27.3 Contracts which involve the use of subcontractors shall contain a contract clause ensuring payment throughout the supply chain of 30 days payment terms.
- 27.4 Service Directors shall be responsible for ensuring appropriate systems are in place for carrying out checks on contractors' final accounts. These checks should include a suitably qualified officer who has had no previous involvement in the contract.

## **Part G Ongoing Requirements**

### **28. Variations**

**You should seek advice from Legal before negotiating / agreeing any variation.**

**This Rule 30 may apply in addition to the Rule 14 Single Tender Option.**

- 28.1 There are two variation procedures: where the contract has provision and procedures relating to variations; and where the contract has no provision for variation.
- 28.2 Any contract may be varied through the use of a deed of variation. You should seek advice from Legal before agreeing any variation.
- 28.3 All variations must be in writing and conform to the appropriate Financial Regulations.
- 28.4 The Service Director: Resources and Service Director: Legal and Community must be informed in writing of any variation.
- 28.5 Any variation under this section does not require reassessment of the original procurement process as a result of a change in the overall value of the contract.

#### Contractual variation

- 28.6 A Service Director may authorise variations to a contract where the variation procedure and the resulting change in price is determined in accordance with the contract terms – this may be through the use of agreed formula or through serving and agreeing change notices.

#### Non-contractual variation

- 28.7 A Service Director may authorise variations to a contract where:
- a) delay would incur substantial cost penalties to the Council; or
  - b) the proposed variations are unavoidable and/or essential for the project to proceed or continue; or
  - c) circumstances arise during the performance of the contract which make it necessary to amend the specification or method of carrying out the works or services or purchase of goods; in each case provided that:
    - (i) the cost to the Council of the variation is less than or equal to 20% of the value of the contract, for contracts up to £250,000 for works and £100,000 for services or goods; or
    - (ii) the cost to the Council of the variation is less than or equal to 10% of the value of the contract, for contracts above £250,000 subject to a maximum value of £50,000k in respect of the variation; or
  - d) in the case of urgency or unforeseen circumstances where works, services or goods are to be added to or deleted from the contract which are substantially different in scope. In this instance the Service Director must report this action to the Executive Member as soon as possible;

and, if relevant, that the variation is within the scope of the original contract notice or any applicable limits as set out in the Public Contracts Regulations 2015 or the overall value of the contract remains below the applicable OJEU threshold.

28.8 Subject to the availability of budget funding, a Executive Member may authorise variations to a contract which:

- a) adds more than 20% to the value of the contract for contracts up to £250,000; or
- b) adds more than 10% to the estimated value of the contract for contracts above £250,000 subject to a maximum value of £50,000 in respect of the variation; or
- c) in the case of urgency or unforeseen circumstances where works, services or goods are to be added to or deleted from the contract which are substantially different in scope;
- d) results in minor changes to the contract terms or specification;

in each case provided that any additional cost does not take the total costs of the contract over the limits permissible by the Public Contracts Regulations 2015 or, if relevant, that the variation is within the scope of the original contract notice.

28.9 Any other variation must be agreed by Cabinet or under delegated authority from Cabinet.

## **29. Extensions**

**You should seek advice from Legal before negotiating / agreeing any extension, including Framework Agreements.**

29.1 All extensions must be in writing in a form approved by the Service Director: Legal and Community and conform to the appropriate Financial Regulations.

29.2 If the terms of a contract allow for an extension (or the law otherwise permits), then a Service Director may, following consultation with the Service Director: Resources and the relevant Executive Member authorise an extension of a contract by up to twenty four months, up to a value of £200,000.

29.3 The appropriate Executive Member may authorise an extension of more than twenty four months OR in excess of £200,000 with the approval of the Service Director: Resources following consultation with the Finance & IT Executive Member.

29.4 In all cases, officers must demonstrate that any extension complies with all applicable laws and statutory guidance; that a detailed and robust cost/benefit analysis has been undertaken and that sufficient budget is available. The relevant Service Director must also consider whether any extension would have a detrimental impact on the Council's strategies and plans. Where applicable, evidence of the decision making process must be formally recorded in a delegated decision which (in addition to the normal process) is filed on the relevant contract file and a copy sent to the Service Director: Legal and Community.

29.5 Any extension under this section does not require reassessment of the original procurement process so long as the value of the extended contract:

- (i) does not exceed any applicable limits as set out in the Public Contracts Regulations 2015; or
- (ii) is within the limits as set out in the original contract notice; or
- (iii) is below the applicable OJEU threshold

## **30. Contract Management**

- 30.1 Once a contract has been awarded it must be monitored with regular review meetings to raise concerns and issues from both parties.
- 30.2 You should take minutes of any review meeting for the benefit of the Council and the contractor.
- 30.3 Contracts identified as Core contracts should be set up with Creditsafe and /or Google Alerts in order to monitor the financial status of the Company. Please contact Accountancy to set up Creditsafe alerts once the contract has been awarded.
- 30.4 A Contract & Relationship Management guide is available on the Procurement Resource pages of the intranet under the following link:

<http://intranet.north-herts.gov.uk/home/finance-and-procurement/procurement/contract-management>

## **Part H Appointment of Consultants**

### **31. Consultants**

Before the appointment of any Consultants, Officers must contact Legal in the first instance, which will provide advice and guidance on the process.

- 31.1 It is important that best value is obtained when employing consultants. Therefore, for all instances where the Contract Value of a consultancy appointment is over £10,000, the commissioning officer must provide a report to the Service Director responsible containing as a minimum the details listed in Rule 32 (Project Details).
- 31.2 This requirement at 33.1 applies to the appointment of management or other advisory consultancy work (to replace, advise or bolster in-house staff resources in “business as usual” activities) The process outlined in 33.1 does not apply to technical or specialist contracts for services (employed for specific projects and included in approved overall project budget) e.g. specialist engineers, architects, surveyors, barristers etc. However, proper procurement procedures must be followed when appointing in all circumstances and parties must enter into a written contract in the form approved by Legal.
- 31.3 All consultants (of any type) must provide evidence of adequate professional indemnity insurance as determined by the HCC Insurance Manager prior to their appointment. The requirement for insurance and the levels required should be advised in the specification of works. This insurance must be maintained for a minimum of 6 years after the contract ends.
- 31.4 It should be a condition of contract with any consultant, agent or professional advisor who is to be responsible to the Council for the award or supervision of a contract on its behalf, that in relation to that contract they shall:
- a) comply with these Procurement Rules as though they were an employee of the Council; and confirm their acknowledgement of this requirement, (this will be particularly relevant if a consultant sub-contracts on behalf of the Council);
  - b) engage in skills transfer activities where required and appropriate;
  - c) produce on request all the records maintained by them in relation to the contract and award of contract; and
  - d) on completion of the contract, transmit all records that they have produced or received that relate to the contract to the appropriate Service Director.
- 31.5 Any contract must set out the consultants legal obligations to the Council. Further guidance on the use of consultants can be found on the Legal procurement pages of the Intranet at:

<http://intranet.north-herts.gov.uk/home/doing-business/procurement/procurement-guides>

## **32. Project Details**

- 32.1 For consultant appointments £10,000, the Service Director shall be responsible for ensuring that the consultant's work is properly monitored on an ongoing basis. This includes:
- a) appointing a named project officer or group; and
  - b) specifying key tasks and dates for consultants; and
  - c) monitoring costs against budgets; and
  - d) arranging regular progress meetings with consultants.
- 32.2 The project officer shall report immediately to the Service Director any material technical or financial deviation by the consultant from the specified agreement.
- 32.3 The project officer shall provide a Projects Details report to the appropriate Service Director which:
- a) identifies the project objectives; and
  - b) documents the reasons for the employment of consultants including the benefits of employing consultants against in-house staff or agency staff; and
  - c) documents the residual in-house costs to support the consultant and ensure that sufficient budget is available to meet all identified costs; and
  - d) includes a project brief, detailing:
    - (i) background; and
    - (ii) objectives; and
    - (iii) timetable; and
    - (iv) costs; and
    - (v) monitoring arrangements; and
    - (vi) documentation standards; and
    - (vii) contact names and numbers for enquiries.
- 32.4 For consultancy appointments over £10,000, at the end of the appointment, an assessment of the consultant's performance should be carried out. This assessment should be documented in the Consultant's Performance Appraisal form and Lessons Learnt Log. Copies of these completed forms should be sent to the relevant stakeholders, with copies to the Procurement Officer.
- 32.5 The Procurement Officer in conjunction with the Contract Procurement Group (CPG) will review the lessons learned and recommend if any should be entered into the Corporate Lessons Learnt Log

Further information can be found:

<http://intranet.north-herts.gov.uk/home/finance-and-procurement/corporate-governance/project-management/project-management-overview>

[Templates for the Performance Appraisal form and Lessons Learnt Log can be found here:](#)

<http://intranet.north-herts.gov.uk/home/doing-business/procurement/procurement-guides>

## **Part I Land Transactions**

### 33. Land Transactions

- 33.1 These Rules shall apply to purchases and sales of property and land and to leases for a fixed term of more than twenty years.
- 33.2 All valuations and negotiations in respect of transactions shall be carried out by or under the supervision of a properly qualified Member of the Royal Institution of Chartered Surveyors or equivalent. **In no circumstances shall Members of the Council conduct them.**
- 33.3 These Rules apply to all valuations of land carried out by a qualified and independent Chartered Surveyor appointed to act on behalf of, or to advise, the Council.
- 33.4 At least two officers of the Council or an officer of the Council and a duly appointed Chartered Surveyor or other agent shall be involved in all negotiations relating to land transactions which engage Section 14 of the Council Constitution (Scheme of Delegation) and any other applicable Section with Terms of Reference for a relevant Committee. .
- 33.5 It shall be the duty of the Council's Chartered Surveyor whether employed or appointed to report on any transaction authorised by the Council to the relevant Committee or Group at appropriate times. Which Committee or Group depends on the particular transaction and the authorisation for that transaction. Please contact Legal for advice.
- 33.6 All valuations prepared for the purpose of a transaction or balance sheet estimate shall be supported by evidence of the values of comparable properties in the locality where information and relevant comparators are available.
- 33.7 No property or land owned or leased by the Council shall be disposed of to a third party until it has been established that no other directorates of the Council have a need for the property or land, and that the current service area confirms no other requirement for the site.
- 33.8 No property or land owned or leased by the Council, other than land held for investment purposes or previously declared surplus to requirements shall be disposed of until a report has been prepared by the Service Director: Resources and presented to Cabinet containing:
- a) a description of the property or land, its title, physical characteristics and development constraints; and
  - b) any information from the Council's records or those of statutory undertakers which would affect the property or land's value or development potential; and
  - c) an assessment of the development potential of the property or land; and
  - d) evidence that the property or land has been offered to all directorates and that the Council has no operational use for the property or land; and
  - e) recommendations on the following:
    - (i) the title to be transferred; and
    - (ii) the method of disposal; and
    - (iii) whether negotiations must proceed with a special purchaser; and
    - (iv) the estimated price the Council may receive ( in a Part 2 report)
  - f) In arriving at the recommendation, other factors that officers need to take into consideration are:
    - (i) issues that need to be resolved before marketing of the property or land can proceed; and
    - (ii) whether legal and other costs must be recovered from the prospective purchaser and if so an estimate of their amount; and
    - (iii) whether the appointment of external advisors or agents is required

- 33.9 All disposals of property or land owned or leased by the Council shall be by one of the following methods: Private Treaty, Public Auction, Formal Tender, Informal Tender, statutory offer back to the former owner, or long lease. Costs of marketing and disposal will be charged to the receipt.
- 33.10 In the event that it is decided to dispose of property or land by way of a tender then so far as it is practicable the procedures laid down in the Rules shall apply, subject to a waiver under Rule 22 (Waivers) where it is not practicable to follow the procedures laid down in the Procurement Rules.
- 33.11 The authorisation required for a land transaction depends on its value and is set out within the Constitution. The following are able to authorise transactions, subject to the value set out in their terms of reference:-
- Service Director: Resources
  - Cabinet
  - Full Council.

## Part J Other Information

### 34. Glossary of Terms

<u>Concession Contract</u>	A contract which allows a Contractor to exploit the works or services for financial gain whilst assuming the usual market risks.
<u>Concessions Directive</u>	Means Directive 2014/23/EU of the European Parliament and of the Council
<u>Dynamic Purchasing System</u>	Is a procedure available for contracts for works, services and goods commonly available on the market. It operates in a similar way to framework agreements but is processed and managed electronically.
<u>Framework Agreements</u>	<p>This is an agreement where the Procurement has been done in such a way as to allow other local authorities to join the contract for particular goods or services. Usually there is some form of “further competition” where we simply say what work or goods we want and the Framework Agreement contractors give us a quotation price for that work, but it might be that prices are fixed.</p> <p>There are many different sorts of these Framework Agreements and it is worth asking whether there is a Framework Agreement that might suit your requirements. Ask Legal for advice.</p>
<u>EU Threshold</u>	<p>These are updated bi-annually and the current figures can be found at</p> <p><a href="http://www.ojeu.eu/usefullinks.aspx">http://www.ojeu.eu/usefullinks.aspx</a></p>
<u>Go Local Policy</u>	<p>The “go local” policy requires any officer seeking to acquire goods or services, for council use, with an aggregate contract value below £50,000, to first attempt to locate those goods, services or works from a supplier located within the North Herts District Council geographical area. The method of acquisition would be in accordance with the current NHDC Contracts and Procurement Rules. If the “go local” policy cannot be applied, because, for instance, there is no suitable supplier (for example, the procuring officer identifies that prices are too high) within the area, then policy would have been exhausted and considered not to be appropriate, and explained as such within the usual procurement process. The overarching principle of this policy would be that, for appropriate procurement, NHDC <b>will aim to use</b> local suppliers for the provision of goods, services and works, having full regard for the principles of “best consideration”.</p> <p>The Cabinet report detailing the Go Local policy can be found at the link below.</p> <p><a href="http://intranet.north-herts.gov.uk/home/doing-business/procurement/procurement-guides">http://intranet.north-herts.gov.uk/home/doing-business/procurement/procurement-guides</a></p>
<u>Invitation to Tender (ITT)</u>	The ITT is a document that details the goods or services we require in sufficient detail for the interested contractors to give us an accurate quotation of price and how they will meet our minimum expected service levels.



The ITT will also contain a Form of Contract that we will require the winning bidder to use. There are also a number of certificates that we require tenderers to return.

There is a standard ITT starting point which contains all of the legal requirements that you will need to complete with help from Legal. This will be tailored to suit your requirements.

#### OJEU

This stands for Official Journal of the European Union. It used to be a print journal but is now a website where local authorities throughout the EU publish details of their procurements to the public. Interested contractors can search the website and find details of contracts that they may want to tender for. If a procurement is over the EU Threshold it must be published on OJEU. Procurement will do this for you.

#### Prior Information Notice (PIN)

A published notice which advertises the procurement in advance. Use of a PIN allows timescales to be shortened. In some circumstances it can be used instead of a Contract Notice.

#### Price or Value

Price or value is the total cost or value of a contract, or transaction **net of any tax or incidental fees**. Note: a decision can be made up to the price or value as set out in these Rules or otherwise as set out in the Council Constitution, notwithstanding that additional tax (for example VAT/ SDLT)/ or fees (for example land registration) may then apply.

#### Social Value

The Public Services (Social Values) Act 2012 imposes an active duty on relevant contracting Authorities to consider the economic, environmental and social benefits that can be achieved through commissioning. It does so by requiring consideration of the following –

How to improve through procurement, the social, economic and environmental well being of the area served by the Contracting Authority and

How to undertake a procurement process with a view to securing that improvement.

You will need to consider Social Value for all procurements above the EU threshold for goods and Services.

Guidance on The Social Value Act and it's application and the Cabinet report can be found at the following location.

<http://intranet.north-herts.gov.uk/home/finance-and-procurement/procurement/general-procurement-guides>

#### Standard Selection Questionnaire (SSQ)

Used to shortlist bidders when there are likely to be large number of suppliers expressing an interest in the contract.

It works by splitting the procurement process into two stages. The first, the SSQ stage involves assessing the company's general competence as a contracting party to provide the services – but not the way that they would actually provide the services. This is done by assessing their financial standing, and other matters that do not relate to the quality of their services, just their ability to provide the service over the contract

lifetime which is assessed by the second stage, the ITT.  
The SSQ assessment is normally quicker and easier than the full assessment that would be carried out in the ITT and for this reason is useful. Where there is no SSQ, the ITT itself would ask these questions. There is a standard SSQ starting point which contains all of the legal requirements that you will need to complete with help from Legal. This will be tailored to suit your requirements.

### 35. Key Contacts

<b>Legal</b>	Service Director: Legal and Community Ext. 4370 Legal Commercial Team Manager Ext. 4578 Procurement Officer Ext. 4284
<b>Shared Internal Audit Services</b>	Audit Manager 01438 845508
<b>Committee Services</b>	Democratic Services Manager Ext TBC Committee, Member and Scrutiny Services Mgr Ext. TBC Committee, Member and Scrutiny Officers [x 2 tbc]
<b>Finance/Financial Appraisals</b>	Service Director: Resources Ext. 4243 Accountancy Manager Ext. 4470
<b>Insurance</b>	HCC Insurance Manager 01438 843565
<b>Risk</b>	Controls, Risk & Performance Manager Ext 4606
<b>Health &amp; Safety</b>	Health & Safety Officer Ext. 4600
<b>Equalities/Environmental</b>	Senior Policy Manager Ext. 4835
<b>Freedom of Information / Data Protection</b>	Information & Records Mgr Ext. 4563

**COUNCIL  
16 JANUARY 2020**

**PART 1 – PUBLIC DOCUMENT**

**ITEM 6c**

**TITLE OF REPORT: ITEM REFERRED FROM CABINET: 17 DECEMBER 2019 - INVESTMENT STRATEGY (CAPITAL AND TREASURY) MID-YEAR REVIEW 2019/20**

***Extract from the draft Minutes of the Cabinet meeting held on 17 December 2019***

The Executive Member for Finance and IT presented the report entitled Investment Strategy (Capital and Treasury) Mid-Year Review 2019/20 together with the following appendices:

- Appendix A - Capital Programme Detail including Funding 2018/19 onwards;
- Appendix B - Treasury Management Update.

The Executive Member for Finance and IT proposed that recommendation 2.4 be amended to read:

“Cabinet recommends to Council that it is asked to note the position of Treasury Management activity as at the end of September 2019.”

He thanked the Service Director – Resources and his tem for all of their work regarding the budget and finances of the Council.

The Chairman drew attention to the referral from the Finance, Audit and Risk Committee meeting held on 5 December 2019 and noted that no additional recommendations to those in the report had been made.

It was moved by Councillor Ian Albert, seconded by Councillor Martin Stears-Handscomb and:

***RESOLVED:***

- (1) That the forecast expenditure of £5.886million in 2019/20 on the capital programme, paragraph 8.2 refers, be noted;
- (2) That the adjustments to the capital programme for 2019/20 onwards as a result of the revised timetable of schemes detailed in table 2, increasing the estimated spend in 2020/21 and beyond by £1.369million be approved;
- (3) That the position of the availability of capital resources, as detailed in table 3 paragraph 8.6 and the requirement to keep the capital programme under review for affordability be noted.

**RECOMMENDED TO COUNCIL:** That the position of Treasury Management activity as at the end of September 2019 be noted.

**REASONS FOR DECISIONS:**

- (1) Cabinet is required to approve adjustments to the capital programme and ensure the capital programme is fully funded;
- (2) To ensure the Council's continued compliance with CIPFA's code of practice on Treasury Management and the Local Government Act 2003 and that the Council manages its exposure to interest and capital risk.

**Report considered by Cabinet on 17 December 2019**

**TITLE OF REPORT: INVESTMENT STRATEGY (CAPITAL AND TREASURY ) MID-YEAR REVIEW 2019/20**

REPORT OF THE SERVICE DIRECTOR - RESOURCES

EXECUTIVE MEMBER FOR FINANCE AND I.T.

COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

**1. EXECUTIVE SUMMARY**

- 1.1 To update Cabinet on progress with delivering the capital and treasury strategy for 2019/20, as at the end of September 2019.
- 1.2 To update Cabinet on the impact upon the approved capital programme for 2020/21 – 2023/24. The current estimate is a decrease in spend in 2019/20 of £1.936million and an increase in spend in future years of £1.369million. The most significant individual change relates to the withdrawal of the Hitchin Swim Centre Car Park scheme.
- 1.3 To inform Cabinet of the Treasury Management activities in the first six months of 2019/20. The current forecast is that the amount of investment interest expected to be generated during the year is £0.372million. This remains unchanged from the value reported at the first quarter.

**2. Recommendations**

- 2.1 That Cabinet notes the forecast expenditure of **£5.886million** in 2019/20 on the capital programme, paragraph 8.2 refers.
- 2.2 That Cabinet approves the adjustments to the capital programme for 2019/20 onwards as a result of the revised timetable of schemes detailed in table 2, increasing the estimated spend in 2020/21 and beyond by **£1.369million**.
- 2.3 That Cabinet notes the position of the availability of capital resources, as detailed in table 3 paragraph 8.6 and the requirement to keep the capital programme under review for affordability.
- 2.4 Cabinet is asked to note the position of Treasury Management activity as at the end of September 2019.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 Cabinet is required to approve adjustments to the capital programme and ensure the capital programme is fully funded.

- 3.2 To ensure the Council's continued compliance with CIPFA's code of practice on Treasury Management and the Local Government Act 2003 and that the Council manages its exposure to interest and capital risk.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Options for capital investment are considered as part of the Corporate Business Planning process.
- 4.2 The primary principles governing the Council's investment criteria are the security of its investments (ensuring that it gets the capital invested back) and liquidity of investments (being able to get the funds back when needed). After this the return (or yield) is then considered, which provides an income source for the Council. In relation to this the Council could take a different view on its appetite for risk, which would be reflected in the Investment Strategy. In general, greater returns can be achieved by taking on greater risk. Once the Strategy has been set for the year, there is limited scope for alternative options as Officers will seek the best return that is in accordance with the Investment Strategy.

#### **5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1 Consultation on the capital expenditure report is not required. Members will be aware that consultation is incorporated into project plans of individual capital schemes as they are progressed.
- 5.2 There are quarterly updates with the Authority's Cash Manager, Tradition and regular meetings with Treasury advisors (Link).

#### **6. FORWARD PLAN**

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on the 6th September 2019.

#### **7. BACKGROUND**

- 7.1 In February 2019, Council approved the Integrated Capital and Treasury Strategy for 2019/20 to 2022/23. This was a change from having a separate Capital Programme and Treasury Strategy. The change was in response to guidance from the Ministry for Housing, Communities and Local Government (MHCLG) and the Chartered Institute of Public Finance and Accountancy (CIPFA). To be consistent with the strategy (and the guidance), the monitoring reports for Capital and Treasury are also integrated.
- 7.2 The Medium Term Financial Strategy for 2019 to 2024 confirmed that the Council will seek opportunities to utilise capital funding (including set aside receipts) for 'invest to save' schemes and proposals that generate higher rates of return than standard treasury investments. This is one way the Council will allocate resources to support organisational transformation that will reduce revenue expenditure.
- 7.3 Link Asset Services Ltd were first contracted to provide Treasury advice for the financial year 2012/13 and this arrangement has been extended until 2022/23. The service includes:

- Regular updates on economic and political changes which may impact on the Council's borrowing and investment strategies
- Information on investment counterparty creditworthiness
- Technical updates
- Access to a Technical Advisory Group.

## 8. RELEVANT CONSIDERATIONS

- 8.1 The Council has £114.5 million of capital assets that it currently owns. This is unchanged from Quarter 1. The Investment Strategy set out the reasons for owning assets that are not for service delivery, including an assessment of Security, Liquidity, Yield and Fair Value. There have been no changes in relation to these since the Strategy was set.

### Capital Programme 2019/20

- 8.2 The full capital programme is detailed in Appendix A and shows the revised costs to date, together with the expected spend from 2019/20 to 2022/23 and the funding source for each capital scheme.
- 8.3 Capital expenditure for 2019/20 is estimated to be **£5.886million**. This is a reduction of **£1.936million** on the forecast in the 1st quarter report (reported to Cabinet on 30th July 2019). The decrease in spend in 2019/20 is largely due to the reprofiling of projects into 20/21. Table 1 below details changes to capital programme.

**Table 1- Current Capital Estimates**

	2019/20 £M	2020/21 £M	2021/22 to 2023/24 £M
Original Estimates approved by Full Council February 2019	8.213	0.962	2.128
Changes approved by Cabinet in 2018/19 Capital Outturn report	1.007	0	0
Revised Capital estimates at start of 2019/20	9.220	0.962	2.128
Changes at Q1	-1.398	1.408	0
Changes at Q2 detailed in this report	-1.936	1.450	0.047
Current Capital Estimates	5.886	3.820	2.175

- 8.4 Table 2 lists the schemes in the 2019/20 Capital Programme that will start or continue in 2020/21:

**Table 2: Scheme Timetable Revision:**

(Key: - = reduction in capital expenditure, + = increase in capital expenditure)

<b>Scheme</b>	<b>2019/20 Working Budget £'000</b>	<b>2019/20 Forecast Spend £'000</b>	<b>Difference £'000</b>	<b>Reason for Difference</b>	<b>Estimated impact on 2020/21 onwards £'000</b>
Lairage Lift Refurbishment	360	0	-360	Previously on hold due to a review of Car Parks. Now being progressed but the work will not take place until 2020/21.	360
Community Facilities Refurbishment	613	313	-300	Local community groups apply for grants. £0.5M has been awarded since 2017/18. 6 Schemes have been allocated funds totalling approximately £0.3M which are waiting to be drawn down. This budget is dependent on the community groups completing the work and claiming the grant funding. Grants are awarded via a panel which sits when a minimum of 3 grant applications have been received. The panel will consider new application in late autumn/winter (only 1 application has been received so far this year).	300
Green Infrastructure Implementation (GAF)	185	0	-185	Awaiting the adoption of the Local Plan as the sites directly relate to the implementation of the project.	185
Lairage Multi-storey Structural Repairs	121	10	-111	In process of instructing a structural engineer to establish the extent of defects. The structural engineer's report will identify areas that require attention. Timing of the repairs will depend on the urgency of what is identified.	111
Replace SAN	110	0	-110	Dell have agreed to extend the warranty cover by a further year.	110
Dell Servers	65	0	-65	Dell have agreed to extend the warranty cover by a further year.	65
Leisure Condition Survey	64	0	-64	Property Services are now going to manage the works which will be built into their 20/21 work programme.	64
Replace Floodlights at	60	0	-60	Power has been restored to	60



Scheme	2019/20 Working Budget £'000	2019/20 Forecast Spend £'000	Difference £'000	Reason for Difference	Estimated impact on 2020/21 onwards £'000
St Mary's Car Park				existing light columns, however a design review of the lighting is required. This review has been delayed due to other projects and reactive workload.	
Off Street Car Parks Resurfacing	77	30	-47	Car Parks are in reasonable condition with the potential for one car park to be resurfaced this year. No further works are foreseen in the next couple of years so it is requested that the budget is reprofiled into 2022/23.	47
New Blade Enclosure	32	0	-32	Dell have agreed to extend the warranty cover by a further year.	32
Additional Storage	25	0	-25	Dell have agreed to extend the warranty cover by a further year.	25
Royston All Weather Hockey Pitch	128	0	-128	This project is for the provision of an All Weather Hockey Pitch on the Heath, Royston. As the Heath is a public open space permission will not be granted to create an enclosed area on the Heath. Officers are looking to see if the S106 funds can be used at an alternative location in Royston. Also in order for the scheme to go ahead additional external funding is still to be secured.	128
S106	0	128	128	To date, a total of £60k of S106 funds have been released for community schemes with an additional £60K committed.	0
Total Minor (under £25k) slippage on other projects	10	0	-10		10
<b>Total Revision to Budget Profile</b>			<b>-1,369</b>		<b>1,497</b>

8.5 There are also changes to the overall costs of schemes in 2019/20. These changes total a net decrease of £0.567million and are detailed in Table 3.

**Table 3: Changes to Capital Schemes Commencing in 2019/20:**

(Key: - = reduction in capital expenditure, + = increase in capital expenditure)

<b>Scheme</b>	<b>2019/20 Working Budget £'000</b>	<b>2019/20 Forecast Spend £'000</b>	<b>Difference £'000</b>	<b>Comments</b>
Hitchin Swim Centre Car Park	498	0	-498	In January 2018 the Planning Inspectorate refused the application to build the access road on Common Land. Since then Officers have been looking at alternatives to provide additional parking. None of the projects identified are financially viable.
Storage Facilities	49	0	-49	We are currently undertaking a wide review of the Council's storage needs. Unit 3 in Letchworth is currently used for general storage needs, particularly archived document storage. There was an expectation that the rationalisation of the Council's property would result in more storage being required at Unit 3. However a combination of (1) a move to electronic data storage means a reducing requirement for paper document storage and (2) most of the documents/ items stored in other locations could be disposed of. This means that a mezzanine floor is unlikely to be needed for general storage. However it is known that Burymead Road has both a limited life and capacity for museum storage. A mezzanine floor at Unit 3 would not provide anywhere near the required volume of storage (or the right storage conditions) to replace Burymead Road, but it is possible it could form part of a wider solution.
Lairage Multi-storey Safety and Equality	39	0	-39	Budget no longer required as superseded by £360K allocation for the refurbishment of Lairage Car Park lift
NH Museum & Community Facility	30	70	40	The Terrace Area at North Herts Museum is still to be developed and will require planning permission. Quotes and designs are currently being drawn up, with the works expected to be completed by the end of this

Scheme	2019/20 Working Budget £'000	2019/20 Forecast Spend £'000	Difference £'000	Comments
				financial year.
Other minor changes			-21	
Total revision to scheme spend			-567	

### Capital Programme 2019/20 Funding onwards

8.6 Table 3 below shows how the Council will fund the 2019/20 capital programme.

**Table 3: Funding the Capital Programme:**

	2019/20 Balance at 1st start of year £M	2019/20 Estimated Additions £M	2019/20 Funding Used £M	2019/20 Balance at end of year £M
Useable Capital Receipts and Set-aside Receipts	8.490	0.474	(4.861)	4.103
IT Reserve			(0.005)	
S106 receipts			(0.229)	
Other third party grants and contributions			(0.791)	
<b>Total</b>	<b>8.490</b>		<b>(5.886)</b>	

8.7 The availability of third party contributions and grants to fund capital investment is continuously sought in order to reduce pressure on the Council's available capital receipts and allow for further investment. Additional capital receipts are dependent on selling surplus land and buildings. Ensuring that the Council gets best value from the disposal of land and buildings can take a long time and therefore the amounts that might be received could be subject to change. This will be kept under review throughout the year. No substantial funds from land sales are forecast until 2021/22.

8.8 The Council's Capital Financing Requirement at 31<sup>st</sup> March 2019 was negative £5.9 million. Based on current forecasts it is expected to remain negative during 2019/20, which means that the Council does not have a need to borrow to fund capital spend.

### Treasury Management 2019/20

8.9 Whilst the Council does not have a need to borrow for capital spend, it still holds historic borrowing that is uneconomical to repay early. Borrowing can also be used for short-term cash flow purposes. During the first six months no long-term borrowing was taken out and no historic borrowing became due for repayment. £2.0M was borrowed for cash flow on 20 June until 1 July at a rate of 0.7%.

- 8.10 The Council invests its surplus cash in accordance with the Investment Strategy (see paragraph 4.2). This surplus cash is made up of capital funding balances, revenue general fund balance, revenue reserve balances and variations in cash due to the timing of receipts and payments. During the first six months, the Council had an average investment balance of £36.7 million and invested this in accordance with the treasury and prudential indicators as set out in the Integrated Capital and Treasury Management Strategy and in compliance with the Treasury Management Practices. Officers can confirm that the approved investment limits within the Annual Investment Strategy were not breached during the quarter ended 30 September 2019. However, the Council's current account did exceed the £5M maximum limit on 17 July by £74K for one day only. On 17 July the Council had the maximum invested with Building Societies (£18M) and its Money Market fund (£3M) and was not yet set up to deal with foreign banks. Funds were not transferred off of the current account as £6.7M was needed on 19 July to fund expenditure and banks the Council had scope to invest with would not have been willing to take such a short term deposit with a reasonable interest rate.
- 8.11 The Council generated £0.194 million of interest during the first six months of 2019/20. The average interest rate on all outstanding investments at the 30 September was 1.13%. Based on current investments and forecasts of interest rates and cash balances for the remainder of the year, it is forecast that the Council will generate £0.372 million of interest over the whole of 2019/20.
- 8.12 As at 30 September the split of investments was as shown in the table below. 7% of total investments (and 18% of the total amount invested in banks) were non-UK banks:

Banks	36%
Building Societies	30%
Local Authorities	31%
Money Market Funds	3%

- 8.13 The level of risk of any investment will be affected by the riskiness of the institution where it is invested and the period that it is invested for. Where an institution has a credit rating this can be used to measure its riskiness. This can be combined with the period remaining on the investment to give a historic risk of default percentage measure. The table below shows the Historic Risk of Default for outstanding investments at 30 September. The most risky investment still has a historic risk of default of below 1%. It should also be noted that in general the interest rate received is correlated to the risk, so the interest income received would be less if it took on less risk. As stated in paragraph 8.10, all investments have been made in accordance with the Investment Strategy.

<b>Borrower</b>	<b>Principal Invested £M</b>	<b>Interest Rate %</b>	<b>Credit Rating</b>	<b>Days to Maturity at 30 Sept</b>	<b>Historic Risk of Default %</b>
Public Sector Deposit Fund	1.0	0.8293 Variable	AAA	1	0.000
Wirral Metropolitan Borough Council	2.0	0.65	AA	20	0.001
Lloyds Bank	1.0	1.15	A+	35	0.005
Bank of Scotland	1.0	0.8	A+	38	0.006
North Lanarkshire Council	1.0	0.8	AA	45	0.003
Barclays Bank	2.0	1.0	A	55	0.008
Cambridge Bldg Soc	1.0	1.25	*	59	0.026
Australia and New Zealand Bank	1.5	0.8	AA-	69	0.005
North Lanarkshire Council	2.0	0.8	AA	70	0.005
Darlington Bldg Soc	1.0	1.3	*	101	0.044
Santander UK Bank	2.0	0.8	A+	106	0.015
Australia and New Zealand Bank	1.0	0.81	AA-	111	0.007
Coventry Bldg Soc	1.0	0.99	A-	139	0.020
Yorkshire Bldg Soc	1.0	0.96	A-	139	0.020
Surrey Heath Borough Council	3.0	0.75	AA	141	0.009
Lloyds Bank	1.0	1.05	A+	155	0.023
Santander UK	1.0	0.83	A+	168	0.024
Lancashire County Council	1.0	1.1	AA	170	0.011
Derbyshire County Council	3.0	0.9	AA	181	0.012
Hinckley & Rugby Bldg Soc	2.0	1.35	*	206	0.090
Skipton Bldg Soc	1.0	0.92	A-	211	0.089
Dudley Bldg Soc	1.0	1.3	*	219	0.096
Furness Bldg Soc	1.0	1.3	*	245	0.107
Lloyds Bank	1.0	1.25	A+	307	0.044
Marsden Bldg Soc	1.5	1.6	*	479	0.577
Monmouthshire Bld Soc	1.0	1.5	*	605	0.729
	36.0	1.13			

\* Unrated Building Societies Historic Risk of Default is based on a Fitch (a credit rating agency) rating of BBB.

## 9. LEGAL IMPLICATIONS

- 9.1 Cabinet's terms of reference under 5.6.7 specifically includes "to monitor expenditure on the capital programme and agree adjustments within the overall budgetary framework". The Cabinet also has a responsibility to keep under review the budget of the Council and any other matter having substantial implications for the financial resources of the Council. By considering monitoring reports throughout the financial year Cabinet is able to make informed recommendations on the budget to Council. The Council is under a duty to maintain a balanced budget.

- 9.2 Section 151 of the Local Government Act 1972 states that:  
“every local authority shall make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs.”
- 9.3 Asset disposals must be handled in accordance with the Council’s Contract Procurement Rules.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 The main financial implications are covered in section 8 of the report.
- 10.2 The Authority operates a tolerance limit on capital projects that depends on the value of the scheme and on this basis over the duration of the programme it should be anticipated that the total spend over the period could be around £2.342million higher than the estimated budget of £11.831million.
- 10.3 The capital programme will need to remain under close review due to the limited availability of capital resources and the affordability in the general fund of the cost of using the Council’s capital receipts. When capital receipts are used and not replaced the availability of cash for investment reduces. Consequently interest income from investments reduces. £1.0million currently earns the Authority approximately £1.0k a year in interest. The general fund estimates are routinely updated to reflect the reduced income from investments. When the Capital Financing Requirement (CFR) reaches zero the Council will need to start charging a minimum revenue provision to the general fund for the cost of capital and will need to consider external borrowing for further capital spend. The CFR at the 31 March 2019 was negative £6million.
- 10.4 The Council also aims to ensure that the level of planned capital spending in any one-year matches the capacity of the organisation to deliver the schemes to ensure that the impact on the revenue budget of loss of cash-flow investment income is minimised.

## **11. RISK IMPLICATIONS**

- 11.1 The inherent risks in undertaking a capital project are managed by the project manager of each individual scheme. These are recorded on a project risk log which will be considered by the Project Board (if applicable). The key risks arising from the project may be recorded on Pentana (the Council’s Performance & Risk management software). Some of the major capital projects have been included in the Council’s Corporate Risks (such as the new North Hertfordshire Museum). The Corporate Risks are monitored by the Finance, Audit and Risk Committee and Cabinet.
- 11.2 Risks associated with treasury management and procedures to minimise risk are outlined in the Treasury Management Practices document, TMP1, which was adopted by Cabinet in July 2003 and is revisited annually as part of the Treasury Strategy review. The risk on the General Fund of a fall of investment interest below the budgeted level is dependant on banks and building societies need for borrowing.

## **12. EQUALITIES IMPLICATIONS**

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 There are no direct equalities implications directly arising from the adoption of the Capital Programme for 2019/20 onwards. For any individual new capital investment proposal of £50k or more, or affecting more than two wards, an equality analysis is required to be carried out. This will take place following agreement of the investment proposal.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1 The Social Value Act and “go local” policy do not apply to this report.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 There are no direct human resource implications.

## **15. APPENDICES**

- 15.1 Appendix A - Capital Programme Detail including Funding 2018/19 onwards.
- 15.2 Appendix B - Treasury Management Update

## **16. CONTACT OFFICERS**

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## **17. BACKGROUND PAPERS**

- 17.1 Investment Strategy (Integrated Capital and Treasury Strategy)  
<https://democracy.north-herts.gov.uk/documents/s4263/Appendix%20A-%20Investment%20Strategy.pdf>

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Project	Service Directorate	Spend Forecasts				Funding				
		2019/20 Funding £	2020/21 Funding £	2021/22 Funding £	2022/23 Funding £	Funded from capital contributions	Funded from Government Grant	Funded from s106 contributions	Funded from IT Reserve	Balance funded from Capital Receipts/ Set- aside receipts
40 KVA UPS Device or Battery Replacement	Customers	7,000	0	0	0	0	0	0	0	7,000
Additional PC's - Support Home Working/OAP	Customers	13,000	0	0	0	0	0	0	0	13,000
Additional Storage	Customers	0	25,000	0	0	0	0	0	0	25,000
Alternative to safeword tokens for staff/members working remotely	Customers	0	0	0	0	0	0	0	0	0
Back-up Diesel 40 KVA Generator (DCO)	Customers	20,000	0	0	0	0	0	0	0	20,000
Baldock Town Hall project	Legal and Community	69,600	0	0	0	0	0	800	0	68,800
Bancroft Recreation Ground, Hitchin, Multi Use Games Area (MUGA)	Place	164,200	0	0	0	60,000	0	60,100	0	44,100
Cabinet Switches - 4 Floors	Customers	0	0	18,000	0	0	0	0	0	18,000
Cadcorp Local Knowledge & Notice Board Software	Customers	10,200	0	0	0	0	0	0	5,000	5,200
Channel shift - processing of housing register applications	Regulatory	40,000	0	0	0	0	0	0	0	40,000
Core Backbone Switch	Customers	0	0	0	0	0	0	0	0	0
Council property improvements following condition surveys	Resources	79,100	432,800	255,000	0	0	0	0	0	766,900
Customer Self Serve Module	Customers	0	0	0	0	0	0	0	0	0
Cyber Attacks - Events Monitoring Software Solution	Customers	30,000	0	0	0	0	0	0	0	30,000
Cycle Strategy implementation (GAF)	Regulatory	278,000	0	0	0	0	278,000	0	0	0
Decommissioning of Play Areas	Place	103,800	0	0	0	0	0	0	0	103,800
Dell Servers	Customers	0	65,000	0	0	0	0	0	0	65,000
DR Set-up	Customers	49,800	0	0	0	0	0	0	0	49,800
Email / Web Gateway with SPAM Filtering Software Solution - Licence 3 Year Contract	Customers	0	39,000	0	0	0	0	0	0	39,000
Email Encryption Software Solution	Customers	0	45,000	0	0	0	0	0	0	45,000
Energy efficiency measures	Resources	8,500	0	0	0	0	0	0	0	8,500
Green Infrastructure implementation (GAF)	Regulatory	0	185,000	0	0	0	185,000	0	0	0
Hitchin & Letchworth Outdoor Pool Automatic Chemical Dosing Pumps	Place	20,000	0	0	0	0	0	0	0	20,000
Hitchin Multi Storey Safety and Equalities Act improvements	Regulatory	0	0	0	0	0	0	0	0	0
Hitchin Outdoor Pool Showers and Toilets	Place	9,200	0	0	0	0	0	0	0	9,200
Hitchin Swimming Pool Car Park extension	Place	0	0	0	0	0	0	0	0	0
Hitchin Town Hall Acoustic Panelling	Commercial	30,000	0	0	0	0	0	0	0	30,000
Hitchin Town Hall Additional Bar Facility	Commercial	15,000	0	0	0	0	0	0	0	15,000
Hitchin Town Hall Sprung Floor Replacement	Commercial	75,000	0	0	0	0	0	0	0	75,000
Installation of trial on-street charging (GAF)	Regulatory	50,000	0	0	0	0	50,000	0	0	0
John Barker Place, Hitchin	Regulatory	0	1,096,000	0	0	0	0	270,400	0	825,600
Lairage Multi-Storey Car Par - Structural wall repairs	Regulatory	10,000	110,700	0	0	0	0	0	0	120,700
Laptops - Refresh Programme	Customers	0	6,000	0	0	0	0	0	0	6,000
Leisure Condition Survey Enhancements	Place	0	87,000	0	39,000	0	0	0	0	126,000
Letchworth Multi_storey Car Park - parapet walls, soffit & decoration	Regulatory	0	133,800	0	0	0	0	0	0	133,800
Letchworth multi-storey car park - lighting	Regulatory	19,700	0	0	0	0	0	0	0	19,700
Letchworth Outdoor Pool safety surface	Place	10,000	0	0	0	0	0	0	0	10,000
Microsoft Enterprise Software Assurance	Customers	358,000	0	0	450,000	0	0	0	0	808,000
New Blade Enclosure	Customers	0	32,000	0	0	0	0	0	0	32,000
NH Museum & Community Facility	Commercial	69,800	0	0	0	69,800	0	0	0	0
Norton Common Wheeled Sports improvements	Place	37,100	0	0	0	0	0	37,100	0	0
Off Street Car Parks resurfacing and enhancement	Regulatory	30,000	0	0	47,100	0	0	0	0	77,100
PC's - Refresh Programme	Customers	19,800	17,000	17,000	0	0	0	0	0	53,800
Private Sector Grants	Regulatory	60,000	60,000	60,000	60,000	0	0	0	0	240,000
Provide housing at market rents.	Commercial	2,981,500	0	0	0	0	0	0	0	2,981,500
Refurbishment and improvement of community facilities	Legal and Community	312,900	420,000	0	0	0	0	0	0	732,900
Refurbishment of lifts at Lairage Car Park	Regulatory	0	360,000	0	0	0	0	0	0	360,000
Renovate play area Howard Park, Letchworth	Place	0	75,000	0	0	0	0	0	0	75,000
Renovate play area King George V Recreation Ground, Hitchin	Place	75,000	0	0	0	0	0	0	0	75,000
Renovate play area, District Park, Gt. Ashby	Place	75,000	0	0	0	0	0	0	0	75,000
Replace and enhance lighting at St Mary's Car Park	Regulatory	0	60,000	0	0	0	0	0	0	60,000
Replace items of play equipment Holroyd Cres, Baldock	Place	0	10,000	0	0	0	0	0	0	10,000
Replace items of play equipment Wilbury Recreation Ground, Letchworth	Place	0	10,000	0	0	0	0	0	0	10,000
Replace items of play equipment, Chiltern Road, Baldock	Place	10,000	0	0	0	0	0	0	0	10,000
Replacement SAN	Customers	0	110,000	0	0	0	0	0	0	110,000
S106 Projects	Various	128,800	128,800	0	0	0	0	257,600	0	0
Security - Firewalls	Customers	14,000	0	14,000	0	0	0	0	0	28,000
Software for personalised bills and annual billing.	Customers	0	0	0	0	0	0	0	0	0
Storage Facilities	Commercial	0	0	0	0	0	0	0	0	0
Tablets - Android Devices	Customers	14,000	12,000	15,000	0	0	0	0	0	41,000
Telephony system	Customers	10,600	0	0	0	0	0	0	0	10,600
Town Centre pay & display machines for on-street charging	Regulatory	235,000	0	0	0	0	0	0	0	235,000
Transport Plans implementation (GAF)	Regulatory	250,000	0	0	0	0	250,000	0	0	0
Walsworth Common Pavilion - contribution to scheme	Place	0	300,000	0	0	250,000	0	37,000	0	13,000
Walsworth Common Pitch Improvements	Place	92,500	0	0	0	83,000	0	2,300	0	7,200
		5,886,100	3,820,100	379,000	596,100	462,800	763,000	665,300	5,000	8,785,200

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# Treasury Management Update

Quarter Ended 30 September 2019

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# Contents

1.	Economic Background.....	3
2.	Interest Rate Forecast .....	5
3.	Annual Investment Strategy .....	7
4.	New Borrowing .....	11
5.	Debt Rescheduling .....	13
6.	Compliance with Treasury and Prudential Limits .....	13
7.	Other.....	14
APPENDIX 1: Prudential and Treasury Indicators as at 30 September 2019 .....		15

# Treasury Management Update

## Quarter Ended 30 September 2019

The CIPFA (Chartered Institute of Public Finance and Accountancy) Code of Practice for Treasury Management recommends that members be updated on treasury management activities regularly (annual, mid-year or quarterly reports). This report, therefore, ensures this Council is implementing best practice in accordance with the Code.

### 1. Economic Background

**UK.** After only tepid annual **economic growth** of 1.4% in 2018, growth in quarter 1 was unexpectedly strong at 0.5%. However, this was boosted by stock building ahead of the original March Brexit deadline so quarter 2 was expected to be slightly negative and duly came in at -0.2% q/q, +1.3% y/y.

After the Monetary Policy Committee raised **Bank Rate** from 0.5% to 0.75% in August 2018, it is little surprise that they have abstained from any further increases since then. We are unlikely to see any further action from the MPC until the uncertainties over Brexit clear. If there were a no deal exit, it is likely that Bank Rate would be cut in order to support growth. Nevertheless, the MPC does have concerns over the trend in wage inflation which peaked at a new post financial crisis high of 3.9% in June before edging back to 3.8% in July, (excluding bonuses). Growth in employment fell to only 31,000 in the three months to July, well below the 2018 average, while the unemployment rate remained at 3.8 percent, its lowest rate since 1975.

As for **CPI inflation** itself, this fell to 1.7% in August and is likely to remain close to 2% over the next two years. If there was a no deal Brexit though, it could rise towards 4%, primarily as a result of imported inflation on the back of a weakening pound.

The rise in wage inflation and fall in CPI inflation is good news for **consumers** as their spending power is improving in this scenario as the difference between the two figures is now around 2.1%, i.e. a real terms increase. Given the UK economy is very much services sector driven, an increase in household spending power is likely to feed through into providing some support to the overall rate of economic growth in the coming months.

**USA.** President Trump's massive easing of fiscal policy in 2018 fuelled a (temporary) boost in consumption in 2018 which generated an upturn in the rate of growth to 2.9% for 2018, just below his target of 3%. Growth in quarter 1 of 2019 was a strong 3.1% but growth fell back to 2.0% in quarter 2. The strong growth in employment numbers during 2018 has reversed into a falling trend during 2019, indicating that the economy is cooling, while inflationary pressures are also weakening. After the Fed increased rates by 0.25% in December 2018 to between 2.25% and 2.50%, it has taken decisive action to reverse monetary policy by cutting rates by 0.25% in each of July and September in order to counter the downturn in the outlook for US and world growth. There are expectations that it could cut again in December.

**EUROZONE.** The annual rate of growth for 2018 was 1.8% but is expected to fall to possibly around half that rate in 2019. The European Central Bank (ECB) ended its programme of quantitative easing purchases of debt in December 2018, which meant that the central banks in the US, UK and EU had all ended the phase of post financial crisis expansion of liquidity supporting world financial markets by purchases of debt. However, the downturn in EZ growth in the second half of 2018 and into 2019, together with inflation falling well under the upper limit of its target range of 0 to 2%, (but it aims to keep it near to 2%), has prompted the ECB to take new measures to stimulate growth. At its March meeting it said that it expected to leave interest rates at their present levels “at least through the end of 2019”, but that was of little help to boosting growth in the near term. Consequently, it announced a third round of TLTROs; this provides banks with cheap borrowing every three months from September 2019 until March 2021 which means that, although they will have only a two-year maturity, the Bank is making funds available until 2023, two years later than under its previous policy. As with the last round, the new TLTROs will include an incentive to encourage bank lending, and they will be capped at 30% of a bank’s eligible loans. However, since then, the downturn in EZ and world growth has gathered momentum so at its meeting on 12 September, it cut its deposit rate further into negative territory, from -0.4% to -0.5% and announced a resumption of quantitative easing purchases of debt. It also increased the maturity of the third round of TLTROs from two to three years. However, it is doubtful whether this loosening of monetary policy will have much impact on growth and unsurprisingly, the ECB stated that governments will need to help stimulate growth by fiscal policy.

**CHINA.** Economic growth has been weakening over successive years, despite repeated rounds of central bank stimulus; medium term risks are increasing. The trade war with the US does not currently appear to be having a significant impact on growth. Major progress still needs to be made to eliminate excess industrial capacity and to switch investment from property construction and infrastructure to consumer goods production. It also needs to address the level of non-performing loans in the banking and credit systems.

**JAPAN.** has been struggling to stimulate consistent significant GDP growth and to get inflation up to its target of 2%, despite huge monetary and fiscal stimulus. It is also making little progress on fundamental reform of the economy.

**WORLD GROWTH.** The trade war between the US and China on tariffs is a major concern to financial markets and is depressing worldwide growth, as any downturn in China will spill over into impacting countries supplying raw materials to China. Concerns are focused on the synchronised general weakening of growth in the major economies of the world compounded by fears that there could even be a recession looming up in the US, though this is probably overblown. These concerns have resulted in government bond yields in the developed world falling significantly during 2019. If there were a major worldwide downturn in growth, central banks in most of the major economies will have limited ammunition available, in terms of monetary policy measures, when rates are already very low in most countries, (apart from the US), and there are concerns about how much distortion of financial markets has already occurred with the current levels of quantitative easing purchases of debt by central banks. The latest PMI survey statistics of economic health for the US, UK, EU and China have all been sub 50 which gives a forward indication of a downturn in growth; this confirms investor sentiment that the outlook for growth during the rest of this financial year is weak.

## 2. Interest Rate Forecast

The Council's treasury advisor, Link Asset Services, has provided the following forecast:

Link Asset Services Interest Rate View											
	Sep-19	Dec-19	Mar-20	Jun-20	Sep-20	Dec-20	Mar-21	Jun-21	Sep-21	Dec-21	Mar-22
Bank Rate View	0.75	0.75	0.75	0.75	0.75	1.00	1.00	1.00	1.00	1.00	1.25
3 Month LIBID	0.70	0.70	0.70	0.70	0.80	0.90	1.00	1.00	1.00	1.10	1.20
6 Month LIBID	0.80	0.80	0.80	0.80	0.90	1.00	1.10	1.10	1.20	1.30	1.40
12 Month LIBID	1.00	1.00	1.00	1.00	1.10	1.20	1.30	1.30	1.40	1.50	1.60
5yr PWLB Rate	1.20	1.30	1.50	1.60	1.70	1.70	1.80	1.90	2.00	2.00	2.10
10yr PWLB Rate	1.50	1.60	1.80	1.90	2.00	2.00	2.10	2.20	2.30	2.30	2.40
25yr PWLB Rate	2.10	2.30	2.40	2.50	2.60	2.70	2.70	2.80	2.90	3.00	3.00
50yr PWLB Rate	2.00	2.20	2.30	2.40	2.50	2.60	2.60	2.70	2.80	2.90	2.90

After the August 2018 increase in Bank Rate to 0.75%, the first above 0.5% since the financial crash, the MPC has put any further action on hold, probably until such time as the fog of Brexit might clear and there is some degree of certainty of what the UK will be heading into. ***The above forecast, and other comments in this report, are based on a central assumption that there will be some form of muddle through agreement on a reasonable form of Brexit.*** Bank Rate forecasts will have to change if this assumption does not materialise e.g. a no deal Brexit on 31 October could well prompt the MPC to do an immediate cut of 0.5% in Bank Rate back to 0.25%. All other forecasts for investment and borrowing rates would also have to change.

### The balance of risks to the UK

- The overall balance of risks to economic growth in the UK is probably to the downside due to the weight of all the uncertainties over Brexit, as well as a softening global economic picture.
- The balance of risks to increases in Bank Rate and shorter term PWLB rates are broadly similarly to the downside.

**BOND YIELDS / PWLB RATES.** There has been much speculation recently that we are currently in a bond market bubble. However, given the context that there are heightened expectations that the US could be heading for a recession, and a general background of a downturn in world economic growth, together with inflation generally at low levels in most countries and expected to remain subdued, conditions are ripe for low bond yields. While inflation targeting by the major central banks has been successful over the last thirty years in lowering inflation expectations, the real equilibrium rate for central rates has fallen considerably due to the high level of borrowing by consumers: this means that central banks do not need to raise rates as much now to have a major impact on consumer spending, inflation, etc. This has pulled down the overall level of interest rates and bond yields in financial markets over the last thirty years. We have therefore seen over the last year, many bond yields up to ten years in the Eurozone actually turn negative. In addition, there has, at times, been an inversion of bond yields in the US whereby ten year yields have fallen below shorter term yields. In the past, this has been a precursor of a recession. The other side of this coin is that bond prices are elevated as investors would be expected to be moving out of riskier assets i.e. shares, in anticipation of a downturn in corporate earnings and so selling out of equities. However, stock markets are also currently at high levels as some investors have focused on chasing returns in the context of dismal ultra-low interest rates on cash deposits.

What we have seen during the last half year is a near halving of longer term PWLB rates to completely unprecedented historic low levels. There is though, an expectation that financial markets have gone too far in their fears about the degree of the downturn in US and world growth. If, as expected, the US only suffers a mild downturn in growth, bond markets in the US are likely to sell off and that would be expected to put upward pressure on bond yields, not only in the US, but due to a correlation between US treasuries and UK gilts, which at various times has been strong but at other times weaker, in the UK. However, forecasting the timing of this and how strong the correlation is likely to be, is very difficult to forecast with any degree of confidence.

One potential danger that may be lurking in investor minds is that Japan has become mired in a twenty year bog of failing to get economic growth and inflation up off the floor, despite a combination of massive monetary and fiscal stimulus by both the central bank and government. Investors could be fretting that this condition might become contagious.

Another danger is that unconventional monetary policy post 2008, (ultra-low interest rates plus quantitative easing), may end up doing more harm than good through prolonged use. Low interest rates have encouraged a debt fuelled boom which now makes it harder for economies to raise interest rates. Negative interest rates could damage the profitability of commercial banks and so impair their ability to lend and / or push them into riskier lending. Banks could also end up holding large amounts of their government's bonds and so create a potential doom loop, (see appendix 4 Eurozone downside risk). In addition, the financial viability of pension funds could be damaged by low yields on holdings of bonds.



### 3. Annual Investment Strategy

The Treasury Management Strategy Statement (TMSS) for 2019/20, which includes the Annual Investment Strategy, was approved by the Council on 7 February. It sets out the Council's investment priorities as being:

- Security of capital;
- Liquidity; and
- Yield.

The Council will aim to achieve the optimum return (yield) on its investments commensurate with proper levels of security and liquidity. In the current economic climate it is considered appropriate to keep investments short term to cover cash flow needs, but also to seek out value available in higher rates in periods up to 24 months.

Officers can confirm that the approved investment limits within the Annual Investment Strategy were not breached during the quarter ended 30 September 2019. However, the Council's current account did exceed the £5M maximum limit on 17 July by £74K for one day only. On 17 July the Council had the maximum invested with Building Societies (£18M) and its Money Market fund (£3M) and was not yet set up to deal with foreign banks. £6.7M was needed on 19 July to fund expenditure so it was not possible to lend longer term to a bank that the Council had capacity to invest with. With the Council now being able to invest with a foreign bank, this should not happen again.

The average level of funds available for investment purposes during the quarter was £37.9M. The Council holds £20.5M core cash balances for investment purposes (i.e. funds available for more than one year). The investment portfolio yield for the first six months of the year was 1.02%. This is the weighted average rate of interest earned on investments held by the Council between 1 April and 30 September. The 1.13% average interest rate shown in the table below is the weighted average rate of interest on outstanding investments on 30 September.

Investments at 30 September 2019

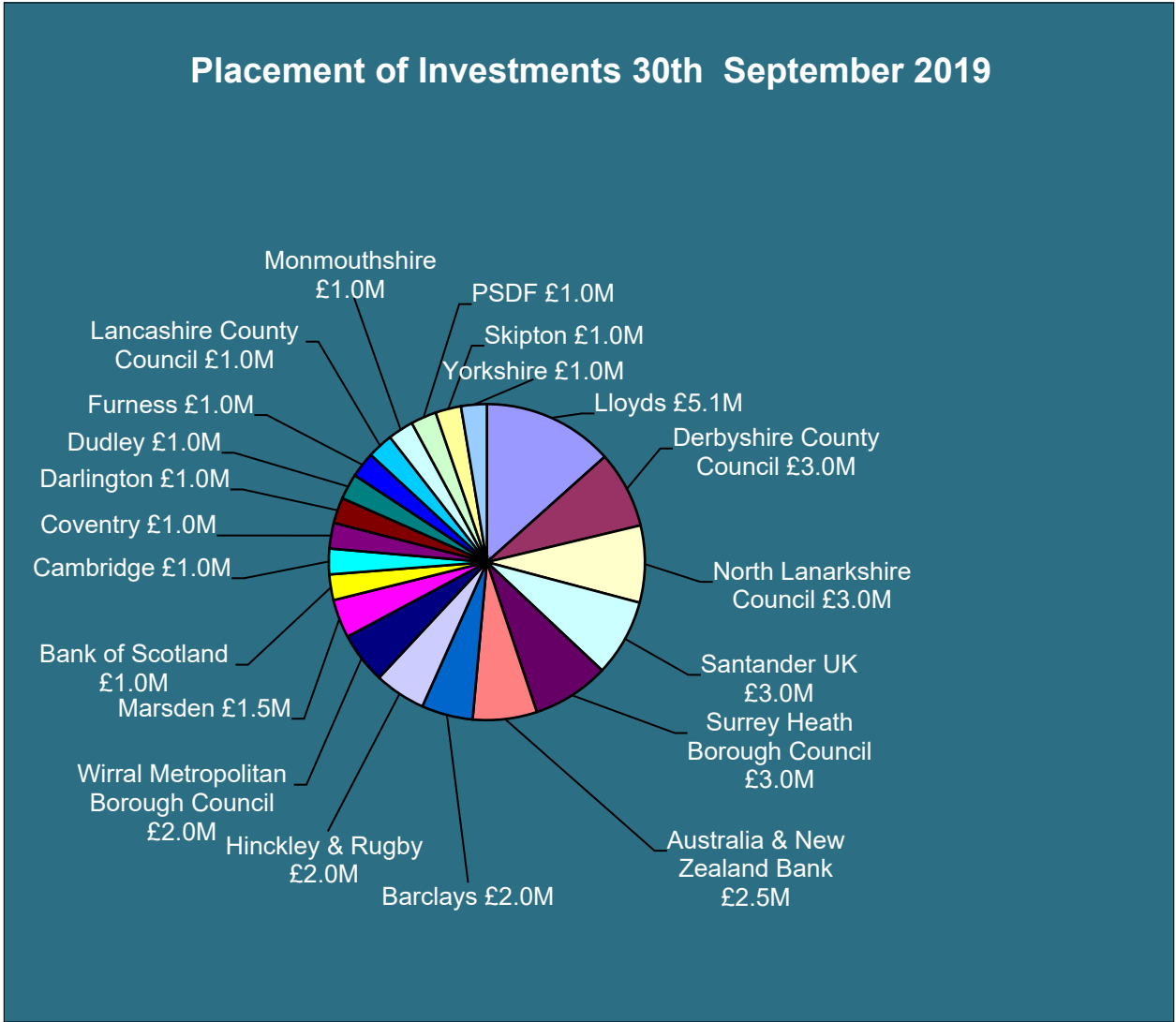
	Amount	Average
	£	Interest Rate %
<b>Managed By NHDC</b>		
Banks	13,600,000	1.00
Building Societies	3,000,000	0.96
Local Authorities	12,000,000	0.86
Money Market Fund	1,000,000	0.82
<b>NHDC To Total</b>	<b>29,600,000</b>	<b>1.00</b>
<b>Managed by Tradition</b>		
Building Societies	8,500,000	1.42
<b>Tradition Total</b>	<b>8,500,000</b>	<b>1.42</b>
<b>TOTAL</b>	<b>38,100,000</b>	<b>1.13</b>

In percentage terms, this equates to:

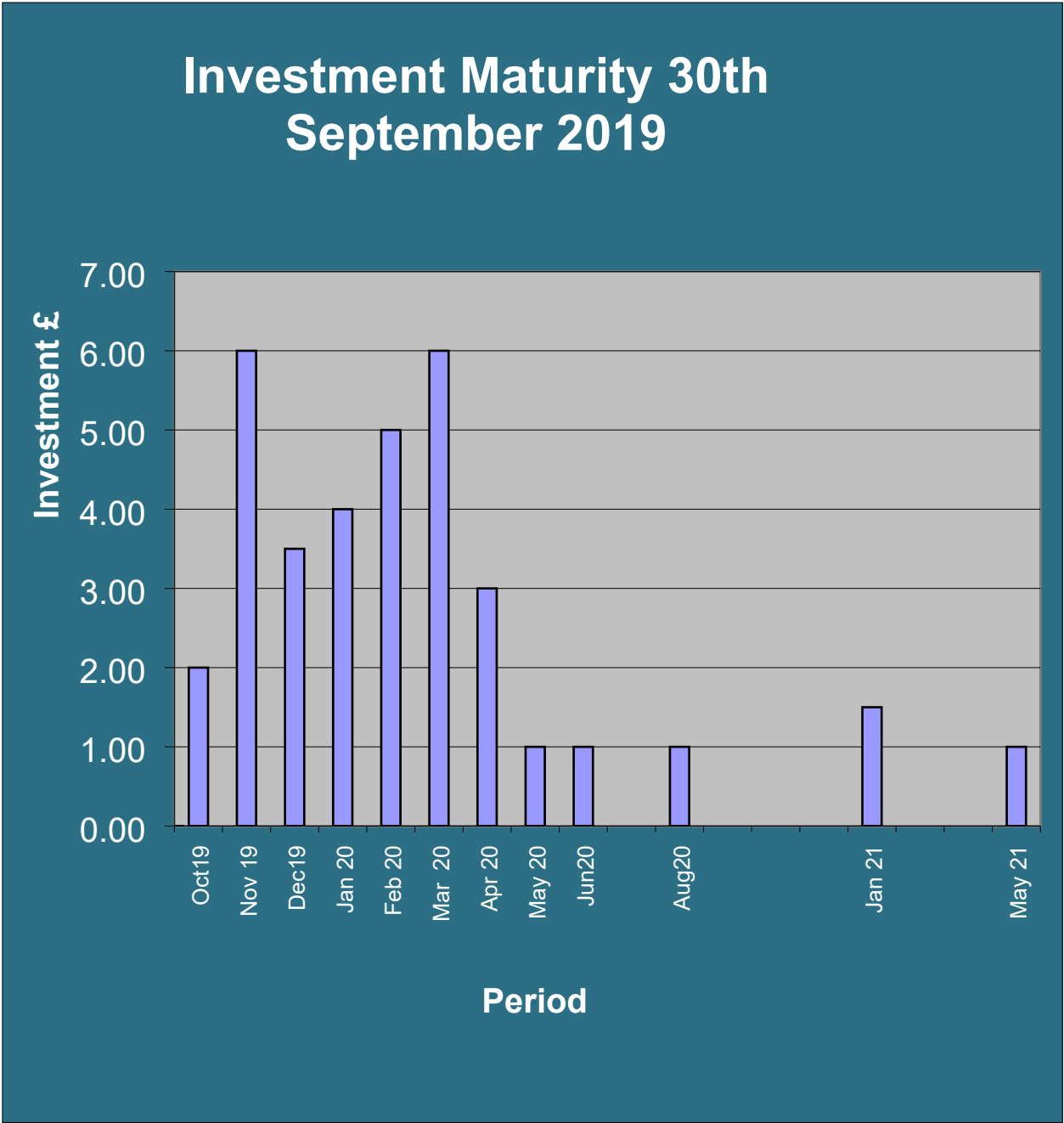
	Percentage
Money Market Funds	3
Local Authorities	31
Banks	36
Building Societies	30

The approved 19/20 strategy is that no more than 60% of investments should be placed with Building Societies with a maximum value of £18M. The value at 30 September was £11.5M

The pie chart below shows the spread of investment balances as at 30 September 2019. This is a snapshot in time that demonstrates the diversification of investments.

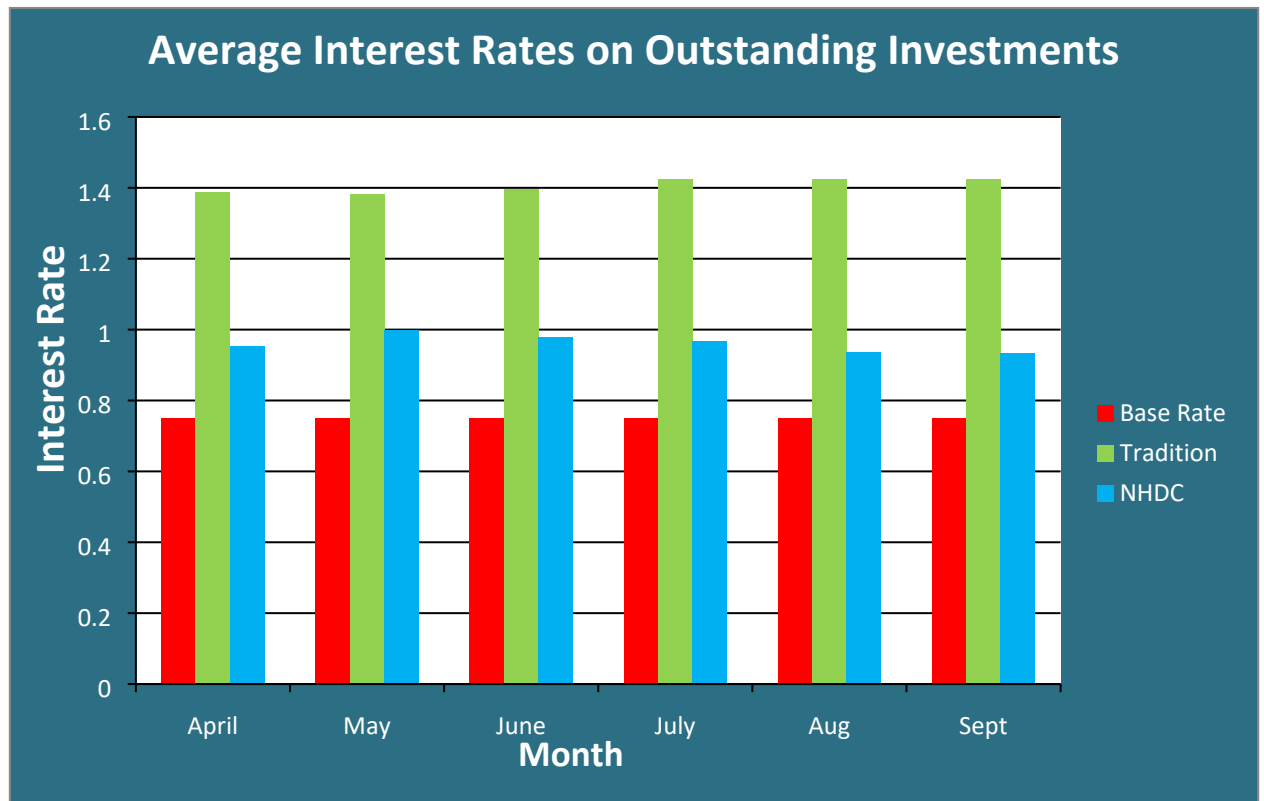


The chart below shows the Council's investment maturity profile. (This does not include the £1.0M held in the Public Sector Deposit Fund Money Market account or £2.1M held in the Lloyds current account which can be called back on any day).



The Council's Original budgeted investment return for 2019/20 was £0.300M. The projection reported in the 1st quarter report was £0.372M and remains unchanged.

The graph below shows the average rate of interest on outstanding investments at 30 September.



The higher rates achieved through Tradition reflect that these are longer-term investments. In general, the Council can currently achieve similar rates for the same length of investment. The Council only undertakes new investments through Tradition where the rate achieved (after fees) are greater than what the Council could achieve for a similar investment.

Treasury indicator below shows the capital value and expected income from Capital Investment assets, alongside any borrowing that is attached to those assets and the expected cost of that borrowing.

Year	Capital value of investment assets £m	Original Expected annual income from investment assets £m	Revised Expected annual income from investment assets £m	Loans linked to investment assets £m	Expected annual borrowing costs for loans linked to investment assets £m
2019/20	18.899	1.089	1.156	0	0
2020/21	18.899	1.139	1.209	0	0
2021/22	18.899	1.189	1.259	0	0
2022/23	18.899	1.189	1.259	0	0
2023/24	18.899	1.189	1.259	0	0

## 4. New Borrowing

No long term borrowing was undertaken during the quarter / half year ended 30 September 2019.

However, £2.0M was borrowed for cash flow on the 20 June until the 1 July at a rate of 0.7%

Based on 2<sup>nd</sup> quarter estimate for capital expenditure, the Council's capital financing requirement (CFR) for 2019/20 is expected to be -£2.43M (-£5.91M at the end of 18/19). The CFR denotes the Council's underlying need to borrow for capital purposes. If the CFR is positive the Council may borrow from the PWLB or the market (external borrowing) or from internal balances (internal borrowing). The CFR is negative as the Council has more cash investments than borrowing. The balance of external and internal borrowing is generally driven by market conditions.

It is anticipated that long term borrowing will not be undertaken during this financial year.

Loans Outstanding at 30 September 2019:

	Amount	Average Interest Rate
	£	%
Public Works Loans Board	£431k	9.70

Forecast outstanding debt:

Year	Forecast Borrowing £m	Forecast other long-term liabilities £m *	Forecast External £m	Total Debt	Operational Boundary £m	Authorised Limit £m
31 <sup>st</sup> March 2019 (Actual)	0.440	2.724	3.164		4.1	10
31 <sup>st</sup> March 2020 (Forecast)	0.423	2.270	2.693		3.6	9
31 <sup>st</sup> March 2021 (Forecast)	0.405	1.816	2.221		3.1	9
31 <sup>st</sup> March 2022 (Forecast)	0.387	1.362	1.749		2.6	8
31 <sup>st</sup> March 2023 (Forecast)	0.367	0.908	1.275		2.0	7
31 <sup>st</sup> March 2024 (Forecast)	0.347	0.454	0.801		1.5	7

\* Comprises the finance lease relating to Letchworth Multi-storey car park and the forecast impact of the finance lease for waste vehicles.

The external borrowing forecast can be used to give an indication of the borrowing that may be required, which is combined with outstanding existing borrowing. The Council will also borrow for short-term cash-flow needs if required. The actual borrowing that is taken out will depend on the latest forecasts and the offers that are available at the time that it is required. There will also be a consideration of when any other borrowing becomes due, with the aim of achieving a spread of these dates. This is to try and avoid refinancing risk. The Council is required to set indicators for the maturity structure of its borrowing. Given the low level of borrowing that the Council currently has and is forecast to have, it is considered appropriate to maintain full flexibility as to the exact duration of any borrowing undertaken.

To manage refinancing risk, the Council sets limits on the maturity structure of its borrowing. However these indicators are set relatively high to provide sufficient flexibility to respond to opportunities to repay or take out new debt (if it was required), while remaining within the parameters set by the indicators. Due to the low level of existing borrowing, the under 12 months limits have a broad range to allow for cash-flow borrowing (if it was required).

Maturity Period	Lower %	Upper %
Under 12 months	0	100
12 months to 2 years	0	50
2 years to 5 years	0	60
5 years to 10 years	0	70
10 years to 20 years	0	80
20 years and above	0	100

The Council does not have a need to borrow, so therefore does not currently need to apply a Minimum Revenue Provision (MRP).

There is a prudential indicator that compares the net cost of financing (i.e. borrowing costs less income generated from investments) with the net revenue budget of the Council. However the indicator below considers the cost of borrowing as a % of the net revenue budget of the Council.

Year	Estimated cost of borrowing £m	Forecast net revenue budget	Estimated cost of borrowing as a % of net revenue budget
2019/20	0.042	15.450	0.27
2020/21	0.041	14.808	0.28
2021/22	0.040	14.911	0.27
2022/23	0.039	15.021	0.26
2023/24	0.037	15.021	0.25

The Council is required to set a prudential indicator that estimates financing costs (cost of borrowing less income from investments) as a percentage of its net revenue budget.

Year	Estimated cost of borrowing £m	Less: Forecast of interest earned £m	Net Financing Costs £m	Forecast net revenue budget	Estimated cost of borrowing as a % of net revenue budget
2019/20	0.042	0.372	-0.330	15.45	-2.136
2020/21	0.041	0.417	-0.376	14.808	-2.539
2021/22	0.040	0.516	-0.476	14.911	-3.192
2022/23	0.039	0.526	-0.487	15.021	-3.242
2023/24	0.037	0.584	-0.547	15.021	-3.642

## 5. Debt Rescheduling

No debt rescheduling was undertaken during the quarter.

## 6. Compliance with Treasury and Prudential Limits

It is a statutory duty for the Council to determine and keep under review the affordable borrowing limits. The Council's approved Treasury and Prudential Indicators, (affordability limits), are included in the approved TMSS.

## 7. Other

A tender was undertaken in September to award a 3 year contract to provide the Council with Treasury advice. The contract was awarded to Link, our current adviser.



## APPENDIX 1: Prudential and Treasury Indicators for 2019-20 as at 30 September 2019

Treasury Indicators	2019/20 Budget £'000	30.9.19 Actual £'000
<b>Authorised limit for external debt</b>	9,000	431
<b>Operational boundary for external debt</b>	3,600	431
<b>Gross external debt</b>	2,548	431

<b>Maturity structure of fixed rate borrowing - upper and lower limits</b>		
<b>Under 12 months</b>	17	17
<b>12 months to 2 years</b>	18	18
<b>2 years to 5 years</b>	58	58
<b>5 years to 10 years</b>	82	82
<b>10 years to 20 years</b>	15	15
<b>20 years to 30 years</b>	20	20

Prudential Indicators	2019/20 Budget £'000	30.09.19 Actual £'000
<b>Capital expenditure</b> The budget is the expected capital expenditure during the year. The actual total is spend to date. Only at the end of the year will actuals get close to the budget.	7,822	597
<b>Capital Financing Requirement (CFR)</b> The total historic outstanding capital expenditure which has not yet been paid for from either revenue or capital resources. It is essentially a measure of the Council's underlying borrowing need. The year end position reflects the budgeted capital spend during the year. A negative total means that there is no borrowing requirement.	-0,063	-5,903
<b>In year borrowing requirement</b>	0	0
<b>Ratio of financing costs to net revenue stream</b> Net expenditure/ (income) from borrowing and investments, as a % of the Council's net revenue. This is negative as the Council is currently receiving a net income from investments.	-1,969	-2,06



**COUNCIL  
16 JANUARY 2020**

**PART 1 – PUBLIC DOCUMENT**

**ITEM 6d**

**TITLE OF REPORT: ITEM REFERRED FROM CABINET: 17 DECEMBER 2019 –  
COUNCIL TAX REDUCTION SCHEME (CTRS) 2020/2021**

***Extract from the draft Minutes of the Cabinet meeting held on 17 December 2019***

The Executive Member for Finance and IT presented the report entitled Council Tax Reduction Scheme (CTRS) 2020/2021.

He thanked the Service Director Customers, the Revenues Manager and their team for all of their work regarding the Council Tax Reduction Scheme and its management and noted the high number of responses to the consultation on this subject.

It was moved by Councillor Ian Albert, seconded by Councillor Martin Stears-Handscomb and:

***RESOLVED:***

- (1) That the CTRS position relating to this and previous financial years be noted;
- (2) That it be noted that a full review of the CTRS is underway and that further recommendations for changes to the Scheme will be presented to Cabinet in 2020 for implementation in 2021/2022.

***RECOMMENDED TO COUNCIL:***

- (1) The following proposed changes to the CTRS for 2020/2021:
  - A) That a de minimis amount of £2.50 per week be introduced for reductions in entitlement, with no de minimis amount for increases in entitlement;
  - B) That any payments made under the Windrush Compensation Scheme be disregarded for the purposes of CTRS.
- (2) That the level of Scheme funding to be allocated to the Parish, Town and Community Councils will be the same as 2019/2020 (£38,885).

***REASON FOR DECISIONS:*** To ensure that the Council complies with the requirement to ensure that a Scheme is in place by 11 March 2020.

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**Report considered by Cabinet on 17 December 2019**

**TITLE OF REPORT: COUNCIL TAX REDUCTION SCHEME (CTRS) 2020/2021**

REPORT OF THE SERVICE DIRECTOR – CUSTOMERS

EXECUTIVE MEMBER: COUNCILLOR IAN ALBERT

COUNCIL PRIORITY: BUILD THRIVING & RESILIENT COMMUNITIES

**1. EXECUTIVE SUMMARY**

- 1.1 To provide Cabinet with an update on how the Scheme is operating in its seventh year and to recommend two minor changes be made to the Scheme for 2020/2021.

**2. RECOMMENDATIONS**

- 2.1 That Cabinet notes the CTRS position relating to this and previous financial years
- 2.2 That Cabinet recommends to Council the following proposed changes to the CTRS for 2020/2021:
- A) That a deminimis amount of £2.50 per week be introduced for reductions in entitlement, with no deminimis amount for increases in entitlement
  - B) That any payments made under the Windrush Compensation Scheme be disregarded for the purposes of CTRS
- 2.3 That Cabinet recommends to the Council that the level of Scheme funding to be allocated to the Parish, Town and Community Councils will be the same as 2019/2020 (£38,885)
- 2.4 That Cabinet notes that a full review of the CTRS is underway and that further recommendations for changes to the Scheme will be presented to Cabinet in 2020 for implementation in 2021/2022

**3. REASONS FOR RECOMMENDATIONS**

- 3.1 To ensure that the Council complies with the requirement to ensure that a Scheme is in place by 11 March 2020.

**4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Since the inception of the Scheme in 2013, the intention has been to keep this as aligned as possible to Housing Benefit Regulations because of the synergy between the two schemes. This is the intention behind recommendation 2.2 (B) and achieves that alignment.
- 4.2 The intention behind recommendation 2.2 (A) is for ease of processing and to avoid customers being sent multiple bills for very small changes in entitlement
- 4.3 Cabinet considered these proposals at its meeting on 24 September 2019 and agreed that these recommendations should be subjected to public consultation.

## **5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1 Following the decision taken by Cabinet on 24 September 2019, the Council has carried out public consultation via its web site and directly to members of the Citizens Panel. There has been a significantly better response than previous consultations carried out on changes to CTRS with 546 responses received. The results can be summarised as:

<b>Recommendation</b>	<b>In favour</b>	<b>Not in favour</b>
Recommendation (A)	92.8%	7.2%
Recommendation (B)	86.2%	13.8%

- 5.2 In addition, the Council is required to consult with Hertfordshire County Council and the Police & Crime Commissioner for Hertfordshire. This has been done, however no response has been received at the time of preparing this report.

## **6. FORWARD PLAN**

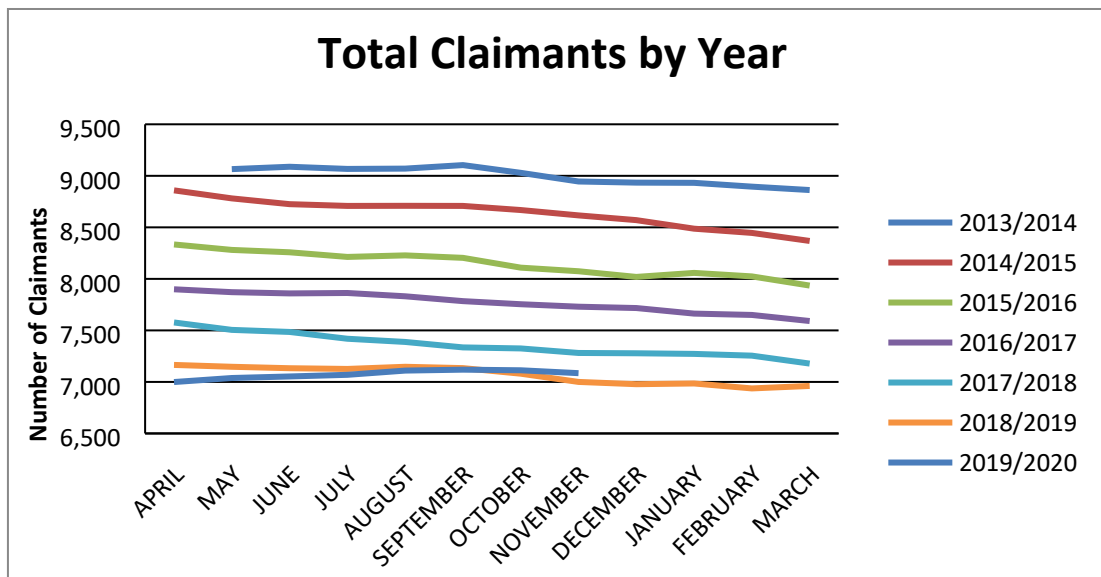
- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on the 6 September 2019.

## **7. BACKGROUND**

- 7.1 Council Tax Benefit was abolished on 1 April 2013 and was replaced by locally defined Council Tax Reduction Schemes.
- 7.2 2020/2021 will be the eighth year of the scheme, which is now fully embedded.
- 7.3 The Council's Scheme is based on the old Council Tax Benefit Scheme and is therefore means-tested with a standard percentage reduction being made to the final award. This reduction was 33.13% for the first two years of the Scheme and has been reduced to 25% for the subsequent five years. A lower reduction means that the claimant will receive more benefit and therefore pay less Council Tax.
- 7.4 The Scheme has been generally accepted within North Hertfordshire. The Council has received very little feedback on the Scheme and collection rates have been fairly well maintained considering the recent period of austerity.
- 7.5 The Scheme continues to cost less than originally anticipated due in the main to the reduction in the number of claimants. This has been a steady year-on-year reduction until the early part of 2018/2019, when the claimant numbers plateaued out. The numbers reduced in the latter part of the year but so far in 2019/2020, the numbers have actually slightly increased. The steady reduction in numbers meant that the Scheme continued to cost about the same amount each year even though Council Tax levels increased. With claimant numbers now not reducing as steadily as in the earlier years of the Scheme, and the tendency for all Major Preceptors to apply the maximum increase in Council Tax without triggering a local referendum, the value of awards is increasing. Further, maximum expected increases in Council Tax for 2020/2021, reduces the scope available to make the Scheme more generous.

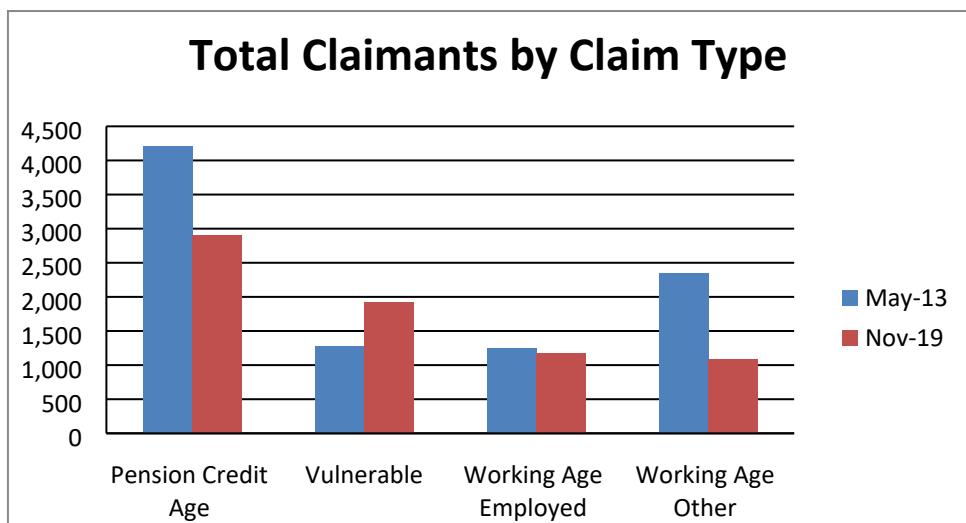
- 7.6 Chart 1 below shows how claimant numbers have steadily reduced since the Scheme was introduced, until this current year.

**Chart 1**



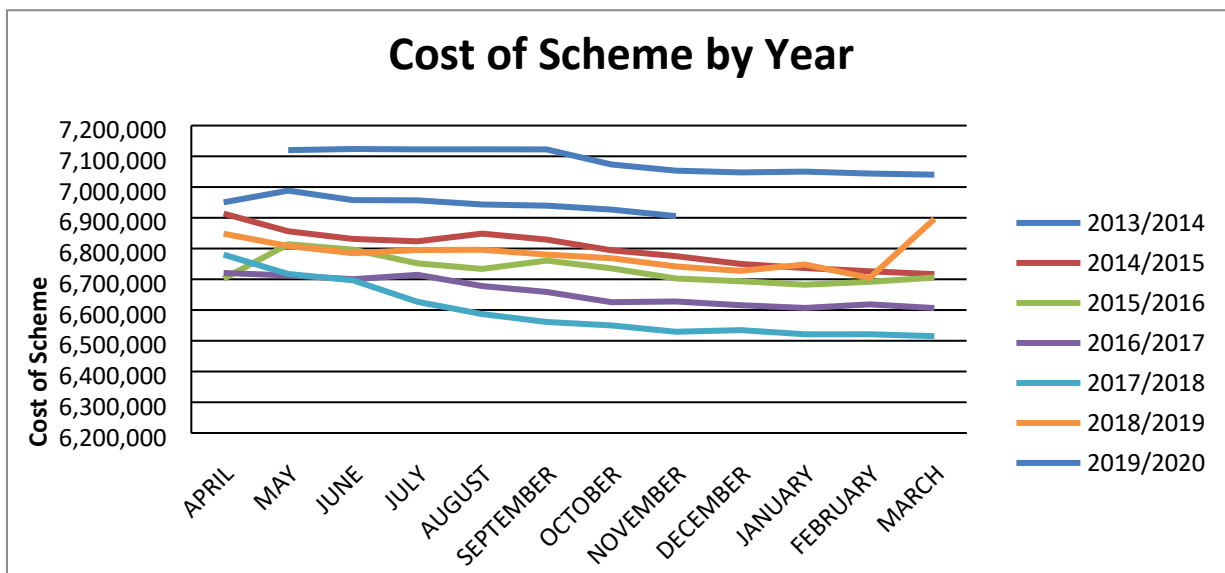
- 7.7 Chart 2 below shows the difference in number of customers by claimant type from May 2013 (the earliest data we have) to October 2019. Members will see there has been a significant reduction in the number of Pension Credit Age customers (1,297 less or 30.85%) and Working Age customers not working (1,260 less or 53.82%). The number of Working Age customers in work has remained fairly constant (69 less or 5.52%), however the number of Vulnerable claimants, i.e. those in receipt of a Disability Premium has increased significantly (646 more or 50.83%).

**Chart 2**



- 7.8 Chart 3 below shows the monetary value of the Scheme year-on-year and it is significant that after five years of steady reductions, in 2018/2019 and this year, the values have increased considerably, reflecting the fact that the number of claimants is no longer steadily reducing.

**Chart 3**



## 8. RELEVANT CONSIDERATIONS

### **Changes to Housing Benefit and should these be reflected in the CTRS?**

- 8.1 The Government has implemented one change to the Housing Benefit Regulations, which Cabinet supported for wider consultation with a view to including it in the Council's CTRS. This is the requirement to disregard any payments made to recipients under the Windrush Compensation Scheme. The effect of this is that any payments made under this scheme will be ignored for Housing Benefit purposes and if adopted by the Council, also for CTRS purposes.
- 8.2 As shown in 5.1 above, this proposal received overwhelming support in the public consultation.

### **Other Considerations**

- 8.3 The introduction of Verification of Earnings & Pensions (VEP), previously Right Time Information (RTI) has resulted in an unforeseen consequence for those in receipt of CTRS, who have fluctuating incomes.
- 8.4 Through VEP, the Council is notified by DWP (via HMRC) whenever there is a change in income or other change which may effect the entitlement of a claimant. Notifications are also being received, which trigger a recalculation when changes are made to Universal Credit, which do not change the overall entitlement to CTRS. Many of these changes are very small and in fact the vast majority are £0.00 as a change is triggered for example at the start or end of a repayment of an advance or the start or end of a deduction, for example to clear Council Tax arrears, which does not effect the entitlement to CTRS.



- 8.5 These changes result in bills being produced and instalments being reset, so that in theory, and also in practice, a customer may go throughout an entire year without paying anything and they will never be caught up in the recovery cycles, if they have a change every month resulting in a recalculation and their instalments being reset.
- 8.6 In the period 1 April 2019 to 31 October 2019, recalculations were carried out for the following amounts:

<b>No of Claims</b>	<b>Value of change of entitlement</b>
888	£0.00
21	Between £0.01 and £0.49
10	Between £0.50 and £2.49
28	Between £2.50 and £9.99

- 8.7 Officers recommended to Cabinet that the deminimis level be set at £2.50 for reductions in entitlement and that it be kept under review. £2.50 per week is considered high enough to eliminate a significant number of small changes in entitlement and also not too high to exempt too many customers from having any recalculations at all. For example, £2.50 per week is £130.00 per year, so theoretically any customer with an entitlement of £130.00 per year or less may not have a recalculation during the year, so long as the entitlement stays below £130.00. At the beginning of this financial year we had 91 customers with an annual entitlement of less than £130.00.
- 8.8 It is recommended that there be no deminimis amount applied for increases in entitlement.
- 8.9 The numbers identified in 8.6 above will increase significantly as more customers migrate to Universal Credit.
- 8.10 Also as shown at 5.1 above, this proposal received overwhelming support.

#### **Amount to be distributed to Parish, Town & Community Councils**

- 8.11 When CTRS was introduced in 2013, the Government provided funding to each Billing Authority to compensate for the reduction in their Tax Bases as CTRS was to be treated as a Discount and was no longer reimbursed on a pound for pound basis through subsidy arrangements. Each Billing Authority was also given a sum of money to distribute amongst its Parish, Town & Community Councils to compensate for their reduction in the Tax Base. For the first year of the CTRS (2013/2014) this amount was £90,850.
- 8.12 This funding is no longer separately identifiable within the Council's financial settlement from the Government and the principle has now been adopted each year that the amount of money distributed by the Council will reduce in line with its own reduction in Government support.
- 8.13 By 2017/2018, this amount had reduced to £38,885 and it has remained at that level since then, as the Council no longer receives any Revenue Support Grant (RSG).

- 8.14 2019/2020 is the final year of a four year settlement, which was announced in February 2016 and allowed Councils to be able to forward plan for those four years. The four year settlement confirmed that this Council would not receive any RSG from 2018/2019 and also announced an additional tariff on Business Rates (known as negative RSG) for 2019/2020, which would have further reduced Council funding by around £1M.
- 8.15 The Government reviewed the position regarding the negative RSG and this was not imposed in this current year and consequently, the Council confirmed that the amount to be distributed to Parish, Town & Community Councils should remain at £38,885 and that this should be reviewed for 2020/2021.
- 8.16 The Government has confirmed that there will be a one year settlement for 2020/2021 and a wider ranging review carried out during 2020/2021 for implementation from 2021/2022. It has been confirmed that the additional tariff on Business Rates will not be applied in 2020/2021.
- 8.17 The Council could decide to remove this Grant, however Members should be aware that the Government has strongly suggested that they would not expect Councils to do so. In view of the Government's intention not to impose the additional tariff on Business Rates in 2020/2021 it would seem equitable to continue with the payments to Parish, Town & Community Councils in 2020/2021 and review this again next year depending on what financial settlement is approved by the Government.

#### **Wider ranging review of the CTRS**

- 8.18 2020/2021 will be the eighth year of the Scheme, which has remained mainly unchanged throughout that time. The Scheme is still based on means testing as this is considered to be the fairest way of administering the Scheme.
- 8.19 Whilst the Council continues to administer a substantial number of Housing Benefit claims, there is little to be gained in terms of administrative costs in changing the Scheme, as the same processes have to be performed as those needed to calculate Housing Benefit. However, many Councils are moving towards different types of Schemes in anticipation of the expected drop in Housing Benefit caseloads, which will escalate when the managed migration of the caseload takes place, some time between 2020 and 2024 on current projections, although these have slipped several times already.
- 8.20 Ideally, the Scheme needs to be simple to administer and for customers to understand, fair and be cost effective. Unfortunately, it is difficult to achieve all three of these objectives, as any two will usually disqualify the third.
- 8.21 Nevertheless, a lot of work is being carried out to test a number of different options, which will be reported to Cabinet in 2020, to allow plenty of time for consultation before implementation in April 2021.

#### **9. LEGAL IMPLICATIONS**

- 9.1 Section 5(2) of Schedule 4 of the Local Government Finance Act 2012, which inserts Schedule 1A to the Local Government Finance Act 1992 requires the Council to set its Council Tax Reduction Scheme by 31 January preceding the start of the financial year in which it is to apply. This has been further amended by Regulation 2 of The Council Tax Reduction Schemes (Amendment) (England) Regulations 2017 to 11 March.

- 9.2 Full Council's terms of reference include at 4.4.1 (z) "approving the Council Tax Reduction Scheme". Cabinet's terms of reference include at 5.6.39 recommending to Full Council "The Council Tax Reduction Scheme".
- 9.3 Section 3(1) of Schedule 4 of the Local Government Finance Act 2012, which inserts Schedule 1A to the Local Government Finance Act 1992 requires the Council to consult on any changes to its scheme as follows:
- Consult any Major Precepting Authority which has power to issue a precept to it
  - Publish a draft scheme in such manner as it thinks fit
  - Consult such other persons as it considers are likely to have an interest in the operation of the scheme
- 9.4 For the original scheme implemented for 2013/2014, it was necessary to carry out comprehensive consultation to ensure that the Council complied with the legal requirement to consult and did not leave itself open to challenge. Very minor changes were made to the Scheme in year two and a restricted consultation exercise was carried inviting members of the public to comment on the Council's web site. Only minor changes have been made in subsequent years, with the resulting restricted consultation. This position remains the same with the proposals for 2020/2021, however this time the consultation with the public has consist of advertising on the Council's web site and using the Citizens Panel resulting in a significantly higher response rate than previous consultations.
- 9.5 Cabinet should note that changes to the Scheme cannot be made later in the financial year due to the need to consult before any changes can be implemented.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 There will be financial implications in respect of the Collection Fund for the implementation of a deminimis rule, which are difficult to quantify. However as the vast majority of changes result in no change in entitlement, this is not considered to be significant and should be easily absorbed within the 1% allowance for non-collection.
- 10.2 Whilst not directly a subject of this report, far more significant is the effect on the Council Tax Base should all the Major Precepting Authorities increase their Council Tax Precepts by the maximum allowed before a local referendum is triggered.
- 10.3 Based on the caseload at the end of July 2019, Council Tax increases of £5.00 for the District Council and 1.99% for County Council and the Hertfordshire Police & Crime Commissioner will incur additional awards of CTRS of around £139,500 and reduce the Council Tax Base by around 77.
- 10.4 The figures could increase if more scope is given to the Police & Crime Commissioner to increase its precept and any further provision is made to increase Council Taxes to help fund Adult Social Care.
- 10.5 There is no statutory requirement for the council to provide funding to Parish, Town and Community Councils, but it may choose to do so and the Government actively encourages Councils to do so. In 2019/2020 this Council passed on £38,885. The current proposed cost of funding to Parish, Town and Community Councils in 2020/2021 remains at £38,885.

## **11. RISK IMPLICATIONS**

- 11.1 Because the Council is required to implement a demand led Scheme there is a financial risk should the number of claimants increase significantly. Whilst the trend in the number of claimants is no longer decreasing, the increase in numbers is gradual and could just as easily reverse again. The amount of Council Tax recovered in the year is monitored by the Overview and Scrutiny Committee on an exception basis. The position on the Collection Fund is also included in the revenue monitoring reports that are presented to the Finance, Audit and Risk Committee and Cabinet.

## **12. EQUALITIES IMPLICATIONS**

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 By conducting extensive consultation when the scheme was first implemented, the Council sought to collect information from those who may be potentially affected by these proposals. The public consultation showed broad support for the scheme. By substantially retaining the same scheme since 2013/2014, and consulting on the minor changes implemented since, the Council continues to meet its obligations under the Equality Act, but current equalities legislation will be checked following decision by Council in January to ensure this remains the case.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1 The Social Value Act and “go local” policy do not apply to this report.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 There are no Human Resources implications in this report.

## **15. APPENDICES**

- 15.1 None

## **16. CONTACT OFFICERS**

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## **17. BACKGROUND PAPERS**

### **17.1 Results of Public Consultation**

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**COUNCIL  
16 JANUARY 2020**

**PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: REVIEW OF PLANNING CODE OF GOOD PRACTICE**

REPORT OF: LEGAL REGULATORY TEAM MANAGER / DEPUTY MONITORING OFFICER

CHAIR OF STANDARDS: CLLR JUDI BILLING

COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

**1. EXECUTIVE SUMMARY**

- 1.1 The report details changes to the council's Planning Code of Good Practice as part of its review.

**2. RECOMMENDATIONS**

- 2.1. That the Council be recommended to adopt the Planning Code of Good Practice as amended and contained at Appendix A

**3. REASONS FOR RECOMMENDATIONS**

- 3.1. To ensure good governance within the Council and that the Council's Planning Code of Good Practice remains fit for purpose and is consistent with best practice.

**4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1. None.

**5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1. Group Leaders and the Standards Committee Chair are kept informed of Monitoring Officer and standards matters on a monthly basis. The Monitoring Officer and Deputy Monitoring Officers also hold quarterly meetings with the Independent Person, Reserve Independent Person ('IPs') and the Chair of Committee.

**6. FORWARD PLAN**

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

## **7. BACKGROUND**

- 7.1 Within its terms of reference the Standards Committee has a function “to advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council”
- 7.2 The Standards Committee considered the amended Planning Code of Good Practice on 22 October 2019 and minutes can be found [here](#).
- 7.3 Consultation with the Chair and Vice-Chair of the Standards Committee, the Independent Person and Reserve Independent Person subsequently took place and a meeting was held between those parties, the Service Director for Legal and Community and Monitoring Officer and the Legal Regulatory Team Manager on 25 November 2019.
- 7.4 The Planning Code of Good Practice is accessible at Appendix 3 to Section 8 of the Council’s Constitution.
- 7.5 The Council’s current Planning Code of Good Practice is based on the Model Member’s Planning Code (the Model Code) produced by Lawyer in Local Government (LLG) and was adopted by the Council on 3 September 2015.
- 7.6 The Model Code was first produced in 2003 in response to a series of successful court challenges concerning local planning authorities and their Members’ Conduct of Conduct and/or conflicts of interests. It replaced a number of individual and sometimes haphazard approaches that existed in individual councils at the time.
- 7.7 The drafting of the Model Code was subject to consultation and comment from a number of local authorities through the machinery of the Association of Council Secretaries and Solicitors (now LLG), the Local Government Association, the Local Government Ombudsman, Audit Commission and from firms of solicitors or barristers acting on their behalf.
- 7.8 Following its publication, the Model Code proved to be one of the most successful and popular guidance documents produced by LLG, being adopted by councils across the country.
- 7.9 The NHDC code went to Full Council on 3 September 2015 before going back to Standards Committee in March 2016 at which it was agreed to review it again at the October 2016 meeting, which resolved -

*(3) That, in respect of the Planning Code of Good Practice, the Monitoring Officer be requested to make minor amendments to the wording of Section 4 to make it sufficiently clear that explanation of the procedure could be discussed;*

*(4) That, subject to (3) above and the correction of typographical errors, the Planning Code of Good Practice be supported.*

## **8. RELEVANT CONSIDERATIONS**

- 8.1. In 2018, the Supreme Court gave its approval of the Model Code when it described it as “useful advice” and “sound practical advice” in a ruling (*R (CPRE Kent) v Dover District Council (SC(E)) 2018 1 WLR*).



- 8.2. The NHDC Planning Code of Good Practice, whilst broadly identical to the Model Code, contains some differences to the LLG version. The main differences between the two are detailed in Appendix B along with comments on the effect those differences have.
- 8.3. The amendments in this review are:
- Part 2 – Removal of reference to pre-application advice and members with DPI or Declarable interest, this is because members are only informed of advice on major applications upon completion of pre-application advice (it should be noted that many of these ‘majors’ are not completed but proceed midway through to an application).
  - Part 3 – Substituting the word “provided” for “completed” as this is less ambiguous.
  - Part 4 – First bullet point: Inserting the words “or appear as a substitute” in order to cover off this eventuality.  
Second bullet point: Deleting the word “formal” when describing meetings, as this could cause confusion where a meeting is proposed to take place in an otherwise informal setting, such as an applicant’s home for example.  
Third bullet point: Inserting reference to Service Director - Regulatory  
Fourth bullet point: Inserting paragraph to cover off appearing as a substitute in order to cover off this eventuality, and also addressing the situation concerning Ward advocates not sitting on those items they have acted on.
  - Part 5 – Clarification around the situation where a member has acted as a Ward advocate.
  - Part 6 – Removal of CPRE from an example of special interest group, as they now identify as a lobbying group.
  - Part 7 – Clarification on how to request a site visit.
  - Part 8 – Clarification of when member of the public may attempt to make contact with members, to avoid ambiguity.
  - Part 9 – Updating job titles in line with the council’s restructure.
  - Part 10 – Referring to previous decisions in similar cases. This is due to the courts recently highlighting that the earlier decisions of a planning committee are a very important material considerations when applications are on the same site and for similar development proposals.
  - Part 11 – First and third bullet point: Tying the Code in with the Council’s Corporate Enforcement Policy.
  - Part 13 – Clarifying that the Code of Conduct applies first and then the Planning Code of Good Practice.
- 8.4. The proposed changes help to remove ambiguity, address the situation where members may be appearing as a substitute, as well as making it clear that members are free to act as ward advocates and the implication of this.

## **9. LEGAL IMPLICATIONS**

- 9.1. The functions of Full Council at paragraph 4.4.1(a) of the Constitution include “approving or adopting the Policy Framework”.

- 9.2. The Code assists to regulate Member actions and ensure good governance. It also assists transparency of decision making and sets expectations as to how Councillors approach planning matters. This helps to ensure that the Council's decision making on planning matters is robust and reduces the potential for successful appeals or challenges to decisions. This Code follows best practice and assists the Council to fulfil its statutory duty to promote and maintain high standards of conduct for both Members and Officers.

## **10. FINANCIAL IMPLICATIONS**

- 10.1. There are no capital or revenue implications arising from the content of this report.

## **11. RISK IMPLICATIONS**

- 11.1. Appropriate policy frameworks help to ensure good governance of the Council and therefore reduce risk of poor practice or unsafe decision making.

## **12. EQUALITIES IMPLICATIONS**

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. There are no direct equalities implications from this report.
- 12.2. Good governance and high ethical standards of conduct ensure that local government decisions are taken in the public interest. The review of the best practice recommendations and appropriate changes will ensure that NHDC will continue demonstrate due regard to the objectives of the Public Sector Equality duty.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1. The Social Value Act and "go local" requirements do not apply to this report.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1. None. The work outlined within the report is within the caseload of the Deputy Monitoring Officer and the legal team.

## **15. APPENDICES**

- 15.1. Appendix A – Clean version of amended Planning Code of Good Practice.
- 15.2. Appendix B – Amended Planning Code of Good Practice
- 15.3. Appendix C – Comparison between NHDC Planning Code of Good Practice and the LLG Model Code

## **16. CONTACT OFFICERS**

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**17. BACKGROUND PAPERS**

17.1. None other than those referred to/ linked above.

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## NORTH HERTFORDSHIRE DISTRICT COUNCIL'S MEMBER'S PLANNING CODE OF GOOD PRACTICE<sup>1</sup>

### Introduction

**The aim of this Planning Code of Good Practice (the 'Code'):** to ensure that there are no grounds for suggesting that a decision is biased, partial or not well founded in the planning process.

One of the key purposes of the planning system is to regulate development and use of land for the public interest. If you are a Member of the Planning Control Committee ('the Committee') your role is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. If you are any other NHDC Member, your role is to ensure that a democratic, fair and transparent process is followed through your role as Ward Advocate.

If you are a Ward Advocate (see Constitution Definitions - section 2.2 and below<sup>2</sup>) then you can have meetings with objectors or applicants and attend a site at the invitation of an owner without involving a Planning Officer.

However, you should still aim to be an objective advocate, abide by the NHDC Code of Conduct and should not be involved if you have an interest, or be involved in the decision making for that application, or sit on the Committee for that item.

**When the Code applies:** this Code applies to all Members at all times when involving themselves in the planning process, whether you are a Member of the Committee or not (this includes pre-application discussions, briefings, when taking part in the decision making meetings of the Council or when involved on less formal occasions, such as meetings with Officers, the public, consultative meetings and acting as Ward Advocate). This includes not only **planning applications/ proposals**, but also **planning enforcement** or **site specific policy issues**.

**If you have any doubts about how this Code applies to you please seek advice from the Monitoring Officer or one of their staff, preferably well before any meeting takes place. As planning is an area of Council business that the public are interested in, remember to consider how your actions will be viewed by them.**

### 1. Relationship to the Members' Code of Conduct ('Code of Conduct')

- **Do** apply the Code of Conduct first, as this must always be complied with. Frequently specific issues will arise on interests: Disclosable Pecuniary Interests ('DPIs') and any Declarable interests (as set out in Part 2 of the Code of Conduct). However, other matters such as making sure you are not seen to misuse your position, or disclose sensitive confidential information – and abiding by the seven Principles of Public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership set out under Appendix B of the Code of Conduct, will also be relevant.
- **Do** then apply this Code, as it seeks to explain and supplement the Code of Conduct and in basic terms the law on the planning process. If you do not abide by this Code, you may put:
  - the Council at risk of appeals, or legal challenges on the legality of the decision or complaints of maladministration; and
  - yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions - a complaint may be made to the police to consider criminal proceedings and/ or the Standards Committee.

<sup>1</sup> Based on the Lawyers in Local Government Model Council Members' Planning Code or Protocol 2014.

<sup>2</sup> XXX (definition approved in constitution to be inserted here when finalised)

## 2. Development Proposals and Interests

The Principle of Integrity is key to decision making and is defined in these terms:

*“Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships**”.*

**So:**

- **Don't** get involved at any stage of the determination of an application if you have an interest in it. **That includes involvement in pre-application discussions or negotiations with an Officer or Members.** If you have an interest you may nominate someone to make representations on your behalf. You may make representations in writing.
- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to conclude that you are receiving preferential treatment, because you are a Councillor.
- **Don't** act as Ward Advocate if you have a DPI or Declarable Interest.
- **Do** notify the Monitoring Officer in writing where it is clear you have a DPI or other Declarable Interest and the existence and nature to other relevant Officers.

Also note:

***If this is your DPI:***

- you should send the notification no later than submission of that application or as *soon as you are aware that the application has been made* (e.g. if this is you or your spouse's employer you may only become aware at a later date);
- **if this is your application** this will always be referred to the Committee for decision and not dealt with by Officers under delegated powers;
- you must not get involved in the processing of the application; and
- you should use an agent to liaise and correspond on your behalf and deal with Officers, attend and speak on your behalf in the public speaking session at Committee.

***If this is a Declarable Interest:***

- Do not get involved in trying to refer the proposal to Committee.
- Ask another Councillor to deal with this with Officers or speaking at Committee as Ward Advocate.
- **Exceptions are detailed below for Multi-hatted Members.**

## 3. Pre-determination, bias, reasonableness and fettering discretion in the Planning Process

You are a democratically accountable decision-taker who has been elected to provide and pursue policies. You are entitled to be predisposed towards an outcome provided you have not pre-

determined a proposal or be seen to have done so. To ensure that is the case (i.e. that you have approached this in a reasonable and unfettered way) you must give due consideration to all representations, Development Plan documents and material planning considerations (which will be set out in any Planning Case Officer's report that comes before Committee). Members must have and be seen to have an open mind on a planning application. A Ward Advocate can appear pre-disposed towards an application or objection by the nature of the role and this is acceptable, so long as they are not involved in the decision making process for that application.

**So:**

- **Don't** get involved in pre-application advice or negotiations other than providing general advice on the planning process/ or procedure. Planning Officers will deal with this, and applicants are made aware that this is not binding on the authority. Pre-application advice is available for all applications and encouraged for certain types of applications. Ward Councillors (and other Councillors as thought appropriate) will be informed if pre-application advice has been completed for Major<sup>4</sup> applications. Active involvement of Committee Members in a proposal prior to determination is likely to lead to an appearance of bias and/or predetermination if the Committee becomes the decision making body
- **Don't** do or say anything to make it appear that you have reached a conclusion on any planning proposal prior to the formal decision being made i.e. don't "fetter your discretion" by approaching the decision with a closed mind.
- **Do** listen to the views of Officers, applicants and objectors and debate at the Committee meeting i.e. keep an open mind in the light of all the evidence and arguments. You should only take account of the Development Plan documents and material planning considerations and must disregard irrelevant issues and considerations.
- **Do** be aware that you will be perceived as biased where the Council is the landowner, developer or applicant if you have acted as, or could be perceived as being a chief advocate for the proposal.

***Multi-hatted Members (i.e. where you are elected/ appointed to another local government body e.g. County or Parish/ Town Council): In all cases declare the nature of your Declarable Interest before the item is considered***

***Where the external body is only a consultee on the application:***

- **Do** take part in the debate on a proposal when acting as part of a consultee body, provided:
  - you make it clear that your views are expressed on the limited information before you only;
  - you reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community (and not just to the people in that area, ward or parish), as and when it comes before the Committee and you then hear all of the relevant information; and
  - you do not commit yourself or others may vote when the proposal comes before the Committee.

You should then be in a position to attend, debate and vote on the item at the Committee. If the body is affected in other ways by the proposal you should consider seeking specific advice from the Monitoring Officer.

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<sup>4</sup> As defined under Art. 2 The Town and Country Planning (Development Management Procedure) (England) Order 2015

**Where the external body is the decision maker (such as the Hertfordshire County Council) and this Council is a consultee and the public interest test is met:**

- **Do** feel you can choose whether to involve yourself in the District consultation debate and vote, or observe. You can observe the District Committee discussions if you wish to participate in the County Council decision. If the external body has a Monitoring Officer and you are unsure whether to take part, seek their advice.

**Where the external body is the applicant:**

*If you have been a chief advocate:*

- **Don't** take part in the Committee debate or vote as the Public Interest test is likely to be met. You may exercise speaking rights, but should follow the process set out below\* if you do. Seek advice if you are unsure.

*If you have not been a chief advocate or had a significant role in the proposal:*

- **Do take part** if you have not committed yourself, as the Public interest test is unlikely to be met. This is going to be the case for most County Council consultee matters and *may be* the case for Town and Parish related proposals. **Seek advice from the Monitoring Officer on the proposals.**
- **Do** take the opportunity to exercise your separate speaking rights as a Ward Advocate where you need to represent the views of local electors (so long as you do not have a DPI or other Declarable Interest). \*Where you intend to do this:
  - advise the Proper Officer or Chair that you wish to speak in this capacity before commencement of the item;
  - remove yourself from the Members area to the public area of the Committee for the duration of that item; and
  - ensure that your actions are recorded.

#### **4. Contact with Applicants, Developers and Objectors**

- **Do** refer those who approach you for planning, procedural or technical advice to Officers and/ or the Planning pages of the Council's website. As a Ward Councillor you will frequently be approached for advice on what to do, or where to obtain information and this is the best approach. If you sit on the Committee, or appear as a substitute, you should refrain from making comments on an application before it is determined in case you are accused of having made up your mind. Also section 5 "**Lobbying of Councillors**".
- **Don't** agree to any meeting with applicants, developers or groups of objectors if you can avoid it. You may act as a Ward advocate, however where you have acted as such, then you must not sit on, or be a substitute for that item at the Committee meeting. Where you feel that a meeting would be useful to clarify issues, you only arrange that meeting through the Development and Conservation Manager if they are able to organise one. If the meeting can be arranged, the Officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- **Do** otherwise:
  - follow the Council's rules on lobbying;



- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report any significant contact with the applicant and other parties to the Development and Conservation Manager (or in their absence the Service Director – Regulatory), explaining the nature of the contact and your involvement in them (and this recorded on the planning file).

**In addition in respect of presentations by Applicants/Developers:**

- **Don't** attend a planning presentation without requesting an Officer to be present if you sit on the Committee or if you are sitting as a substitute at the Committee where the application is going to be determined. You may act as a Ward Advocate, however, if you do so you must not be involved in the decision making for that application, or sit on the Committee for that item. Ideally any presentation (excluding those at pre-application stage) should be made to the Committee as a whole as part of the determination procedure. If you are on the Committee and attend a presentation outside of that process, take care – you will not have all the information and should reserve / and make clear you will reserve your opinion on the proposals until this is considered properly by the Council. If you sit on the Committee and a presentation is made to you at an Area Committee, then be wary of committing yourself at that meeting to a grant or refusal. You may be predisposed towards a particular approach - whilst reserving your position for any final Committee meeting when all the facts will be presented.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application. This will be carried out at the Committee.
- **Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at the Committee.

**5. Lobbying of Councillors**

- **Do not commit yourself** to those lobbying you (generally or as part of the Statement of Community Involvement process) to vote a particular way at Committee, as you will be seen as it prejudicing your impartiality, and therefore your ability to participate in the Committee's determination. It is, however, possible to act as Ward Advocate so long as you do not sit on the Committee for that item and do not have an interest. Where you have acted as Ward Advocate, you should not also sit as a substitute at that Committee meeting for that item.
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make impartial decisions that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is minimal, its acceptance is declared as soon as possible, including adding it to your register of interests where relevant.
- **Do** pass on any lobbying correspondence you receive to the Development and Conservation Manager at the earliest opportunity.
- **Do** promptly refer any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise to the Development and Conservation Manager.

- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).

## 6. Lobbying by Councillors

- **Don't** become a member of, lead or represent, an organisation whose primary purpose is to lobby to promote or oppose planning proposals unless it is your intention to openly campaign on the matter. If you do you will have to follow the DPI or Declarable Interest path (see Code of Conduct and above).
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## 7. Site Visits/Inspections

- A planning “**site visit**” is a recognised planning term within the planning system with a defined legal purpose. The purpose of a planning site visit is to observe the site and gain a better understanding of the issues. Visits made by Committee Members with Officer assistance are therefore the best approach. The Council does not regularly organise site visits and relies on report and presentations at Committee for consideration purposes. However, on larger or potentially contentious developments it may do so. ***This is not the same as a location or drive by visit by a Member.*** Once a Member becomes aware of a proposal they may be tempted to visit the site alone (i.e. a location or drive by visit). In such situations, the Member is only entitled to view the application site **from public vantage points**; they have no right to enter private property. While Members may be invited to enter the site by the owner, **it is not good practice to do so, as it can lead to the perception of bias.** Therefore if applicable Committee Members:
- **Do** try to attend site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly necessary because:
  - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
  - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
  - *Requests can be made through the Planning Control Committee Chair to the Development and Conservation Manager, who in consultation with each other will determine whether it is reasonable (in terms of timing and nature of the proposal).*

- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee.
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the Officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party, with the exception of the Ward Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority, or attend the Committee and direct them to or inform the Officer present.
- **Don't** express a committed opinions or views about the proposal.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias.

## 8. Public Speaking at Meetings

- **Don't** allow members of the public to communicate with you, either immediately before, during or at any break of the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

## 9. Officers

- **Don't** put pressure on Officers to put forward a particular recommendation. (*This does not prevent you from asking questions or submitting views to the Officer, which may be incorporated into any Committee report*).
- **Do** recognise that Officers are part of a management structure and only discuss a proposal outside of any arranged meeting, with a Service Director/Manager or those Officers who are authorised by their Service Director/Manager to deal with the proposal at a Member level.
- **Do** recognise and respect that Officers involved in the processing and determination of planning matters must act in accordance with the Council's Employee Code and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. *As a result, Planning Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.*

## 10. Decision Making

- **Do** ensure that if you request a proposal to go before the Committee rather than be determined through Officer delegation, that **you provide clear reasons** (as per the Committee's terms of reference under 8.4.5 (c) (ii) or (iii)) **AND you should attend and speak to the item at Committee if you have made a request for this to go before Committee to present reasons/ grounds to the Committee.**

- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan<sup>5</sup> unless material planning considerations indicate otherwise.
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to Officer recommendation or the Development Plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge at Appeal/ Inquiry or Judicial Review.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request further information. If necessary this may lead to a proposal to defer (or, if sufficient reasons to do so, a refusal).
- **Do** make clear any reasons for deferral of any proposal, as these must be recorded.
- **Do** consider that, where an application is similar to a previous decision of the Planning Control Committee, that consideration is given to that decision and is referred to in your reasons.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the Officer's introduction to the matter.

## 11. Planning Enforcement

**It is not always a criminal offence to carry out development without planning permission. However, it is likely to constitute a contravention of planning laws and the Council (as Local Planning Authority) can enforce those laws.**

**So:**

- **Do** pass on reports from local residents of suspected planning breaches or those you believe have taken place, to the Development and Conservation Manager as soon as possible, as **enforcement action is time critical**. These will then be investigated in line with the Corporate Enforcement Policy and Members updated when or where appropriate and enforcement matters reported regularly to the Committee.
- **Don't** discuss enforcement matters with third parties – you should stress that you cannot commit the Council to any particular course of enforcement action.
- **Don't** recommend a preferred course of action to officers – what action is taken, if any, must conform to the Corporate Enforcement Policy.

## 12. Training

- **Don't** participate in decision making at Committee unless you have attended the mandatory planning training prescribed by the Council.

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<sup>5</sup> The Development Plan is defined under section 38 of the Planning and Compulsory Purchase Act 2004 as any regional strategy, development plan documents (taken as a whole) which have been adopted or approved in relation to the area and any adopted neighbourhood development plans.

- **Do** endeavour to attend any other specialised training sessions provided, as these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and therefore assist you in carrying out your role properly and effectively. All Members are invited for annual refresher training and should endeavour to attend.
- **Do** participate in any annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

### 13. In summary:

- Firstly apply the NHDC Code of Conduct and then this Code.
- Declare interests and follow the participation procedures that apply to the interest you have.
- Don't involve yourself in pre-application advice or negotiations.
- Refer queries on applications and procedures to Officers.
- Ensure that if you request a proposal to go before the Committee that your reasons are clear (as per the Committee terms of reference). **You should attend the Committee and speak to the item if you do this.** Don't do this if you have an interest.
- Avoid meeting directly with developers/ attending presentations by them without Officers being present. Avoid lobbying other Members about a proposal.
- If you decide to undertake a location/ drive by of the proposal site, only view this from public vantage points. **This is not the same as a Planning Site Visit and Committee Members should attend if organised by the Council.**
- Don't put pressure on Planning Officers to change their recommendations before a Committee.
- Come to meetings with an open mind and demonstrate that you are open-minded.
- Come to your decision only after due consideration of all of relevant information. Making decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- Don't vote or take part in the discussion on a proposal at the meeting unless you have been present to hear the entire debate, including the Officers' introduction to the matter.
- If you are proposing, (seconding or supporting) a decision contrary to an Officer's recommendation or the Development Plan you must clearly identify the planning reasons for doing so. These reasons must be given prior to the vote and be recorded. You may have to justify the resulting decision by giving evidence in the event of any challenge.
- Report potential planning breaches to the Development and Conservation Manager.
- You must attend any mandatory training. Attend other specialist training if made available.
- **If you are unsure about any of the above, seek advice.**

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## Appendix B

### NORTH HERTFORDSHIRE DISTRICT COUNCIL'S MEMBER'S PLANNING CODE OF GOOD PRACTICE<sup>1</sup>

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#### Introduction

The aim of this Planning Code of Good Practice (the 'Code'): to ensure that there are no grounds for suggesting that a decision is biased, partial or not well founded in the planning process.

One of the key purposes of the planning system is to regulate development and use of land for the public interest. If you are a Member of the Planning Control Committee ('the Committee') your role is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. If you are any other NHDC Member, your role is to ensure that a democratic, fair and transparent process is followed through your role as Ward Advocate.

If you are a Ward Advocate (see Constitution Definitions - section 2.2 and below<sup>2</sup>) then you can have meetings with objectors or applicants and attend a site at the invitation of an owner without involving a Planning Officer.

However, you should still aim to be an objective advocate, abide by the NHDC Code of Conduct and should not be involved if you have an interest, or be involved in the decision making for that application, or sit on the Committee for that item.

**When the Code applies:** this Code applies to all Members at all times when involving themselves in the planning process, whether you are a Member of the Committee or not (this includes pre-application discussions, briefings, when taking part in the decision making meetings of the Council or when involved on less formal occasions, such as meetings with Officers, the public, consultative meetings and acting as Ward Advocate). This includes not only planning applications/ proposals, but also planning enforcement or site specific policy issues.

If you have any doubts about how this Code applies to you please seek advice from the Monitoring Officer or one of his/her staff, preferably well before any meeting takes place. As planning is an area of Council business that the public are interested in, remember to consider how your actions will be viewed by them.

#### 1. Relationship to the Members' Code of Conduct ('Code of Conduct')

- Do apply the Code of Conduct first, as this must always be complied with. Frequently specific issues will arise on interests: Disclosable Pecuniary Interests ('DPIs') and any Declarable interests (as set out in Part 2 of the Code of Conduct). However, other matters such as making sure you are not seen to misuse your position, or disclose sensitive confidential information – and abiding by the seven Principles of Public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership set out under Appendix B of the Code of Conduct, will also be relevant.
- Do then apply this Code, as it seeks to explain and supplement the Code of Conduct and in basic terms the law on the planning process. If you do not abide by this Code, you may put:
  - the Council at risk of appeals, or legal challenges on the legality of the decision or complaints of maladministration; and
  - yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions - a complaint may be made to the police to consider criminal proceedings and/ or the Standards Committee.

<sup>1</sup> Based on the Lawyers in Local Government Model Council Members' Planning Code or Protocol 2014.

<sup>2</sup> XXX (definition approved in constitution to be inserted here when finalised)

## 2. Development Proposals and Interests

The Principle of Integrity is key to decision making and is defined in these terms:

*"Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships**".*

So:

- **Don't** get involved at any stage of the determination of an application if you have an interest in it. **That includes involvement in pre-application discussions or negotiations with an Officer or Members.** If you have an interest you may nominate someone to make representations on your behalf. You may make representations in writing. ~~Members with a DPI or Declarable Interest will not be notified of pre-application advice, if Officers are aware of the interest.~~
- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to conclude that you are receiving preferential treatment, because you are a Councillor.
- **Don't** act as Ward [a](#)dvocate if you have a DPI or Declarable Interest.
- **Do** notify the Monitoring Officer in writing where it is clear you have a DPI or other Declarable Interest and the existence and nature to other relevant Officers.

Also note:

### ***If this is your DPI:***

- you should send the notification no later than submission of that application or as *soon as you are aware that the application has been made* (e.g. if this is you or your spouse's employer you may only become aware at a later date);
- **if this is your application** this will always be referred to the Committee for decision and not dealt with by Officers under delegated powers;
- you must not get involved in the processing of the application; and
- you should use an agent to liaise and correspond on your behalf and deal with Officers, attend and speak on your behalf in the public speaking session at Committee.

### ***If this is a Declarable Interest:***

- Do not get involved in trying to refer the proposal to Committee.
- Ask another Councillor to deal with this with Officers or speaking at Committee as Ward [a](#)dvocate.
- **Exceptions are detailed below for Multi-hatted Members.**

## 3. Pre-determination, bias, reasonableness and fettering discretion in the Planning Process



You are a democratically accountable decision-taker who has been elected to provide and pursue policies. You are entitled to be predisposed towards an outcome provided you have not pre-determined a proposal or be seen to have done so. To ensure that is the case (i.e. that you have approached this in a reasonable and unfettered way) you must give due consideration to all representations, Development Plan documents and material planning considerations (which will be set out in any Planning Case Officer's report that comes before Committee). Members must have and be seen to have an open mind on a planning application. **A Ward Advocates can appear pre-disposed towards an application or objection by the nature of the role and this is acceptable, so long as they are not involved in the decision making process for that application.**

**So:**

- **Don't** get involved in pre-application advice or negotiations other than providing general advice on the planning process/ or procedure<sup>3</sup>. Planning Officers will deal with this, and applicants are made aware that this is not binding on the authority. Pre-application advice is available for all applications and encouraged for certain types of applications. Ward Councillors (and other Councillors as thought appropriate) will be informed if pre-application advice has been ~~provided-completed~~ for Major<sup>4</sup> applications. Active involvement of Committee Members in a proposal prior to determination is likely to lead to an appearance of bias and/or predetermination if the Committee becomes the decision making body
- **Don't** do or say anything to make it appear that you have reached a conclusion on any planning proposal prior to the formal decision being made i.e. don't "fetter your discretion" by approaching the decision with a closed mind.
- **Do** listen to the views of Officers, applicants and objectors and debate at the Committee meeting i.e. keep an open mind in the light of all the evidence and arguments. You should only take account of the Development Plan documents and material planning considerations and must disregard irrelevant issues and considerations.
- **Do** be aware that you will be perceived as biased where the Council is the landowner, developer or applicant if you have acted as, or could be perceived as being a chief advocate for the proposal.

**Multi-hatted Members (i.e. where you are elected/ appointed to another local government body e.g. County or Parish/ Town Council):** In all cases declare the nature of your Declarable Interest before the item is considered

**Where the external body is only a consultee on the application:**

- **Do** take part in the debate on a proposal when acting as part of a consultee body, provided:
  - you make it clear that your views are expressed on the limited information before you only;
  - you reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community (and not just to the people in that area, ward or parish), as and when it comes before the Committee and you then hear all of the relevant information; and
  - you do not commit yourself or others may vote when the proposal comes before the Committee.

<sup>3</sup> Amended under delegated authority of the Monitoring Officer section 14.6.19(c)(d) of the Constitution, following resolution of Standards Committee 12 October 2016. ~~CAN COME OFF NOW AS BEEN THROUGH SEVERAL CYCLES OF REVIEW~~

<sup>4</sup> As defined under Art. 2 The Town and Country Planning (Development Management Procedure) (England) Order 2015

You should then be in a position to attend, debate and vote on the item at the Committee. If the body is affected in other ways by the proposal you should consider seeking specific advice from the Monitoring Officer.

**Where the external body is the decision maker (such as the Hertfordshire County Council) and this Council is a consultee and the public interest test is met:**

- Do feel you can choose whether to involve yourself in the District consultation debate and vote, or observe. You can observe the District Committee discussions if you wish to participate in the County Council decision. If the external body has a Monitoring Officer and you are unsure whether to take part, seek [his/her/their](#) advice.

**Where the external body is the applicant:**

*If you have been a chief advocate:*

- Don't take part in the Committee debate or vote as the Public Interest test is likely to be met. You may exercise speaking rights, but should follow the process set out below\* if you do. Seek advice if you are unsure.

*If you have not been a keychief advocate or had a significant role in the proposal:*

- Do take part if you have not committed yourself, as the Public interest test is unlikely to be met. This is going to be the case for most County Council consultee matters and *may be* the case for Town and Parish related proposals. **Seek advice from the Monitoring Officer on the proposals.**
- Do take the opportunity to exercise your separate speaking rights as a Ward [A](#)advocate where you need to represent the views of local electors (so long as you do not have a DPI or other Declarable Interest). \*Where you intend to do this:
  - advise the Proper Officer or [ChairmanChair](#) that you wish to speak in this capacity before commencement of the item;
  - remove yourself from the Members area to the public area of the Committee for the duration of that item; and
  - ensure that your actions are recorded.

#### 4. Contact with Applicants, Developers and Objectors

- Do refer those who approach you for planning, procedural or technical advice to Officers and/ or the Planning pages of the Council's website. As a Ward Councillor you will frequently be approached for advice on what to do, or where to obtain information and this is the best approach. If you sit on the Committee, or appear as a substitute, you should refrain from making comments on an application before it is determined in case you are accused of having made up your mind. Also section 5 "Lobbying of Councillors".
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- Do otherwise:
  - follow the Council's rules on lobbying;
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- Requests can be made through the Planning Control Committee Chair to the Development and Conservation Manager, who in consultation with each other will determine whether or at Committee if the item is on the agenda and will be arranged if it is agreed that it is reasonable (in terms of timing and nature of the proposal).

- Do ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee.
- Do ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- Do ask the Officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- Don't hear representations from any other party, with the exception of the Ward Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority, or attend the Committee and direct them to or inform the Officer present.
- Don't express a committed opinions or views about the proposal.
- Don't enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias.

#### 8. Public Speaking at Meetings

- Don't allow members of the public to communicate with you, either immediately before, during or at any break of the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.
- Do ensure that you comply with the Council's procedures in respect of public speaking.

#### 9. Officers

- Don't put pressure on Officers to put forward a particular recommendation. (*This does not prevent you from asking questions or submitting views to the Officer, which may be incorporated into any Committee report*).
- Do recognise that Officers are part of a management structure and only discuss a proposal outside of any arranged meeting, with a ~~Head-of-Service~~ Director/Manager or those Officers who are authorised by their ~~Head-of-Service~~ Director/Manager to deal with the proposal at a Member level.
- Do recognise and respect that Officers involved in the processing and determination of planning matters must act in accordance with the Council's Employee Code and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. *As a result, Planning Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence*, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

#### 10. Decision Making

- Do ensure that if you request a proposal to go before the Committee rather than be determined through Officer delegation, that **you provide clear reasons** (as per the Committee's terms of reference under 8.4.5 (c) (ii) or (iii)) **AND you should attend and speak to the item at Committee if you have made a request for this to go before Committee to present reasons/ grounds to the Committee.**
- Do come to meetings with an open mind and demonstrate that you are open-minded.
- Do comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan<sup>5</sup> unless material planning considerations indicate otherwise.
- Do make sure that if you are proposing, seconding or supporting a decision contrary to Officer recommendation or the Development Plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge at Appeal/ Inquiry or Judicial Review.
- Do come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request further information. If necessary this may lead to a proposal to defer (or, if sufficient reasons to do so, a refusal).
- Do make clear any reasons for deferral of any proposal, as these must be recorded.
- Do consider that, where an application is similar to a previous decision of the Planning Control Committee, that consideration is given to that decision and is referred to in your reasons.
- Don't vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the Officer's introduction to the matter.

## 11. Planning Enforcement

**It is not always a criminal offence to carry out development without planning permission. However, is likely to constitute a contravention of planning laws and the Council (as Local Planning Authority) can enforce those laws.**

**So:**

- Do pass on reports from local residents of suspected planning breaches or those you believe have taken place, to the Development and Conservation Manager, as soon as possible, as **enforcement action is time critical**. These will then be investigated in line with the Corporate Enforcement Policy and Members updated when or where appropriate and enforcement matters reported regularly to the Committee.
- Don't discuss enforcement matters with third parties – you should stress that you cannot commit the Council to any particular course of enforcement action.
- Don't recommend a preferred course of action to officers – what action is taken, if any, must conform to the Corporate Enforcement Policy.

<sup>5</sup> The Development Plan is defined under section 38 of the Planning and Compulsory Purchase Act 2004 as any regional strategy, development plan documents (taken as a whole) which have been adopted or approved in relation the area and any adopted neighbourhood development plans.

## 12. Training

- **Don't** participate in decision making at Committee unless you have attended the mandatory planning training prescribed by the Council.
- **Do** endeavour to attend any other specialised training sessions provided, as these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and therefore assist you in carrying out your role properly and effectively. All Members are invited for annual refresher training and should endeavour to attend.
- **Do** participate in any annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.

## 13. In summary:

- **Firstly** Apply **the NHDC** Code of Conduct and then this Code.
- Declare interests and follow the participation procedures that apply to the interest you have.
- Don't involve yourself in pre-application advice or negotiations.
- Refer queries on applications and procedures to Officers.
- Ensure that if you request a proposal to go before the Committee that your reasons are clear (as per the Committee terms of reference). **You should attend the Committee and speak to the item if you do this.** Don't do this if you have an interest.
- Avoid meeting directly with developers/ attending presentations by them without Officers being present. Avoid lobbying other Members about a proposal.
- If you decide to undertake a location/ drive by of the proposal site, only view this from public vantage points. **This is not the same as a Planning Site Visit and Committee Members should attend if organised by the Council.**
- Don't put pressure on Planning Officers to change their recommendations before a Committee.
- Come to meetings with an open mind and demonstrate that you are open-minded.
- Come to your decision only after due consideration of all of relevant information. Making decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- Don't vote or take part in the discussion on a proposal at the meeting unless you have been present to hear the entire debate, including the Officers' introduction to the matter.
- If you are proposing, (seconding or supporting) a decision contrary to an Officer's recommendation or the Development Plan you must clearly identify the planning reasons for doing so. These reasons must be given prior to the vote and be recorded. You may have to justify the resulting decision by giving evidence in the event of any challenge.
- Report potential planning breaches to the Development and Conservation Manager.
- You must attend any mandatory training. Attend other specialist training if made available.

- If you are unsure about any of the above, seek advice.



## Comparison between NHDC Planning Code of Good Practice and the LLG Model Code

### 1. The Introduction

#### NHDC:

One of the key purposes of the planning system is to regulate development and use of land for the public interest. If you are a *Member of the Planning Control Committee ('the Committee')* your role is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. *If you are any other NHDC Member, your role is to ensure that a democratic, fair and transparent process is followed through your role as Ward advocate.*

#### Model:

One of the key purposes of the planning system is to regulate the development and use of land in the public interest. *Your role as a Member of the Planning Authority* is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons. *You are also a democratically accountable decision-taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies provided that you have considered all material considerations and have given fair consideration to relevant points raised.*

The variance in NHDC's code specifically draws a distinction between members of the Committee and those acting as ward advocates. The Model code makes reference to the "Planning Authority" before referencing "decision takers" and could therefore be argued to be less far reaching. This distinction continues in the next paragraph;

#### NHDC:

**When the Code applies:** this Code applies to *all* Members at all times when involving themselves in the planning process, *whether you are a Member of the Committee or not* (this includes *pre-application discussions, briefings*, when taking part in the decision making meetings of the Council or when involved on less formal occasions, such as meetings with Officers, the public, consultative meetings *and acting as Ward advocate*). This includes not only **planning applications/ proposals**, but also **planning enforcement or site specific policy issues**.

#### Model:

**When the Code of Good Practice applies:** this code applies to Members at all times when involving themselves in the planning process. (This includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

By adding in the word "all" and also setting it out clearly that it applies to all members, the NHDC code is far more comprehensive in its application, and explains this in an unambiguous way. Removal of this explanatory wording could leave room for argument as to whether the code applies to members who are not on the Planning Control Committee.

### 2. Development Proposals and Interests

Broadly, both codes contain the same information at point 2, although it is set out and expressed differently in the NHDC code. Although these changes give the impression that the codes are divergent in this section, in actual fact the differences are minor. The NHDC code also covers the situation around DPI's in greater detail.

### **3. Pre-determination, bias, reasonableness and fettering discretion in the Planning Process**

This section in the NHDC code has been expanded when compared to the Model code. As well as being more specific around different situations i.e. the different roles external bodies can play in applications, as well including an earlier part of the Model code that had previously been omitted (the latter purple text contained in text box 1).

The NHDC code also includes the following section which is not included in the Model code;

*Don't get involved in pre-application advice or negotiations other than providing general advice on the planning process/ or procedure. Planning Officers will deal with this, and applicants are made aware that this is not binding on the authority. Pre-application advice is available for all applications and encouraged for certain types of applications. Ward Councillors (and other Councillors as thought appropriate) will be informed if pre-application advice has been provided for Major applications. Active involvement of Committee Members in a proposal prior to determination is likely to lead to an appearance of bias and/or predetermination if the Committee becomes the decision making body.*

The added detail included in point 3 of the NHDC code is effective and provides more certainty than would otherwise be the case.

### **4. Contact with Applicants, Developers and Objectors**

These are almost identical in both the NHDC and Model code. The only real variance is as below;

#### **NHDC:**

*Don't attend a planning presentation without requesting an Officer to be present if you sit on the Committee. Ideally any presentation should be made to the Committee as a whole as part of the determination procedure. If you are on the Committee and attend a presentation outside of that process, take care – you will not have all the information and should reserve / and make clear you will reserve your opinion on the proposals until this is considered properly by the Council.*

#### **Model:**

**Don't** attend a planning presentation without requesting an officer to be present.

The added text to the above paragraph specifically restricts the information within it on to members who sit on the committee, where the model code could be read as applying to all members. Given that the NHDC code has been specific that the code applies to all members at all times, this specific restriction curtails the application to only committee members. If this was not the intention, then adoption of the more limited wording in the Model code would be advisable.

### **5. Lobbying of Councillors**

The codes are almost identical at this point, the only differences being the first paragraph, and also the model code includes a further paragraph at the end of the section;



**NHDC:**

**Do not commit yourself** to those lobbying you (generally or as part of the Statement of Community Involvement process) to vote a particular way at Committee, as you will be seen as it prejudicing your impartiality, and therefore your ability to participate in the Committee's determination. It is, however, possible to act as Ward advocate if you do not sit on the Committee and do not have an interest.

**Model:**

**Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in the Committee's decision making, to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.

Whilst the paragraphs broadly say the same thing, again the NHDC code makes the distinction between members of the committee and those who may act as ward advocates.

The additional bullet point in the Model code, which is absent from the NHDC code, states the following;

**Model:**

**Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Code through:

- listening or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind);
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion of others in your role as a [Ward][Division] Member.

## **6. Lobbying by Councillors**

This section is pretty much identical in each code, with the NHDC code having an additional bullet point;

**NHDC:**

**Don't** sit on the Committee if you are likely to regularly submit a number of planning applications. Councillors who are Members of Committee should never act as agents for individuals (including a company, group or body) pursuing a planning matter.

## **7. Site Visits/Inspections**

The body of this section is pretty much identical in both codes, however the NHDC code starts off with an explanation of what a site visit is and gives some brief advice to councillors who might decide to visit a site on their own i.e. don't go onto private land etc. This introduction is helpful and clarifies what the section ahead is concerning.

The last bullet point in the NHDC code has omitted certain points that are in the Model code;

**NHDC:**

**Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias.

**Model:**

**Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias *unless:*

- *you feel it is essential for you to visit the site other than through attending the official site visit,*
- *you have first spoken to the Development Control Manager about your intention to do so and why (which will be recorded on the file) and you can ensure you will comply with these good practice rules on site visits.*

The changes in the NHDC code means that members cannot enter sites which are subject to a proposal in any way other than as part of a site visit, whereas the Model code allows for more flexibility in different circumstances.

**8. Public Speaking at Meetings,**

**9. Officers,**

**10. Decision Making**

Sections 8, 9 and 10 are identical in both codes.

**11. Planning Enforcement**

Section 11 is not present in the Model code (or rather, section 11 in the Model code; "training", is contained at section 12 of the NHDC code)

This section in the NHDC code states as follows;

**NHDC:**

*It is not always a criminal offence to carry out development without planning permission. However, is likely to constitute a contravention of planning laws and the Council (as Local Planning Authority) can enforce those laws.*

*So:*

- *Do pass on reports from local residents of suspected planning breaches or those you believe have taken place, to the Development and Conservation Manager, as soon as possible, as enforcement action is time critical. These will then be investigated and Members updated when or where appropriate and enforcement matters reported regularly to the Committee.*
- *Don't discuss enforcement matters with third parties – you should stress that you cannot commit the Council to any particular course of enforcement action.*

**12. Training**

As mentioned above, this section on training is contained at 11 in the Model code; however this is the only difference, with the body being identical in both.

### 13. In summary

There is no summary in the Model code, however I think it is useful as a round up of what has gone before. The whole of the summary in the NHDC code is as follows;

#### **NHDC:**

*Apply Code of Conduct and then this Code.*

- *Declare interests and follow the participation procedures that apply to the interest you have.*
- *Don't involve yourself in pre-application advice or negotiations.*
- *Refer queries on applications and procedures to Officers.*
- *Ensure that if you request a proposal to go before the Committee that your reasons are clear (as per the Committee terms of reference). You should attend the Committee and speak to the item if you do this. Don't do this if you have an interest.*
- *Avoid meeting directly with developers/ attending presentations by them without Officers being present. Avoid lobbying other Members about a proposal.*
- *If you decide to undertake a location/ drive by of the proposal site, only view this from public vantage points. This is not the same as a Planning Site Visit and Committee Members should attend if organised by the Council.*
- *Don't put pressure on Planning Officers to change their recommendations before a Committee.*
- *Come to meetings with an open mind and demonstrate that you are open-minded.*



**COUNCIL  
16 JANUARY 2020**

**PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: REVIEW OF MEMBERS' ALLOWANCES SCHEME**

REPORT OF THE DEMOCRATIC SERVICES MANAGER

EXECUTIVE MEMBER: Allowances -Non-Executive function.  
(Committee Member and Scrutiny Services: COMMUNITY ENGAGEMENT)

COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

NEW COUNCIL PRIORITY: BE A MORE WELCOMING AND INCLUSIVE COUNCIL

**1. EXECUTIVE SUMMARY**

- 1.1 To agree the Member's Allowances Scheme 2020/2021 having taken into account the recommendations of the Independent Remuneration Panel ('IRP').

**2. RECOMMENDATIONS**

That the Council:

- 2.1. Considers the report and recommendations of the IRP, as attached as Appendix A of the submitted report.
- 2.2. Agrees the Members' Allowances Scheme for 2020/2021 as set out in Appendix B<sup>1</sup> of the submitted report.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1. To ensure that the Council meets its statutory requirements of an annual review and adoption of the scheme.

**4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1. None, as the Council is required to undertake an annual review prior to the beginning of the financial year and approve a Scheme of basic and other prescribed allowances for Members. In making or amending a Scheme the Council shall have regard to the recommendations made by the Panel. The Council can amend the Scheme as per the IRP recommendations either partly or wholly or to retain the current Scheme.

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<sup>1</sup> Amended as per the tracked changes.

## **5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1. The Panel invited the Leader of the Council and Group Leaders (or a nominated representative) to meet to discuss views and opinions on the Members' Allowances Scheme 2019/2020 and any considerations for the 2020/2021 Scheme, including the Special Responsibility Allowance and whether adjustments were required.
- 5.2. Following discussions at the Modern.Gov Member Champion meetings, the Panel invited comments from both the Modern.Gov and the Learning and Development Member Champions as to any considerations regarding the Members' Allowances Scheme, as Members were being required to work differently following the move to paperless meetings.

## **6. FORWARD PLAN**

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

## **7. BACKGROUND**

- 7.1. The Council is required under the Local Authorities (Members' Allowances) (England) Regulations 2003 (as amended) to agree on an annual basis a Scheme of Allowances payable to Members' for the following financial year. Under the Regulations, when making or amending a Scheme, the Council is required to have regard to the recommendations of an IRP (Regulation 19). The Regulations state that before the beginning of each year the authority shall make a Scheme for the allowances for that year. The Members Allowance Scheme is comprehensive and includes Basic Allowances ('BA'), Special Responsibility Allowances ('SRA') (for posts which carry specific responsibilities) and other allowances and expenses that may be claimed.
- 7.2. Since the 2019/20 Scheme was approved by Council in November 2018, a new Panel has been appointed as notified by delegated decision on 5 February 2019. The following people formed the IRP:

Dr Hazel Bentall  
Christopher Clark  
Stephen Vinall

- 7.3 The Members' Allowances Scheme was further amended by Council on 11 July 2019 to allow for an in-year review of Cabinet SRAs so that there was no additional cost from reverting to 7 Executive Members.

## **8. RELEVANT CONSIDERATIONS**

### **IRP considerations:**

- 8.1. As per paragraph 2.3 of the report, the IRP considered that any increase in allowances for Members should not exceed that negotiated by the Local Government Association for Council Officers' pay. It was noted that for 2019/2020 this was set at 2% and that this increase had not been applied to the 2019/2020 allowances.



- 8.2. That SRAs should be expressed as a multiplier of the BA for clarity and ease of calculation and that subject to the above, the level of SRA is appropriate, given the changes to portfolios.
- 8.3. The BA is recommended at £5,100 with SRAs as follows:

Leader of the Council	BA x 3	£15,300
Deputy Leader of the Council	BA x 0.3	£1,530
Cabinet Executive Members (x7)	BA x 1.2	£6,120
Chairs - Area Committees (x 5)	BA x 0.2	£1,020
Chair of Finance, Audit and Risk Committee	BA x 0.7	£3,570
Chair – Overview and Scrutiny Committee	BA x 0.7	£3,570
Chair - Planning Control Committee	BA x 1.2	£6,120
Chair of Licensing and Appeals Committee	BA x 0.3	£1,530
Leader of each Opposition Group	BA x 0.3	£1,530* (*Subject to a minimum of 3 members)

Child Care and Other Allowances:

- 8.4. This is recommended to increase as per paragraph 3.5 of the report in Appendix A. The remainder of the allowances, as per Appendix B, are unaltered.

It was noted that childcare and dependent carers allowance is recoverable at the amount actually paid up to the limit specified. The current limit of £6.70 was considered inadequate given that the National Minimum Wage is currently £8.21 an hour and likely to increase from April 2020. The increase proposed ensured childcare and dependent carers allowance was set at a reasonable level that accounts for Councillors needing to attend evening meetings when such costs were likely to be higher. The London Weighted Real Living Wage was used as a sensible benchmark and more likely to reflect the actual costs for using a suitably qualified and competent carer.

Chair and Vice Chair Allowances:

- 8.5. The allowances for the Chair and Vice Chair of Council are covered by Sections 3(5) and 5(4) of the Local Government Act 1972 and are not a matter which the IRP are obliged to make recommendations on. Historically, the Chair and Vice Chair of Council have received an allowance which is expected to recompense for the additional costs associated with these roles. It is not clear how the current allowance of £5,500 for the Chair and £1,060 for the Vice Chair was agreed. However, for transparency the allowances have been incorporated into the Scheme as a recommendation by the IRP.

Further representations made to IRP:

- 8.6 The Administration, made further representations to the IRP on the recommendations, and the responses have been summarised below:
- i. In regards to the reduction in allowances to the Chairs of the Area Committees, the IRP was comfortable that the SRA for the Area Committee Chairs was suitable. However, the IRP would reconsider the SRA for the Area Committee Chairs during the next review, provided sufficient information was supplied in advance of any meeting.
  - ii. In regards that any increase in allowances should not exceed that negotiated by the Local Government Association (LGA) for Council Officers' pay, (for 2019/2020 this was set at 2%), and that some of the IRP recommendations would result in an increase higher than 2%. The IRP noted that they had fulfilled their brief to review members' allowance and that the Council could resolve to cap particular allowances. However, the IRP wished Members to be mindful of the financial implications as detailed in paragraph 10.1 of this report and the overall cost to the Council.
  - iii. In regards to the SRA for the Leader of the Opposition Group – this allowance was for a Leader who was not part of the administration – the SRA was for opposition group leader/s.
  - iv. The IRP emphasised that only one SRA (the highest) should be paid irrespective of whether the councillor had more than one role.

Other considerations:

- 8.7 The IRP were consulted on whether attendance by Councillors at Town or Parish Council meetings within their ward, to explain District Council business should be included as an approved duty within the Scheme. It was not unusual for a Parish/Town Council to expect a District Councillor to attend Parish Council meetings or for a District Councillor to wish to attend Parish/Town Council meetings within their ward. There being no objections on this matter by the IRP, it has been included within the Scheme and therefore would also apply to Paragraph 8 of the Scheme (Childcare and dependent Carers' Allowance).

**9. LEGAL IMPLICATIONS**

- 9.1. The Local Government and Housing Act 1989, Local Government Act 2000 and the Local Authorities (Members' Allowances) (England) Regulations 2003/1021 (as amended) make provisions regarding the setting of Members Allowances.
- 9.2. Regulation 10(1)-(2) provides that before the beginning of each year, an authority shall make the Scheme required for payment of basic and other allowances.
- 9.3. Regulation 19 requires that before an authority makes or amends a scheme it must have regard to the recommendations made in relation to it by the IRP.

- 9.4. The function of making any Scheme authorised or required by regulations under section 18 (Schemes for basic, attendance and special responsibility allowances for local authority members) of the Local Government and Housing Act 1989, or of amending, revoking or replacing any such Scheme, is a Full Council responsibility, by virtue of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853. This is therefore detailed as a function and reserved to Full Council under section 4.4.1(i) of the Council's Constitution '*considering recommendations from the Independent Remuneration Panel and adopting an allowances scheme or assessing, revoking or replacing the whole or part of any such scheme*'.
- 9.5. The adopted Scheme must be published in at least one or more newspapers circulating" in the District area under Regulation 16.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 Should the proposed Members' Allowances Scheme be approved, based on the amendments to the Basic Allowance and SRA, this would have a financial implication on the budget of an additional £490 per annum. The forecast Members allowances budget costs for 2019/20 are £330,500 and the proposed costs under the new Scheme £330,990. The budget provision for 2019/2020 for Members Allowances is £341,100, which includes allowances of £2,755 per annum paid to Independent Persons for the Standard Committee, which is outside of this scheme, and also provision for childcare and dependent carers' allowance. Therefore there is no additional budget provision required for the proposed scheme as this can be covered from the existing budget.
- 10.2 In regard to the childcare and dependent carers' allowance, looking back to January 2019 there has been minimal demand for this allowance, with two Members claiming this allowance. The financial implication to the budget regarding this allowance is more difficult to calculate as there are variables that will affect this i.e. the number of new Members elected in May who will need to make use of the allowance, number of meetings scheduled and personal circumstances as to whether it is required.
- 10.3 The expenses allowance for the Chair and Vice Chair of Council is not an additional amount required to be identified within the budget as the allowance is already being made.
- 10.4 There is a requirement to advertise the Scheme in one or more local papers. The cost to advertise the amended Scheme in July 2019 in the Royston Crow and The Comet was £667.16.
- 10.5 The amounts in the Members' Allowances Scheme are currently cumulative – it is possible for Members to be entitled to more than one Special Responsibility Allowance in addition to the Basic Allowance. However, the IRP have proposed that where a Councillor holds more than one office of Special Responsibility they will receive only one SRA and this will be the highest of the allowances due. This would also apply to the Allowances included in Paragraph 5 of the Scheme (Chair and Vice Chair of Council Allowance). Therefore, depending on the allocation of roles this could mean that the cost of the scheme could be lower than the amounts referenced in paragraph 10.1 of this report.

## **11. RISK IMPLICATIONS**

- 11.1. None contained within this report.

## **12. EQUALITIES IMPLICATIONS**

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. The inclusion of the dependent carers and childcare allowance continues to provide assistance to Councillors' to fulfil their responsibilities and provide recompense to them.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1. As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 Members allowances are paid by the payroll provider currently Serco and any changes need to be notified to the provider to ensure the correct rates are paid. However, as of 1 April 2020 the payroll provider is changing along with requirement for Members to submit expenses online. The Committee, Member and Scrutiny Services Team process Councillors' allowances.

## **15. APPENDICES**

- 15.1. Appendix A - Report of IRP Panel for 2020/21 Members' Allowances.
- 15.2. Appendix B - Proposed Members' Allowances Scheme 2020/2021 with tracked changes (2019/2020 with proposed Scheme highlighted).

## **16. CONTACT OFFICERS**

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## **17. BACKGROUND PAPERS**

- 17.1 The Local Authorities (Members' Allowances) (England) Regulations 2003  
<https://www.legislation.gov.uk/uksi/2003/1021/introduction/made>
- 17.2 Councillors' Allowance Council webpage  
<https://www.north-herts.gov.uk/home/council-and-democracy/councillors/councillors-allowances>
- 17.3 Delegated Decision – Appointment of IRP – 5 February 2019  
<https://www.north-herts.gov.uk/home/council-and-democracy/decisions/delegated-decisions-2019>
- 17.4 Council – 11 July 2019  
<https://democracy.north-herts.gov.uk/ieListDocuments.aspx?CId=136&MId=2207&Ver=4>

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**NORTH HERTFORDSHIRE  
DISTRICT COUNCIL**



**REPORT AND RECOMMENDATIONS**

**BY THE INDEPENDENT REMUNERATION PANEL (IRP)**

**ON THE**

**MEMBERS' ALLOWANCES SCHEME 2020/21**

Dr Hazel Bentall  
Christopher Clark  
Stephen Vinall

December 2019

# NORTH HERTFORDSHIRE DISTRICT COUNCIL



## 1. Introduction

1.1 The report presents the recommendations of the Independent Remuneration Panel (IRP) to Council for its consideration and approval.

1.2 The Panel was appointed under the delegated authority of the Service Director, Legal and Community as reported as a delegated decision on 5 February 2019.

1.3 The following people form the Independent Remuneration Panel:

Dr Hazel Bentall  
Christopher Clark  
Stephen Vinall

1.4 The Panel convened on three separate occasions, plus communicated independently outside of the meetings.

1.5 The Panel was provided with a comprehensive information pack relating to the existing allowances scheme and general information on North Hertfordshire District Council (NHDC). This information pack also contained comparative data for the Members' Allowances Schemes of other Councils of a similar size and nature to NHDC locally.

1.6 The Panel was provided with the final report of the previous 2016 NHDC IRP, in addition to the amended Allowances Scheme which the Panel was consulted upon and subsequently agreed by Council on 22 November 2018. Additional information was provided, as requested by the Panel, such as indices of deprivation, a list of twin hatted Councillors, description of the role of the Deputy Executive Members.

1.7 The Panel were supported by the Service Director – Legal and Community/Monitoring Officer; Democratic Services Manager; Committee, Member and Scrutiny Manager with some assistance by the former PA to the Service Director – Legal and Community.

1.8 The Panel invited the Leader of the Council and Group Leaders (or a nominated representative) to meet to discuss views and opinions on the Members' Allowances Scheme 2019/2020 and any considerations for the 2020/2021 Scheme, including the Special Responsibility Allowance and whether adjustments were required. The Members that attended the meeting were:

Cllr Helen Oliver  
Cllr Paul Clark  
Cllr David Levett

1.9 Following discussions at the Modern.Gov Member Champion meetings, the Panel invited comments from both the Modern.Gov and the Learning and Development Member Champions as to any considerations regarding the Members' Allowances Scheme, as Members were being required to work differently following the move to paperless meetings. The IRP did not receive any representations from the Member Champions.



# NORTH HERTFORDSHIRE DISTRICT COUNCIL



## 2. IRP Conclusions

- 2.1 The newly convened IRP (comprising three members) has considered carefully a wide variety of relevant information, including the previous Panel's report, contributions from Members and officers, and comparators with adjoining and similar councils.
- 2.2 It notes that NHDC Members are very aware of the costs of the Scheme and that they have suggested economies for 2019/2020. This was achieved by a reduction from £7,000 to £6,000 of Executive Members' Special Responsibility Allowance (SRA) as the number increased from 6 to 7, and a reduction in the Leader's SRA from £15,000 to £14,000. However, the IRP has also considered the effect of allowances on Member retention and their willingness to take on extra responsibilities, which inevitably involves the possibility of greater absence from paid work.
- 2.3 In principle, the IRP considers that any increase in allowances for Members should not exceed that negotiated by the Local Government Association (LGA) for Council Officers' pay. It was noted that for 2019/2020 this was set at 2% and that this increase had not been applied to the 2019/2020 allowances.
- 2.4 The LGA settlement is not normally available for the current year in time for the Council's budget setting, so the previous year's settlement will be used for calculating the current year.
- 2.5 The Panel also recommends that SRAs are in future expressed as a multiplier of Basic Allowance (BA) for clarity and ease of calculation.
- 2.6 The Panel considered whether the level of Executive Member SRA remains appropriate considering the changes to portfolios.
- 2.7 Only one SRA (the highest) should be paid irrespective of whether a councillor has more than one role.
- 2.8 **Leader's SRA** - the Panel recognises the previous Panel's recommendation of Leader's SRA of £15,000 although this was reduced voluntarily to £14,000 for 2019/2020. The Panel recognises the significant extra responsibility of the Leader and future willingness of potential Leaders to undertake this role, and consider that 3xBA correctly recognises the responsibility of the role.
- 2.9 **Area Committee Chair SRA** - differing representations have been made to the Panel regarding the importance and activity of the Area Committees. Whilst recognising the ambition to further develop their function, the Panel does not consider at this time, especially with reference to the delivery of the Committee's Terms of Reference, that the current SRA genuinely reflects the responsibility and a reduction is recommended. Should the responsibilities change, the Panel will review this element of the Scheme.
- 2.10 **Licensing Chair SRA** – this is a new SRA to reflect the responsibility of the role.

# NORTH HERTFORDSHIRE DISTRICT COUNCIL



- 2.11 **Chair of Finance Audit and Risk** – this role is considered to be an equally important responsibility as Overview and Scrutiny and the recommendations reflect that.
- 2.12 **Group Leaders** - the Panel recommends a single amount payable to a Leader of an Opposition Group (subject to a group consisting of a minimum of 3 Members). It is not persuaded that the responsibility is related to the number of Members in the group, recognising that Opposition itself is an important part of checks and balances on the majority group.
- 2.13 **Chair and Vice Chair Allowance** - the Panel is not clear on what basis this allowance was originally introduced and seeks further clarification from the incumbents and the Council to assess what is included and what is additionally provided by the Council, and whether it remains an appropriate allowance. For the 2020/2021 year the Panel recommends no change.
- 2.14 **Childcare Allowance** – this was considered and it is recommended that this is increased to reflect the actual cost of childcare and to encourage diversity in the composition of the Council.

The childcare and dependent carers allowance is recoverable at the amount actually paid up to the limit specified. The current limit of £6.70 is inadequate given that the National Minimum Wage is currently £8.21 an hour and likely to increase from April 2020. The increase proposed ensured childcare and dependent carers allowance was set at a reasonable level that accounts for Councillors needing to attend evening meetings when costs are likely to be higher. The London Weighted Real Living Wage was used as a sensible benchmark and more likely to reflect the actual costs for using a suitably qualified and competent carer.

## 3. IRP Recommendations

### 3.1 Basic Allowance

A basic allowance of £5,100 shall be paid to each Councillor (x49) for each year.

### 3.2 Special Responsibility Allowance

For each year a Special Responsibility Allowance in the amounts indicated below shall be paid to those Councillors who hold the following special responsibilities:-

Leader of the Council	BA x 3	£15,300
Deputy Leader of the Council	BA x 0.3	£1,530
Cabinet Executive Members (x7)	BA x 1.2	£6,120
Chair - Area Committees (x 5)	BA x 0.2	£1,020
Chair of Finance, Audit and Risk Committee	BA x 0.7	£3,570
Chair – Overview and Scrutiny Committee	BA x 0.7	£3,570
Chair - Planning Control Committee	BA x 1.2	£6,120

# NORTH HERTFORDSHIRE DISTRICT COUNCIL



Chair of Licensing and Appeals Committee	BA x 0.3	£1,530
Leader of each Opposition Group	BA x 0.3	£1,530* (*Subject to a minimum of 3 members)

## 3.4 Chair and Vice Chair of the Council Allowance

Chair                £5,500  
Vice Chair        £1,060

## 3.5 Childcare and dependent Carers' Allowance

A care allowance will be paid to any Member who incurs expenditure on the care of young children and or dependent relatives in order to perform their duties as a Councillor, subject to:

- (a) the duty being one for which Travelling and Subsistence Allowance is payable under this Scheme of Members' Allowances; and
- (b) that each individual claim shall not exceed the actual sum paid or £10.55 (London weighted Real Living Wage) per hour, whichever is the lesser.
- (c) Consideration being given to an additional allowance for specialist care for a dependent, where this is known to be more expensive.

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## MEMBERS' ALLOWANCES SCHEME 2019/20

### 1. Definitions

In this scheme:

"Council" means North Hertfordshire District Council;

"Councillor" means a Member of the Council who is a Councillor;

"year" means the 12 months ended 31 March;

### 2. Commencement and Duration

This scheme shall have effect for the year commencing 1 April 2020 and for subsequent years, save that the Council may amend the scheme at any time subject to the provisions of paragraph 98 hereunder.

### 3. Basic Allowance

Subject to paragraph 98, a basic allowance of ~~£5,000~~ £5,100 shall be paid to each Councillor (x49) for each year.

### 4. Special Responsibility Allowance

For each year a special responsibility allowance in the amounts indicated below shall be paid to those Councillors who hold the following special responsibilities:-

Leader of the Council	<del>£14,000</del> <u>£15,300</u>
Deputy Leader of the Council	<del>£1,500</del> <u>£1,530</u>
Cabinet Executive Members (x7)	<del>£6,000</del> <u>£6,120</u>
Chair - Area Committees (x 5)	<del>£2,000</del> <u>£1,020</u>
Chair - Finance, Audit and Risk Cttee	<del>£3,000</del> <u>£3,570</u>
Chair – Overview and Scrutiny Cttee	<del>£3,500</del> <u>£3,570</u>
Chair - Planning Control Cttee	<del>£6,000</del> <u>£6,120</u>
<u>Chair of Licensing and Appeals Committee</u>	<u>£1,530</u>
Leader of <u>each largest</u> Opposition Group	<u>£5,500</u> <u>£1,530</u>
<u>(Variable)*</u>	

\* ~~Dependant upon number in Group at £250 per Group Member~~  
(Subject to a minimum of 3 Members)

Such allowances shall be subject to the requirements of Paragraph 98 hereunder.

Where a Councillor holds more than one office of Special Responsibility they will receive only one SRA and this will be the highest of the allowances due. This is also applicable to the Allowances included in Paragraph 5.

### 5. Chair and Vice Chair of Council Allowance

<u>Chair of Council</u>	<u>£5,500</u>
<u>Vice Chair of Council</u>	<u>£1,060</u>

### 6. Travelling and Subsistence Allowances

Travelling and subsistence allowances are payable at the recommended HMRC approved amounts of 45 pence per mile for cars for the first 10,000 miles and 25 pence per mile thereafter, whilst undertaking duties as listed in (a) – (i), replacing the following National Joint Council recommended rates for local government staff-



# NORTH HERTFORDSHIRE DISTRICT COUNCIL



## Cyclists

20.0p (20.0p)

## Car Sharing

An additional allowance of 5p (HMRC approved amount) per passenger per mile be paid when a Member takes other Members whilst carrying out approved duties and in the following circumstances

- (a) the Chair and Vice-Chair of the Council when engaged on official Council business;
- (b) the Chair and Vice-Chair of any Committee or Sub-Committee for attending pre-agenda and briefing meetings and opening tenders;
- (c) Cabinet Portfolio Members for attending meetings with officers in connection with their official duties as Spokesman;
- (d) attendance by Councillors at a meeting of the Council or any Committee or Sub Committee appointed thereby in accordance with the provisions of Section 102(1)(a) and (c) of the Local Government Act 1972 (including informal meetings of such bodies which have been arranged at the behest of the appropriate Chair and to which all Members therefore have been invited to attend), of which he/she is a Member, or has been specifically requested to attend by the Chair and such is recorded in the minutes of the meeting;
- (e) attendance by Councillors at a meeting of any Working Party or Panel to which he/she has been appointed by any of the bodies referred to in (d) above and comprising representatives of more than one political group;
- (f) attendance by Councillors at Seminars and other similar meetings arranged formally for the purpose of informing and/or training to which representatives of more than one political group have been invited;
- (g) attendance at meetings of external bodies to which the Councillor claiming is the Council's appointed representative;
- (h) attendance by Councillors at conferences, courses, seminars, etc;
- (i) attendance by Councillors at Town or Parish Council meetings within their ward to explain District Council Business.

(No such allowance shall be payable in respect of attendance at any conference or meeting in relation to which the Councillor is entitled to a payment in the nature of an allowance under Section 175 of the Local Government Act 1972.

No such allowance shall be payable if such a payment would be contrary to a provision made by or under any enactment.)



**Subsistence Allowances**

The same as those used for the payment of staff claims for meals taken away from home, to be paid at the rate set and from time to time amended by the HMRC.

	<b><u>Amount that can be claimed per meal</u></b>
<u>Breakfast</u>	<u>5.00</u>
<u>Lunch</u>	<u>10.00</u>
<u>Tea</u>	<u>5.00</u>
<u>Evening Meal</u>	<u>10.00</u>
<b><u>Subject to a maximum that is based on time away from home or usual place of work</u></b>	
<u>5 hours</u>	<u>5.00</u>
<u>10 hours</u>	<u>10.00</u>
<u>15 hours/day</u>	<u>25.00</u>

**7. Renunciation**

A Councillor may by notice in writing given to the Democratic Services Manager elect to forego any part of his/her entitlement to an allowance under this scheme.

**8. Childcare and dependent Carers' Allowance**

A care allowance will be paid to any Member who incurs expenditure on the care of young children and or dependent relatives in order to perform their duties as a Councillor, subject to:

- (a) the duty being one for which Travelling and Subsistence Allowance is payable under this Scheme of Members' Allowances; and
- (b) that each individual claim shall not exceed the actual sum paid or **£10.55 (London Weighted Real Living Wage) £6.70** per hour, which ever is the lesser.
- (c) Consideration being given to an additional allowance for specialist care for a dependent, where this is known to be more expensive.

**9. Part-Year Entitlements**

If during the course of the year the Council amends the amounts payable in respect of basic or special responsibility allowance, then the entitlement to such allowance shall be adjusted pro-rata to the proportion of the year that such allowance is payable.

Where a Councillor (a) is not a Councillor for the whole of the year; or (b) during the course of the year takes up or relinquishes a position in respect of which a special responsibility allowance is payable, then the entitlement to basic or special responsibility allowance shall be adjusted pro-rata to the proportion of the year during which he/she was a Councillor or held such position.

**10. Claims**

A claim for travelling and/or subsistence allowance under this Scheme shall:

- a) be made in writing within three months of the end of the month in which the meeting/activity in respect of which the entitlement to the allowances arises **(or by 30 April if incurred between January and end of March)**;
- b) include or be accompanied by, a statement by the Councillor claiming the allowance that he or she is not entitled to receive remuneration in respect of the matter to which the claim relates otherwise than under the Scheme;



- c) be accompanied by receipts itemising VAT as appropriate.

Claims submitted later than three months after the relevant date, and/ or one month after 31 March shall be paid only in such exceptional circumstances following approval by the Service Director: Resources in accordance with the Financial Regulations.

**11. Payments**

Subject to the provisions of paragraph 98 payments of basic and special responsibility allowances shall be made in monthly instalments.

Payments in respect of travelling and subsistence allowance shall be made as soon as is practicable after submission of a claim.

**12. External Conferences, Seminars, etc.**

Travelling and subsistence Allowance at the same rate as that applying under the Members' Allowances Scheme are payable to those Members attending conferences, seminars, courses, etc., falling within the criteria specified in Section 175 of the Local Government Act, 1972 where such attendance has been previously approved by the Council.

~~**12. Subsistence Allowances**~~

~~The same as those used for the payment for meals taken away from home, to be paid at the rate set and from time to time amended by the HMRC.~~



<b>COUNCIL</b> <b>16 JANUARY 2020</b>
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<b>*PART 1 – PUBLIC DOCUMENT</b>
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**TITLE OF REPORT: CONSTITUTIONAL & GOVERNANCE REVIEW 2019/20**

REPORT OF THE SERVICE DIRECTOR: LEGAL AND COMMUNITY & MONITORING OFFICER

EXECUTIVE MEMBER: THE LEADER OF THE COUNCIL: COUNCILLOR MARTIN STEARS-HANDSCOMB

CURRENT COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

FUTURE COUNCIL PRIORITY: BE A MORE WELCOMING AND INCLUSIVE COUNCIL

**1. EXECUTIVE SUMMARY**

- 1.1 This reports sets out the review undertaken and recommends amendments to update the Council's Constitution and propose new Panels.

**2. RECOMMENDATIONS**

- 2.1. That Full Council approves the proposed amendments set out in Appendix A, or where alternatives are proposed – such alternatives as are legally appropriate.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1. To ensure the Council meets its statutory obligations and continues to improve its working practices.

**4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1. None.

**5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 5.1. Following consultation with the Leader of Council, a Constitutional & Governance Working Group ('Working Group') was established. The Working Group is/ was a cross party/ officer group consisting of the following: Cllr Martin Stears-Handscomb, Cllr Judi Billing, Cllr Steve Jarvis, Cllr Carol Stanier, Cllr David Levett, Cllr Claire Strong, Anthony Roche, Melanie Stimpson and Jeanette Thompson. The Working Group has considered the proposal in meetings and by email.
- 5.2. Emails have been sent to the wider Membership and Senior Officers to seek any proposed changes and comment on the proposals. The proposals have been discussed at Political Board Liaison 'PLB' (concentrating on Panels) and at the Senior Management Team ('SMT') meetings in December. Other than that no further consultation has taken place.

## 6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

## 7. BACKGROUND

- 7.1. The Monitoring Officer has a duty to monitor and review the Constitution. Under paragraph 2.4 of the Constitution there is an annual straightforward (necessary/ minor) and triennial in-depth review process. The last detailed review took place in April 2018 and June 2018 – following the Senior Management restructure. A further review was then undertaken with the then Group Leaders in 2018 and approved in January 2019.
- 7.2. Following the election in May 2019, the new administration indicated that it would like to undertake a review of the Constitutional and potentially change the Governance arrangements. The Working Group was established to review and met on three occasions to consider various governance models and proposals. A motion at Council supported the Review<sup>1</sup>. At the first meeting a detailed options paper was discussed regarding Cabinet and Committee-based arrangements. The consensus was to explore a hybrid model of an Executive form of Governance with two new all-Member Cabinet Panels (in addition to the Cabinet Panel on the Environment), to allow for greater community and Member participation. The Working Group has also discussed further options and Constitutional amendments during these meetings.
- 7.3. As agreed by the Working Group, all Members and Senior Officers were emailed on 14 October for suggested amendments to the Constitution. Any received were considered by the Working Group. Wording and proposals are as set out in **Appendix A**. Panel Terms of reference are as **Appendices B-C**, with suggested minor Change to the Environment Panel's Terms (at **Appendix D**) to marry up with the wording with the other two proposed Panels. As indicated, the Panels were considered by PLB and the overall proposals by SMT in December.
- 7.4. The two new Panels proposed are Cabinet ones for:
- Housing, Strategic Planning & Transport; and
  - Community Engagement, Enterprise and Co-operative Development.
- Ordinarily, as these are advisory Panels to Cabinet/ the Executive Members/ Officers), then they could be established (as the Environment one was) by Cabinet. However, as these have wider resource implications, they are considered here.

## 8. RELEVANT CONSIDERATIONS

### **Constitution amendments (as per the Schedule appended at A):**

- 8.1. Mostly these are minor amendments to existing arrangements – gaining consensus of most of the Working Group. Of particular note are:

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<sup>1</sup> <https://democracy.north-herts.gov.uk/documents/b7207/Supplementary%20Agenda%20-%20Notice%20of%20Motions%2012th-Sep-2019%2019.30%20Council.pdf?T=9>

**General - delegated Executive decision making:**

- 8.2. The proposal is that any individual delegated Executive decision within the Constitution would be undertaken by the Executive Members (as opposed to Officers). At present the Council has a limited number of Executive functions that are specifically delegated in the Constitution to Officers. The vast majority detailed being operational/ non-Executive functions which legally cannot be undertaken by an individual Member<sup>2</sup>. To the extent that any Executive delegations have been identified, then these have been changed - (eg Grant awards: when an Area Committee or District Panel either cannot make or make a recommendation on the award).
- 8.3. Note in respect of Licensing fee setting - due to the differing legislation, this means that some are Officer approval, and others Executive Member. Therefore no change is proposed.

**Chairing of Project Boards 1.2.6:**

- 8.4. The proposal is that this will move from the Lead Officer to a Member on all new Project Boards established.

**Standing to speak at Full Council meetings 4.8.20 (a):**

- 8.5. There is a proposal to change this arrangement at Full Council. Some of the discussion have focused on the following:
- the audio recording equipment in the chamber and its ability to pick up those speaking when the person is standing, causing issues for those with hearing difficulties (be they Members or the public).
  - equality issues – and the requirement to stand (other than seeking a form of permission from the Chair, which of itself may not be desirable or appropriate);
  - the need to see who is speaking (and therefore need to stand);
  - the need to maintain an element of formality and respect for the Chair of Council (and therefore maintain the requirement).
- 8.6. Members should note that there is no longer uniformity of approach to standing in Full Council meeting nationally. Those that have changed to sitting, appear to have cited equality reasons as the appropriate justification. Proposed wording has been included in the Schedule to remove this requirement, should Members decide to approve.

**Deputy Executive Member new 5.5 & 14.4.18:**

- 8.7. The proposal is to include a definition of this role – to reflect the nature of it. This is not a formal decision making position within the Executive under the provisions of the Local Government Act 2000, therefore this definition largely aims to explain the role at the same time as making it clear that it has no formal decision making / Cabinet function.
- 8.8. As this is not a formal role, there has been a further proposal regarding the term “Deputy” and whether Observer or Shadow would be more appropriate. This is because a Deputy Executive Member cannot formally deputise in terms of Cabinet or delegated decision making. The alternative proposed is “*Administrative Observer*”, and if Members approve this, then the definition included will be updated to reflect this.

**Panels:**

- 8.9. These are as detailed in the Terms of Reference (**Appendices B-C**).

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<sup>2</sup> Section 101 Local Government Act 1972 undertaken by Council/ ordinary Committee or Officer.

- 8.10. It was discussed and acknowledged by Executive Members at PLB that the potential workload impacts of the Panels need to be carefully managed, both in terms of preparations for the Panel meetings and outcomes arising from them. It was acknowledged that any recommendations should be directed to Cabinet for consideration and that the work programme of the various Panels needs to be carefully planned and co-ordinated.
- 8.11. If the Panels are approved, a group of 16 will look initially at a draft programme, and will then discuss this with relevant Service Directors, bring this back to PLB and thereafter to Cabinet to agree the approach. If growth bids for staff are not approved for the 2020/21 budget then this can incorporate this issue as per the Financial implications referred to at 10.1, at that stage.

## **9. LEGAL IMPLICATIONS**

- 9.1. Full Council's terms of reference include "*approving or adopting the Policy Framework*". The Policy Framework includes the Constitution.
- 9.2. Section 37 Local Government Act 2000 requires the Council to have in place a Constitution and to keep that under review. The Local Government Act 2000 section 9P sets out the requirements of a local authority's Constitution, including the requirements to prepare it and keep it up to date and the requirement to make it available for public inspection.
- 9.3. In terms of Cabinet Panel's, whilst they have the term 'Cabinet', they are an advisory body, without Cabinet powers, and therefore there is no in principal issue with Council agreeing to their establishment.

## **10. FINANCIAL IMPLICATIONS**

- 10.1 There are resource/ financial implications for the changes in respect of Panel meetings and staffing resource. Growth bids are included in the draft Budget and cover support in Committee, Member and Scrutiny Services and Policy & Community Engagement. If the growth bids are not agreed by Full Council in February then it be necessary to either have a further review the Constitutional amendments in relation to the new Panels or identify non-statutory work that no longer needs to be undertaken by the relevant teams. Other than that the resourcing will have to be met through existing staffing structures. In addition to individual growth bids, Members will be aware that an additional payments can be claimed by officers for attending evening meetings (c.£25 per officer, per meeting), as well as toil/ or overtime, and that Property services support will be required to initially staff the reception 19-19.45. Currently it is expected that the costs of these will not be significant so no pressure has been included in the budget process. This will be subject to review in later years.

## **11. RISK IMPLICATIONS**

- 11.1. Ensuring the Council has appropriate governance arrangements in place is an important risk mitigation measure. The Council's Constitution is a fundamental part of those governance arrangements.

## **12. EQUALITIES IMPLICATIONS**

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 One proposal potentially links to equality (the requirement to stand at Full Council). The preference in any such situation would be prevent any group with a protected characteristic from being treated differently and the proposal to change the standing order would reflect that. Other than that, the overall proposals do not materially affect any group with protected characteristics, but it is the aim, in revising the Constitution and its content regularly, to make it more 'user friendly', ensure transparency and also to encourage greater participation in the Council's decision making processes.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1. The Social Value Act and "go local" requirements do not apply to this report.

## **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 The new Panels: it has been anticipated that this will increase workload for some sections within the Council and there are growth bids within those teams due to be considered by Full Council in February. They were considered as part of the Budget Workshops by all Groups, and the draft Budget at Cabinet on 17 December 2019.

## **15. APPENDICES**

- 15.1 Appendix A – Schedule of proposed amendments to the Constitution.
- 15.2 Appendix B - Cabinet Panel on Housing, Strategic Planning and Transport
- 15.3 Appendix C - Cabinet Panel on Community Engagement, Enterprise and Co-operative Development
- 15.4 Appendix D - Cabinet Panel on Environment – as amended.

## **16. CONTACT OFFICERS**

- 16.1 Jeanette Thompson; Service Director: Legal & Community; Monitoring Officer  
[jeanette.thompson@north-herts.gov.uk](mailto:jeanette.thompson@north-herts.gov.uk); ext 4370
- 16.2 Ian Couper; Service Director: Resources and s151 Officer  
[ian.couper@north-herts.gov.uk](mailto:ian.couper@north-herts.gov.uk); ext 4243
- 16.3 Reuben Ayavoo; Policy & Community Engagement Manager  
[reuben.ayavoo@north-herts.gov.uk](mailto:reuben.ayavoo@north-herts.gov.uk); ext 4212
- 16.4 Kerry Shorrocks; Corporate Human Resources Manager  
[Kerrr.shorrocks@north-herts.gov.uk](mailto:Kerrr.shorrocks@north-herts.gov.uk); ext 4224

## **17. BACKGROUND PAPERS**

- 17.1 Current NHDC Constitution 2019: <https://www.north-herts.gov.uk/home/council-and-democracy/council-constitution>

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Reference	Subject	Raised by	Response/ reason Reference to changes made to denote <i>proposal</i> unless statutory requirement.	C&G Working Group/ MO Legal response/ proposal
	Contents page index to include descriptions	Cllr Stears- Handscomb	To make this easier to find sections	To list.
General: Throughout	Removal of gender terms	Last Constitutional review  Cllr Deakin- Davies	Suggested as part of the 2018/19 for the May 2019 implementation. Resource constraints at the time. Therefore to consider and potentially take forward during this review.	Changing he/ she; s/he has to ‘they have’. Change of Chairman to ‘Chair’  Search against: man, woman men, women, father, mother, dad, mum, mankind, womankind undertaken –none found  Sections 19/20 to be updated accordingly.
General & specific	Delegated Decision – where these are Executive, they should be undertaken by the Executive Member in consultation with relevant officer.	Cllr Stears- Handscomb; Cllr David Levett	This would not apply to non-executive officer decisions on licensing, planning, licences, any specific function delegated by Full Council to an officer, or individual decisions made by a Committee. Specifically Grant decisions (on recommendation of the Capital / Capital and Revenue wide panel, or those that could not be made at Area Committees).	<b>See below those currently aware of under delegations. Ongoing work with officers required.</b>
1.2.6	Project Boards to be chaired by a Member	Cllr Stears- Handscomb	That this should be changed from the Lead Officer to a Member.  <b>Response:</b> The current Project Management approach is based on the PRINCE2 model, which has a Lead officer as the Project Executive and Chair of the Project Board. This is to reflect that this is a non- decision making board and the fact that operational delegations lie with the Lead Officer. Changing this will be a departure, albeit will not change the operational responsibilities/ delegations of the Lead Officer. Assumed to apply to any new Project Board established post approval of amendments to the Constitution.	<b><u>Proposed wording (shown as tracked change) to this effect:</u></b>  1.2.6 <i>‘On larger projects the Council uses an approach based on the PRINCE2 (an acronym for projects in controlled environments, version 2) model of project management, in which the lead officer (called the project executive) is the decision maker. This model includes Project Boards whose role is to provide the lead officer with the support and input necessary for the project to</i>

Reference	Subject	Raised by	Response/ reason Reference to changes made to denote <i>proposal</i> unless statutory requirement.	C&G Working Group/ MO Legal response/ proposal
				<i>proceed and to overcome any problems. The Chief Executive appoints the Lead Officer for the Project Board, <del>who will chair and chose the Lead</del> <u>Officer will liaise with relevant Senior Officers and the Leader of Council on the Officer/ Member appointment to the Board (respectively) membership in consultation with the Leader of Council</u>. Membership will take into account the number of Members/ Officers, the risk and/or profile of the project and the skills and experience that will benefit the project (this list is non exhaustive). It may include external support. Membership usually includes appropriate Cabinet members. <u>A Member shall Chair the Board</u>. As an internal consultation and advisory meeting with no decision making powers, meetings are private and do not require a published agenda, reports or minutes.”</i>
Section 2				
2.2 Definitions	Introduction of definition of Ward advocate	Independent Person – following discussions on Planning Code of Good Conduct	Make clearer role and expectation and assist with PCGC matters	<b><u>Proposed wording to this effect:</u></b> “Ward Advocate” A Councillor representing an individual or group within a ward (or at the request of another Councillor in a single Member ward) on an issue, application, concern. This should be subject to the Code of Conduct rules on interests and not being involved in any subsequent decision making on the matter”.
	Introduction of the definition/ explanation of ‘Cabinet Panels’	C&G Working Group	To make later references to Panel’s clear.  NB – to introduce remit wording in Panels ToR that “The Panel will endeavour not to duplicate the work of the Overview & Scrutiny Committee or its Task and Finish Groups”	<b><u>Proposed wording</u></b> <b><u>“Cabinet Panel”</u></b> “This is a group of members that has been established as a non-decision making, investigatory and advisory body



Reference	Subject	Raised by	Response/ reason Reference to changes made to denote <i>proposal</i> unless statutory requirement.	C&G Working Group/ MO Legal response/ proposal
				<i>to Cabinet, Executive Members or relevant Service Directors on a subject area that falls within their terms of reference”.</i>
Section 4				
4.4.1(q)	Polling station reviews	C&G Working Group	To add this remit to Full Council at (q) as this also currently covers:  “agreeing proposals relating to district boundaries, electoral wards and the number of district councillors;”	<b><u>Proposed wording</u></b> <i>(q) review and agree proposals on polling districts, polling places and polling stations, district boundaries, electoral wards and the number of District Councillors;</i>
4.5.5	Role of Members		Remove reference to role description being on website	<b><u>Current wording:</u></b> <b>Role of Members</b> The role of Members is described in the document “Members’ Role Descriptions” which is available upon request and from the Democratic Services Manager.  <b><u>Proposed wording</u></b> <b>‘Role of Councillors</b> <i>Information of the role of Councillors within the Council can be found on the Council’s and the Local Government Association’s websites.’</i>
4.8.1(a)(viii) & 4.8.4 (a),(b),(c),(d)(e)	Annual Meeting of Council	Consequential to changes re Panels	Add reference to Panel appointments to (viii)	<b><u>Proposed</u></b> <i>Add ‘and Panels’.</i> <i>‘or Panels’ as appropriate.</i> <i>(d) add “Substitutes are allowed for Panels.”</i>
4.8.9 (also change Appendix 1 to section 8 para 2.6).	Amend / remove application of procedure rule to Planning Control Committee	Cllr lan Mantle	(i) Removal of the restriction on the number of points of clarification that could be raised at the Planning Control Committee (currently 3) <i>OR – if Members unhappy to remove</i>  (ii) Make it clear that the Chairman can exercise discretion to allow further points of clarification as a matter of discretion.	<b><i>Preference of the C&amp;G Working Group would be (ii) make it clearer that Chair has discretion under 4.8.9</i></b> <b><u>(b) Proposed words added underlined &amp; removal of some unnecessary wording:</u></b> <i>“Points of clarification may be asked by</i>

Reference	Subject	Raised by	Response/ reason Reference to changes made to denote <i>proposal</i> unless statutory requirement.	C&G Working Group/ MO Legal response/ proposal
				<i>Council or a particular Committee through the Chair (up to a total of three on each presentation, <u>more at the discretion of the Chair</u>) of the <u>person member of the public</u> making a presentation. The Chair can decline to put a point of clarification if they consider this irrelevant or this has been covered during the presentation.”</i>
4.8.14 (g)(v)	Rules of Debate (v) Amendments to Motions	SD: L&C	Change wording from ‘will read out’ to ‘may read if requested’ an amended motion, as rarely occurs and not always necessary.	<b>Proposed:</b> (v) <i>After an amendment has been carried, the Chair <del>will</del> <u>may if requested</u> read out the amended motion before accepting any further amendments, or if there are none, put the substantive motion as amended for debate and to the vote.”</i>
4.8.20 (a)	(a) Standing to Speak at Council Meetings	Cllr Stears-Handscomb/ Deputy Chief Executive	To remove the requirement to stand at Full Council meetings (? Also at the start of the meeting when Chair enters).	<b>Proposed:</b> (a) <del>Standing to</del> <u>Speaking</u> at Meetings  <i>When a Member <u>wishes to speak</u>s at Full Council <u>they</u> must <u>notify their request via the audio system (or by hand in the absence of this)</u> <del>stand</del> and address the meeting through the Chair. If more than one Member signifies their intention to speak, the Chair will ask one to speak. Other Members must remain silent whilst a Member is speaking unless they wish to make a point of order or a point of personal explanation.”</i>
Section 5				
Between 5.5 & 5.6  & new 14.6.18	‘Deputy’ Executive Members	Cllr Carol Stanier; & Cllr Ruth Brown	To include a definition in the constitution.	This is not a formal decision making position within the Executive under the provisions of the Local Government Act 2000. The definition can therefore

Reference	Subject	Raised by	Response/ reason Reference to changes made to denote <i>proposal</i> unless statutory requirement.	C&G Working Group/ MO Legal response/ proposal
		Cllr Claire Strong	<i>Alternative Proposal regarding the term – to call these roles “Administrative Observer”. If this alternative term is approved by Full Council, this will be replaced in the proposed wording - &amp; 14.6.18.</i>	define the role at the same time as making that clear:  <b><u>Proposed:</u></b> <i>“Note that in a joint administration a ‘deputy’ to an Executive portfolio holder may be appointed. That deputy will be invited to attend relevant meetings of the Executive (formal or informal) where executive functions are discussed, give their opinion and for this to be taken into account by the Executive decision maker or Cabinet, although they are not formally part of the Cabinet Executive nor an Executive decision maker. This does not apply to the Deputy Leader who is appointed to acts as per section 5.4”.</i>
Cabinet’s terms of reference	5.6	C&G Working Group	Amend Terms of Reference to receive recommendations from Panels.	<b><u>Proposed:</u></b> <b><u>New 5.6.37 (&amp; subsequent renumbering)</u></b> <i>‘To consider and respond to recommendations from Cabinet Panels.’</i>
Cabinet Sub-Committee (Local Authority Trading Companies’ Shareholder) 5.11.4 (g) (ii)	Consider the roles	SD Regulatory	Under 5.11.4 (g) (ii) the sub-committee has the role of monitoring – this would appear to duplicate the commissioning officer role within the Building Control company documentation who attends Commissioning Group meetings and the AGM on behalf of the Council.	<b><u>Proposed following discussion in C&amp;G Working Group:</u></b> <i>Amend (ii): “monitor” to “oversight of”</i>  <i>To specifically delegate the monitoring functions to relevant Service Director – Regulatory (as per general delegation under section 14 for client side).</i>
Section 8				
Licensing & Appeals Committee	8.2.3 number of meetings	Licensing & Appeals Committee meeting, resolution (2)(ii),	That Service Director Legal and Community be requested to consider an amendment to the constitution in that the Committee may meeting more than once per year and that the Licensing Manager, in consultation with the Chairman of the Licensing and Appeals Committee, call meetings when necessary with a maximum of 4 per annum.	<b><u>Proposed:</u></b> Amend 1 to 2.

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		21.10.19		
Appendix A	Planning Code of Good Practice	Cllr Clark; Standards Committee referral	Change of wording: NB this will be subject to a separate referral report from Standards Committee.	To be incorporated in final constitutional changes post approval by Full Council.
Section 9 Area Committees				
9.8.1	Polling places reviews etc	C&G Working Group	Remove remit from Area Committees – return to Council, as unnecessary and felt there was little benefit in this going to the 5 Area Committees as could not influence any real changes.	<b>Proposed</b> Move to section 4.
9.8.2	Community	C&G Working Group	Changing remit of Area Committees to include receive presentation from developers for certain major developments.  <b>NB</b> comments from Development Control Manager: The statement of community engagement is not compulsory for developers and the LPA cannot extend time for determination or refuse permission to grant planning permission. Applicants will be encouraged to engage early prior to submitting their applicant to allow for meaningful feedback. In all likelihood on the major planning developments of 100 plus this would take some time and allow for this to fit in the Area Committee cycle.	To also include in the Statement of Community Involvement.  <b>Proposed wording new ToR:</b> New (g) <i>“In line with the Council’s adopted Statement of Community Involvement to receive any presentations from developers in their area on major planning applications for 100 dwelling and above (including Construction Management Routes) and provide comments accordingly.”</i>
9.8.2 (h) (below (h))  Also changes to 14.6.9 (b)(iii)	Executive delegated powers	Cllr Stears- Handsombe; Cllr David Levett	SD: Legal Community – change delegation from that role to the Executive Member (also note in section 14 delegations).  Note that Executive decision may be delegated to Area Committee, Executive Member, or Officer (as well as Cabinet, or Sub-Committee of Cabinet	<b>Current wording:</b> <i>(h) To establish and maintain relationships with outside bodies/voluntary organisations operating specifically within the area including, where appropriate, the provision of discretionary grant aid/financial support etc. but excluding grants for district-wide activities (as determined by the Service Director: Legal and Community).</i>

Reference	Subject	Raised by	Response/ reason Reference to changes made to denote <i>proposal</i> unless statutory requirement.	C&G Working Group/ MO Legal response/ proposal
				<p><b>Proposed wording:</b> (h) To ....activities (as determined by the Service Director: Legal and Community under delegated authority).</p> <p><b>Current wording:</b> Below (h) “The Service Director: Legal and Community in consultation with the Chair or Vice Chair of the relevant Area Committee.”</p> <p><b>Proposed wording:</b> “The Executive Member for Community Engagement having consulted the Chair or Vice Chair of the relevant Area Committee and Service Director: Legal and Community”.</p>
Section 11				
CCTV Joint Committee 11.7 11.7.1(a)		SD: Resources; & Administration budget workshop	CCTV changes: Rewording following the governance review. At least one Executive Member nominated should be the Executive Member with responsibility for CCTV under 11.1.1(a) and to add a footnote to that effect.	<p><b>Proposed wording relevant sections that have been amended set out:</b> <b>11.7 CCTV Joint <u>Executive</u> Committee</b></p> <p>11.7.1 Membership, Quorum and Meetings (a) The Membership shall comprise: three <del>Cabinet</del> members from each of the Authorities (in North Hertfordshire, <u>Cabinet members</u>).</p> <p>(b) Meetings shall be held at least <del>once</del> twice per annum or when there is sufficient business.</p> <p>(d) The <del>Chairman</del> shall <u>ordinarily</u> be a member of the Authority hosting the meeting, <u>although members present at the meeting may choose a Chair from any member present</u>.</p> <p>11.7.2 Terms of Reference</p>

Reference	Subject	Raised by	Response/ reason Reference to changes made to denote <i>proposal</i> unless statutory requirement.	C&G Working Group/ MO Legal response/ proposal
				<p>(b) To deal with all matters defined under the CCTV ‘Code of Practice’ as the responsibility of the CCTV Joint Executive <del>Board</del> Committee.</p> <p>(c) To consider operations and performance reports from the CCTV Operations Manager and CCTV Officer Management Board.</p> <p>(d) To consider and approve <u>any location, expansion or contraction proposals and service changes</u> for the CCTV Control Room, Network, and monitoring service.</p> <p>(i) To express views <u>regards the jointly owned company, Hertfordshire CCTV Ltd, to be channelled through the CCTV Officer Management Board.</u></p> <p>(j) To make recommendations on any of the above to the Officer Management Board.</p>
Section 12				
12.1.2	Areas of remit	SD:L&C	Change of wording to reflect correct team title post reorganisation May 2019.	<b>Proposal</b> Community Development revised to Community “Engagement”.
Section 14				
14.6.9 (b)(iii)(A) - see section 9 above also	Grants	Cllr Stears- Handscomb; Cllr David Levett & SD: L&C	Financial assistance – need to revise wording to reflect changes under Grants Policy and also in relation to Capital and Revenue Grants Panel	<p><b>Current wording for SD:L&amp;C delegation:</b> “financial assistance and grants to external organisations, and voluntary sector and community group development (including although not limited to capital grants following capital grant panel deliberations).”</p> <p><b>Proposed wording:</b> “financial assistance and grants to external organisations, and voluntary sector and community groups <del>development</del> (including although not</p>

Reference	Subject	Raised by	Response/ reason Reference to changes made to denote <i>proposal</i> unless statutory requirement.	C&G Working Group/ MO Legal response/ proposal
			Executive Member delegation to include making the grants following capital (and revenue) grant panel, and in between Area Committees, in consultation with others.	<i>limited to capital or revenue grants. following capital grant panel deliberations).</i>  <b><u>New no 5 Executive Delegation</u></b> “To approve Grants under the Grants Policy following capital and / or revenue grant panel deliberations, or between Area Committee meeting requirements, having consulted the Chair or Vice Chair of the relevant Area Committee (where applicable), and Service Director: Legal and Community.”
14.6.11 (b)(ii)	Building Control	SD: Regulatory	Make the Building Control client side work clearer in terms of the delegation.	<b><u>Proposed wording:</u></b> “including <u>client-side Building Control company operational matters as required under any agreements, in addition to all activities relating to discharge of the Council’s function as the Local Building Regulation Authority</u> ”
14.6.11(b) (iv)	Enforcement function	SD: Regulatory	Add Environmental Health “and enforcement functions” to mirror (v) Environmental protection and enforcement functions. This then reflects 12.1.2.	<b><u>Proposed:</u></b> To make the changes.
14.6.18 – see section 5	‘Deputy’ Executive Members	Cllr Carol Stanier; & Cllr Ruth Brown	To include a definition in the Constitution.  <i>See Cllr Strong suggested title section 5 – Administrative Observer. If this alternative approved, this will be amended also.</i>	This is not a formal decision making position within the Executive under the provisions of the Local Government Act 2000. The definition can therefore define the role at the same time as making that clear:  <b><u>Proposed new 14.6.18 (&amp; renumber subsequent):</u></b> “In a joint administration a ‘deputy’ to an Executive portfolio holder may be appointed. That deputy will be invited to attend relevant meetings of the Executive (formal or informal) where executive functions are discussed, give their opinion and for this to be taken

Reference	Subject	Raised by	Response/ reason Reference to changes made to denote <i>proposal</i> unless statutory requirement.	C&G Working Group/ MO Legal response/ proposal
				<i>into account by the Executive decision maker or Cabinet, although they are not formally part of the Cabinet Executive nor an Executive decision maker. This does not apply to the Deputy Leader who is appointed to acts as per section 5.4.”</i>
Section 20				
	Contract Procedure Rules	Annual review	Subject to a separate report and referral. To pick up any recommendation of Cabinet on HTH review and Finance Audit and Risk referral to Council.	See relevant report item.



**CABINET PANEL ON HOUSING, STRATEGIC PLANNING AND TRANSPORT****MEMBERSHIP**

1. The Panel shall comprise of nine (9) Members.
2. The Panel shall be politically balanced.<sup>1</sup>
3. The quorum shall be three (3).
4. The initial appointments to be made by Council at its Annual Meeting or at other times, under delegated responsibility, by the Democratic Services Manager in consultation with Group Leaders.
5. Substitutes to be allowed, as per the Council's Procedure Rules.

**TERMS OF REFERENCE**

The Panel's Terms of Reference are to consider a range of Housing, Strategic Planning and Transport issues and in particular to:

1. Engage with individuals and the community, act as a sounding board on community ideas and projects and seek evidence and views as appropriate;
2. Consider a range of views on issues relating to new Housing, Strategic Planning and Transport matters<sup>2</sup>;
3. Help and where appropriate maintain any links with relevant external (public, research and industrial) bodies;
4. Act as an advisory Panel to Cabinet in relation to the above.

*The Panel shall endeavour not to duplicate the work of the Overview & Scrutiny Committee or its Task and Finish Groups.*

**PROCEDURE & ADMINISTRATION**

1. The Panel is advisory and has no decision making powers. It is therefore the intention that the Panel meetings, style and tone are informal and that the community and any person or body are welcomed and enabled to participate.
2. The Panel shall be Chaired by the Executive Member for Planning and Transport, or Housing and Environmental Health on a meeting by meeting basis (or by such Chair(s) as appointed at the Annual Council in the event of portfolio change).
3. The Panel shall aim to meet approximately 6 times per year, once before each Cabinet cycle.
4. Any recommendation of the Panel shall, in so far as possible, be by consensus. Where voting is necessary, then the normal Council voting procedures will apply.
5. Administrative support will be organised by the Committee, Member and Scrutiny Team.
6. Officer support shall be provided by the Regulatory Directorate and where relevant other Directorate officers, as requested by the Panel.

<sup>1</sup> 2019/20 4 Conservative; 3 Labour & Co-operative; and 2 Liberal Democrats.

<sup>2</sup> The Panel will not substitute or duplicate the ongoing Local Plan process or consider planning/ development control matters. Public engagement regarding the ongoing Local Plan is via any public consultation exercise or submission to the Local Planning Inspectorate.

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## CABINET PANEL ON COMMUNITY ENGAGEMENT, ENTERPRISE AND CO-OPERATIVE DEVELOPMENT

### MEMBERSHIP

1. The Panel shall comprise of nine (9) Members.
2. The Panel shall be politically balanced.<sup>1</sup>
3. The quorum shall be three (3).
4. The initial appointments to be made by Council at its Annual Meeting or at other times, under delegated responsibility, by the Democratic Services Manager in consultation with Group Leaders.
5. Substitutes to be allowed, as per the Council's Procedure Rules.

### TERMS OF REFERENCE

The Panel's Terms of Reference are to consider a range of community engagement, commercial and enterprise issues and in particular to:

1. Engage with individuals and the community, act as a sounding board on community ideas and projects and seek evidence and views as appropriate;
2. Consider a range of views on issues relating to community engagement, commercial and economic development matters;
3. Help and where appropriate maintain any links with relevant external (public, research, professional/trade, commercial and industrial) bodies;
4. Act as an advisory Panel to Cabinet in relation to the above.

*The Panel shall endeavour not to duplicate the work of the Overview & Scrutiny Committee or its Task and Finish Groups.*

### PROCEDURE & ADMINISTRATION

1. The Panel is advisory and has no decision making powers. It is therefore the intention that the Panel meetings, style and tone are informal and that the community and any person or body are welcomed and enabled to participate.
2. The Panel shall be Chaired by the Executive Member for Enterprise and Co-operative Development, or Community Engagement on a meeting by meeting basis (or by such Chair(s) as appointed at the Annual Council in the event of portfolio change).
3. The Panel shall aim to meet approximately 6 times per year, once before each Cabinet cycle.
4. Any recommendation of the Panel shall, in so far as possible, be by consensus. Where voting is necessary, then the normal Council voting procedures will apply.
5. Administrative support will be organised by the Committee, Member and Scrutiny Team.
6. Officer support shall be provided by the most relevant Directorate for the subject of the meeting and where relevant other Directorate officers, as requested by the Panel.

<sup>1</sup> 2019/20 4 Conservative; 3 Labour & Co-operative; and 2 Liberal Democrats.

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## CABINET PANEL ON THE ENVIRONMENT

## MEMBERSHIP

1. The Panel shall comprise of nine (9) Members.
2. The Panel shall be politically balanced.<sup>1</sup>
3. The quorum shall be three (3).
4. The initial appointments to be made by Cabinet, thereafter confirmed by Full Council at its Annual Meeting or at other times, under delegated responsibility, by the Democratic Services Manager in consultation with Group Leaders.
5. Substitutes to be allowed, as per the Council's Procedure Rules.

## TERMS OF REFERENCE

The Panel's Terms of Reference are to consider a range of climate and environmental issues and in particular to:

1. Engage with individuals and the community, act as a sounding board on community ideas and projects and seek evidence and views as appropriate;
2. Consider a range of views on issues relating to climate change (both mitigation of and adaption to) and environmental matters;
3. Help and where appropriate maintain any links with relevant external (public, research and industrial) bodies;
4. Consider any relevant government or agency consultations and advise Cabinet or the relevant Executive Member and Service Director of a proposed response;
5. Contribute towards the review of the Climate Change Strategy;
6. Act as an advisory Panel to Cabinet in relation to the above.

*The Panel shall endeavour not to duplicate the work of the Overview & Scrutiny Committee or its Task and Finish Groups.*

## PROCEDURE &amp; ADMINISTRATION

1. The Panel is advisory and has no decision making powers. It is therefore the intention that the Panel meetings, style and tone are informal and that the community and any person or body are welcomed and enabled to participate.
2. The Panel shall be Chaired by the Executive Member for Environment and Leisure, and Recycling and Waste alternatively, or in the event of the absence of the other, by the attending Executive Member.
3. The Panel shall aim to meet approximately 6 times per year, once before each Cabinet cycle.
4. Any recommendation of the Panel shall, in so far as possible, be by consensus. Where voting is necessary, then the normal Council voting procedures will apply.
5. Administrative support will be organised by the Committee, Member and Scrutiny Team.
6. Officer support shall be provided by the Policy officer(s) from Policy and Community Engagement and where relevant other Directorate officers, as requested by the Panel.

<sup>1</sup> 2019/20 4 Conservative; 3 Labour & Co-operative; and 2 Liberal Democrats.

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