

Agenda Council

You are hereby summoned to attend a meeting of the Sandwell Metropolitan Borough Council, to be held on Tuesday, 26 July 2022 at 6.00 pm for the purpose of transacting the following business:-

The Mayor of Sandwell, Councillor Richard Jones, in the Chair

- | | | |
|----------|---|----------------|
| 1 | Apologies for Absence | 9 - 10 |
| | To receive apologies for absence (if any). | |
| 2 | Declarations of Interest | 11 - 12 |
| | Members to declare any interests in matters to be discussed at the meeting. | |
| 3 | Minutes | 13 - 28 |
| | To confirm, as a correct record, the minutes of the annual meeting of Council held on 24 May 2022 and the meeting of Council held on 7 June 2022. | |
| 4 | Urgent Business | 29 - 30 |
| | To consider any urgent business (with prior approval by the Mayor). | |



- 5 **Mayor's Announcements** 31 - 34
- To receive announcements from the Mayor.
- 6 **Petitions** 35 - 36
- To receive petitions under Standing Order No. 5.
- 7 **Written Questions** 37 - 40
- To consider written questions under Standing Order No. 6 to:-
- (a) the Mayor;
 - (b) the Leader of the Council;
 - (c) any other member of the Cabinet;
 - (d) any person appointed to preside at a committee, sub-committee or panel;
 - (e) the members of the Council nominated pursuant to Section 41 of the Local Government Act 1985, on the discharge of the functions of the following Joint Authorities:-
 - (i) West Midlands Combined Authority (the Leader);
 - (ii) West Midlands Fire and Rescue Authority (Councillor Jalil);
 - (iii) Transport for the West Midlands (Councillor Webb);
 - (f) a nominated member appointed by the Council to the Board of Sandwell Leisure Trust;
 - (g) a member of the Council who is, as a result of action taken by or on behalf of the Council, a member or director of any company.

- | | | |
|----|--|-----------|
| 8 | Governance Review - Proposed Changes to the Council's Constitution | 41 - 150 |
| | To consider changes to the Council's Constitution as part of the Governance Review. | |
| 9 | Council Election Cycle - Consultation to explore a change to the current schedule of elections in Sandwell | 151 - 178 |
| | To consider a consultation to explore a change to the schedule of elections. | |
| 10 | Proposed Departure from the Development Plan at land Newcomen Drive Open Space, Newcomen Drive, Tipton | 179 - 184 |
| | To consider a departure from the Local Development Plan. | |
| 11 | Delegation of decision-making authority to Birmingham City Council to determine cross-boundary planning application for proposed demolition of structures at land to the rear of Anderson Road, Smethwick and erection of two-storey building to provide 17 assisted living units with associated car parking and landscaping | 185 - 190 |
| | To consider delegation of decision-making authority in relation to a cross-boundary planning application at Anderson Road, Smethwick. | |
| 12 | Annual Report of Licensing Committee 2021-2022 | 191 - 210 |
| | To receive the annual report of the Licensing Committee 2021-2022. | |

18.1 Programme of Investment in Infrastructure and Community Resources

Proposer: Councillor Williams

Secunder: Councillor Wilkes

“This council requests that the cabinet member for Regeneration and Growth together with the Cabinet Member for Finance and Resources explore options to increase funding to wards within the Borough that have the highest levels of deprivation with a view to creating a programme of investment in infrastructure and community resources including community centres, youth provision and parks; to help increase pride within the local communities, support vulnerable people and reduce crime.”

18.2 Revision to Standing Orders

283 - 284

Proposer: Councillor William Gill

Secunder: Councillor Chapman

That this Council welcomes the ongoing governance review through a recognition of the need for scrutiny from members of the Council and members of the public. That this Council reaffirms its commitment to openness and transparency by recognising the position of other local authorities like Birmingham City Council and calling on the Governance and Constitution Review Committee to consider an amendment to the constitution that enables the introduction of a standing agenda item that allows for written questions from members of the public in line with the draft standing order which is attached as Appendix A. This Council consequently resolves through a request that this matter is referred to the Governance and Constitution Review Meeting of 13 September which would enable any decision to be ratified by the Council at the earliest available opportunity which would be the October 25 Council.

Kim Bromley-Derry CBE DL
Managing Director Commissioner
Sandwell Council House
Freeth Street
Oldbury
West Midlands

Distribution

All Members of the Council

Contact: democratic_services@sandwell.gov.uk

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Apologies

To receive any apologies from members

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Declarations of Interest

Members to declare any interests in matters to be discussed at the meeting.

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Minutes of Annual Council

**Tuesday 24 May 2022 at 6.00pm
in the Council Chamber, Sandwell Council House, Oldbury**

Present: His Worshipful The Mayor, Mr M Hussain;

Councillors Abrahams, Ahmed, Akhtar, Akpoteni, Allcock, Allen, Anandou, Ashman, Bhullar, Bostan, Carmichael, Chapman, Choudhry, Costigan, Crompton, Dhallu, Dunn, Fenton, Fisher, Gavan, E A Giles, L Giles, G Gill, M Gill, S Gill, W Gill, Hackett, Hartwell, Hinchliff, Hughes, A Hussain, Z Hussain, Jalil, O Jones, R Jones, S Jones, Kalari, Kaur, Khatun, Lewis, Mabena, McVittie, Melia, Millar, Millard, Moore, Owen, Padda, Piper, Preece, Rahman, Randhawa, Rollins, Shackleton, Shaeen, Simms, N Singh, Smith, Taylor, Trumpeter, Uddin, Webb and Wilkes.

Also present: Kim Bromley-Derry – Managing Director Commissioner; Surjit Tour – Director of Law and Governance and Monitoring Officer; Elaine Newsome – Services Manager – Democracy; Trisha Newton – Senior Democratic Services Officer; Stephnie Hancock – Senior Democratic Services Officer; Connor Robinson – Democratic Services Officer and Kennedy Brown, Sergeant at Arms.

(Outgoing Mayor Mr Mushtaq Hussain in the Chair)

75/22 **Apologies for Absence**

Apologies for absence or were received from Councillor Chambers, Dhariwal, E M Giles, J Giles, Kausar, K Singh and Williams.



76/22 **Declarations of Interest**

No declarations of interest were received.

77/22 **Election of Mayor**

Mr Mushtaq Hussain invited nominations for the office of Mayor of the Borough of Sandwell for the 2022/23 Municipal Year.

Councillor Richard Jones was nominated by Councillor Fenton and Councillor Bhullar seconded the nomination.

On being put to the vote the motion was carried and it was

Resolved that Councillor Richard Jones be declared elected Mayor of the Borough of Sandwell for the ensuing Municipal Year 2022/23.

Councillor Richard Jones made and subscribed the Declaration of Acceptance of Office required by law and was invested with the Mayoral chain and badge of office.

Councillor R Jones took the Chair and made his speech of acceptance. The Mayor announced that, during his term of office, his chosen charities would be St. John's Ambulance, LGBT+ in Sandwell Community Group and New Beginnings Baby Bundles.

The Mayor announced that his partner, Councillor Richard McVittie would act as the Mayor Consort for the ensuing Municipal Year. Councillor McVittie was invested with the chain and badge of office of Mayor's Consort.

His Worshipful the Mayor, Councillor Richard Jones, in the Chair.

(Mayor Councillor Richard Jones in the Chair)



78/22

Vote of thanks to the Retiring Mayor

Councillor Jalil moved a vote of thanks to the retiring Mayor, Mushtaq Hussain, on behalf of the Council, and Councillor Hartwell seconded the motion.

In response Mr M Hussain thanked the sergeant at arms and the support of member services and wished the Mayor a successful year and thanked him for his support over the past year.

Mr M Hussain also thanked members of the Council for giving him the opportunity to represent the Borough as Mayor and also thanked his consorts, his son, Mr Amar Mushtaq, and his family friend, Mr Ijaz Ahmad.

79/22

Election of the Deputy Mayor

The Mayor invited nominations for the office of Deputy Mayor of the Borough of Sandwell for the 2022/23 Municipal Year.

Councillor Jackie Taylor was nominated by Councillor L Giles and Councillor Randhawa seconded the nomination.

On being put to the vote the motion was carried and it was

Resolved that Councillor Jackie Taylor be declared elected Deputy Mayor of the Borough of Sandwell for the Municipal Year 2022/23.

Councillor Taylor made and subscribed the Declaration of Acceptance of Office required by law and was invested with the chain and badge of office and made her speech of acceptance.

The Deputy Mayor announced that her partner, Mr Taylor, would act as the Deputy Mayor's Consort for the ensuing Municipal Year. Mr Taylor was invested with the chain and badge of office.



Resolved that the minutes of the extraordinary meeting of Council held on 12 April and the ordinary meeting of Council held on 21 April 2022 be approved as a correct record and signed by the Chair.

Executive Appointments

The Leader of the Council announced the names of those appointed to the positions of Deputy Leader and Cabinet Members.

Resolved:-

- (1) that the names of persons appointed by the Leader of the Council to the position of Deputy Leader (Statutory) and as a Cabinet Member be noted;
- (2) that the Executive Portfolios as determined by the Leader of the Council and their assignment to the Deputy Leader and each Cabinet Member, as follows, be noted:-
 - i. Councillor Bob Piper as Deputy Leader and Cabinet Member for Finance and Resources;
 - ii. Councillor Suzanne Hartwell as Cabinet Member for Adults Social Care and Health;
 - iii. Councillor Simon Hackett as Cabinet Member for Children and Education;
 - iv. Councillor Danny Millard as Cabinet Member for Communities;
 - v. Councillor Zahoor Ahmed as Cabinet Member for Environment Services;
 - vi. Councillor Charn Singh Padda as Cabinet Member for Housing;



- vii. Councillor Laura Rollins as Cabinet Member for Leisure and Tourism;
- viii. Councillor Peter Hughes as Cabinet Member for Regeneration & Growth.

(3) that the executive appointments as set out in Appendix A of the report be approved.

82/22

Appointment to Committees, Boards and Other Fora 2022/23

In accordance with the requirements of its Constitution, the Council considered proposals relating to the identification of the bodies it wished to carry out its function as a local authority and terms of reference for those bodies.

Consideration was given to the nominations to committees, boards and other fora which had been received from all political groups.

Resolved:-

- (1) that, taking into account proportionality, the constitution of committees, board and other fora for 2022/23 as set out in Appendix 1 of the report, be approved;
- (2) that the revised committee structure, including the disestablishment of the Electoral Participation Select Committee, and appointments of members and co-opted members to the positions, committees, boards and other fora established by the Council, as set out in Appendix B of the report, be approved;
- (3) that, in accordance with the provisions of the Localism Act 2011, one nomination from each of the Church of England Diocese and Roman Catholic Archdiocese and two nominations for Parent Governor representatives to serve as non-elected members on the Children's Services and Education Scrutiny Board be invited, with voting rights conferred only on any matter with regard to education, whether in respect of schools or wider educational issues;



(4) that the programme of meetings for the 2022-23 municipal year be approved.

83/22 **Appointment of Representatives to Other Bodies**

Consideration was given to the appointment or nomination of representatives to serve on outside bodies for the Municipal Year 2022/23.

Resolved that the appointments to outside/other bodies, as detailed in Appendix A to the report, be approved.

Meeting ended at 6.56pm

Contact: democratic_services@sandwell.gov.uk



Minutes of Council

**Tuesday 7 June 2022 at 6.00pm
in the Council Chamber, Sandwell Council House, Oldbury**

Present: His Worshipful The Mayor, Councillor R Jones;
Deputy Mayor, Councillor Taylor;

Councillors Ahmed, Akhtar, Akpoteni, Allen, Ashman, Bhullar, Carmichael, Chambers, Chapman, Choudhry, Costigan, Crompton, Dhallu, Dhariwal, Dunn, Fenton, Fisher, Gavan, E M Giles, E A Giles, J Giles, L Giles, G Gill, S Gill, W Gill, Hackett, Hartwell, Hinchliff, A Hussain, Z Hussain, Jalil, S Jones, Kaur, Kausar, Khatun MBE, Lewis, Mabena, McVittie, Melia, Millar, Millard, Moore, Owen, Padda, Piper, Preece, Rahman, Randhawa, Rollins, Shackleton, Shaeen, Simms, N Singh, Smith, Trumpeter, Uddin, Webb, Wilkes, Williams.

Also present: Kim Bromley-Derry – Managing Director Commissioner, Surjit Tour – Director of Law and Governance and Monitoring Officer; Elaine Newsome – Services Manager – Democracy; Suky Suthi-Nagra – Democratic Services Manager; Stephnie Hancock – Senior Democratic Services Officer; Connor Robinson – Democratic Services Officer and Phil Challoner, Civic and Member Services Manager.

84/22 **Apologies for Absence**

Apologies for absence were received from Councillors Abrahams, Allcock, Anandou, Bostan, M Gill, Hughes, O Jones and K Singh.



85/22 **Declarations of Interest**

No declarations of interest were received.

86/22 **Additional Item of Business**

There were no additional items of business to consider.

87/22 **Mayor's Announcements**

Details of Mayoral and Deputy Mayoral engagements since the last meeting of the Council had been circulated to members.

In addition, the Mayor expressed his good wishes and that of the Council to Corin Crane, the outgoing Chief Executive of the Black Country Chamber of Commerce, and thanked him for his dedication and hard work demonstrated over the last six years to Sandwell and the wider Black Country.

88/22 **Petitions**

No petitions were received under Standing Order No. 5.

89/22 **Written Questions**

Questions received under Standing Order No. 6 were asked of the relevant members and responses provided.

90/22 **Sandwell Council Improvement Plan**

The Leader of the Council introduced the Sandwell Council Improvement Plan.

The Improvement Plan included proposed mechanisms for governance and assurance.



The mechanisms would enable senior officers and members to manage the successful delivery of the Improvement Plan, whilst also providing all staff, members, the public and other stakeholders with assurance on the progress of the ongoing improvement.

It was recognised that the Improvement Plan would be a living document, one that would need to evolve over time to respond to emerging intelligence and situations. Through the proposed governance arrangements, changes to the Plan would be captured and approved through an agreed Change Control process. To enable the authority to maintain the required pace of its improvement journey, it was proposed that Cabinet be delegated the authority to approve changes to the Improvement Plan as part of regular reporting arrangements.

Resolved that:-

- (1) the updated Improvement Plan to address the recommendations from external reviews and the proposed reporting mechanisms to ensure progress was managed effectively be approved;
- (2) delegated authority be given to the Director of Finance, in consultation with the Cabinet Member – Finance and Resources and Managing Director Commissioner, to identify and commit earmarked reserves towards Improvement Plan activities be approve.

91/22

Proposed Departures from the Development Plan at Land At West Bromwich Street, Oldbury, B69 3AT

At the meeting of Planning Committee held on 11 May 2022, consideration was given to planning application DC/21/66339, which sought approval for residential development on land allocated for mixed use in the development plan. Planning Committee approved the planning application with conditions, subject to the departure from the development plan (mixed-use to residential) being considered and ratified by Council.

The site formed part of a mixed-use allocation in the development plan which had not come to fruition. A major residential



development had been approved and was under construction on the adjacent site (which was previously approved by Planning Committee and Council), and this development of an additional 13 houses would complement the larger scheme. The departure of the land use from mixed-use to residential was therefore, considered to be acceptable.

Resolved that approval be given to an exception to the development plan in respect of planning application DC/21/66339 - Proposed 13 No. dwellings including amendment to plot 197 approved under planning application DC/20/64152- land at West Bromwich Street, Oldbury.

92/22

Proposed Departures from the Development Plan at Ervin Amasteel, George Henry Road, Tipton

At the meeting of Planning Committee held on 11 May 2022, consideration was given to planning application DC/21/65853, which sought approval for part demolition of existing buildings and proposed change of use from foundry to scrap metal recycling centre, comprising of new building and installation of sheer, pre-shredder, shredder and down streamer and boundary treatment.

Planning Committee approved the application and now Council would need to approve the departure from the Development Plan before planning permission can be granted.

The land was allocated for employment uses (Class E, B2 and B8; the proposed was a waste use (sui generis), and as such was contrary to adopted council policy. The application site was a vacant foundry site that is 33,907 square metres in area and was located on the eastern side of George Henry Road, Tipton. The site was in an established area of industrial and commercial units with wider area to the east of the site characterised by residential properties. The proposal would bring a large vacant site back into use.



Resolved that approval be given to an exception to the Development Plan in respect of planning application DC/21/65853 planning application for part demolition of existing buildings and proposed change of use from foundry to scrap metal recycling centre, comprising of new building and installation of sheer, pre-shredder, shredder and down streamer and boundary treatment – Ervin Amasteel, George Henry Road, Tipton.

93/22 **Minutes of the Governance and Constitution Review Committee**

The minutes of the meeting of the Governance and Constitution Review Committee held on 27 May 2022 were received.

The Council considered the recommendation of the Governance and Constitution Review Committee on the following matter:-

93/22(a) **Constitution Review - Cabinet Advisors**

Council considered the revised descriptions of Cabinet Advisors and the change of name to Performance Champions.

Resolved that the revised role descriptions for Cabinet Advisors, to be renamed Performance Champions, be approved and the Performance Champion – Neighbourhoods and Lead Member provide a bi-annual report to Full Council on the work of the Performance Champions.

94/22 **Extension of Appointment of Independent Member for the Audit and Risk Assurance Committee**

At Council on 17 July 2018, approval was given that Mr Jay Hussain be appointed as Independent Member to the Audit and Risk Assurance Committee, for a four-year period ending on 16 July 2022. The term was due to come to an end and Mr J Hussain had indicated that he would be happy to extend his term of office in the role.



Resolved that approval be given to extend the appointment of Mr Jay Hussain as Independent Member to the Audit and Risk Assurance Committee for the four year period ending 15 July 2026.

95/22 **Notice of Motions**

The Council proceeded to consider motions received under Standing Order No. 7.

95/22(a) **Environmental Impact of Cable Ties**

It was moved by Councillor W Gill and seconded by Councillor Williams: -

“That this Council reaffirms its commitment to tackling the climate crisis through the recognition of the impact that single use cable ties can have and moves to resolve through the banning of political posters from Council property in order to limit the usage of single use cable ties”.

In accordance with Standing Order No. 11 (15(b)), Councillor L Giles called for the matter to be put to the vote. The motion received the required support and the request was achieved.

On being put to the vote, the motion was defeated.

95/22(b) **Extend Free Parking Across Sandwell**

It was moved by Councillor Trumpeter and seconded by Councillor Dunn: -

“As we have seen in Wednesbury Town Centre recently, and as we see in our other town centres on the lead up to Christmas, free parking in council owned car parks can be offered by this council with minimal fuss when it suits. Free parking benefits residents, shoppers and our fantastic local businesses in our town centres by ensuring that shoppers spend money in the towns rather than



being drawn to out-of-town shopping centres that offer free car parking.

Over 20,000 people backed the Sandwell Conservatives calls for free weekend parking in our borough at the recent elections. Therefore, this council moves to resolve to explore this and invites the executive to consider extending free car parking in all other town centres until October 2022, in line with the recent Wednesbury scheme”.

In accordance with Standing Order No.7, Councillor Ahmed moved the following amendment to the motion, which was seconded by Councillor Gavan:-

“As we have seen in Wednesbury Town Centre recently, the council has offered one car park free of charge while regeneration of the town takes place. The regeneration project is an excellent example of how this council is taking steps forward to increase footfall to generate business into the town centre.

On the lead up to Christmas, free parking for two Saturdays is available in all council owned car parks. This Free parking benefits residents, shoppers and our fantastic local businesses in our town centres by ensuring that shoppers spend money locally in the towns rather than being drawn to shopping centres out of the borough of Sandwell that offer free car parking. Along with the combined authority we will continue to promote the use of public transport and other clear air methods of transport.

Therefore, this council resolves to explore options by the executive to consider extending free car parking in other town centres where regeneration is taking place, in line with the Wednesbury Scheme. The council must in doing so ensure that its commitment to tackling the climate crisis and health issues through recognition of reducing particulate matter, Carbon Monoxide and Nitrogen Oxides in our Town Centres is at the forefront of any decision taken”.

The motion as amended was put to the vote and, having been carried, it was RESOLVED accordingly.



95/22(c) **Off Road Motorbikes**

It was moved by Councillor Fisher and seconded by Councillor Chapman: -

“That this council believes that council officers, elected members, neighbourhood policing and local residents do a great job trying to tackle off road motorbikes, but more support is needed. With off road motorbikes being one of the highest reported incidents of anti-social behaviour in Sandwell. The safety of local residents and their pets, are at risk with the nuisance they cause, along with the destruction to our parks and green spaces, this cannot continue. Will the leader of the council agree to write to the West Midlands Police and Crime Commissioner Simon Foster calling for the re-introduction of a dedicated off-road motorbike team that can focus solely on this issue and give it the attention it deserves”.

In accordance with Standing Order No.7, Councillor Moore moved the following amendment to the motion, which was seconded by Councillor Piper:-

“That this Council believes that Council officers, elected members, neighbourhood policing and local residents do a great job trying to tackle off road motorbikes, but more support is needed. Notes that off road motorbikes and the nuisance that they cause is one of the highest reported incidents of anti-social behaviour in Sandwell. The safety of local residents and their pets, are at risk with the nuisance they cause, along with the destruction to our parks and green spaces; this cannot continue. This Council resolves to write to the Chief Constable of West Midlands, who is responsible for operational policing decisions, to call for the re-introduction of a dedicated off-road motorbike team that can focus solely on this issue and give it the attention it deserves; and further calls on the Council to write to the Home Secretary to ask her to review the law, guidance and training governing police pursuits”.



The motion as amended was put to the vote and, having been carried, it was RESOLVED accordingly.

Meeting ended at 7.16pm

Contact: democratic_services@sandwell.gov.uk



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Urgent Business

To consider any urgent business (with prior approval by the Mayor).

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EVENTS ATTENDED SINCE 7TH JUNE 2022

- Sandwell Valley Re-Launch
- West Midlands Reserve Forces & Cadets Association AGM
- Sandwell Against Racism
- Pride in the Park
- Charity Event for Queen Elizabeth Hospital
- St. John Ambulance Platinum Jubilee Service
- QAVS Workshop
- UK Geoparks - The Canal & River Trust
- Richards Book Launch & One Small Change
- Black Country Touring - What's in Store
- Select Lifestyles Fun Day
- Open Day at Lightwoods House
- Judge Celebrate Sandwell Bostin People Drawing Competition
- Visit to Sandwell Aquatic Centre
- Windrush Day at Kuumba Centre
- Sandwell Twinning AGM

- Summer Diversity Festival at Ferndale Primary School
- Photo Shoot for LGBT+ West Midlands Voices Exhibition
- Handover Ceremony at Sandwell Aquatics Centre
- The Big Clean Up
- Armed Forces Day
- VOWS Community Enterprise CIC - Windrush Ball
- Visit to Brandhall Green Space
- St. Michael's CE High School Student Voice
- Holly Lodge High School Centenary Celebrations
- Visit to Dingle Meadow Care Home Open Day
- SHAPE Your Talent
- 617th Sandwell Air Scouts Launch of Squirrels Section
- Suzie's Singers and Community Choir
- Sandwell General Hospital - Harvey presenting NHS Birthday Cards
- Family Lunch and Tour of Q3 Academy
- Meeting with Jayne Leeson - Changing Our Lives
- Meeting with Bally Barquer - Asian Mental Health Support Group
- Talk at Tipton Library
- SIPS Music and Arts Summer Festival
- Mayor of Dudley's Civic Sunday

- SIPS Awards Night with Music
- National Citizenship Service to Support Young People's Community Projects
- Pride of Bristnall Awards Evening
- Praise Assembly at Perryfields School
- The Birmingham Sandwell & West Side Jazz Festival Launch
- Opening of The SHAPE Summer Festival
- Calendar Wenches
- University of Wolverhampton - Conferment of Awards
- Ormiston Forge Academy Prize Giving Evening
- Dorothy Parkes Summer Fair
- Medical Conference
- Baton Relay

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Petitions

To receive any petitions under Standing Order No. 5 (strategic policy issues or which are of a Borough-wide significance if they are relevant to some matter to which the Council has functions and responsibilities, or which affects the Borough, or part of it, or its citizens or a number of them).

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Report to Council

26 July 2022

Subject:	Written Questions
Director:	Surjit Tour – Director of Law and Governance and Monitoring Officer

The following written questions have been received:-

7(a) From Councillor Moore to the Cabinet Member for Environment Services

When will Highways Services adopt Scafell Way and surrounding streets in Hateley Heath and for what reason matter has not been resolved?

7(b) From Councillor Trumpeter to the Cabinet Member for Communities

Would the cabinet member for communities welcome an approach from West Bromwich Albion supporter groups, to explore granting The Hawthorns an Asset of Community Value (ACV) status?

Under The 2011 Localism Act, The Hawthorns is likely to be identified as an asset of importance to our community's social wellbeing, and thus potentially eligible to be granted ACV status.

Over the last decade, various sporting arenas have been granted ACV status, including Anfield, Old Trafford and neighbouring St Andrews. This gives comfort to supporters knowing there is a layer of protection, and an opportunity to submit a bid should the current, or any future owner(s), wish to dispose of the stadium.



9(c) From Councillor Dunn to the Cabinet Member for Environment Services

Tividale is famous in Sandwell for its rolling hills and spectacular views over the Black Country, Birmingham and farther afield. Unfortunately, however, Tividale is blighted by speeding vehicles which is endangering the lives of our community especially on roads such as Oakham Road, Tower Road and Regent Road. I acknowledge that we are currently directing our concerns to the Neighbourhood Police Team, but with low resource and high demand, the Council should take a more effective approach. So, I ask the Cabinet Member for the Environment if he can work with me to strategise a better working plan to tackle speeding across the Borough, but in particular my ward of Tividale.

9(d) From Councillor Fisher to the Cabinet Member for Communities

Will the cabinet member for communities please use whatever power he has, to help residents and users of Charlemont Community Centre.

Since March 2022, Briarley TRM Company Ltd installed a barrier, preventing vehicular access to the visitor's car park. This has prevented community groups using the community centre, with some groups having to cancel sessions as they are for children with disabilities and special educational needs.

The barrier has also prevented people parking when visiting the play area and has caused additional traffic issues when football matches are being played, as they are having to park in nearby residential streets causing parking issues for residents.

This council has a legal right of access, and the full force of this council needs to be applied so a resolution can be found. After 4 months of being told 'it is with the legal department' is simply no longer acceptable to myself or the Charlemont Community users.



9(e) From Councillor Wilkes to the Cabinet Member for Environment Services

Keep Britain Tidy's Chief Executive recently said: "The eyes of the world will fall on the Midlands as the much-anticipated Commonwealth Games takes place, and we want to make sure the region is looking its best for competitors, residents and visitors."

As we rapidly approach the start of the games and prepare to broadcast our borough to the world, is the Cabinet Member for Environment Services satisfied with the efforts of this council and SERCO in ensuring Sandwell looks its absolute best?

9(f) From Councillor William Gill to the Leader of the Council

Will the leader work with myself and colleagues on both sides of the chamber as well as relevant officers, and Serco staff to introduce unique QR codes onto all communal bins for example those bins on high streets and green spaces in the Borough which would allow and encourage members of the public to report overflowing bins or damaged bins with ease?



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Report to Council

26 July 2022

Subject:	Governance Review – Proposed Changes to the Council’s Constitution
Director:	Surjit Tour Director of Law and Governance & Monitoring Officer
Contact Officer:	Elaine Newsome Service Manager – Democracy

1 Recommendations

- 1.1 That the Key Decision financial threshold in the Constitution:
 - 1.1.1 be raised to £1m for decisions to be taken by Cabinet;
 - 1.1.2 that individual Cabinet Members be delegated to make financial decisions between £500,001 and £999,999;
 - 1.1.3 that the limit of Chief Officers’ financial delegations be raised to £500,000;
- 1.2 That Contract and Procurement Procedure Rules be revised and amended as proposed in this report.
- 1.3 That the Protocol for the Disposal of Council Owned Land and Buildings, forming part of the Financial Regulations and Procedures, be revised and amended as proposed in this report.



- 1.4 Subject to the approval of the above recommendations, the Director of Law & Governance/Monitoring Officer, in consultation with the Director of Finance (and S151 Officer), be authorised to make all necessary consequential changes to the Constitution to give effect to the approved changes.







2 Reasons for Recommendations

- 2.1 The Council commenced a review of the Council's governance arrangements following the Grant Thornton Governance Review, LGA Corporate Peer Review and CIPFA Review. These reviews identified a number of key governance issues that need to be addressed.
- 2.2 The reviews specifically identified the requirement to address underlying constitutional and procedural deficiencies that directly and indirectly undermine or hinder the Council's governance arrangements, decision making ability and key working relationships.
- 2.3 An Officer Governance Review Project Team has been established to help coordinate and oversee the delivery of the Governance Review. Support has also been provided by the Local Government Association, Centre for Governance and Scrutiny, Chartered Institute of Public Finance and Accountancy and the Commissioners.
- 2.4 The Governance and Constitution Review Committee, on 27 May 2022, established a cross-party Member Working Group to oversee the process for and coordination of constitution revisions and proposals. The Working Group considered the following proposed changes to the Constitution at its meeting on 14 July 2022:
- a) Key Decision Financial Thresholds,
 - b) Contract and Procurement Rules, and
 - c) Protocol for the Disposal of Council Owned Land and Buildings.
- 2.5 The changes to the Constitution proposed in his report have been recommended by the cross-party Member Working Group. In order for any of the changes to take effect Full Council approval is required.



2.6 Demonstrating progress in respect of the Governance Review is a key area of focus for the Secretary of State and ensuring necessary changes to the Council’s Constitution are delivered at pace considered critical to the Council’s improvement.

3 How does this deliver objectives of the Corporate Plan?

	An effective governance framework supports delivery of all the objectives within the Corporate Plan.
	Best start in life for children and young people
	People live well and age well
	Strong resilient communities
	Quality homes in thriving neighbourhoods
	A strong and inclusive economy
	A connected and accessible Sandwell

4 Context and Key Issues

BACKGROUND

- 4.1 Earlier this year, the Council commenced a review of its governance arrangements following the Grant Thornton Governance Review, LGA Corporate Peer Review and CIPFA Review. These reviews identified a number of key governance issues that required consideration and refresh.
- 4.2 The review also identified a need to address underlying cultural and behaviour issues that directly and indirectly undermined the Council’s governance arrangements, decision-making ability and key relationships.



4.3 An Officer Governance Project Team has been established to help coordinate and oversee the delivery of the Governance Review. Support has also been provided by the Local Government Association, Centre for Governance and Scrutiny, Chartered Institute of Public Finance and Accountancy and the Commissioners.

4.4 The Governance and Constitution Review Committee has met and established a cross-party Member Working Group consisting of 10 members – namely, all the members of the Committee and two additional Conservative Group members. The Working Group has started to consider draft constitution proposals and work with other Committees and Boards/Groups to ensure proposed change are joined up, for example, any development and training needs are being fed into the Member Development Programme as training and development needs are identified.

KEY AREAS OF FOCUS

4.5 The Governance Review is refreshing the Council's decision-making mechanisms and updating the constitutional arrangements to enable: the achievement of the Council's strategic direction and ambition, in particular:

- efficient and effective decision-making;
- a more open, transparent and accountable Council;
- greater engagement with residents, communities and stakeholders in relation to democratic functions;
- more effective support to Elected Members to enable them to be confident and successful in their various roles;
- corporate governance documentation, policies and procedures to be updated and revised so that they are consistent with national guidance, align to best practice and are fit for purpose;
- strong and healthy relationships between Elected Members and Officers.



- 4.6 The Governance Review will review all elements of the Council's Constitution in line with the indicative timetable set out below. Where possible, the various work strands will be expedited to ensure the Constitution review is completed and expeditiously as possible, and in any event by the end of the calendar year.

Indicative Timetable

Full Council on 26 July 2022

- Key Decision Thresholds
- Contract and Procurement Procedure Rules
- Protocol for the Disposal of Council Owned Land and Buildings

Full Council on 25 October 2022 -

- Scheme of Delegation to Officers
- Council Procedure Rules
- Executive Procedure Rules
- Scrutiny Review Update/Changes (if any) (including Scrutiny Procedure Rules)
- Access to Information Rules
- Officer Employment Procedure Rules
- Protocol Member and Employee Relations
- Officers' Code of Conduct

For approval by Full Council on 13 December 2022 -

- Budget & Policy Framework Procedure Rules
- Financial Regulations and Procedure Rules
- Remaining Articles (including Committee Structures and Terms of Reference)
- Responsibility for Functions
- Third Sector Grant Funding & Procedures



KEY WORK STRANDS for COUNCIL (26 July)

Key Decision Threshold

- 4.6 It has been recognised that the Governance Review needed to promote and embed effective decision making. Over recent years, more and more decisions have been escalated to Cabinet resulting in less efficient decision making in the Council.
- 4.7 The characteristics of effective decision making include:
- making decisions in a timely manner
 - decisions being made at the right level within the organisation (which is balanced between Members and Officers)
 - decision making that is informed
 - decisions that are open and transparent and compliant with the Council's Access to Information Rules
- 4.8 To enable decisions to be taken more effectively, it is proposed that the Key Decision Threshold be changed. Details are set out as follows:
- Key Decision threshold for Cabinet Decisions to: £1m (from £250k)
Cabinet Member financial delegations: £500,001 and £999,999
Chief Officers financial delegations: £500k (from £249,999)
- 4.9 A comparison has been undertaken with a number of other councils in relation to their financial thresholds. A table showing the different thresholds is set out at Appendix 1.
- 4.10 Given the benchmarking information, the proposal is comparable with some other Local Authorities. The changes to the key decision financial thresholds will enable more agile decision-making and operational efficiency, which supports the Council's ambitious strategic agenda for delivery and improvement.
- 4.11 It should be noted that decisions taken by officers and Cabinet Members will require the same level of information and consideration of the issues as a decision taken by the Cabinet. Decisions by officers and the Cabinet Member will be accompanied by a Decision Notice that will be published (subject to Sch12 Local Government Act 1972 considerations) and a detailed report that includes all material and relevant information, together with legal, finance, HR, equality and other necessary



implications, to enable an informed decision to be taken. Any delegated decision taken by a Cabinet member or Officer will also be reported to the next available Cabinet Meeting for noting. Such an approach ensures that decisions remain open and transparent, and consistent with good governance principles.

- 4.12 It is therefore proposed that the Key Decision Threshold as detailed at paragraph 4.8 above be approved and that the Constitution be amended to reflect that change.

Contract and Procurement Procedure Rules (CPRs)

- 4.13 A detailed review has been undertaken in relation to the CPRs with the support of internal staff, another experienced Monitoring Officer and governance practitioner (who also supported Birmingham City Council - via the LGA - with their governance review). The review has drawn upon various officer experiences, including the Council's Interim Procurement Manager. The officers involved collectively have extensive experience that has been gained over many years working at other metropolitan, unitary and district councils.
- 4.14 Support and input has also been provided from the wider Procurement Team, Legal Services and various officers from across the Council who have provided feedback on the CPRs to ensure areas of improvement have been identified and addressed as part of the revision of the Rules.
- 4.15 Initial work undertaken looked at the Council's current CPRs and benchmarking against CPRs from a number of authorities around the country. In particular, consideration has been given to a cross section of Greater Manchester Authorities, including Salford City Council, Manchester City Council, STAR Procurement (Stockport, Trafford, Rochdale and Tameside), Brent LBC and Birmingham City Council. These Councils have either been involved in significant procurement projects, recently undergone a CPR review and/or are considered similar in size to Sandwell MBC.
- 4.16 Overall, the Council's CPR arrangements were broadly similar to the benchmarked authorities. However, there were some areas which needed strengthening, such as robust statements were required about the need to procure within a strong ethical governance environment and this has been reflected in the draft CPRs. The review has also provided the opportunity to deal with changes in the law which were not reflected



in any benchmarked examples we reviewed – principally around the changes to the statutory procurement regime following the UK's exit from the EU.

- 4.16 The revised CPRs are set out at Appendix 2. A summary of the changes proposed are set out in a Summary Table at Appendix 3
- 4.17 Overall, some 70 substantive changes to CPRs are being proposed. These have formed the basis of a consultation exercise in June with a focus group of officers, before the draft CPRs being submitted to the Corporate Leadership Team.
- 4.18 The proposed changes to the CPRs will make procurement more agile and effective whilst retaining the necessary safeguards to ensure governance risks are mitigated and managed effectively. The changes introduce greater flexibilities on decision-making where it was considered sensible to do so, for example on exemptions and quotations; whilst strengthening requisite check and balances to provide effective assurance to the Council. The CPRs will be accompanied by revised Guidance and Protocols that will promote and embed good practice whilst improving timely and effective procurement. The CPRs specifically require compliance with any guidance, advice or protocol issued by the Council's Procurement Team. The revised CPRs therefore seek to strike a balance between the need for an effective legal framework and operational efficacy to delivery effective procurement across the Council.

Financial Regulations (Fin Regs)

- 4.19 A review of the Council's Fin Regs is underway and from the benchmarking exercise are considered to be broadly in line with those found in many authorities, although there are some areas, such as the definition of budget overspends and underspends, that seem to have been affected by historic local circumstances.
- 4.20 The Chief Finance Officer will be keeping the Fin Regs under review throughout the Municipal Year to ensure any emerging issues not currently known or anticipated can be addressed.
- 4.21 The Fin Regs are currently being reviewed and a revised version will be considered by Full Council at a later meeting.



- 4.22 The review is almost complete and comprises of consequential changes from the (anticipated) proposed increase in the Key Decision Thresholds; corrections to Committees references, updates to teams and officer designations and removal of provisions no longer used.
- 4.24 The Director of Finance has been engaged in the review of the Fin Regs. The changes will help embed improvements to the Council financial management arrangements, provide greater clarity and understanding for members and officer, and ensure financial responsibility and accountability sits at the heart of the Fin Regs.

Protocol for the Disposal of Council Owned Land and Buildings ("Protocol")

- 4.25 The Protocol forms part of the Council's Fin Regs. It was introduced to bolster the Council's governance and decision making around the disposal of significant land and building assets.
- 4.26 The Protocol provides an opportunity for potential land and building assets considered to be surplus to requirements and appropriate to be disposed of, to be considered by the Land and Asset Management Committee (subject to the value meeting the threshold) prior to any disposal. The Committee whilst not a decision-making Committee, will make recommendations to the Cabinet Member or Cabinet on any qualifying disposal.
- 4.27 The proposed changes to the Protocol focus on ensuring the Protocol is clear, the thresholds set at the appropriate level to ensure decision making is effective whilst ensuring the requisite checks and balances are in place.
- 4.28 The proposed Land and Asset Disposal Protocol is set out at Appendix 4



5 Implications

Resources:	<p>There are no direct resources implications arising from this report. However, the changes proposed enables more effective decision making, greater financial oversight and management. The changes ensure greater clarity around obligations, approach and expectations which are essential to promote and embed good governance.</p>
Legal and Governance:	<p>The proposals will enable high standards of decision making across the authority and addresses the recommendations contained within the Council's Improvement Plan.</p> <p>The council must ensure good governance underpins its decision making which needs to be informed and timely. The proposed changes seek to achieve this whilst striking a balance between the necessary safeguards necessary to provide assurance to the Council.</p> <p>Any constitutional changes require Full Council approval.</p>
Risk:	<p>The proposed changes will reduce the Council risk of challenge as more informed and effective decision making will be achieved. Mitigation of risks associated with decision making is essential and protects the council from avoidable challenge and reputational harm.</p>
Equality:	<p>There are no direct equality implications arising from this report save that all decision making needs to be compliant with the Equality Act 2010 and the public sector equality duty. All decisions must therefore consider relevant equality, diversity and inclusion implications.</p>
Health and Wellbeing:	<p>There are no direct implications for health and wellbeing from this report.</p>



Social Value	The changes [proposed to the Contract and Procurement Rules promote and emphasise the need to ensure social value is properly considered and encouraged wherever possible.
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6 Appendices

1. Appendix 1 Key decision financial threshold benchmarking
2. Proposed Contract Procedure Rules
3. Summary of proposed changes to Contract Procedure Rules
4. Proposed Land and Asset Disposal Protocol

7. Background Papers

Constitutions of Salford City Council, Manchester City Council, STAR Procurement (Stockport, Trafford, Rochdale and Tameside Councils), Brent LBC, Birmingham City Council, Durham County Council, Nuneaton and Bedworth Borough Council, Gateshead Metropolitan Borough Council, Nottinghamshire County Council, Hertfordshire County Council, Liverpool City Council.



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Appendix 1

Benchmarking Exercise Key Decision Financial Threshold Data from metropolitan districts and local neighbours

Council	Financial threshold
Barnsley	£500k
Birmingham	£1million Capital £500k Revenue
Bolton	£100k
Bradford	£250k
Calderdale	£200k
Coventry	£1million
Doncaster	£1million Capital £250k Revenue
Dudley	£250k
Gateshead	£250k
Kirklees	£250k
Knowsley	£250k Revenue £1m Capital
Leeds	£500k
Liverpool	£250k
Manchester	£500k
North Tyneside	£500k
Newcastle upon Tyne	£1million capital £250k revenue
Oldham	£250k
Rochdale	£500k
Rotherham	£400k
South Tyneside	£250k
Salford	£350k £1million for procurement
Sandwell	£250k
Sefton	£100k or more than 2% of a Departmental Budget, whichever is greater
Sheffield	£500k
Solihull	£250k
St Helens	£500k
Stockport	£500k
Sunderland	£250k

Tameside	Any Executive decision which requires a budget expenditure of £30,000 or more that is not in the budget presented to Council; or Any Executive decision to vire £500,000 or more in the budget presented to Council;
Trafford	£500k
Wakefield	£250k £500k public health contract spend £1million land and property acquisition or disposal
Walsall	£500k
Wigan	£500k
Wirral	£500k
Wolverhampton	£250k



Sandwell
Metropolitan Borough Council

DRAFT

CONTRACT

PROCEDURE RULES

Reviewed: July 2022

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1. Introduction

1.1. These Contract Procedure Rules (made in accordance with section 135 of the Local Government Act 1972) are intended to promote probity in commissioning and purchasing practice; public accountability; reflect the Council's priorities and deter corruption.

1.2 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Procedure Rules is to provide a structure within which commissioning and purchasing decisions are made and implemented and which ensure that the Council:

- Achieves best value for money, including social value
- Supports all relevant council priorities and policies to include the Corporate Plan and Vision 2030
- Purchases quality goods, services and works
- Safeguards its reputation from any suggestion of dishonesty or corruption
- incorporates principles of sustainability, efficiency, quality, social value, best value for money and whole life-cycle costing
- complies with the Public Contract Regulations 2015 (PCR) and any future amendments

1.3 Basic Principles

1.3.1 All procurement, contracting, contract management and disposal procedures must:

- comply with these rules and Financial Regulations;
- achieve Best Value;
- be consistent with the highest standards of integrity;
- comply with the relevant Legislation (including the Council's statutory duties and powers);
- comply with any relevant Council policies;
- support the Council's corporate and departmental aims; and
- ensure that non-commercial considerations do not influence the award decision.
- must ensure that all procurement activity is transparent and proportionate and that all bidders are treated equally and without discrimination throughout its processes.

1.4 General Principles – Application and Compliance

1.4.1 No contract may be awarded unless there is a budget allocated and the appropriate delegated authority has been granted.

1.4.2 These Contract Procurement Rules apply to the purchase by or on behalf of the Council of works, supplies (goods) and services.

1.4.3 These Contract Procurement Rules apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are listed in 2.3.

1.4.4 In the event of conflict between the above, UK legislation will take precedence, then the Council's Constitution, policies and procedures

1.4.5 Non-compliance with these rules could result in a legal challenge to the Council. Therefore, any incidence of non-compliance with these rules could constitute a disciplinary offence.

1.5. These rules should be read in conjunction with the following:

- Financial Regulations
- Scheme of Delegations
- Member Code of Conduct
- Officer Code of Conduct
- Voluntary and Community Sector Grant Funding Guidance and Procedures
- The Public Services (Social Value) Act 2012 Policy and Guidance

1.6. All procurement activity and sales of Council assets, excluding land and buildings, shall comply with these rules unless an exemption is approved under Rule 15. This includes where a partner or consultant has been instructed to invite tenders on behalf of the Council.

1.7. Advice on any matter within these rules can be obtained from the Procurement Services or Legal Services. Where these rules are applicable and engaged any advice, guidance, protocols (or the equivalent) relating to them issued by the council Procurement Team must be adhered to by any officer, member or third party acting on behalf of the council.

1.8 The threshold values at which public procurement opportunities are subject to the full suite of regulations governing public contracts are revised every two years to take account of currency fluctuations, and to ensure the UK complies with its obligations under the World Trade Organisation's Agreement on Government Procurement (GPA). Appendix C sets out the threshold values for public contracts, utilities contracts, concession contracts and defence and security contracts from 1 January 2022. When calculating the estimated value of the contract to determine whether the regulations apply, the contract value estimation should be inclusive of VAT (where applicable) from 1 January 2022.

1.9. Appendix A of these Contract Procedure Rules contains a list of defined words and expressions

2. Scope

2.1. These Rules apply to all contracts with outside organisations or people, including agreements with or on behalf of other public sector organisations and partner agencies, where there is an agreement to supply materials, goods, services or works, in return for money or payments in kind, whether that agreement is formal or informal. This includes:

- a) purchasing of all materials, goods, services or works; and
- b) instruction of outside experts or consultants under contracts for services.

2.2. Where the Council enters into a contract as an agent for another authority the agency agreement should specify which rules apply. Where other public bodies are acting as the lead or contracting body for a procurement that the Council will be participating in, then their own Contract Procedure Rules or Contract Standing Orders will apply.

2.3. However, these rules do not apply to the following areas:

- a) Expenditure funded by EU grants – European Procurement Rules must be complied with. Where use of the Council's centrally arranged contracts is made then compliance with the European Procurement Rules will be achieved.
- b) Grants that are made by the Council to external organisations that do not constitute a contract for services – this expenditure is covered by the Third Sector Grant Funding Guidance and Procedures.
- c) Locally maintained school expenditure operating under the scheme of the delegated budget.
- d) Treasury management transactions, including leasing, exercising borrowing consents, cash management, investments and other transactions in accordance with the Treasury Management Policy.
- e) Contracts of employment which make an individual a direct employee of the Council.

f) Disposal, including sale, of Council owned land and buildings – this is dealt with under the Sale of Land and Buildings Appendix to the Financial Regulations.

2.4. It should be noted that depending upon the terms and conditions, a Development Agreement entered in to by the Council may need to follow the Public Procurement Regulations. Prior advice must be sought from the Monitoring Officer/Chief Legal Officer before steps are taken to negotiate any Development Agreement.

2.5. Advice should be sought from Procurement Services or Legal Services as to whether proposed activity is covered by the scope of these rules.

3. Roles and Responsibilities

3.1. All officers of the Council must adhere to these Rules. The Rules also apply where consultants or third parties are employed to act on behalf of the Council.

3.2. Before commencing any procurement activity, officers must ensure that they have appropriate authority and delegated approval to act. It is the responsibility of individual officers leading on a contract/procurement exercise to ensure appropriate authority to act has been obtained, which might include obtaining the approval of the relevant Cabinet Member or Cabinet and that the budget is available. The officer should consult with Legal Services at the earliest opportunity regarding the proposed form of authority to ensure it is sufficient, but the ultimate responsibility for obtaining appropriate authority rests with the officer. Failure to obtain appropriate authority will cause delay to procurement activity and/or the award of a contract.

3.3. Roles and responsibilities of members and officers across the Council are set out below. Definitions of officers are as in the Scheme of Delegation.

Members

a) Set the strategic direction of services, which informs the requirements from the market.

b) Are not involved in the evaluation of quotations or tenders.

c) Cabinet authorises the commencement of procurement above the Key Decision Threshold (£1million+) and delegates the award of all contracts with total value above the Key Decision Threshold (£1million+) to the relevant Chief Officer/Cabinet Member unless otherwise agreed by Cabinet.

d) Cabinet approves exemptions from any part of these rules for contracts with a total value above the Key Decision Threshold (£1million+director).

e) Individual Cabinet Members authorise the commencement of procurement as it relates to their portfolio for procurement between £500,001 and £1million and may delegate the award of all contracts to the relevant Chief Officer.

f) Individual Cabinet Members approves exemption from any part of these rules for contracts with a total value between £500,001 and £1million as it relates to their portfolio.

g) Cabinet approves and maintains the Council's Procurement Policy Framework

Chief Executive

a) Approves any exemption to these rules for contracts up to a total value of £500,000 which relate to service areas that are the responsibility of the Chief Finance Officer.

b) Endorses any exemption to these rules for contracts with a total value above £500,000 which relate to service areas that are the responsibility of the Chief Finance Officer.

Chief Finance Officer

- a) Act as a compulsory consultee on procurement activity above £250,000 in value to ensure appropriate resources are in place and compliant processes have been followed.
- b) Review all monetary limits shown in these Rules annually and report any resulting amendments to the relevant Cabinet Member.
- c) Act as escalation point for any appeals or reviews made by bidders with regard to these Rules.
- d) Approve any exemptions to these Rules for contracts up to a total value of £500,000 relating to services outside of their area of responsibility
- e) Endorse any exemption to these Rules for contracts above a total value of £500,000 relating to services outside of their area of responsibility.

Chief Officer

- a) Ensure compliance with these Rules across their service areas.
- b) Ensure all strategic procurement projects are properly resourced, and have financial, procurement, legal and (where necessary) HR input from the start.
- c) Ensure delegated authority is obtained as required.
- d) Ensure appropriate cabinet members are briefed on appropriate levels of procurement activity within their portfolios.
- e) Ensure officers are sufficiently trained, experienced and knowledgeable about these Rules and commissioning/procurement activity.
- f) Ensure resources are available to allow compliance with these Rules.
- g) Ensure that the Head of Procurement is notified of all planned procurement activities to include in the Corporate Procurement Plan
- h) Approve the award of contracts relating to their service areas up to a total value of £500,000.
- i) Endorses any exemption to these Rules for contracts relating to their service areas

Director of Law & Governance/ Monitoring Officer

- a) Authorise the commissioning/procurement of legal services for all aspects of Council business.
- b) Act as a compulsory consultee on procurement activity above £250,000 in value to protect the Council's interests and ensure onerous terms and conditions are not entered into.
- c) Act as a compulsory consultee on any Development Agreement.
- d) Enter into contracts on behalf of the authority with delegated authority.
- e) Endorses any exemptions to these rules for expenditure above £250,000 in value

Director of Regeneration & Growth

a) Authorise the commissioning/procurement of advice relating to the valuation, sale or acquisition of land or property.

Head of Procurement

a) Review these rules annually to ensure they are fit for purpose and meet all relevant legislative and policy requirements.

b) Provide advice and guidance on all procurement activity across the Council

c) Endorses any exemptions to these rules prior to Chief Finance Officer/Monitoring Office, other than those for Minimal Quotes/Tenders.

d) Ensures that all procurement activity above £100,000 is compliant with these Rules.

e) Ensure the Procurement Team adhere to The Procurement Processes & Guidance Documents on The Sandwell Intranet Procurement Site.

Service Manager – ICT

a) Authorise the commissioning/procurement of ICT systems and support across the Council.

All Officers of the Council

a) Comply with these rules, The Procurement Processes & Guidance Documents on The Sandwell Intranet Procurement Site, Financial Regulations, Employee Code of Conduct and with all relevant UK legislation.

b) Make use of existing Council contracts and internal suppliers where available.

c) Ensure they and any team members they are responsible for are suitably trained to carry out procurement activities.

d) Ensure that appropriate budget and authorities are in place before commencing procurement activity.

e) Undertake procurement activity for all requirements below £100,000.

f) Consult with Legal Services in relation to obtaining authority to award a contract at the earliest opportunity, including obtaining advice from the lawyer who is assigned to the matter on the form and content of the authority (i.e. either in the form of a Cabinet report or delegated authority).

g) Ensure procurement procedures are commenced as early as possible to ensure compliance with these rules and sufficient pre-market engagement to develop requirements and attract suitable suppliers.

h) Ensure any agents, consultants and contractual partners acting on their behalf comply with these rules. Legal advice must be obtained by officers where any conflict of interest has potential to impact on a contractual relationship.

- i) Maintain an audit trail of all authorities given and decisions made to show how these rules have been complied with.
- j) Involve Procurement, Finance, Legal Services and (where necessary) HR at the earliest opportunity, and at all stages of a project.
- k) Store all documents electronically and in compliance with any corporate or service specific document management and retention policies.
- l) Ensure that all opportunities are advertised as per procedures set out in this document to achieve value for money.
- m) Monitor contracts for which they are responsible, and manage issues arising to ensure optimum contract performance.

Third Parties commissioned to act on behalf of the Council

- a) Must comply with these rules
- b) Must not carry out any procurement activity without prior consultation with Head of Procurement
- c) Ensure any conflict of interest is avoided in the first instance or declared to the appropriate Chief Officer/Service Manager as soon as possible. Legal advice must be obtained by officers where any conflict has potential to impact on a contractual relationship.

4. Conduct of Officers, Members and Suppliers

4.1. The Council will adopt the necessary processes and procedures to be able to demonstrate a fair and transparent procurement process, providing auditable justification for all decisions made.

4.2. Where bidders attempt to influence the outcome of a procurement process other than through proper participation (e.g. by canvassing members), they will be excluded from the procurement process to which such canvassing or approaches relate.

4.3. Every **Member** and officer of the Council shall declare any personal or prejudicial interest in any contract in accordance with the Council's Code of Conduct for Councillors and Code of Conduct for Officers. Such interests should be recorded in the Members' or Employee's Registers of Interest.

4.4. Any potential conflict of interest in relation to a procurement e.g. a relationship with a bidder or a company operating in the market, or a personal interest in the matter, must be identified and recorded at the earliest opportunity to ensure equal treatment of bidders and a fair and transparent procurement process. Advice should be sought from the Head of Procurement and such action should be taken to remove the conflict e.g. employee not taking part in the evaluation of the bid.

4.5. No **Member** or officer of the Council shall in a personal capacity enter into any contract on behalf of the Council.

5. Use of Internal Providers and Council-Wide Contracts

5.1. Where an internal service can provide the goods or service, this must be used in the first instance.

5.2. Where the Council has corporately procured a contract or framework agreement, these contracts should be used as the Council will be obtaining value for money by procuring corporately. The requirements of these rules will have been addressed, value for money ensured, and standard terms and conditions used.

5.3. A list of all corporately procured contracts is maintained by the Corporate Procurement Service and made available on the Council's intranet.

5.4. **As required by the Financial Regulations**, purchase orders must be raised via the Oracle Financials system (SBS). Where possible, Council-wide contracts should be available through catalogues via the Oracle Financials system (SBS).

5.5. Subject to any pre-existing exclusivity arrangements which oblige the Council to use a pre-existing contract, where the appropriate Chief Officer (in consultation with the **Head of Procurement**) considers that there are specific advantages to be obtained by negotiating a separate contract for corporately procured goods or services, then written approval must be sought from the **Head of Procurement** and retained on the appropriate contract file.

5.6. Failure to use existing corporately procured contracts where available can be viewed as a disciplinary offence, unless approval is given as per paragraph 5.5 above.

5.7. Where there are no internal suppliers or existing contracts in place, officers must follow the procedures set out in this document to identify external suppliers.

6. Contracts Relating to Assets

6.1. These Rules do not apply to the sale or disposal of Council owned land or buildings. Transactions of this nature must adhere to the Sale of Land and Buildings Protocol within the Financial Regulations.

6.2. Where the sale of land also specifies works or services to be carried out by the developer then advice should be sought from Legal Services as the land sale could constitute a public works contract or public services contract which would be subject to these Rules as well as the Sale of Land and Buildings Protocol.

6.3. These Rules do apply to the acquisitions, leases, licenses, agreements and other matters relating to land or property, except where they have been expressly varied. Any arrangements must adhere to the Financial Regulations.

7. Procurement Cards

7.1. Procurement cards should be used in the following circumstances:

a) **For all requirements where there is no written contract in place with a maximum transaction value of £500**

and no greater than £1,000 per month; Any spend with a single supplier over £10,000 should follow the procurement process and be contracted.

- b) Where purchase orders cannot be used;
- c) Where there is a requirement to respond to service users' requirements in an emergency or out of normal working hours;
- d) In place of petty cash as far as possible; or
- e) Where online procurement routes offer the only or the most value for money option.

7.2. Procurement cards will be issued subject to the Procurement Card Policy. Before a procurement card will be granted to a card holder, Internal Audit must confirm that there are no significant issues that would identify a high risk of inappropriate use by that individual or that service area.

7.3. Procurement cards will not be used where an internal provider or a corporately procured contract exists, unless this is in the form of an embedded/virtual procurement card.

7.4. Use of procurement cards must be in accordance with the Procurement Card Policy and these Rules, including the use of internal suppliers and corporate contracts (Rule 5) and advertising thresholds (Rule 8). Procurement cards can be used for higher value purchases in emergency situations only.

7.5. Failure to adhere to these procedures will constitute a disciplinary offence.

7.6. Where a procurement card is used, it is the responsibility of the card holder and their budget manager to ensure that value for money is obtained at all times and spend is in line with business need.

8. Values and Advertising Thresholds

8.1. Values (or genuine pre-estimated values) used in the operation of these Rules will normally be the total value of the contract over the whole of the contract term including any extension. **The value will be inclusive of VAT.**

8.2. Where a series of purchases is made for the same or similar purposes, then the value will be the aggregated value of purchases made within any single contract or period of 12 consecutive months. Where a contract is required over a multiple year period, then the total value of that contract must be considered.

8.3. Orders or requirements should not be artificially divided to make two or more orders of a lower value to avoid the requirement to obtain quotations or tenders.

8.4. Advice should be sought from Procurement Services on calculating the estimated value. It may be appropriate to obtain an independently verified estimated before commencing the procurement activity. If an external expert is required, the appointment of that expert must be in line with these rules.

8.5. The value (or genuine pre-estimated value) will determine the procurement method used, as set out in Table 1 below. The value of the contract will depend upon the specification of the goods, services or works required. Details of how estimated figures have been calculated must be kept on the relevant contract file.

8.6. Should the lowest quotation/bid received be above the estimated cost and the value dictates that an alternative procurement method should have been used, Chief Officer approval is required to accept the bids and award the contract after evaluation. Should the lowest tender received be above **£1million** in total value then Cabinet approval will be required to award the contract after evaluation.

8.7 All Contracts and spend with a Supplier in excess of £10,000 needs to be captured on the Councils agreed procurement portal

8.8. Table 1 below sets out the procurement thresholds, minimum number of bids required and the responsibility for obtaining those bids:

Table 1: Advertising Procurement Thresholds

Estimated value of goods, services or works (Including Aggregation)	Minimum number of bid/s required	Method of obtaining bids	Responsibility for obtaining bids	Written Records required
£0-£500	No bids required All noncontractual purchases to be made via procurement card	n/a	n/a Council officers; Purchaser must ensure value for money is being obtained	n/a
£500-£10,000 To be treated as a one-off non-recurring requirement	At least One quotation. Using a Sandwell supplier or if not available a supplier from the West Midlands Combined Authority Area wherever possible.	Verbal enquiries, email confirmation required	Council officers; purchaser must ensure value for money is being obtained	Written quotation from supplier(s) – email acceptable

£10,000-£100,000	Three quotations to be obtained with at least one supplier from Sandwell or if not available a supplier from the West Midlands Combined Authority Area	Advertisement is required via e-Tendering portal for all spend in excess of £25,000 via eTendering portal and Contracts Finder . Specification and selection/award criteria to be included in the invitation to quote (Rule 11)	Council officers	Invitation to Quote, specification documents, quotations and communications from suppliers
£100,001 and above	Three tenders to be obtained In all instances at least one bid should be from a Sandwell Supplier or if not available the West Midlands Combined Authority Area	Advertisement required via eTendering portal and Contracts Finder Sealed or electronic bids	Corporate Procurement Team (excluding Social Care and Public Health Requirements)	Invitation to Tender, tender schedules, bids and communications from suppliers Estimated value of goods, services or works (Including Aggregation) Minimum number of bid/s required Method of obtaining bids Responsibility for obtaining bids Written Records required

8.8. The thresholds set out in Table 1 apply to the procurement of all goods, services or works by the Council

8.9. Where the value determines that a tender is required, advice must be sought from Procurement Services or Legal Services on the most appropriate tendering procedure. Where requirements relate to social care or public health services, then advice must be sought from the delegated teams in those areas.

8.10. If the minimum number of bids required as set out in Table 1 has not been obtained, but at least two bids have been received, approval of the Chief Officer will be required to enable the procurement to proceed. Cabinet approval will be required

for all contracts above **£1million because this is a Key Decision**. Approval must include details on why the bids received represent value for money and any information on process carried out to attract sufficient bids. Details of correspondence must be kept on the relevant contract file to evidence that value for money has still been obtained.

8.11. If only one bid or quotation is received for requirements **over £10,000**, an exemption will be required to award the contract as per Rule 15. The report must set out how the received bid represents value for money.

8.12. If a Framework is used, then the requirements of the mini competition clauses within that agreement must be met.

9. Advertising Requirements and Timescales

9.1. Unless making a call-off from a properly procured Framework Agreement to a single supplier or a direct award, all requirements **above £25,000** in total value must be advertised on the Council's agreed portal. This ensures compliance with the government's Transparency Agenda.

9.2. All adverts for Council requirements will be placed on the Council's e-Tendering portal, which will ensure that the advert is also placed on Contracts Finder. Responsibility for placing the advert will depend on the value and nature of the requirement:

- a) **£25,000-£100,000** – adverts to be placed by the Council officer responsible for procurement;
- b) **£100,000** and above – adverts to be placed by Procurement Services;
- c) Social care and public health – adverts to be placed by designated procurement teams.

9.3. As a minimum, adverts must include the following:

- a) Specification
- b) Selection and award criteria
- c) Closing date and time for responses
- d) Total contract period, including any optional extension period
- e) Whether variant bids will be accepted as part of tender submissions
- f) If the requirements have been divided into lots and if it is the intention to appoint a single supplier or multiple suppliers (Rule10.3).

9.4. Time limits for the return of quotations/tenders will vary dependent upon the value and complexity of the requirements and the process in question. It is the responsibility of the procuring officer, following advice from Procurement Services, to decide the most appropriate timescale for the return of quotations/tenders. However, this must be set to attract the minimum number of quotations/tenders to ensure that

suppliers have a sufficient but not disproportionate period to respond and that value for money has been achieved.

9.5. In all cases, opportunities must be advertised for a minimum of five working days via the Council's e-Tendering Portal. In order to demonstrate value for money, a longer advertising period should be considered. Where the **Public Contracts Regulations 2015** procedure is to be followed, there are prescribed timescales that must be adhered to.

9.6. No quotation/tender/bid received after the closing date/time shall be accepted or considered under any circumstances. Details of the closing date/time must be clearly stated within all invitation to quote/tender documentation.

10. Provisions Applicable to All Procurement Activity and Contracts

10.1. Pre-Market Research, Engagement and Consultation

a) Officers should ensure that the Borough of Sandwell geographical area receives the maximum benefit possible from the expenditure made by the Council.

b) Therefore, an options appraisal should be undertaken by the relevant Service Manager to ascertain what is the most appropriate route to achieving the desired outcomes of the service or project. The appraisal must be approved by the Chief Officer responsible for the service in consultation with the Chief Finance Officer and **Monitoring Officer (Cabinet approval is required for procurement above £1million+, Individual Cabinet Member approval is required for procurement between £500,001 and £1million).**

c) When carrying out this options appraisal full consideration should be given to:

- Vision 2030;
- Public Services (Social Value) Act 2012;
- Working with partners and/or service users through co-design or coproduction.

d) To achieve this, market consultations may be conducted while producing the options appraisal and prior to commencing any procurement exercise, in order to ensure that the best possible outcomes are achieved and benefits to the local community are maximised. Findings from this consultation may be used in the planning and conduct of a procurement procedure, provided that this adheres to the Council's procurement principles of transparency, equal treatment and non-discrimination of all bidders.

e) Independent external organisations may be appointed to assist with market consultations. However, it remains the Council's responsibility to ensure that this does not result in distorted competition (e.g. through the sharing of all relevant information or the setting of adequate timescales for submission of bids).

10.2. Allocation of Resources and Authority to Act

a) Prior to commencing procurement activity, officers must ensure that sufficient resources are in place to cover the life of the contract/requirement. Should additional resources be required, these must be sought in line with Financial Regulations.

b) Prior to commencing procurement activity, officers must ensure that they have sufficient authority to act. This will be dependent upon the value of the requirement, and whether it has been included in the Corporate Procurement Plan. Advice should be sought from Procurement Services and Legal Services on the necessary authority required.

10.3. Specification

a) Officers within the service area must develop a specification for the goods, services or works required prior to commencement of a procurement activity. The level of detail will depend upon the (estimated) value of goods, services or works required **commensurate with risk.**

b) Specification must include as a minimum:

i. Details of the goods, services or works required, including outcomes to be achieved;

ii. Timescale for delivery/completion;

iii. Expected levels of performance or quality, including links to Social Value that are a requirement; and

iv. Additional desired outcomes to be achieved through Social Value on top of the requirements.

10.4. Division into Lots

a) To make procurement opportunities more accessible to small and medium sized enterprises or to voluntary/community sector organisations, consideration should be made to dividing contracts into separate lots where appropriate.

b) Advice must be sought from the Head of Procurement where consideration is made to dividing contracts into separate lots.

c) Records of all discussions and decisions must be kept on the relevant contract file.

d) The intention to award lots or to award to a single contractor must be specified in the advertisement and all procurement documentation.

10.5. Period of Contract

a) No contract for the supply of goods, services or works shall exceed four years, including any extension, without prior written approval from Cabinet or from the Head of Procurement. This also applies to a framework agreement unless in exceptional circumstances.

b) Details of the total contract period, including any potential extensions, must be included in the initial advertisement and quotation/tender documentation. Allowance

for extension of times to projects with defined Completion Dates must be included in the documentation.

c) Prior to the extension of any contract, officers must ensure that the requirements of Rule 13 have been met.

d) If an additional extension is required, advice must be sought from the Head of Procurement and Legal Services Manager, prior to the submission of an exemption request as per Rule 15.

10.6. Electronic Quotation, Tendering, Communications and Opening of Tenders

a) Unless a requirement of using a Framework stipulates the use of a specific e-procurement tool, all quotations and tendering activity must be via the Council's e-Tendering portal to ensure a fully compliant and auditable quotation and tendering process. This includes the opening of quotations and tenders submitted through the eTendering portal, which ensures sufficient reporting mechanisms and audit trails are in place.

b) Any communication relating to procurement will be via the Council's e-Tendering portal. All documentation relating to contracts procured through a Framework not using the Council's e-Tendering portal are to be uploaded to the Council's e-Tendering portal.

c) This process will be managed by Corporate Procurement Services, with the exception of:

i. Requirements up to a value of £100,000 which will be managed by officers within services; and

ii. social care or public health requirements, which will be managed by those dedicated procurement teams.

d) Where the Council's e-Tendering portal is not used (i.e. for sale of land, assets or property), then tenders for contracts above £100,000 must be opened in the presence of a minimum of two officers, including a nominated officer of the

Democratic Services Unit and an officer of the service area requesting the tender opening delegated this task by the relevant Chief Officer.

e) A record shall be completed at the time of opening tenders detailing:

i. Nature of the goods/materials/services to be supplied or work to be executed, or the title of the land/asset to be disposed of;

ii. Name of each person by on whose behalf the tender was submitted

iii. Date and time of receipt of tender recorded on the envelope/electronic tender system;

iv. Date and time of opening the tenders;

v. Names of all persons present at the opening of the tenders; and

vi. Tender or offer figure (if practicable).

10.7. Risk Assessment

a) Where a contract is awarded with a value in excess of £100,000 or relates to a business critical activity, a risk register should be drawn up for the letting, award and management of the contract in accordance with the [Corporate Risk Management Strategy](#).

b) Further advice should be sought from the Head of Procurement, Risk & Insurance Manager and Legal Services.

10.8. Business Continuity:

a) Evidence of compliant business continuity plans are required for:

i. Any contract in excess of £100,000; or

ii. For any contract identified by the relevant service manager as relating to a business critical activity.

b) Specifications and contracts must include clauses requiring evidence of the contractor's business continuity plans and the Council's right of an independent audit on any or all business continuity.

10.9. Freedom of Information Act 2000:

a) All tender documents shall set out the Council's statement, in a form approved by the Monitoring Officer, concerning the supplier's participating in the tender process and the Council's intention to comply with the Freedom of Information Act 2000.

10.10. Public Services (Social Value) Act 2012:

a) All procurement activity carried out under these rules must consider the inclusion of appropriate social value award criteria, taking into account where social value is incorporated into the requirements of the specification

b) The Act requires these criteria to be relevant to the subject matter of the contract and proportionate to the value and potential impact that could be achieved.

c) Further guidance: [Public Services \(Social Value\) Act Guidance Document](#).

d) Any procurement activity undertaken on behalf of the Combined Authority should follow the approved Policy.

10.11 **UK** General Data Protection Regulation:

a) All tender documents shall set out the requirements, in a form approved by the Monitoring Officer, concerning the expectations relating to the **UK** General Data Protection Regulation (**UK** GDPR).

11 Selection, Contract Award Criteria and Evaluation

11. 1 Use of Selection Questionnaires / Selection Criteria

- a) Selection Questionnaires must not be used for procurements below **the applicable Public Contracts Regulations 2015 Threshold** for supplies and services, other than where deemed appropriate for construction related procurements.
- b) Reasonable and proportionate questions should be asked as part of the tender process to assess the requirements or minimum standards of suitability, capability, legal status or financial standing. of a potential supplier
- c) Where a Selection Questionnaire is required, this must use the Cabinet Office standard documentation,
- d) Selection criteria must be considered prior to publication of quotation/tender and included in the documentation.

11.2 Contract Award Criteria

- a) Where a framework is used, any further competition procedures must adhere to the selection and award criteria set by the framework.
- b) All invitations for quotations or tenders must be in writing and specify whether a contract or offer is to be awarded on the basis of an offer which either:
 - i. Offers the lower price when purchasing goods/services/works, or the highest price when disposing of Council assets/land/property; or
 - ii. Is the most advantageous by reference to price and quality criteria. The criteria could include price, running costs, profitability, period for completion or delivery, technical merit, aesthetic and functional characteristics, after sales service, technical assistance, outcomes for service users, social value impact, etc.
- c) Where bids are evaluated on price and quality, the quality element of the Award Criteria must not exceed 40%, Social Value should account for 5%-30% of this as per Public Services (Social Value) Act Guidance Document (unless the requirement has been included within the specification).
- d) Where the quality element of the Award Criteria needs to be higher, agreement must be sought from the Head of Procurement and records kept on the relevant contract file.
- e) Details justifying all elements of the Award Criteria must be kept on the relevant contract file.
- f) Award Criteria must be set out in the quotation/tender documentation in descending order and must be adhered to without alteration throughout the process.

11.3 Evaluation of Quotations and Tenders

- a) All quotations or tenders submitted in response to an advertisement under Rule 9 must be evaluated in accordance with the principles of transparency equal treatment and non-discrimination, as well as the selection and award criteria disclosed in the invitation as per Rule 11 (Selection Criteria and Award Criteria).

Advice must be sought from Procurement Services on the evaluation and moderation process.

b) Officers must ensure that all evaluations are undertaken in compliance with the Public Contracts Regulations and EU Procurement Directives.

c) Variable bids will not be accepted unless stated within the advertisement and invitation to tender documents.

d) Where examination of quotations/tender submissions reveals an error or omission, the bidder shall be notified only that the submission contains an error or omission. The bidder shall be given the opportunity of either confirming or withdrawing the submission.

12 Construction and Engineering Contracts

12.1 Construction and engineering works valued below the **applicable Public Contracts Regulations 2015** Threshold for Works must make use of Constructionline and contractors approved for health and safety by organisations list by Safety Schemes in Procurement (SSIP).

12.2 Instructions on how to access details of the lists of contractors contained within these databases can be obtained from Corporate Procurement Services.

12.3 Advertisements for these contracts must include:

a) Scope of contract;

b) Registration requirements with Constructionline and SSIP; and

c) How shortlisting will take place

12.4 If the successful company does not meet the required standard, then a suitable time period should be given to ensure compliance during the contract period.

13 Contract Extensions

13.1 Following compliance with instructions on permitted contracting periods for goods, services and works specified in Rule 10, negotiations may only be undertaken to extend contracts provided that the following requirements are met:

a) provision was made in the original advertisement and documentation that it may be subject to an extension – this includes where more than one extension of the contract has been included in the original advertisement;

b) benchmarking with similar organizations has been undertaken to prove that the contract continues to provide value for money;

c) the contract has been monitored and no concerns have been raised with regard to the level of service/quality of goods supplied or sufficient mechanisms, such as a robust improvement plan, are in place that ensure that any identified issues will be resolved;

d) any price increases are in accordance with the relevant contractual provision (e.g. in line with an appropriate published index) and as permitted under **relevant** Procurement Regulations;

e) The appropriate Chief Officer and the Head of Procurement are satisfied that no better terms could be obtained by competitive tendering or that the nature or urgency of the work makes it desirable that the same Contractor is employed. Comments of the Chief Officer and the Head of Procurement are to be kept on the contract file;

f) The Legal Services Manager has been consulted to ensure that the extension does not result in a material change to the Contract; and

g) No variations are being made.

h) Evidence of these requirements being met must be recorded

13.2 The approval to extend any contract should be confirmed in writing by the appropriate Chief Officer and Head of Procurement. If provision to extend the contract was not included in the original advertisement and documentation, and the extension to the contract means that the total contract value is over **£1 million**, then Cabinet authority is required to extend the contract and individual cabinet members at or **above £500,001**.

14 Contract Variations

14.1 Any changes to an existing contract that materially affects the original requirements (whether financial and/or services, goods etc.) may effectively amount to the award of a new contract and so should be subject to a fresh procurement exercise.

14.2 There are six permitted circumstances where variations are permitted to existing contracts and frameworks. Advice should be sought from Legal Services on whether these circumstances apply:

a) Amendments that are clearly provided for in the original procurement and contract documents.

b) Necessary amendments where a change of contractor cannot be made.

c) Unforeseen circumstances have arisen which the authority acting “diligently” could not have foreseen.

d) Amendments to deal with a new contractor replacing the original contractor and this is permitted in the contract or procurement documents.

e) The amendments are “not substantial”.

f) Low value amendments:

i. Falls below the procurement threshold for works and services; and

ii. Is less than 10% of the original contract value for supplies or services and 15% for a works contract;

And

iii. The amendment does not alter the overall nature of the contract.

14.3 The advice of the Legal Services Manager should be sought at an early stage and in any event prior to the submission of any report for an exemption to these rules when any changes to an existing contract are being considered.

14.4 For construction related contracts, paragraph 12 applies unless the terms and conditions of the contract entered into allows for Contract Variations.

14.5 Records of all decisions and supporting evidence must be kept on the contract file.

14.6 Where a variation to a contract increases the total value to £1million+, Cabinet approval is required and between £500,001 and £1million individual Cabinet Member approval is required.

15 Exemptions to the Procurement and Contract Procedure Rules

15.1 An exemption to these rules are not an exemption from the legislative requirements and cannot be granted where a breach of any UK legislation would be incurred.

15.2 Table 2 sets out the authority to grant exemptions to the Contract Procedure Rules and the records required.

Table 2: Authority to Grant Exemptions

Value of Exemption	Authority to Grant Exemption	Records Required
Up to £100,000	Chief Officer following endorsement from Head of Procurement	The request for an exemption must be made in writing setting out the special circumstances justifying the exemption, demonstrate how the action achieves best value for money and indicate any action that may be required to manage risk Approval via email acceptable
£100,000 to £500,000	Chief Officer and Chief Finance Officer following endorsement from Head of Procurement. Where an exemption is for a	The request for an exemption must be made and approved in report format, signed by the Chief Officer and Chief Finance Officer The request must specify the special circumstances justifying the exemption, demonstrate how the action achieves best value for money, and indicate any action that may be required to manage risk

	contract above £100,000, the endorsement of Legal Services is required	Advice must be sought from Procurement and Legal Services at the earliest opportunity. The comments of the Head of Procurement and Legal Services must be included in the report
£500,001 to £1million	Cabinet Member	Report to Cabinet Member including content above
Above £1million+ (Key Decision)	Cabinet	Report to Cabinet including content above

Notice must be included in the Forward Plan within sufficient time to ensure necessary public notice of the decision.

15.3 Any exemption relating to ICT requirements must include comments from the ICT Service Manager.

15.4 An exemption request can only be endorsed / approved by the Chief Finance Officer (S151) where they are independent from the original decision-making process. Where the exemption applies to a service that is the responsibility of the Chief Finance Officer (S151), the exemption must be approved by the Chief Executive.

15.5 Any exemption must be sought within a timescale to allow for the possibility that the request may not be approved. The Head of Procurement will arrange for the exemption request to be presented to the Chief Finance Officer for approval.

15.6 A record of all exemptions approved by the Chief Financial Officer shall be provided to the Cabinet Member for Core Council Services on a quarterly basis for their information.

15.7 Any exceptions to this rule are included in Appendix B, which lists the type of contract/activity where an automatic exemption is given. This list will be updated and approved by the Chief Finance Officer and Monitoring Officer on a quarterly basis and reported to the Cabinet Member for Core Council Services. In general terms, the list includes:

- a) 'genuine sole suppliers' for certain goods, service or works where it can be evidenced that there is no benefit in undertaking a procurement exercise,
- b) Certain social care contracts;
- c) Public health contracts linked to care pathways or patient choice.

Inclusion within this list does not remove the need to ensure that a suitable contract is in place with these suppliers and value for money evidenced (Benchmarking can be undertaken).

15.8 The use of properly procured Framework Agreements meeting the conditions listed in 8.12 and 11.2(a).

16 Contract Award and Contracting Procedures

16.1 Contract Award

a) It is imperative that the appropriate Council authority exists to enter into a contract. This may be a direct authority in the form of a Cabinet decision, or a delegated authority given to a Chief Officer as set out in the Scheme of Delegation.

b) Table 3 sets out the authority to award contracts and the records required:

Table 3: Contract Award Thresholders

Contract Value	Authority to Award Contract	Records Required
Under £100,000	Chief Officer or delegated budget holder in accordance with Financial Regulations (especially 4.12 and 4.13).	Award of contract in email or report format. Under Raising of Purchase Order via SBS will constitute approval to award contract. A record of all contracts awarded must be sent to Head of Procurement for inclusion in the Contracts Register.
£100,000 - £500,000	Chief Officer, in consultation with the Chief Finance Officer	Awarding of a contract must be in report format, setting out the procurement process followed, details of quotations/tenders received, the evaluation methodology and naming the supplier(s) who have made the most economic advantageous offer. Report must be signed by both the Chief Officer(s) set out in this table. Report will also be required in the event that prior authority has been given by Cabinet to a Chief Officer to award a contract above a total value of £250,000.
£500,001 to £1million	Cabinet Member	Report to Cabinet Member including content above, including where any exemptions to these rules are required

£1million+	The relevant Chief Officer/Cabinet Member.	Report to Cabinet including content above, including where any exemptions to these rules are required. Notice must be included in the Forward Plan within sufficient time to ensure necessary public notice of the decision
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16.2 Signing of Contracts

a) The signing of contracts will be carried out as per the Article 14 of the Council's Constitution (Finance, Contracts and Legal Matters).

b) Contracts up to the value of £250,000 can be signed by the appropriate Chief Officer. Legal advice must be taken as to whether the contract needs to be sealed with the common seal of the Council.

c) Contracts of £250,001 or above must be in writing and be signed by the Monitoring Officer or by the Chief Executive and a Legal Services Manager, or sealed with the common seal of the Council.

16.3 Notification to Tenders

a) Notifications to successful and unsuccessful tendered, including debriefing, must be in writing and adhere to the Public Contracts Regulations. Advice should be sought from Head of Procurement.

b) Notification of acceptance of a tender which requires a formal contract must be given in writing clearly marked 'subject to contract' and should advise that contract documents are to follow.

c) All unsuccessful tenderers are to be notified in writing that they have been unsuccessful.

16.4 Standstill Period

a) For above the applicable Public Contracts Regulations 2015 Threshold procurements, no formal contract or framework agreement shall be entered into before the end of the standstill period of a minimum of 10 days from the date of notification.

17 Contents of Contracts

17.1 Standard terms and conditions of contracts are available; however, each contract should be considered on its own merit. Advice from Legal Services should be sought as to the terms and conditions that should be used.

17.2 The Council shall avoid entering into contracts under a tenderer's/contractor's terms and conditions. However, contractor's own terms may be included in contracts where they are acceptable to the Council

17.3 Contracts must include the following as a minimum:

- a) Specification of goods/services to be supplied or works to be executed or land/asset being disposed of, and the conditions that will apply.
- b) Price to be paid or the rates on which price is calculated, milestones for payments and a statement of discounts or other deductions. If the contract term exceeds 12 months, future pricing structure must be included. If a price fluctuation clause is to be included, then it must make reference to a published index.
- c) Contract period, delivery date or times within which outputs of the contract must be completed.
- d) Details of any extension period and basis upon which this will be agreed.
- e) Required performance levels and details of monitoring/governance arrangements, including those relating to Social Value outcomes.
- f) Details of any indemnities required and how any claims arising will be dealt with and by whom
- g) Provision for audit inspection
- h) Clauses requiring evidence of the contractor's business continuity plans and the Council's right of an independent audit on any or all business continuity
- i) Compliance with the Data Protection Act 2018, Freedom of Information Act 2000, Modern Slavery Act 2015 and UK General Data Protection Regulation.
- j) Contractor to comply with Council's Confidential Reporting Code
- k) Termination of contract, other than through the expiration of the contract term.
- l) Insurance cover requirements

18 Reporting

18.1 Records of all activity and decisions must be retained by the client officer.

18.2 Details of all planned tendering activity must be forwarded to Head of Procurement for inclusion in the Corporate Procurement Plan.

18.3 Details of all contracts awarded over **£10,000** in value must be forwarded to Head of Procurement for inclusion in the contracts register.

18.4 All contracts awarded over **£10,000** in value, and all spend via procurement cards, must be published on the Council's internet. Publishing this information will be the responsibility of the Corporate Procurement Service.

19 Employment of Agency Staff, Consultants and Interim Managers and Use of Personal Service Companies

19.1 All temporary or agency workers must be engaged through the [HR Resourcing](#) team.

19.2 Any agency workers engaged with must be from agencies included on the approved framework used by the Council; failure to comply with this requirement, without approval from the Chief Executive, will be treated as a disciplinary matter.

19.3 All temporary or agency worker engagements, or extensions / redeployments of existing workers, must be approved by the appropriate **Service Manager or above** before being submitted to HR.

19.4 The likelihood of temporary or agency worker engagements being approved will be greatly increased where the following business case is provided, covering:

- a rational explanation as to why the engagement is required;
- an explanation in regard of why a permanent appointment has not been made; and
- what steps will be taken to ensure that the temporary or agency worker engagement is kept to a limited time period.

19.5 Prior to seeking approval to engage temporary or agency workers, managers should liaise with HR Business Partners in regard of identifying/investigating alternative approaches that may be taken to address any resourcing gaps, thus negating the need to engage temporary or agency workers.

19.6 Where the approved framework (as referred to in 19.2) is exhausted, as advised by the HR Resourcing team, the procurement method used for the engagement of agency staff, consultants, interim managers and personal service companies shall comply with the procurement rules as detailed in this document.

19.7 All individual temporary or agency worker engagements will be limited to a period of three months at a time. Periods of longer than three months are only allowed in exceptional circumstances that must be included in the business case provided to HR.

19.8 Any agency staff, consultants, interim managers and personal service companies engaged by the Council shall comply with these rules as though he/she were an officer of the Council.

20 Social Care and Public Health Contracts

20.1 Officers procuring care and public health contracts should follow these rules. The nature of the adult and children's social care and public health services market and commissioning arrangements may require exceptions, as per Appendix A. However, in all instances the procuring/commissioning officer should always ensure that value for money is obtained for both the Council and clients.

20.2 Any Social Services and Public Health related contract, with the total value above the EU threshold for these contracts for must be procured using a procedure that is at least sufficient to ensure compliance with the principles of transparency, equal treatment and non-discrimination. A Notice must be **published on Find a Tender.**

20.3 Residential and nursing care

- a) Where there is no standard fee then the service needs to ensure that value for money is provided.
- b) Where clients select accommodation costing in excess of the standard fee, placements can be made provided a third party is willing to pay the difference where the service is one where a third-party contribution applies. Suitable records must be maintained demonstrating that the client was given a choice and that it was the client or their authorised representative who exercised that right.
- c) Where a placement is to be made where it is not subject to a standard fee, it will not be necessary to obtain competitive quotations provided that the client or his/her representative has chosen the home and/or the social work budget holder (or panel where it exists) has approved the placement. To ensure that value for money is obtained, the Council's approved fee calculating mechanism will be used to determine the cost of the placement. If the fee is more than the fee calculated using the approved mechanism, then this must be justified and approved by an Operations Manager (or equivalent) independent from the original decision-making process. Records must be kept of the circumstances justifying the placement.
- d) Where residential placements are made for Public Health services, placement selection must be based on client needs and risk factors. Consideration of market rates for similar provision must also be made to ensure value for money.

20.4 Domiciliary Care

- a) It will be necessary to obtain competitive quotations for domiciliary care or non-residential services where there is no standard rate set by the Council. Three quotations should be sought, and the cheapest provider should be used. Where the cheapest provider is not used, the package request must be approved by an Operations Manager (or equivalent) independent from the original decision-making process confirming the package is justified by special circumstances. A record should be kept of the circumstances justifying the package of care.
- b) Where the client does not wish to receive a service from the provider deemed the cheapest through the competitive exercise, a direct payment should be offered to the client who will be able to procure the service directly his/herself subject to all of the identified needs being met.

20.5 Specialist Services

- a) In some cases, the specialist nature of the assessed service or temporary limitations in the availability of providers will limit the range of alternative suppliers. Where there are no alternative providers such services will be treated as an exception to these rules (Appendix A).
- b) It will be the responsibility of the appropriate Chief Officer and Commissioning Manager (or equivalent) to maintain suitable records to demonstrate the appropriateness of this approach and the involvement of more than one officer in the process.

c) Where it is possible to obtain the service from more than one provider, quotations/tenders must be obtained in accordance with Rule 11 and the service commissioned in accordance with Rule 16.

20.6 Public Health Contracts

a) Where the public health service is subject to patient choice from NHS providers and the selection of provider is determined by where patients elect to receive treatment records must be kept to evidence that patients have chosen their healthcare provider. If the expectation is that the provider will deliver services over £100,000 the Council will aim to enter into a contract. Suitable evidence will be kept to substantiate this expectation. Where the Council enters into a contract Rule 16.2 shall apply.

b) Officers should ensure that, where national tariffs are not utilised, that negotiation has been undertaken with healthcare providers to ensure that value for money is achieved. As a minimum, officers should benchmark to give assurances that best value is obtained.

20.7 Sole Provider, Emergency Placements or Emergency Care

a) Where an Exception (Appendix A) has been identified It shall, be the responsibility of the appropriate Chief Officer and Commissioning Manager to regularly review the situation and, should any of the circumstances change, communicate any changes of placement or policy to all appropriate parties.

b) In such cases it shall not be necessary to obtain tenders but the appropriate authorization shall be obtained in accordance with Rule 15.

c) The decision process concerning where the adult or child is to be placed should involve more than one person and this process together with the names of the officers concerned should be evidenced in relevant directorate records.

d) Specifications and agreements should include for exit clauses when it is assessed that the care requirements are no longer required.

e) Agreements should be reviewed on a regular basis and reports placed on the contract file detailing the findings and required action.

21 Procurement Considerations, Social Value and Localism

21.1 The Council is committed to supporting the local economy by ensuring all tendering opportunities are accessible and tenderer friendly.

21.2 Where practical and relevant, tenders should also address the following local social benefits, (as part of the supply chain) through the use of tender quality assessments and method statements.

- employment;
- supply chain;
- apprenticeships;

- community benefit schemes;
- any other benefit that supports the local economy and well-being of Sandwell and the West Midlands Combined Authority Area residents and businesses.

21.4 The Council commits to work with local enterprises through supplier events to offer support and guidance around bidding and working for the Council.

Appendix A – Definitions

- Award a contract - to accept an offer by a supplier;
- Budget - means revenue budgets, capital budgets and other spending programmes approved by the Council;
- Cabinet - the Leader of the Council and the other members of the Council's Cabinet;
- Chief Finance Officer - the officer designated under section 151 of the Local Government Act 1972; • Council - means the Sandwell Metropolitan Borough Council, the Cabinet, a Standing Body or person(s) acting in accordance with authority delegated by the Council;
- Contract - means any agreement (Including Framework Agreements) between the Council and a third party for the provision of any goods, materials, services or works for whatever value. All contract documentation shall be worded and in such form so as to protect the Council's interests, in accordance with advice from the Chief Legal Officer and standard contract documentation;
- Contracts Finder – the web-based portal provided by or on behalf of the Cabinet Office for the publication of information about contracts awarded (<https://www.contractsfinder.service.gov.uk>);
- Contract price in relation to all contracts - means the aggregated cost (including fees) for the whole of the period of the contract. Where a Chief Officer knows that a similar service, supply or type of work is to be ordered during a twelve-month period, this should be taken into account and used for the purposes of the estimated contract price;
- Chief Officer - is defined as a Director and above in the Scheme of Delegation;
- Chief Officer and appropriate Chief Officer – means a Chief Officer or any subordinate officer nominated by their Chief Officer, but the Chief Officer is at all times responsible for the actions undertaken by the subordinate officer;
- Chief Financial Officer – an officer of the Council appointed as the section 151 Officer officer The Director of Finance is the Chief Financial Officer
- Concession Contract - a works or services contract for pecuniary interest concluded in writing by means of which one or more contracting authorities entrust the execution of works or the provision and the management of services (other than the execution of works) to one or more economic operators, the consideration for which consists either solely in the right to exploit the works or the services that are the subject of the contract or in that right together with payment; and that meets the requirements of 3(4) of the Concession Contracts Regulations 2016 (CCR 2016).
Regulation 3(4) of the CCR 2016 further defines the necessary characteristics of the arrangement for the purposes of the regime, which are:
 - (a) the award of the contract must transfer to the contractor the operating risk in exploiting the works or services encompassing demand or supply risk or both; and

(b) the part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible.

- Dynamic Purchasing System (DPS) - the system referred to in regulation 34 of the Public Contracts Regulations 2015. A DPS is a procedure available for contracts for works, services and goods commonly available on the market. As a procurement tool, it has some aspects that are similar to an electronic framework agreement, but where new suppliers can join at any time;

- Financial Regulations - the Council's financial regulations which contain all financial accountabilities in relation to the running of the Council, including the Council budget and Council policy framework;

- Grant – Is the payment of money or some other thing, without the expectation of goods or services in return (this could include making a financial contribution to the independent work of the Voluntary or Community Organisation). A grant is usually provided subject to conditions that state how the grant can be used. The grant aided organisation may use or offer to use the grant to provide goods or services that meet their objectives;

- Key Decision - an executive decision which must be made by the Cabinet which is likely:

(a) to result in the Council incurring expenditure which exceeds that included in any approved revenue or capital budget or the limits set out within an approved borrowing or investment strategy and was not the subject of specific grant; or

(b) to result in the Council incurring expenditure, the making of savings or the generation of income amounting to £1m+

(c) to be significant in terms of its effect on communities living or working in an area comprising two or more wards of the Borough.

- Light Touch - the rules and procedures for the Light Touch Regime Services set out in Chapter 3 of the Public Contracts Regulations 2015 (as amended);

- Monitoring Officer - the officer designated under section 5 of the Local Government and Housing Act 1989 to monitor the Council's compliance with the law and rules of administration. The Director of Law & Governance is the Monitoring Officer;

- Programme - A set of component projects/work streams which have been brought together under one management process to achieve an overall strategic objective/beneficial change and ensure robust governance;

- Project - a component of a programme which has a predetermined outcome or result at a pre-specified time using predetermined resources;

- Signing of Contracts – The execution of a contract by authorised parties by Hand, Deed or e-signature.

- Social Value - activities, approaches and services that help to deliver measurable benefits to local communities' safety, health, prosperity and quality of life, particularly:
- Sustainability – environmental impact
- Local economy
- Support of corporate objectives
- Beneficial impact on local communities – including furthering equalities and community cohesion.

Appendix B - Exceptions

As per paragraph 15.7 of these Rules, an automatic exemption is given to the following types of contract or activity:

- A. Social Care and Public Health Contracts where a Care Pathway is in place. Where associated clinical services are already provided by an NHS provider, records must be maintained, demonstrating the connection between the public health service and the associated clinical service(s) within the care pathway.
- B. ICT Licenses and support costs (where systems are already in place)
- C. Patient or Pupil choice
- D. Sole Suppliers/Providers
- E. Emergency Requirements (when a contract cannot be utilized)
- F. Residential, Nursing and Domiciliary and Nursing Care (where the Council pays a standard fee)
- G. Specialist Social/Public Health Services where alternate providers cannot be identified

Appendix C – Applicable Public Contracts Regulations Thresholds

Valid 1 January 2022 – 31 Dec 2023

Supplies & Services (except subsidised services contracts)

£213,477

Subsidised services contracts

All bodies £213,477

Works (including subsidised works contracts)

All bodies £5,336,937

Light Touch Regime for Services

All bodies £663,540

Small lots

Supplies and services £70,778

Works £884,720

The Utilities Contracts Regulations

Supplies and Services

All sectors £426,955

Works

All sectors £5,336,937

Small lots

Supplies and Services £70,778

Works £884,720

The Concession Contracts Regulations

Concession contracts £5,336,937

The Defence and Security Public Contracts Regulations

Supplies and Services

All sectors £426,955

Works

All sectors £5,336,937

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Summary of draft changes to the Contract Procedure Rules - 2018 – 2019

Updates are captured in this change document and highlighted in yellow on the Draft

For reference, current CPRs available at <https://sandwell.moderngov.co.uk/ecSDDisplay.aspx?NAME=SD304&ID=304&RPID=330485>

Rule Number	Summary of Current Wording	Proposed Change	Comments
Covid update 1-6	A range of statutory relaxations to the procurement arrangements.	Deleted.	The temporary legislative change has now expired and will not be renewed.
1 & 2	Introductory section setting out the purpose and scope of Contract Procedure Rules (CPR).	Introduction expanded. Sets out key principles of good procurement practice, for example: <ul style="list-style-type: none"> • Achieves best value for money, including social value; • Furthers the Council's corporate objectives; • Purchases quality goods, services and works; • Safeguards the Council's reputation from any suggestion of dishonesty or corruption; • Incorporates principles of sustainability, efficiency, quality, social value, best value for money and whole life-cycle costing; • Summarises procurement compliance requirements across all areas of Council functions and activities, identifies when CPR doesn't apply; 	Key principles and purpose of CPR now in line with benchmarked best practice.

		<ul style="list-style-type: none"> Added Contracts of Employment as omitted from scope. 	
1.8	Added.	<p>The threshold values, at which public procurement is subject to the full suite of regulations governing public contracts, are revised every two years to take account of currency fluctuations and to ensure the UK complies with its obligations under the World Trade Organisation's Agreement on Government Procurement (GPA).</p> <p>New Appendix C sets out the threshold values for public contracts, utilities contracts, concession contracts and defence and security contracts from 1 January 2022, inclusive of VAT (where applicable).</p>	Not in the current version of CPR. The thresholds at which trigger the application of the PCR 2015 rules now added.
1.9	A glossary of terms is at the end of this document.	Appendix A contains a list of defined words and expressions. This has been expanded.	Added additional definitions to assist users of CPRs
3	The roles of officers, Members and the Cabinet.	<p>Responsibility for setting procurement framework policy is transferred from the Cabinet Member for Core Services to Cabinet;</p> <p>New confirmation added to clarify that Cabinet authorises the commencement of procurement at or above the Key Decision threshold.</p>	Principles in line with best practice and drawn from benchmarking. Change promotes whole Cabinet responsibility for setting Executive Policy.
Throughout	<p>References to the European Union (EU).</p> <p>OJEU.</p>	<p>Updated to refer to UK domestic law following the UK leaving the EU.</p> <p>Replaced with PCR 2015.</p>	Necessary to assist with statutory compliance and the interpretation of CPR. Most Councils have not yet made these changes in their CPRs.

3.2	Addition.	Added ' <i>may require Cabinet member or Cabinet approval</i> '.	For clarification purposes to ensure appropriate approval is obtained.
3.3	Key Decision Threshold (KDT) £250,000; c) Cabinet awards all contracts with total value above KDT.	KDT throughout increased to £1million+; Cabinet authorises the commencement of procurement above the KDT £1million+ and delegates the <i>award</i> of all contracts at or above KDT to the relevant Chief Officer in consultation with the relevant Cabinet Member unless otherwise agreed by Cabinet. e) Individual Cabinet Members authorise the commencement of procurement as it relates to their portfolio for procurement between £500,001 and £1million and may delegate the <i>award</i> of all contracts to the relevant Chief Officer. f) Individual Cabinet Members approves exemption from any part of these rules for contracts with a total value between £500,001 and £1million as it relates to their portfolio.	More efficient/effective decision making for Cabinet Members whilst retaining full Cabinet oversight. Cabinet approves commencement of procurement and award is based on the agreed evaluation criteria with retained Chief Officer and Cabinet Member oversight. The division of procurement decision-making between Cabinet, Cabinet Members and Chief Officers is in line with best practice.
New			
New			
3.3 Cabinet Member for Core Services	Cabinet Member for Core Services - Sets the procurement policy framework across the council.	Substituted: Cabinet approves and maintains the Council's Procurement Policy Framework.	Emphasis the role of the Cabinet as responsible for the setting of Executive Policy.
3.3 Chief Executive	Approves/Endorses any exemption to these rules for contracts up to a total value of £250,000.	Increased to £500,000	Threshold increased to complement increase in KDT.

3.3 Chief Finance Officer	Act as a compulsory consultee on procurement activity above £100,000. Approve/Endorse any exemptions to these Rules for contracts up to a total value of £250,000.	Increased to £250,000 Increased to £500,000	Threshold increased to complement increase in KDT. Thresholds increased to complement increase in KDT.
3.3 Chief Officer	Approve the award of contracts relating to their service areas up to a total value of £100,000.	Increased to £500,000	Thresholds increased to complement increase in KDT.
Comment (g)	Service Manager – Procurement.	Head of Procurement.	Corrected job title.
Comment (i) deleted	In conjunction with the Chief Finance Officer, approves the award of contracts relating to their services up to a total value of £250,000.	Deleted (i) as duplication.	Duplication.
3.3 Director of Law & Governance / Monitoring Officer	Chief Legal Officer. Act as a compulsory consultee on procurement activity above £100,000. Endorses any exemptions to these rules for expenditure above £100,000 in value.	Replaced with Director of Law & Governance. Increased to £250,000 Increased to £250,000	Corrected job title. Thresholds increased to complement increase in KDT Thresholds increased to complement increase in KDT
3.3 Service Manager procurement	Service Manager – Procurement. Endorses any exemptions to these rules, other than those for Minimal Quotes/Tenders.	Head of Procurement. Endorses any exemptions to these rules prior to Chief Finance Officer/Monitoring Office, other than those for Minimal Quotes/Tenders.	Corrected job title. Clarified requirements.

New		e) Ensure the Procurement Team adhere to The Procurement Processes & Guidance Documents on The Sandwell Intranet Procurement Site.	To ensure the latest Procurement guidance is followed.
All officers of the Council	Added	The Procurement Processes & Guidance Documents on The Sandwell Intranet Procurement Site	Need to ensure anyone engaged in procurement only does so after they have undergone appropriate in-house training and follows the guidance on the Procurement intranet site.
4.3 & 4.5	Elected Member.	Member.	Minor amendment for consistency in the constitution.
5.4	As per the Financial Regulations.	As required by the Financial Regulations.	Amended wording.
5.5	Procurement Services Manager.	Head of Procurement.	Corrected job title.
7.1.a New	For all requirements below £250 where there is no contract in place.	For all requirements where there is no contract in place with a maximum transaction value of £500 and no greater than £1,000 per month in aggregate. Any spend with a single supplier over £10,000 should follow the procurement process and be contracted.	Added how the card is intended to be used £500 per transaction / £1,000 per month /no greater than £10,000 with a single supplier. This is intended as a CPR anti-avoidance measure.
7.2	Appendix C PCard Policy.	Removed	Moved to Procurement Policy Framework Definition
8.1	The value will be net of VAT.	The value will be inclusive of VAT.	New rules state that the estimates should include VAT

8.6	Should the lowest tender received be above £250,000 in total value then Cabinet approval will be required to award the contract after evaluation.	Changed to £1million	Consistent with increase in KDT.
8.7 New		All Contracts and spend with a Supplier in excess of £10,000 needs to be captured on the In-tend Portal.	Part of the automation and improved compliance / visibility of spend.
8.8 from 8.7 Table 1	Threshold £250 - £5,000 Service Area. Threshold £5,000 - £50,000 Service Area. £50,001 - £100,000 3 quotes via procurement. £100,001 and above Procurement.	Threshold £250 - £5,000 Service Area. Threshold £5,000 - £50,000 Service Area. £50,001 - £100,000 3 quotes via procurement. £100,001* and above Procurement. *at least one supplier from Sandwell or if not available the West Midlands Combined Authority Area.	Greater focus on “ <i>Spend Local</i> ”.
.8.8	The thresholds set out in Table 1 apply to all activities carried out by Sandwell Council, including those for construction and works.	The thresholds set out in Table 1 apply to the procurement of all goods, services or works by the Council.	Expanded for clarity and consistency.
8.10	Contracts above £250,000.	Contracts above £1million.	Updated KDT.
8.11	If only one bid is received for requirements over £5,000, an exemption will be required to award the contract as per Rule 15.	If only one bid or quotation is received for requirements over £10,000, an exemption will be required to award the contract as per Rule 15.	Updated in line with the proposed increase in thresholds.
9.1	Unless making a call-off from a properly procured Framework Agreement to a single supplier or a direct award, all requirements above £5,000 in total	Unless making a call-off from a properly procured Framework Agreement to a single supplier or a direct award, all requirements	Changed to the PCR 2015 threshold of £25,000

	value must be advertised on the Council's agreed portal.	above £25,000 in total value must be advertised on the Council's agreed portal.	
9.5	Where the OJEU procedure is to be followed, there are prescribed timescales that must be adhered to.	Changed to The Public Contracts Regulations 2015.	Reflects compliance with UK law after BREXIT.
10.1a	While procurement has been traditionally used as a mechanism to achieve desired outcomes, this may not be the most advantageous route to achieve the ambitions of Vision 2030.	Removed	Removed as wording lacks substantive meaning.
10.1b	An options appraisal should be undertaken by the relevant Service Manager to ascertain what is the most appropriate route to achieving the desired outcomes of the service or project. The appraisal must be approved by the Chief Officer responsible for the service in consultation with the Chief Finance and Monitoring Officer (Cabinet approval is required for requirements above £250k).	Cabinet approval is required for procurement above £1million, Individual Cabinet Member approval is required for procurement between £500,001 and £1million).	Approval track reminder updated in line with KDT
10.3	Added.	Commensurate with risk.	Strengthened.
10.4b	<i>'...especially where the contract value is above the OJEU Threshold'.</i>	Removed.	OJEU no longer applicable.
10.11	New.	UK.	Referenced UK Law after BREXIT.
11.1a	OJEU Threshold for supplies and services.	Changed to: The applicable Public Contracts Regulations 2015 Threshold	OJEU no longer applicable.
12.1	OJEU.	applicable Public Contracts Regulations 2015.	OJEU no longer applicable.

13.1d	Removed EU Procurement Regulations.	Changed to Relevant Procurement Regulations.	EU Procurement Regulations no longer applicable.
13.2 (was 13.3)	If provision to extend the contract was not included in the original advertisement and documentation, and the extension to the contract means that the total contract value is over £250,000, then Cabinet authority is required to extend the contract.	If provision to extend the contract was not included in the original advertisement and documentation, and the extension to the contract means that the total contract value is over £1million, then Cabinet authority is required to extend the contract and individual cabinet members at or above £500,001	Updated with proposed revised thresholds and greater clarity on the approvals.
14.6 was 14.7	Where a variation to a contract increases the total value to £250,000 or above, Cabinet approval is required.	Where a variation to a contract increases the total value to £1million+, Cabinet approval is required and between £500,0001 and £1million individual Cabinet Member approval is required.	Reference to proposed revised thresholds.
15.2	New.	Labelled as Table 2.	To help with understanding.
15	Above £250,000 Cabinet.	Added Cabinet member £500,000 - £1million Increased to £1million+	nserts delegations to the relevant Cabinet Member that would otherwise go the Cabinet. This is in line with best practice & benchmarking.
15.8 (new)	Added.	15.8 The use of properly procured Framework Agreements meeting the conditions listed in 8.12 and 11.2a.	Strengthened wording around Frameworks.
16.1	This may be formal authority granted by the Cabinet or other delegated authority given to Chief Officers as set out in the Scheme of Delegations to Officers.	This may be a direct authority in the form of a Cabinet decision, or a delegated authority given to a Chief Officer as set out in the Scheme of Delegation.	Improved clarity.
Table 2		Now Table 3.	Renumbering.

Table 3 'Contract award thresholds'	Under £50,000 – Chief Officer or delegated budget holder. £50,000 - £100,000 – Chief Officer or delegated budget holder. £100,000 - £250,000 - Chief Officer, in consultation with the Chief Finance Officer. Above £250,000 Key Decision.	Increased to £100,000 Banding removed as incorporated above. Increased to £500,000 Added Cabinet Member £500,000 to £1million £1million + Cabinet/delegation by Cabinet to Chief Officer/Cabinet Member.	Proposed revised thresholds below and over new KDT. Cabinet approves the commencement of Procurement (above) and delegates authority to <i>award</i> unless otherwise agreed.
16.2	Contracts up to the value of £100,000 can be signed by the appropriate Chief Officer.	Increased to £250,000	Increased the levels for contracts signing to £250k and kept the contracts over £100K to be signed by the Monitoring Officer and a Legal Services Manager.
16.4	OJEU thresholds.	Changed to: the applicable Public Contracts Regulations 2015 Threshold.	Removal of EU Procurements references.
17.1	Chief Legal Officer.	Legal Services.	Corrected to reflect practice.
17.4i	Compliance with Data Protection Act, Freedom of Information Act, Modern Slavery Act and General Data Protection Regulations.	Compliance with the Data Protection Act 2018, Freedom of Information Act 2000, Modern Slavery Act 2015 and UK General Data Protection Regulations.	Corrected references to UK Statute.

18.3	Details of all contracts awarded over £5,000	Details of all contracts awarded over £10,000	To match proposed revised thresholds.
18.4	All contracts over £5,000	All contracts awarded over £10,000	To match proposed revised thresholds.
19.4	Approval of temporary or agency worker engagements, or extensions / redeployments of existing workers, by the appropriate Executive Director	Delegation to the relevant Service Manager or above.	Ability to make temporary changes in a more agile way.
19.5	References to named officers.	Removed officers names and phone numbers.	Names/numbers are soon out of date.
20.2	OJEU Notice (or a PIN) must be published.	Changed to : A Notice must be published on <i>Find a Tender</i> .	Removal of EU Procurement references.
21	New Social Value Commitment.	<p>21.1 The Council is committed to supporting the local economy by ensuring all tendering opportunities are accessible and tenderer friendly.</p> <p>21.2 Where practical and relevant, tenders should also address the following local social benefits, (as part of the supply chain) through the use of tender quality assessments and method statements.</p> <ul style="list-style-type: none"> • employment; • supply chain; • apprenticeships; • community benefit schemes; • any other benefit that supports the local economy and well-being of Sandwell and the West Midlands Combined Authority Area residents and businesses. 	

		21.4 The Council commits to work with local enterprises through supplier events to offer support and guidance around bidding and working for the Council.	
Appendix A	Table of definitions (below).	Expanded to include explanations of words and expressions.	To assist with the interpretation of CPR.
Added	<ul style="list-style-type: none"> • Award a contract - to accept an offer by a supplier; • Cabinet - the Leader of the Council and the other members of the Council's Cabinet; • Chief Finance Officer - the officer designated under section 151 of the Local Government Act 1972; • Contracts Finder – the web-based portal provided by or on behalf of the Cabinet Office for the publication of information about contracts awarded (https://www.contractsfinder.service.gov.uk) • Chief Financial Officer – an officer of the Council appointed as the section 151 Officer officer The Director of Finance is the Chief Financial Officer; • Concession Contract - a works or services contract for pecuniary interest concluded in writing by means of which one or more contracting authorities entrust the execution of works or the provision and the management of services (other than the execution of works) to one or more economic operators, the consideration for which consists either solely in the right to exploit the works or the services that are the subject of the contract or in that right 		Improved definitions to aid understanding.

	<p>together with payment; and that meets the requirements of 3(4) of the Concession Contracts Regulations 2016 (CCR 2016). Regulation 3(4) of the CCR 2016 further defines the necessary characteristics of the arrangement for the purposes of the regime, which are:</p> <p>(a) the award of the contract must transfer to the contractor the operating risk in exploiting the works or services encompassing demand or supply risk or both; and</p> <p>(b) the part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible.</p> <ul style="list-style-type: none"> • Dynamic Purchasing System (DPS) - the system referred to in regulation 34 of the Public Contracts Regulations 2015. A DPS is a procedure available for contracts for works, services and goods commonly available on the market. As a procurement tool, it has some aspects that are similar to an electronic framework agreement, but where new suppliers can join at any time; • Financial Regulations - the Council's financial regulations which contain all financial accountabilities in relation to the running of the Council, including the Council budget and Council policy framework; • Key Decision - an executive decision which must be made by the Cabinet which is likely: 		
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	<p>(a) to result in the Council incurring expenditure which exceeds that included in any approved revenue or capital budget or the limits set out within an approved borrowing or investment strategy and was not the subject of specific grant; or</p> <p>(b) to result in the Council incurring expenditure, the making of savings or the generation of income amounting to:</p> <ul style="list-style-type: none"> - £250,000 or more where the service area budget exceeds £10m; - £100,000 or more where the service area budget is less than £10m; or <p>(c) to be significant in terms of its effect on communities living or working in an area comprising two or more wards of the Borough.</p> <ul style="list-style-type: none"> • Light Touch - the rules and procedures for the Light Touch Regime Services set out in Chapter 3 of the Public Contracts Regulations 2015 (as amended); • Monitoring Officer - the officer designated under section 5 of the Local Government and Housing Act 1989 to monitor the Council's compliance with the law and rules of administration. The Director of Law & Governance is the Monitoring Officer; • Signing of Contracts – The execution of a contract by authorised parties by Hand, Deed or e-signature. • Social Value - activities, approaches and services that help to deliver measurable benefits to local communities' safety, health, prosperity and quality of life, particularly: 		
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	<ul style="list-style-type: none"> ○ Sustainability – environmental impact; ○ Local economy; ○ Support of corporate objectives; ○ Beneficial impact on local communities – including furthering equalities and community cohesion; 		
Appendix C	Added and referenced in 1.8	<p>Appendix C – Summary of Threshold Levels from 1 January 2022</p> <p>The Public Contracts Regulations</p> <p><u>Supplies & Services</u> (except subsidised services contracts)</p> <p>£213,477</p> <p><u>Subsidised services contracts</u></p> <p>All bodies £213,477</p> <p><u>Works</u> (including subsidised works contracts)</p> <p>All bodies £5,336,937</p> <p><u>Light Touch Regime for Services</u></p> <p>All bodies £663,540</p> <p><u>Small lots</u></p> <p>Supplies and services £70,778</p> <p>Works £884,720</p> <p>The Utilities Contracts Regulations</p>	Update thresholds from PCR 2015 regulations.

		<p><u>Supplies and Services</u> All sectors £426,955</p> <p><u>Works</u> All sectors £5,336,937</p> <p><u>Small lots</u> Supplies and Services £70,778 Works £884,720</p> <p>The Concession Contracts Regulations Concession contracts £5,336,937</p> <p>The Defence and Security Public Contracts Regulations</p> <p><u>Supplies and Services</u> All sectors £426,955</p> <p><u>Works</u> All sectors £5,336,937</p> <p>Small lots Supplies and Services £70,778 Works £884,720</p>	
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FINANCIAL REGULATIONS – Appendix 4

PROTOCOL FOR THE DISPOSAL OF COUNCIL OWNED LAND & BUILDINGS

1.0 Introduction

- 1.1** This Protocol governs the disposal of land and property owned by the Council. It applies to all property interests owned by the Council. If a conflict exists between this protocol and statute or guidance (as may be the case, for example, for school properties or for residential properties held in the HRA) then this protocol will be followed to the extent that it does not conflict with statute or guidance.
- 1.2** A disposal of Council-owned land and/or property includes the following:
- Freehold disposal by way of sale;
 - An exchange of Council owned land or buildings.
 - Leasing of Council owned properties on leases in excess of 7 years.
- 1.3** This Protocol applies to every Member and officer of the Council and anyone acting on its behalf. Any exemptions from this Protocol will require approval from Cabinet and should only be sought in exceptional circumstances. If the need for an exemption is urgent and approval cannot be sought from Cabinet in time, approval must be sought from the Leader of the Council, relevant Scrutiny Chairperson and the Chief Executive; and be reported to the next scheduled meeting of the Cabinet.
- 1.4** The document complies with statutory duties and is in line with Government advice recommending that local authorities should have a document of this nature available for inspection and it is intended for use by members, officers, and as a source of information for the public and developers.
- 1.5** It should be read in conjunction with the Council's Responsibility for Functions, the Scheme of Delegation to Officers, Contract Procedure Rules and Financial Regulations, all of which can be found in the Council's Constitution
- 1.6** Failure to follow this protocol may result in disciplinary action or action under the Members' Code of Conduct and Officers' Code of Conduct.

2.0 Legal Background

- 2.1** Section 123 of the Local Government Act 1972 ('LGA 72') states that "a council may dispose of land held by them in any manner they wish" but that "except with the consent of the Secretary of State, a council shall not dispose of land under this section for a consideration less than the best that can reasonably be obtained".
- 2.2** Circular 06/03: "Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained" provides further guidance, and this is referred to in section 7.0 below.
- 2.3** An important distinction exists between the legislation relating to sale of land and property (set out in the LGA 72) and legislation relating to the procurement of services (set out in Public Contract Regulations 2015 'PCR 15'). This distinction is important because the procurement

regime set out in the PCR 15 imposes certain obligations on a public body when entering into contracts for works and services, that do not apply to the disposal of land or real property, and the disposal of land is clearly set out in the legislation and guidance published relating to disposals. The definition of a "*public contract*" identifies four main constituents of such a contract: (1) that it is "*for pecuniary interest*"; (2) that it is "*in writing*"; (3) that it is entered into by an "*economic operator*" and a "*contracting authority*"; (4) that it should have as its "*object*" the "*execution of works*" or the "*supply of products*" or the "*provision of services*" (see *Faraday Developments Ltd v West Berkshire Council* 2016). The sale or disposal of property does not automatically fall into the definition contract for the execution of works, supply of products or provision of services.

- 2.4** Procurement of services generally involves the undertaking of competitive selection processes, and these are not generally necessary or appropriate for land transactions governed by LGA 72. However, where contracts for the sale of land place contractual obligations on the purchaser (other than planning obligations) to undertake activities for the Council's benefit which could be considered to be services, then in certain circumstances, procurement legislation may apply. Legal advice must be sought where such obligations exist or are proposed.

3.0 Roles, Responsibilities and Decision-Making

This section describes the roles and responsibilities of key officers, Council departments, groups, boards, and committees in the disposal of land and buildings:

- 3.1** Full Council: As land disposal is an executive function, decisions to dispose of land & buildings will not normally be referred to a meeting of Council.

- 3.2** Cabinet: Cabinet makes the decision to:

- i. Declare assets Surplus where their value exceeds £1m.
- ii. Dispose of Surplus Assets which exceed £1m in value. In approving disposals, it may delegate to the Director of Regeneration & Growth the responsibility for approving the details of the transaction.

- 3.3** Cabinet Member for Regeneration & Growth (or equivalent Portfolio): Following consultation with the Land & Asset Management Committee, the Cabinet Member for Regeneration & Growth makes decisions to:

- a. Declare assets Surplus where their value is between £500,001 and £1m.
- b. Dispose of Surplus Assets where their value is between £500,001 and £1m. In approving disposals, they may delegate to the Director of Regeneration & Growth the responsibility for approving the details of the transaction.

- 3.3** Director, Regeneration & Growth: The Director of Regeneration & Growth (or equivalent) is responsible for:

- a. As part of Leadership Team, considering proposals to rationalise the operational property estate in response to service needs.

- b. Making recommendations to Cabinet to declare assets in excess of £1m in value surplus.
- c. Making recommendations to Cabinet to dispose of assets over £1m in value.
- d. Making recommendations to the Cabinet Member for Regeneration & Growth to dispose of assets between £500,000 and £1m in value.
- e. In consultation with the Cabinet Member for Regeneration & Growth, with Ward Members as appropriate and with the Director of Finance and s151 Officer, declaring assets between £100,000 and £500,000 in value surplus.
- f. In consultation with the Director of Finance and s151 officer, approving the disposal of assets between £100,000 and £500,000.
- g. In consultation with the Cabinet Member and with Ward Members as appropriate, declaring assets up to £100,000 surplus.
- h. Approving the disposal of assets up to £100,000 in value.
- i. Overseeing the negotiation of property transactions.
- j. Approving the details of transactions in accordance with delegations put in place by Cabinet.

3.4 Audit & Risk Assurance Committee: The Committee reviews policies and procedures, including this document. It is therefore responsible for:

- a. Approving this document as part of the revised Financial Regulations and updates
- b. Reviewing this document periodically as part of their wider review of the Financial Regulations
- c. Reviewing the implementation of this policy and seeking assurance that the policy is followed.

3.5 Scrutiny Panel: Scrutiny Panel has the power to call in and scrutinize individual decisions, including decisions to declare assets surplus and decisions to sell land & buildings (including the terms of transactions).

3.6 Director of Law & Governance and Monitoring Officer:

- a. To execute legal documentation in accordance with instructions received from Cabinet or from the Director of Regeneration & Growth.
- b. To ensure that all transactions are in the Council's best interest, are within the Council's powers and are legal.
- c. To ensure that there are no conflicts of interest arising from a relevant entry in the Members Register of Interests or the Employees Register of Interests.

3.7 Director of Finance and Section 151 Officer

- a. Advising on the financial implications of a property transaction (such as the impact on the revenue budget of selling a capital asset, or the impact on the Council's ledger if a sale price is above or below the most recent asset valuation). Preparing the "Financial Implications" section in Cabinet papers.
- b. Processing any financial receipts and ensuring that they are recorded appropriately in the Council's accounts.

- c. Consulting with the Director of Regeneration & Growth regarding the declaring of assets surplus and the approval of disposal of assets over £100,000 and up to £500,000.

3.8 Leadership Team: Leadership Team has no formal delegations under the Council's constitution, so it does not make decisions as such, but it acts as a forum in which directors can collectively set the direction, including:

- a. Considering whether services can be rationalised, whether buildings can be vacated, and assets declared surplus.
- b. Considering whether proposals should go to Cabinet.

3.9 The Land & Asset Management Committee: has no formal delegations under the Council's constitution, however it will be consulted by and will make representations to the Cabinet Member for Regeneration & Growth prior to decisions being made by that Cabinet Member or Cabinet. It also has the ability to review decisions for consideration and to make recommendations to Cabinet.

3.10 The Land & Asset Management Officers Group has no formal delegations under the Council's constitution, so it does not make decisions as such, but it acts as a forum in which officers from across all the Council's service areas can discuss and agree on proposals to be taken to Leadership Team and to Cabinet.

3.11 Strategic Assets & Land Team will develop proposals to put to the Land & Assets Management Officers Group, to Leadership Team and to Cabinet as appropriate. The team will also be responsible for undertaking negotiations and implementing the decisions made by Cabinet and by the Director of Regeneration & Growth.

4.0 The process of declaring Operational assets 'surplus' to the Council's needs.

4.1 Service Managers will be responsible for defining their service needs as part of the service planning process and agreeing these with their relevant Director. The Strategic Land & Assets Team will support this process by advising on property matters and by identifying the most efficient way of providing for a service area's property needs.

4.2 Where the above process results in property assets being no longer required for service provision (and where this has been confirmed by email by the Director responsible for the service), proposals will be brought to Land & Asset Management Officers Group, which will consider the possible needs of other service areas before recommending that an asset is declared surplus.

4.3 Once a service has declared that they no longer require use of an asset and once the Land & Asset Management Officers Group have considered the needs of other service areas, the decision to declare the asset surplus (if it exceeds £1m in value) will be a decision for Cabinet. For assets between £500,001 and £1m it will be a decision for the Cabinet Member for Regeneration & Growth. For assets between £100,000 and £500,000 in value it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member, with Ward Members as appropriate and with the Director of Finance and s151 officer. For assets below

£100,000 it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member for Regeneration & Growth and relevant Ward Members as appropriate.

- 4.4** Policy decisions which materially affect the delivery of services will usually be made by Cabinet. When such a decision is made it will be good practice to ask Cabinet to delegate responsibility to the Director of Regeneration & Growth, in consultation with the Director of Finance & s151 Officer, to declare surplus any property assets which become surplus as a result of that decision.
- 4.5** Similarly, where policy decisions are made as part of the budget setting process, it will be good practice to ask Cabinet, when they approve the budget, to delegate responsibility to the Director of Regeneration & Growth, in consultation with the Director of Finance & s151 Officer, to declare surplus any property assets which become surplus as a result of the budget setting process.
- 4.6** If Land & Asset Management Officers Group recommends that an asset is declared surplus then a Cabinet paper will be prepared, which will be consulted upon in the usual way with Members and with Leadership Team.
- 4.7** Until an asset is declared surplus in accordance with 4.3 above it remains the budgetary responsibility of the relevant service area. Once it is declared surplus it becomes the responsibility of Strategic Assets & Land who will be charged to dispose of the asset.

5.0 Disposal Method

- 5.1** The Director of Regeneration & Growth will decide on the most appropriate method of disposal taking into account the need to achieve best value, also social value and the corporate priorities of the Council. For assets in excess of £1m in value this decision will be ratified by Cabinet when they approve the disposal. Alternative disposal methods include:
- a. Direct disposal. Where an unsolicited offer is received from a party for an asset, it may be appropriate to negotiate and agree terms with that one party. The Director of Regeneration & Growth will need to be satisfied that the sale complies with the s123 LGA 72 obligation to achieve the best price that can reasonably be obtained, and to that end a Red Book valuation will usually be necessary. Direct disposal is most likely to be appropriate where an offer is made by a special purchaser (eg neighbour), or where there is reason to think that a competitive process is unlikely to achieve a better result. Where there is to be a direct disposal, then the purchaser will be required to formally declare if they have an interest with or are related to an Elected Member or officer of the Council. Where such a relationship is declared, then approval to proceed should be sought from Cabinet regardless of the value of the asset.
 - b. Appointment of agents. Where assets are declared surplus it may be appropriate to appoint a firm of estate agents to market the asset on the Council's behalf.
 - c. Direct Marketing. The Council could itself advertise the asset and deal with enquiries itself.

- d. Sale by tender.
- e. Auction.

6.0 Valuation

- 6.1** For all property disposals a formal written valuation will be obtained and attached to the Cabinet or Individual Cabinet Member report . All valuations must be in line with Royal Institute of Chartered Surveyors professional standards.
- 6.2** The Director of Regeneration & Growth will approve the appointment of a valuer, decide whether the valuation should be conducted internally or by an external valuer, and satisfy himself that no conflicts of interest exist.
- 6.3** If the disposal of an asset has an impact on the value of any retained assets (for example, granting of a lease might have an impact on the value of the retained freehold) then this should be assessed, and it should be explained in the report which seeks approval to the disposal. Advice from Finance should be sought regarding the impact on the Council's annual asset valuations and whether a write-down is necessary.

7.0 Sale at less than Best Value

- 7.1** Circular 06/03: *"Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained"* provides guidance on the circumstances in which assets can be sold for less than Best Consideration Reasonably Obtainable. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2m or less.
- 7.2** It is Government guidance that local authorities and other public bodies should dispose of surplus land wherever possible. Generally, it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue. Authorities should clearly not divest themselves of valuable public assets unless they are satisfied that the circumstances warrant such action.
- 7.3** The Consent was issued to give local authorities autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.
- 7.4** In determining whether to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue.
- 7.5** When disposing of land at less than best consideration authorities are potentially providing a subsidy to the purchaser. Legal advice should be sought and consideration should be given to

relevant state aid legislation and to government guidance including the Government's Summary Guidance to Awarding Subsidies.

7.6 Where an asset is being sold at less than Best Consideration then:

- a. If the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (ie the "undervalue") is £50,000 or less, then the decision to sell at less than Best Consideration, together with an explanation as to the rationale, must be made in writing by the Director of Regeneration & Growth, the Section 151 officer and the Monitoring Officer.
- b. If the Undervalue is more than £50,000, then the decision to sell at less than Best Consideration must be made by Cabinet.
- c. If the Undervalue exceeds £2m then the approval of the Secretary of State is required.

7.7 In considering the legal and financial considerations of any disposal at an undervalue and/or granting of a lease, there must be demonstrable evidence that the outcome will be equally beneficial as compared to a disposal at market value and will be for the well-being of the whole or part of the area. If possible, the social, economic or environmental benefits, which are argued to be the justification for a disposal at an undervalue, and/or lease should be quantified in monetary terms.

7.8 Where leases are granted as part of a number of linked transactions, ie where a separate service contract is being entered into between the Council and the lessee, simultaneously with the lease, under which the lessee commits to provide certain services to the Council or to residents, the nature and value of this commitment should be taken into account in (a) assessing whether the disposal is at an undervalue and (b) justifying the undervalue if it exists. Advice from Legal and Finance should be sought in this scenario, and care should be taken to ensure that CIPFA, RICS and other appropriate guidance regarding the treatment of Linked Transactions is followed, and that the Community Asset Transfers will only be undertaken on a leasehold basis. When they do occur they will be undertaken in accordance with the Council's protocol on Community Asset Transfers and in accordance with this protocol.

7.9 In all cases, where a disposal and/or granting of a lease is undertaken at less than best consideration, then to protect the Council's interest in the event of subsequent sales, it must include, where appropriate, an asset lock, clawback, overage or uplift clause, restrictive covenants, ransom strip retention, user rights, forfeiture or break clause or right of pre-emption. This is to ensure that the Council eventually obtains best value and a purchaser does not profit excessively at the expense of the Council.

8.0 Complex Contractual Arrangements

8.1 This section sets out a protocol for undertaking discussions and negotiations with developers relating to Council-owned land. In particular it focuses on the circumstances in which the Council might enter into complex contractual arrangements with property developers relating to land. It defines, purely for the purposes of this document, what we mean by 'complex contractual arrangements', it highlights the risks to be considered and it sets out clear guidance which officers must follow in negotiating and agreeing such arrangements.

8.2 Complex Contractual Arrangements: For the purposes of this document Complex Contractual Arrangements are contracts which commit the Council to dispose of land but where the receipt of purchase monies is delayed and/or is conditional on a future event. Such arrangements include:

- Option agreements which give a developer the right to acquire land at a future date, either at a pre-agreed price, a price to be fixed by a formula (such as a development appraisal) or a price to be fixed by independent valuation.
- Sale contracts or agreements for lease, which are conditional on receipt of a planning approval, on satisfactory due diligence (eg site investigations), funding or other matters.
- Sale contracts or lease agreements where payment of purchase monies is delayed until a future event takes place such as Practical Completion of a development project, completion of other adjoining site acquisitions, future property sales, funding agreements.
- CPO Indemnity Agreements where developers reimburse CPO costs
- Contracts with Overage or profit-share clauses
- Joint Ventures
- Exclusivity agreements
- Promotion agreements
- Release of restrictive covenants.

8.3 Circumstances in which Option Agreements or Conditional Contracts are appropriate: From time to time the Council will want to encourage and promote property development in order to promote regeneration & renewal or to contribute to strategic targets such as housing numbers – and to this end working with, negotiating with and entering into contracts with property developers is an important part of Council business.

8.4 Promoting complex property development schemes is time-consuming and expensive. Developers often spend years promoting schemes through the planning process, incurring large costs in professional fees, only to find that schemes fail to obtain planning approval or they become unviable as costs and values change. It is common therefore for developers to seek to manage their exposure by securing the right to acquire a site (without which they could not justify the expenditure on fees) but preserving their ability to withdraw, or delaying payments for land, until key risks (such as planning) have been mitigated. To a degree, the Council needs to recognise this in its dealings with developers. It does however need to protect its own interests at the same time.

8.5 Risks for the Council: In entering into complex contractual arrangements the Council must take care that it does not:

- a. Find itself unable to terminate an agreement with a developer who is not performing, or where it has become apparent that the scheme cannot be delivered.
- b. Find that the developer is deliberately delaying (for example by delaying signature of a section 106 agreement) and the Council is unable to terminate.

- c. Finds itself under undue pressure to renegotiate the terms of a transaction because the alternative would be non-delivery and political embarrassment, because the agreement cannot be terminated.
- d. Find that it is committed to sell a site for a price which, because of the valuation mechanism employed or because of the outcome of due diligence work, is significantly less than the Council was expecting and/or less than the existing use value of the site.
- e. Find that the conditions in a conditional sale agreement are such that the purchaser is in complete control, and so the conditional contract effectively functions as an option agreement. An example of this is where a contract is conditional on receipt of a 'Satisfactory Planning Permission' and that is defined as 'A permission which the purchaser in their absolute discretion finds satisfactory'.
- f. Find that it is due substantial payments from a corporate entity that has insufficient financial strength, and no bonds or guarantees are in place.

Other risks for the Council include:

- g. Lack of clear distinction between the Council's statutory role as planning authority and its role as landowner and financial beneficiary. A clear distinction is essential from a probity perspective and to avoid Judicial Review of decisions.
- h. Lack of an appropriate competitive process in selecting developers to work with, resulting in procurement challenges and/or best value not being achieved.

8.6 Mitigations: To mitigate these risks the Council should:

- a. Only enter into exclusive discussions with a developer about a development project where that developer has an exclusive position relating to the project, such as ownership of an adjoining site, access rights or other rights which mean only they can deliver the scheme. 'Exclusive discussions' include informal meetings with officers and Members.
- b. Not enter into option agreements which are longer than reasonably necessary. Only under exceptional circumstances should options be more than 18 months long, and they should never be more than five years long. Any extensions beyond the original option period (apart from automatic extensions linked to Judicial Review) must be subject to Cabinet approval at the time that the original option period expires.
- c. Only enter into Option Agreements which have clearly set out milestones which the developer must achieve, and the ability for the Council to terminate if they are not achieved. They might include:
 - i. A timescale for formal planning pre-application discussions
 - ii. A timescale for development of design to each of the RIBA stages
 - iii. A public consultation strategy, with timescales
 - iv. A timescale for submitting planning applications, outline and/or detailed.
 - v. A timescale for satisfactory conclusion of due diligence (site investigations, discussions with the Environment Agency etc) and the ability to terminate if the results are unsatisfactory.

- vi. A timescale for entering into funding agreements
- vii. A timescale for signing section 106 agreements etc.
- d. Only enter into Conditional sale contracts which have similar milestones (and similar ability for the Council to terminate) as set out in c. above. The Conditional Period should not be longer than reasonably necessary. Only under exceptional circumstances should it be more than 18 months long, and it should never be more than five years long. Any extensions beyond the original conditional period (apart from automatic extensions linked to Judicial Review) must be subject to Cabinet approval at the time that the original conditional period expires.
- e. Ensure that before entering into any complex contractual arrangement, it has had sight of the developer's financial appraisals and cost plans, it has had obtained its own professional advice on these and is satisfied that the scheme is viable. If the scheme is not viable then it is inevitable that the developer will delay or will seek to renegotiate, and the Council's expectations will not be met.
- f. Does not enter into contracts for the sale of land where purchase monies are delayed beyond Completion unless:
 - i. There is a guaranteed minimum purchase price (which is not dependent on a future valuation or appraisal) which is equal to or greater than the Open Market Value of the site at the date of the contract, that this is payable unconditionally and that it is suitably secured against the appropriate assets of the purchaser.
 - ii. Payment of the guaranteed minimum purchase price must not be delayed more than 2 years beyond Completion.
 - iii. There is an appropriate drop-dead date by which all purchase monies must be paid regardless of any other factors.
 - iv. The Council retains a charge over the land until all purchase monies are paid.
- g. Only enters into Complex Contractual Arrangements with companies of suitable financial standing or where suitable guarantees are in place.

8.7 The decision to enter into a Complex Contractual Arrangement is a decision for Cabinet if the likely end sale price of the land (including any uplift resulting from change of use) exceeds £1m. If the likely price is between £500,001 and £1m it will be a decision for the Cabinet Member for Regeneration & Growth. If the likely price is between £100,000 and £500,000 it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member, with Ward Members as appropriate and with the Director of Finance and s151 officer. If it is below £100,000 it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member and Ward Members as appropriate.

9.0 Legal Documentation

9.1 For Complex Contractual Arrangements or for transactions with a consideration in excess of £1 million, the Director of Regeneration & Growth, in consultation with the Director of Law & Governance, will approve the selection and appointment of an appropriate firm of lawyers to represent the Council.

9.2 Documents will be executed in accordance with the Scheme of Delegations, including affixing the Council's common seal when necessary. Documents prepared by external legal representatives will be reviewed by the Director of Law & Governance and Monitoring Officer, to ensure they comply with the Council's legal duties and responsibilities and in accordance with the Council's Constitution (including this protocol, to the extent that it is relevant).

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	Existing Protocol	Proposed New Protocol	Reasons for Change
1	A disposal of council-owned land and/or property includes the following: <ul style="list-style-type: none"> • Freehold disposal by way of sale; • An exchange of council owned land or buildings. 	<p>This Protocol governs the disposal of land and property owned by the Council. It applies to all property interests owned by the Council. If a conflict exists between this protocol and statute or guidance (as may be the case, for example, for school properties or for residential properties held in the HRA) then this protocol will be followed to the extent that it does not conflict with statute or guidance.</p> <p>A disposal of Council-owned land and/or property includes the following:</p> <ul style="list-style-type: none"> • Freehold disposal by way of sale; • An exchange of Council owned land or buildings. • Leasing of Council owned properties on leases in excess of 7 years. 	More precise language. Clarity about the relationship between this Protocol and other guidance & legislation.
2	The protocol applies to every Member and Officer of the Authority and anyone acting on its behalf. Any exemptions from this protocol will require approval from Cabinet.	This Protocol applies to every Member and officer of the Council and anyone acting on its behalf. Any exemptions from this Protocol will require approval from Cabinet and should only be sought in exceptional circumstances	To emphasize the status of the protocol and the need to follow it.
3	The document complies with statutory duties and is in line with Government advice recommending that local authorities should have a document of this nature available for inspection and it is intended for use by Council Officers, Local Councillors, members of the public and developers.	The document complies with statutory duties and is in line with Government advice recommending that local authorities should have a document of this nature available for inspection and it is intended for use by members, officers, and as a source of information for the public and developers.	No change
4	It should be read in conjunction with the Council's Responsibility for Functions, the Scheme of Delegation to Officers, Standing Orders,	It should be read in conjunction with the Council's Responsibility for Functions, the Scheme of Delegation to Officers, Contract Procedure Rules and Financial	More precise language

	Procurement and Contract Procedure rules and Financial Regulations.	Regulations, all of which can be found in the Council's Constitution	
5	Failure to adhere to this protocol may result in disciplinary action and / or a standards investigation.	Failure to follow this protocol may result in disciplinary action or action under the Members' Code of Conduct.	More precise language
	Not Covered	<p>Legal Background</p> <p>Section 123 of the Local Government Act 1972 ('LGA 72') states that "a council may dispose of land held by them in any manner they wish" but that "except with the consent of the Secretary of State, a council shall not dispose of land under this section for a consideration less than the best that can reasonably be obtained"</p> <p>Circular 06/03: "Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained" provides further guidance, and this is referred to in section 7.0 below.</p> <p>An important distinction exists between the legislation relating to sale of land and property (set out in the LGA 72) and legislation relating to the procurement of services (set out in Public Contract Regulations 2015 'PCR 15'). This distinction is important because the procurement regime set out in the PCR 15 imposes certain obligations on a public body when entering into contracts for works and services, that do not apply to the disposal of land or real property, and the disposal of land is clearly set out in the legislation and guidance published relating to disposals. The definition of a "public contract" identifies four main constituents</p>	To ensure that the Protocol is closely aligned with the relevant legislation and government guidance.

		<p>of such a contract: (1)that it is "<i>for pecuniary interest</i>"; (2)that it is "<i>in writing</i>"; (3) that it is entered into by an "<i>economic operator</i>" and a "<i>contracting authority</i>"; (4) that it should have as its "<i>object</i>" the "<i>execution of works</i>" or the "<i>supply of products</i>" or the "<i>provision of services</i>" (see Faraday Developments Ltd v West Berkshire Council 2016). The sale or disposal of property does not automatically fall into the definition contract for the execution of works, supply of products or provision of services.].</p> <p>Procurement of services generally involves the undertaking of competitive selection processes, and these are not generally necessary or appropriate for land transactions governed by LGA 72. However, where contracts for the sale of land place contractual obligations on the purchaser (other than planning obligations) to undertake activities for the Council's benefit which could be considered to be services, then in certain circumstances, procurement legislation may apply. Legal advice must be sought where such obligations exist or are proposed.</p>	
6	<p>In determining whether or not to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a</p>	<p>Sale at less than Best Value</p> <p>Circular 06/03: "<i>Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained</i>" provides guidance on the circumstances in which assets can be sold for less</p>	<p>Improved alignment to the relevant law & guidance.</p>

	<p>professionally qualified valuer as to the likely amount of the undervalue.</p>		
7	<p>All disposals need to comply with the European Commission's State aid rules. The Commission's Communication on State aid elements in sales of land and buildings by public authorities (97/C 209/03) provides general [ILO: UNCLASSIFIED] guidance on this issue. When disposing of land at less than best consideration authorities are providing a subsidy to the owner, developer and/or the occupier of the land and property, depending on the nature of the development. Where this occurs authorities must ensure that the nature and amount of subsidy complies with the State aid rules, particularly if there is no element of competition in the sale process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.</p> <p>Before disposing of any interest in land for a price which may be less than the best consideration reasonably obtainable, local authorities are strongly advised in all cases to ensure that they obtain a realistic valuation of that interest. This applies even for disposals by means of formal tender, sealed bids or auction. By following this advice, an authority will be able to demonstrate that it has adopted a consistent approach to decisions about land disposals by carrying out the same step by step valuation process on each occasion. Supporting documents should provide evidence that an</p>	<p>than Best Consideration Reasonably Obtainable. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2m or less. It is Government guidance that local authorities and other public bodies should dispose of surplus land wherever possible. Generally, it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue. Authorities should clearly not divest themselves of valuable public assets unless they are satisfied that the circumstances warrant such action.</p> <p>The Consent was issued to give local authorities autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.</p> <p>In determining whether to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally</p>	

	<p>authority has acted reasonably and with due regard to its fiduciary duty.</p>	<p>qualified valuer as to the likely amount of the undervalue.</p> <p>When disposing of land at less than best consideration authorities are potentially providing a subsidy to the purchaser. Legal advice should be sought and consideration should be given to relevant state aid legislation and to government guidance including the Government’s Summary Guidance to Awarding Subsidies.</p> <p>Where an asset is being sold at less than Best Consideration then:</p> <ol style="list-style-type: none"> a. If the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (ie the “undervalue”) is £50,000 or less, then the decision to sell at less than Best Consideration, together with an explanation as to the rationale, must be made in writing by the Director of Regeneration & Growth, the Section 151 officer and the Monitoring Officer. b. If the Undervalue is more than £50,000, then the decision to sell at less than Best Consideration must be made by Cabinet. c. If the Undervalue exceeds £2m then the approval of the Secretary of State is required. <p>In considering the legal and financial considerations of any disposal at an undervalue and/or granting of a lease, there must be demonstrable evidence that</p>	
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		<p>the outcome will be equally beneficial as compared to a disposal at market value and will be for the well-being of the whole or part of the area. If possible, the social, economic or environmental benefits, which are argued to be the justification for a disposal at an undervalue, and/or lease should be quantified in monetary terms.</p> <p>Where leases are granted as part of a number of linked transactions, ie where a separate service contract is being entered into between the Council and the lessee, simultaneously with the lease, under which the lessee commits to provide certain services to the Council or to residents, the nature and value of this commitment should be taken into account in (a) assessing whether the disposal is at an undervalue and (b) justifying the undervalue if it exists. Advice from Legal and Finance should be sought in this scenario, and care should be taken to ensure that CIPFA, RICS and other appropriate guidance regarding the treatment of Linked Transactions is followed.</p> <p>Community Asset Transfers will only be undertaken on a leasehold basis. When they do occur they will be undertaken in accordance with the Council's protocol on Community Asset Transfers and in accordance with this protocol.</p> <p>In all cases, where a disposal and/or granting of a lease is undertaken at less than best consideration, then to protect the Council's interest in the event of subsequent sales, it must include, where appropriate, an asset lock, clawback, overage or uplift clause, restrictive covenants, ransom strip retention, user rights, forfeiture or break clause or</p>	
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		right of pre-emption. This is to ensure that the Council eventually obtains best value and a purchaser does not profit excessively at the expense of the Council.	
8	The Full Council is responsible for: • Adopting the Council's Constitution and Members Code of Conduct and for approving the policy framework, budget and borrowing within which the Cabinet operates; • Approving and monitoring compliance with the Authority's overall framework of accountability as set out in its Constitution; • Monitoring compliance with agreed policy and reporting decisions taken; • Making or amending Procurement and Contract Procedure Rules and Financial Regulations, including this appendix to Financial Regulations.	<i>Full Council:</i> As land disposal is an executive function, decisions to dispose of land & buildings will not normally be referred to a meeting of Council.	To set out functions specifically in relation to disposals of land & assets, rather than describing general functions.
9	Audit Committee provides independent assurance to elected members of the adequacy of the risk management framework and the internal control environment. This appendix to Financial Regulations has been developed following a recommendation by Audit Committee and will be subject to regular monitoring by that committee.	<i>Audit & Risk Assurance Committee:</i> The Committee reviews policies and procedures, including this document. It is therefore responsible for: <ul style="list-style-type: none"> d. Approving this document as part of the revised Financial Regulations and updates e. Reviewing this document periodically as part of their wider review of the Financial Regulations f. Reviewing the implementation of this policy and seeking assurance that the policy is followed. 	To set out functions specifically in relation to disposals of land & assets, rather than describing general functions.
10	The Land and Asset Management Committee provides the strategic direction for all matters relating to the effective use of land and property	<i>The Land & Asset Management Officers Group</i> has no formal delegations under the Council's constitution, so it does not make decisions as such,	To describe the decision-making process more accurately and to

	assets within the borough to maximise social and economic benefits and regeneration; and makes recommendations to Cabinet about the use of those assets.	but it acts as a forum in which officers from across all the Council's service areas can discuss and agree on proposals to be taken to Leadership Team and to Cabinet.	ensure alignment to the Council's Scheme of Delegations.
11	Not Covered	<p><u>Leadership Team:</u> Leadership Team has no formal delegations under the Council's constitution, so it does not make decisions as such, but it acts as a forum in which directors can collectively set the direction, including:</p> <ul style="list-style-type: none"> g. Considering whether services can be rationalised, whether buildings can be vacated, and assets declared surplus. h. Considering whether proposals should go to Cabinet. 	To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.
12	<p>Director – Regeneration & Economy (Chief Property Officer) • To negotiate and agree terms for the disposal of land and property by the most appropriate method of sale and in accordance with such policy as may be determined by the Council. That the Monitoring Officer be consulted by the Director – Regeneration and Economy on terms for the disposal of land and property in the event that there is a potential conflict including where there is a relevant entry in the Members Register of Interests and the Employees Register of Interests. • To negotiate and agree, terms for the disposal by the most appropriate method of sale of areas of land and premises up to a value of £100,000. That the Monitoring Officer be consulted by the Director – Regeneration and Economy to negotiate and</p>	<p><i>Director, Regeneration & Growth: The Director of Regeneration & Growth is responsible for:</i></p> <ul style="list-style-type: none"> i. As part of Leadership Team, considering proposals to rationalise the operational property estate in response to service needs. j. Making recommendations to Cabinet to declare assets in excess of £1m in value surplus. k. Making recommendations to Cabinet to dispose of assets over £1m in value. l. Making recommendations to the Cabinet Member for Regeneration & Growth to dispose of assets 	To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.

	<p>agree, terms for the disposal by the most appropriate method of sale of areas of land and premises up to a value of £100,000 in the event that that there is a potential conflict including where there is a relevant entry in the Members Register of Interests and the Employees Register of Interests. [ILO: UNCLASSIFIED] • In consultation with the appropriate Director, to offer land and/or premises for disposal at auctions where the estimate of value does not exceed £100,000. That the Monitoring Officer be consulted by the Director – Regeneration and Economy on the offer land and/or premises for disposal at auctions where the estimate of value does not exceed £100,000 in the event that that there is a potential conflict including where there is a relevant entry in the Members Register of Interests and the Employees Register of Interests.</p>	<p>between £500,000 and £1m in value.</p> <ul style="list-style-type: none"> m. In consultation with the Cabinet Member for Regeneration & Growth, with Ward Members as appropriate and with the Director of Finance and s151 Officer, declaring assets between £100,000 and £500,000 in value surplus. n. In consultation with the Director of Finance and s151 officer, approving the disposal of assets between £100,000 and £500,000. o. In consultation with the Cabinet Member and with Ward Members as appropriate, declaring assets up to £100,000 surplus. p. Approving the disposal of assets up to £100,000 in value. q. Overseeing the negotiation of property transactions. <p>Approving the details of transactions in accordance with delegations put in place by Cabinet.</p>	
13	<p>Monitoring Officer • To sign off and authorise on behalf of the Council any express or implied undertakings for the disposal and acquisition of land to be given by a Council officer. • To acquire and dispose of land and property upon receipt of instructions from the Director - Regeneration and Economy, on terms to be agreed in accordance with authority delegated to him, and being satisfied that all necessary statutory or other authorities in connection with the acquisition or disposal have</p>	<p>1.2 <u>Director of Law & Governance and Monitoring Officer:</u></p> <ul style="list-style-type: none"> a. To execute legal documentation in accordance with instructions received from Cabinet or from the Director of Regeneration & Growth. b. To ensure that all transactions are in the Council’s best interest, are 	

	<p>been agreed. • To dispose of land and/or premises at auction where the Director – Regeneration and Economy estimates the value of the land/property being offered for sale is less than £100,000 but the bid price exceeds that amount. • To dispose of land up to a value of £100,000 on terms agreed by the Director - Regeneration and Economy, in accordance with the authority delegated to him.</p>	<p>within the Council’s powers and are legal.</p> <p>c. To ensure that there are no conflicts of interest arising from a relevant entry in the Members Register of Interests or the Employees Register of Interests.</p>	
14	<p>Chief Finance Officer (Section 151 Officer) The Chief Finance Officer is responsible for maintaining a continuous review of Financial Regulations and Procedures, including this protocol, and submitting any additions or changes to the full council for approval. The Chief Finance [ILO: UNCLASSIFIED] Officer is also responsible for reporting breaches of Financial Regulations and Procedures to the Council and/or to Cabinet Members</p>	<p><u>Director of Finance and Section 151 Officer</u></p> <p>d. Advising on the financial implications of a property transaction (such as the impact on the revenue budget of selling a capital asset, or the impact on the Council’s ledger if a sale price is above or below the most recent asset valuation). Preparing the “Financial Implications” section in Cabinet papers.</p> <p>e. Processing any financial receipts and ensuring that they are recorded appropriately in the Council’s accounts.</p> <p>f. Consulting with the Director of Regeneration & Growth regarding the declaring of assets surplus and the approval of disposal of assets over £100,000 and up to £500,000.</p>	
15	<p>Corporate Landlord (part of Assistant Chief Executive) Corporate Landlord is responsible for the management of land and premises required for operational purposes. This includes: • Ensuring that</p>	<p>Not Covered</p>	<p>This is a general description of the property function, and it is not specifically relevant to the disposal</p>

	<p>the council's operational property portfolio is fit for purpose, sustainable and in good repair; • Identifying assets surplus to council requirements; • The formulation of business cases relating to the rationalisation and continued improvement of the council's operational property portfolio.</p>		<p>of assets, so it is not included in the proposed new protocol.</p>
16	<p>Property Services (part of Regeneration & Economy) Property Services is responsible for: • The disposal of any parcel of land or property which is surplus to council requirements; • The grant of leases to third parties and/or organisations; and • The management of the council's commercial estate e.g. shops, industrial units, ground leases etc.</p>	<p><u>Strategic Assets & Land Team</u> will develop proposals to put to the Land & Assets Management Officers Group, to Leadership Team and to Cabinet as appropriate. The team will also be responsible for undertaking negotiations and implementing the decisions made by Cabinet and by the Director of Regeneration & Growth.</p>	<p>To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.</p>
17	<p>Legal Services (part of Assistant Chief Executive) Legal Services is responsible for: • Completion of all legal paperwork including contract documentation for the acquisition and/or disposal of land and/or property whether the transaction is on a freehold or leasehold basis.</p>	<p>For Complex Contractual Arrangements or for transactions with a consideration in excess of £1 million, the Director of Regeneration & Growth, in consultation with the Director of Law & Governance, will approve the selection and appointment of an appropriate firm of lawyers to represent the Council.</p> <p>Documents will be executed in accordance with the Scheme of Delegations, including affixing the Council's common seal when necessary. Documents prepared by external legal representatives will be reviewed by the Director of Law & Governance and Monitoring Officer, to ensure they are comply with the Council's legal duties and responsibilities and in accordance with the Council's Constitution (including this protocol, to the extent that it is relevant).</p>	<p>The Director of Regeneration & Growth will decide whether to use internal or external lawyers to complete legal paperwork / contract documentation. The Monitoring Officer has responsibility for ensuring that all transactions are in the Council's best interest, are within the Council's powers and are legal.</p>

18	<p>Strategic Finance (part of Assistant Chief Executive) Strategic Finance is responsible for: • Ensuring transactions relating to the disposal of land and/or property are properly recorded in the financial records of the Council.</p>	<p><u>Director of Finance and Section 151 Officer</u></p> <ul style="list-style-type: none"> g. Advising on the financial implications of a property transaction (such as the impact on the revenue budget of selling a capital asset, or the impact on the Council's ledger if a sale price is above or below the most recent asset valuation). Preparing the "Financial Implications" section in Cabinet papers. h. Processing any financial receipts and ensuring that they are recorded appropriately in the Council's accounts. i. Consulting with the Director of Regeneration & Growth regarding the declaring of assets surplus and the approval of disposal of assets over £100,000 and up to £500,000. <p>If the disposal of an asset has an impact on the value of any retained assets (for example, granting of a lease might have an impact on the value of the retained freehold) then this should be assessed, and it should be explained in the report which seeks approval to the disposal. Advice from Finance should be sought regarding the impact on the Council's annual asset valuations and whether a write-down is necessary.</p>	<p>To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.</p>
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19	<p>Corporate Landlord is responsible for determining whether operational land or buildings are potentially surplus to requirements and for reporting their availability to the Land and Asset Management Officer Group. The report will include:</p> <ul style="list-style-type: none"> • An initial estimate of valuation • Proof of Ownership • Title issues • Restrictive covenants • Ransom strip issues • Rights of way and other easements • Retaining rights over adjoining land • Potential for grant repayment • The relevant entry in the asset management system • The relevant entry in the asset register, including the valuation currently assigned to that asset. 	<p>Service Managers will be responsible for defining their service needs as part of the service planning process and agreeing these with their relevant Director. The Strategic Land & Assets Team will support this process by advising on property matters and by identifying the most efficient way of providing for a service area's property needs.</p> <p>Where the above process results in property assets being no longer required for service provision (and where this has been confirmed by email by the Director responsible for the service), proposals will be brought to Land & Asset Management Officers Group, which will consider the possible needs of other service areas before recommending that an asset is declared surplus.</p> <p>Once a service has declared that they no longer require use of an asset and once the Land & Asset Management Officers Group have considered the needs of other service areas, the decision to declare the asset surplus (if it exceeds £1m in value) will be a decision for Cabinet. For assets between £500,001 and £1m it will be a decision for the Cabinet Member for Regeneration & Growth. For assets between £100,000 and £500,000 in value it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member, with Ward Members as appropriate and with the Director of Finance and s151 officer. For assets below £100,000 it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member for</p>	<p>Clarifying the fact that the purpose of the property function is to support the delivery of services.</p>
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		<p>Regeneration & Growth and relevant Ward Members as appropriate.</p> <p>Policy decisions which materially affect the delivery of services will usually be made by Cabinet. When such a decision is made it will be good practice to ask Cabinet to delegate responsibility to the Director of Regeneration & Growth, in consultation with the Director of Finance & s151 Officer, to declare surplus any property assets which become surplus as a result of that decision.</p> <p>Similarly, where policy decisions are made as part of the budget setting process, it will be good practice to ask Cabinet, when they approve the budget, to delegate responsibility to the Director of Regeneration & Growth, in consultation with the Director of Finance & s151 Officer, to declare surplus any property assets which become surplus as a result of the budget setting process.</p> <p>If Land & Asset Management Officers Group recommends that an asset is declared surplus then a Cabinet paper will be prepared, which will be consulted upon in the usual way with Members and with Leadership Team.</p> <p>Until an asset is declared surplus in accordance with 4.3 above it remains the budgetary responsibility of the relevant service area. Once it is declared surplus it becomes the responsibility of Strategic Assets & Land who will be charged to dispose of the asset.</p>	
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20	The Land and Asset Management Officer Group will consider the report presented by Corporate Landlord and will make recommendations on all property transactions prior to disposal. The Group membership will include the following officers or their representatives: • Director – Regeneration & Economy • Corporate Landlord • Monitoring Officer • Section 151 Officer	<p><i>The Land & Asset Management Officers Group</i> has no formal delegations under the Council's constitution, so it does not make decisions as such, but it acts as a forum in which officers from across all the Council's service areas can discuss and agree on proposals to be taken to Leadership Team and to Cabinet.</p>	To ensure alignment to the Council's Scheme of Delegations.
21	The Land and Asset Management Officer Group will consider the report and determine whether or not the sale will proceed.		
22	If approval for disposal is given a valuation will be obtained. All valuations will be in line with Royal Institute of Chartered Surveyors professional standards.	<p>For all property disposals a formal written valuation will be obtained and attached to the Cabinet or Individual Cabinet Member report. The exception to this will be where properties are sold at auction or by formal tender. All valuations must be in line with Royal Institute of Chartered Surveyors professional standards.</p> <p>The Director of Regeneration & Growth will approve the appointment of a valuer, decide whether the valuation should be conducted internally or by an external valuer, and satisfy himself that no conflicts of interest exist.</p> <p>If the disposal of an asset has an impact on the value of any retained assets (for example, granting of a lease might have an impact on the value of the retained freehold) then this should be assessed, and it should be explained in the report which seeks approval to the disposal. Advice from Finance</p>	<p>To delegate decisions regarding the appointment of valuers, as appropriate, in line with the Scheme of Delegations.</p> <p>Conflicts of Interest are adequately covered by the responsibilities of the Director of Law & Governance and Monitoring Officer, and beyond this there is no need to be prescriptive as to how sales to employees or council Members etc will be dealt with.</p>
23	<p>Internal valuations will be undertaken where: [ILO: UNCLASSIFIED] - the value of the site does not exceed a de-minimis threshold that will initially be set at £50,000 that will be reviewed after 12 months of operation; - an open market sale is to be undertaken.</p> <p>In those cases where a valuation is difficult but is anticipated to not exceed £100,000 the sale will be conducted in compliance with procurement and contract procedure rules with the bids received being used to set the market valuation. 4.7 External valuations will be obtained for all other land sales; sales to a council employee and/or local councillor; where a sale at less than best is being considered; or if the land is to be sold subject to a restrictive covenant affecting its value.</p>		

24	Where the valuation does not exceed £100,000 the Director – Regeneration & Economy will negotiate and agree terms for the disposal by the most appropriate method of sale. The Monitoring Officer will be consulted in the event that there is a conflict arising from a relevant entry in the Members Register of Interests and the Employees Register of Interests.	should be sought regarding the impact on the Council’s annual asset valuations and whether a write-down is necessary.	
25	Where the value of the asset being considered for disposal exceeds £100,000 the matter will be submitted to the Land & Asset Management Committee and to Cabinet approval.	<p>Cabinet makes the decision to:</p> <p style="padding-left: 40px;">Declare assets Surplus where their value exceeds £1m.</p> <p style="padding-left: 40px;">Dispose of Surplus Assets which exceed £1m in value. In approving disposals it may delegate to the Director of Regeneration & Growth the responsibility for approving the details of the transaction.</p>	
26	Not Covered	<p><u>Cabinet Member for Regeneration & Growth</u> makes decisions to:</p> <p style="padding-left: 40px;">a. Declare assets Surplus where their value is between £500,001 and £1m .</p> <p style="padding-left: 40px;">b. Dispose of Surplus Assets where their value is between £500,001 and £1m. In approving disposals, they may delegate to the Director of Regeneration & Growth the responsibility for approving the details of the transaction.</p>	To reflect new Scheme of Delegations
27	Not Covered	<u>Scrutiny Panel:</u> Scrutiny Panel has the power to call in and scrutinize individual decisions, including	To describe the decision-making process more accurately and to

		decisions to declare assets surplus and decisions to sell land & buildings (including the terms of transactions).	ensure alignment to the Council's Scheme of Delegations.
28	<p>The Land & Asset Management Committee will consider the report prepared by the officer group and determine whether or not the sale will proceed. The report will include:</p> <ul style="list-style-type: none"> • The valuation; • Legislation and Secretary of State guidance governing the disposal process; • The proposed method of disposal and explanation as to why that option has been chosen; • General guidelines which are applicable, e.g. the Crichel Down rules which apply to most disposals by the Council of property acquired using compulsory purchase or under threat of compulsory purchase. Where the rules are applicable, there is an obligation to offer the property back to the original owner before it can be placed on the open market; [ILO: UNCLASSIFIED] • Confirmation as to whether or not the transaction is caught by the public procurement rules; • Confirmation as to whether or not the transaction is caught by the State Aid rules; • An indicative location plan highlighting the land/property to be sold; • Financial implications. 	<p><i>The Land & Asset Management Officers Group</i> has no formal delegations under the Council's constitution, so it does not make decisions as such, but it acts as a forum in which officers from across all the Council's service areas can discuss and agree on proposals to be taken to Leadership Team and to Cabinet.</p> <p>Disposal Method</p> <p>The Director of Regeneration & Growth will decide on the most appropriate method of disposal taking into account the need to achieve best value, also social value and the corporate priorities of the Council. For assets in excess of £1m in value this decision will be ratified by Cabinet when they approve the disposal. Alternative disposal methods include:</p> <p>Direct disposal. Where an unsolicited offer is received from a party for an asset, it may be appropriate to negotiate and agree terms with that one party. The Director of Regeneration & Growth will need to be satisfied that the sale complies with the s123 LGA 72 obligation to achieve the best price that can reasonably be obtained, and to that end a Red Book valuation will usually be necessary. Direct disposal is most likely to be appropriate where an offer is made by a special purchaser (eg</p>	<p>To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.</p> <p>There is no need to be prescriptive in the Protocol as to what headings must be included in a report, as officers will make this judgement on a case-by-case basis.</p>

		<p>neighbour), or where there is reason to think that a competitive process is unlikely to achieve a better result. Where there is to be a direct disposal, then the purchaser will be required to formally declare if they have an interest with or are related to an Elected Member or officer of the Council. Where such a relationship is declared, then approval to proceed should be sought from Cabinet regardless of the value of the asset.</p> <p>Appointment of agents. Where assets are declared surplus it may be appropriate to appoint a firm of estate agents to market the asset on the Council's behalf.</p> <p>Direct Marketing. The Council could itself advertise the asset and deal with enquiries itself.</p> <p>Sale by tender.</p> <p>Auction.</p>	
29	If the proposed sale price is less than the valuation, then Cabinet approval will be required.	<p>Sale at less than Best Value</p> <p>Circular 06/03: <i>“Local Government Act 1972 general disposal consent (England) 2003 disposal of land for less than the best consideration that can reasonably be obtained”</i> provides guidance on the circumstances in which assets can be sold for less than Best Consideration Reasonably Obtainable. The Consent removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (“the undervalue”) is £2m or less.</p>	<p>To describe the decision-making process more accurately and to ensure alignment to the Council's Scheme of Delegations.</p> <p>To align the protocol more closely with legislation and government guidance.</p>
30	In considering the legal and financial considerations of any disposal at an undervalue, there must be demonstrable evidence that the outcome will be equally beneficial as compared to a disposal at market value and will be for the well-being of the whole or part of the area. If possible, the social, economic or environmental benefits, which are argued to be the justification for a disposal at an undervalue, should be quantified in monetary terms		
31	In all cases, where a disposal is undertaken at less than best consideration, then to protect the Council's interest in the event of subsequent sales, it will include, where appropriate, an asset lock,		

<p>clawback, overage or uplift clause, restrictive covenants, ransom strip retention, user rights, forfeiture or break clause or right of pre-emption. This is to ensure that the Council eventually obtains best value and a purchaser does not profit excessively at the expense of the Council.</p>	<p>It is Government guidance that local authorities and other public bodies should dispose of surplus land wherever possible. Generally, it is expected that land should be sold for the best consideration reasonably obtainable. However, it is recognised that there may be circumstances where an authority considers it appropriate to dispose of land at an undervalue. Authorities should clearly not divest themselves of valuable public assets unless they are satisfied that the circumstances warrant such action.</p> <p>The Consent was issued to give local authorities autonomy to carry out their statutory duties and functions, and to fulfil such other objectives as they consider to be necessary or desirable. However, when disposing of land at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.</p> <p>In determining whether to dispose of land for less than the best consideration reasonably obtainable, and whether or not any specific proposal to take such action falls within the terms of the Consent, the authority should ensure that it complies with normal and prudent commercial practices, including obtaining the view of a professionally qualified valuer as to the likely amount of the undervalue.</p> <p>When disposing of land at less than best consideration authorities are potentially providing</p>	
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		<p>a subsidy to the purchaser. Legal advice should be sought and consideration should be given to relevant state aid legislation and to government guidance including the Government’s Summary Guidance to Awarding Subsidies.</p> <p>Where an asset is being sold at less than Best Consideration then:</p> <ul style="list-style-type: none"> j. If the difference between the unrestricted value of the interest to be disposed of and the consideration accepted (ie the “undervalue”) is £50,000 or less, then the decision to sell at less than Best Consideration, together with an explanation as to the rationale, must be made in writing by the Director of Regeneration & Growth, the Section 151 officer and the Monitoring Officer. k. If the Undervalue is more than £50,000, then the decision to sell at less than Best Consideration must be made by Cabinet. l. If the Undervalue exceeds £2m then the approval of the Secretary of State is required. <p>In considering the legal and financial considerations of any disposal at an undervalue and/or granting of a lease, there must be demonstrable evidence that the outcome will be equally beneficial as compared to a disposal at market value and will be for the</p>	
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		<p>well-being of the whole or part of the area. If possible, the social, economic or environmental benefits, which are argued to be the justification for a disposal at an undervalue, and/or lease should be quantified in monetary terms.</p> <p>Where leases are granted as part of a number of linked transactions, ie where a separate service contract is being entered into between the Council and the lessee, simultaneously with the lease, under which the lessee commits to provide certain services to the Council or to residents, the nature and value of this commitment should be taken into account in (a) assessing whether the disposal is at an undervalue and (b) justifying the undervalue if it exists. Advice from Legal and Finance should be sought in this scenario, and care should be taken to ensure that CIPFA, RICS and other appropriate guidance regarding the treatment of Linked Transactions is followed.</p> <p>Community Asset Transfers will only be undertaken on a leasehold basis. When they do occur they will be undertaken in accordance with the Council's protocol on Community Asset Transfers and in accordance with this protocol.</p> <p>In all cases, where a disposal and/or granting of a lease is undertaken at less than best consideration, then to protect the Council's interest in the event of subsequent sales, it must include, where appropriate, an asset lock, clawback, overage or uplift clause, restrictive covenants, ransom strip</p>	
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		retention, user rights, forfeiture or break clause or right of pre-emption. This is to ensure that the Council eventually obtains best value and a purchaser does not profit excessively at the expense of the Council.	
32	Files will be maintained for every disposal by the Director – Regeneration & Economy (property file) and the Director – Governance (legal file) and these files will be accessible by Internal/External audit.	Not covered	Maintaining of appropriate records is an officer responsibility across all service areas, and it is the responsibility of management to ensure that appropriate record-keeping is in place. It is not necessary or appropriate for this protocol to be prescriptive.
33	The property file will contain all correspondence to verify how the authority made the decision to dispose, including a copy of the appropriate minute authorising the sale or a signed delegation form, verification of value in the form of a formal written valuation in line with Royal Institute of Chartered Surveyors professional standards, signed instructions to Legal Services, completion statement and actions taken by the case officer in relation to the matter.	Not covered	
34	The legal file will contain a copy of the Legal Instructions (Legal Instructions should contain a surveyor certificate of best consideration, written valuation in line with Royal Institute of Chartered Surveyors professional standards, reason for any discrepancies in final sale price and valuation, the contract documentation, confirmation of all checks in relation to the title of the property, money laundering compliance, best value confirmation from the instructing officer and member involvement information); any correspondence in relation to the matter and a completion statement.	Not Covered	

35	A completion statement will be passed to: - Director – Regeneration & Economy - Corporate Landlord - Monitoring Officer - Section 151 Officer	Not Covered	
36	Receipts from the disposal of assets will be treated as a corporate resource.	<p><u>Director of Finance and Section 151 Officer</u></p> <p>Advising on the financial implications of a property transaction (such as the impact on the revenue budget of selling a capital asset, or the impact on the Council’s ledger if a sale price is above or below the most recent asset valuation). Preparing the “Financial Implications” section in Cabinet papers.</p> <p>Processing any financial receipts and ensuring that they are recorded appropriately in the Council’s accounts.</p> <p>Consulting with the Director of Regeneration & Growth regarding the declaring of assets surplus and the approval of disposal of assets over £100,000 and up to £500,000.</p>	
37	Not Covered	<p>Complex Contractual Arrangements</p> <p>This section sets out a protocol for undertaking discussions and negotiations with developers relating to Council-owned land. In particular it focuses on the circumstances in which the Council might enter into complex contractual</p>	To provide guidance and to protect the Council’s interests in its dealings with property developers.

		<p>arrangements with property developers relating to land. It defines, purely for the purposes of this document, what we mean by ‘complex contractual arrangements’, it highlights the risks to be considered and it sets out clear guidance which officers must follow in negotiating and agreeing such arrangements.</p> <p>Complex Contractual Arrangements: For the purposes of this document Complex Contractual Arrangements are contracts which commit the Council to dispose of land but where the receipt of purchase monies is delayed and/or is conditional on a future event. Such arrangements include:</p> <ul style="list-style-type: none"> • Option agreements which give a developer the right to acquire land at a future date, either at a pre-agreed price, a price to be fixed by a formula (such as a development appraisal) or a price to be fixed by independent valuation. • Sale contracts or agreements for lease, which are conditional on receipt of a planning approval, on satisfactory due diligence (eg site investigations), funding or other matters. • Sale contracts or lease agreements where payment of purchase monies is delayed until a future event takes place such as Practical Completion of a development project, completion of other adjoining site acquisitions, future property sales, funding agreements. • CPO Indemnity Agreements where developers reimburse CPO costs • Contracts with Overage or profit-share clauses 	
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		<ul style="list-style-type: none">• Joint Ventures• Exclusivity agreements• Promotion agreements• Release of restrictive covenants. <p>Circumstances in which Option Agreements or Conditional Contracts are appropriate: From time to time the Council will want to encourage and promote property development in order to promote regeneration & renewal or to contribute to strategic targets such as housing numbers – and to this end working with, negotiating with and entering into contracts with property developers is an important part of Council business. Promoting complex property development schemes is time-consuming and expensive. Developers often spend years promoting schemes through the planning process, incurring large costs in professional fees, only to find that schemes fail to obtain planning approval or they become unviable as costs and values change. It is common therefore for developers to seek to manage their exposure by securing the right to acquire a site (without which they could not justify the expenditure on fees) but preserving their ability to withdraw, or delaying payments for land, until key risks (such as planning) have been mitigated. To a degree, the Council needs to recognise this in its dealings with developers. It does however need to protect its own interests at the same time.</p>	
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		<p>Risks for the Council: In entering into complex contractual arrangements the Council must take care that it does not:</p> <ul style="list-style-type: none">m. Find itself unable to terminate an agreement with a developer who is not performing, or where it has become apparent that the scheme cannot be delivered.n. Find that the developer is deliberately delaying (for example by delaying signature of a section 106 agreement) and the Council is unable to terminate.o. Finds itself under undue pressure to renegotiate the terms of a transaction because the alternative would be non-delivery and political embarrassment, because the agreement cannot be terminated.p. Find that it is committed to sell a site for a price which, because of the valuation mechanism employed or because of the outcome of due diligence work, is significantly less than the Council was expecting and/or less than the existing use value of the site.q. Find that the conditions in a conditional sale agreement are such that the purchaser is in complete control, and so the conditional contract effectively	
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		<p>functions as an option agreement. An example of this is where a contract is conditional on receipt of a 'Satisfactory Planning Permission' and that is defined as 'A permission which the purchaser in their absolute discretion finds satisfactory'.</p> <p>r. Find that it is due substantial payments from a corporate entity that has insufficient financial strength, and no bonds or guarantees are in place.</p> <p>Other risks for the Council include:</p> <p>s. Lack of clear distinction between the Council's statutory role as planning authority and its role as landowner and financial beneficiary. A clear distinction is essential from a probity perspective and to avoid Judicial Review of decisions.</p> <p>t. Lack of an appropriate competitive process in selecting developers to work with, resulting in procurement challenges and/or best value not being achieved.</p> <p>Mitigations: To mitigate these risks the Council should:</p>	
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		<ul style="list-style-type: none">u. Only enter into exclusive discussions with a developer about a development project where that developer has an exclusive position relating to the project, such as ownership of an adjoining site, access rights or other rights which mean only they can deliver the scheme. 'Exclusive discussions' include informal meetings with officers and Members.v. Not enter into option agreements which are longer than reasonably necessary. Only under exceptional circumstances should options be more than 18 months long, and they should never be more than five years long. Any extensions beyond the original option period (apart from automatic extensions linked to Judicial Review) must be subject to Cabinet approval at the time that the original option period expires.w. Only enter into Option Agreements which have clearly set out milestones which the developer must achieve, and the ability for the Council to terminate if they are not achieved. They might include:<ul style="list-style-type: none">i. A timescale for formal planning pre-application discussions	
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		<ul style="list-style-type: none">ii. A timescale for development of design to each of the RIBA stagesiii. A public consultation strategy, with timescalesiv. A timescale for submitting planning applications, outline and/or detailed.v. A timescale for satisfactory conclusion of due diligence (site investigations, discussions with the Environment Agency etc) and the ability to terminate if the results are unsatisfactory.vi. A timescale for entering into funding agreementsvii. A timescale for signing section 106 agreements etc.x. Only enter into Conditional sale contracts which have similar milestones (and similar ability for the Council to terminate) as set out in c. above. The Conditional Period should not be longer than reasonably necessary. Only under exceptional circumstances should it be more than 18 months long, and it should never be more than five years long. Any extensions beyond the original conditional period	
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		<p>(apart from automatic extensions linked to Judicial Review) must be subject to Cabinet approval at the time that the original conditional period expires.</p> <ul style="list-style-type: none">y. Ensure that before entering into any complex contractual arrangement, it has had sight of the developer's financial appraisals and cost plans, it has had obtained its own professional advice on these and is satisfied that the scheme is viable. If the scheme is not viable then it is inevitable that the developer will delay or will seek to renegotiate, and the Council's expectations will not be met.z. Does not enter into contracts for the sale of land where purchase monies are delayed beyond Completion unless:<ul style="list-style-type: none">i. There is a guaranteed minimum purchase price (which is not dependent on a future valuation or appraisal) which is equal to or greater than the Open Market Value of the site at the date of the contract, that this is payable unconditionally and that it is suitably secured against	
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		<ul style="list-style-type: none">the appropriate assets of the purchaser.ii. Payment of the guaranteed minimum purchase price must not be delayed more than 2 years beyond Completion.iii. There is an appropriate drop-dead date by which all purchase monies must be paid regardless of any other factors.iv. The Council retains a charge over the land until all purchase monies are paid.aa. Only enters into Complex Contractual Arrangements with companies of suitable financial standing or where suitable guarantees are in place. <p>The decision to enter into a Complex Contractual Arrangement is a decision for Cabinet if the likely end sale price of the land (including any uplift resulting from change of use) exceeds £1m. If the likely price is between £500,001 and £1m it will be a decision for the Cabinet Member for Regeneration & Growth. If the likely price is between £100,000 and £500,000 it will be a decision for the Director of Regeneration & Growth in consultation with the Cabinet Member, with Ward Members as appropriate and with the</p>	
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Report to Council

26 July 2022

Subject:	Council Election Cycle - Consultation to explore a change to the current schedule of elections in Sandwell
Director:	Director of Law and Governance & Monitoring Officer Surjit Tour
Contact Officer:	Electoral Services Manager, Tracey Hurst Tracey_Hurst @Sandwell.gov.uk

1 Recommendations


- 1.1 That Council resolves to launch a public consultation on 1 August 2022 as detailed within this report, on changing the council's election cycle from the current system of election by thirds to whole council elections occurring once every four years.
- 1.2 That council authorises the MD Commissioner, in consultation with both Group Leaders, to progress all necessary actions to enable Council, at a specially convened meeting of council, to determine whether to change the council's electoral cycle to whole council elections.

2 Reasons for Recommendations

- 2.1 The council agreed to consider changing the council's election cycle from the current system of election by thirds to whole council elections occurring once every four years following directions by the Secretary of State for Levelling Up, Housing and Communities.



3 How does this deliver objectives of the Corporate Plan?

	<p>Strong resilient communities The corporate plan commits the council to engaging with and listening to residents, businesses and communities. The recommendations of this report seek to deliver these commitments in respect of a key element of the council's democratic arrangements and in line with the commitment to the successful delivery of Sandwell's Improvement Plan.</p>
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4 Context and Key Issues

4.1 Background

- 4.2 On 18 January 2022, Minister Kemi Badenoch from the Department for Levelling Up, Housing and Communities (DLUHC) confirmed in a [written ministerial statement](#) that after due consideration, the Secretary of State was minded to use his powers under the Local Government Act 1999 to intervene at the council.
- 4.3 The statement set out the Secretary of State's decision and invited representations from the council. The minister added "*We are also seeking their views on moving to a four yearly election cycle at the earliest opportunity and how best to achieve this*"
- 4.4 On the 10th February 2022, in its formal response to the Secretary of State, the council advised "*We are in the process of preparing a clear plan of action to progress this matter, that includes details of our consultation and engagement activity, so that an informed decision can be made at full council as soon as it is practicable to do so.*"
- 4.5 On 22 March 2022, the Secretary of State for Levelling Up, Housing and Communities announced an intervention package and a set of Directions to ensure the council was able to comply with its best value duty under Part 1 of the Local Government Act 1999. These Directions were in-part influenced by the Grant Thornton report following their Value for Money Governance Review of December 2021.



- 4.6 On the 1 June 2022, a briefing note was presented to the Council's Leadership Team in relation to a review of the Council's electoral cycle. Leadership Team agreed for a report to be prepared and presented to Council, to seek agreement to commence a public consultation on the schedule of elections at Sandwell Metropolitan Borough Council. This being in line with the Council's commitment to actively explore the move to whole council elections from the current arrangements as outlined in the council's Improvement Plan.
- 4.7 Approval is sought from Council to commence a public consultation process from 1 August to 16 September 2022 in accordance with Local Government & Public Involvement in Health Act 2007, (LGPIH) on whether the council should move from the current election cycle of elections by thirds, to whole council elections once every four years.
- 4.8 The consultation will seek public opinion and views on either retaining the current electoral arrangements of elections by thirds taking place in three years out of four or moving to a cycle of whole council elections that take place once every four years.

5.0 Cycles of Local Government Elections in England

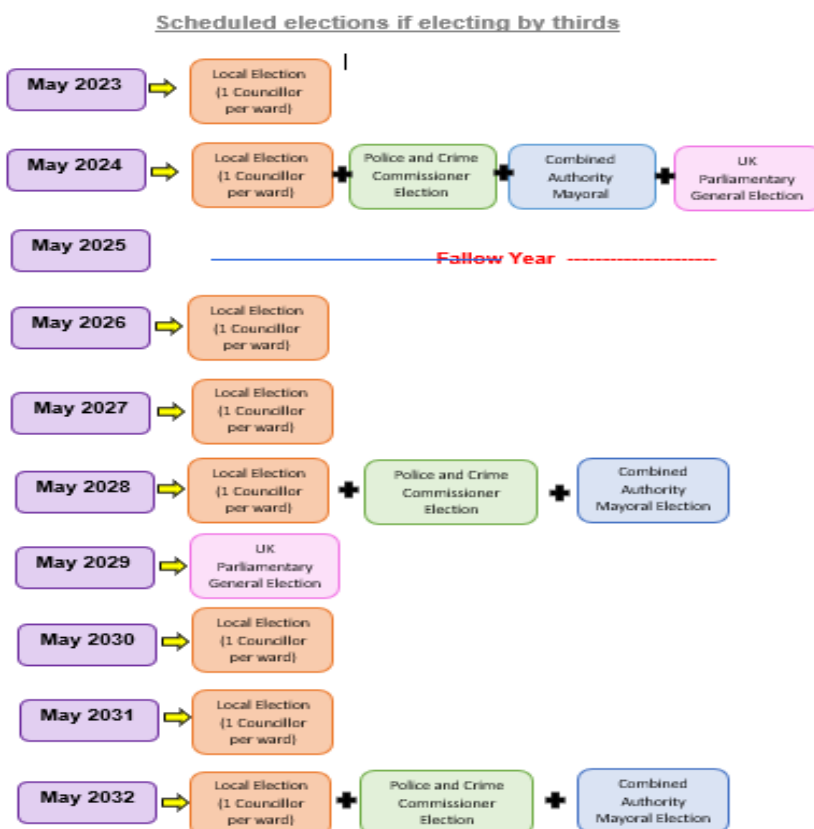
- 5.1 Sandwell Metropolitan Council has 72 councillors and currently elects by thirds in three years out of four; in the fourth year there are no elections, this is known as a fallow year.
- 5.2 All out elections are where all councillors are elected to office once every four years. This means that all 72 seats, three seats for each ward, are elected at once. Historically, the last whole council elections conducted in Sandwell was in May 2004 following a Local Government Boundary Commission Review.
- 5.3 There are currently 232 councils across the country who operate a whole elections cycle. These councils are predominately district, county and London Borough councils. 116 councils elect by thirds and 7 councils elect by halves. 91% of Metropolitan Councils elect by thirds. This includes all West Midlands' Metropolitan Councils with the exception of Birmingham and Wolverhampton.¹

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/920186/EI



6.0 Current Position and Timetable of Scheduled Elections in Sandwell

- 6.1 Local elections in Sandwell have continued to elect councillors by thirds since 2004. Each year a councillor is elected to one seat in all 24 wards. Currently, and subject to no change to the current cycle, the next Local Borough Election will take place on the 4 May 2023.
- 6.2 Table A below lists the current scheduled elections under the current electoral arrangements due to be held up until 2032.

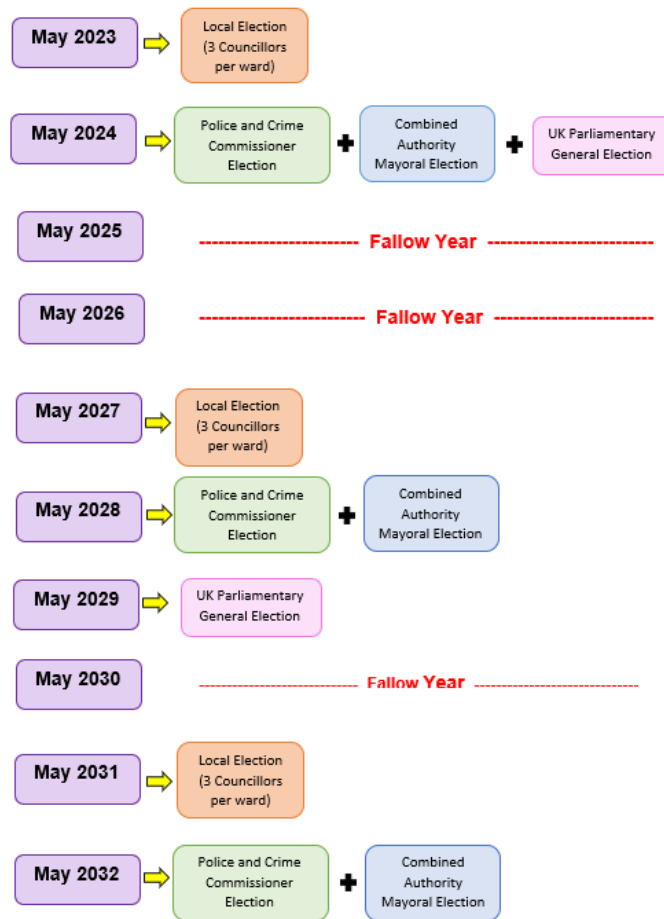


In comparison, Table B below lists the current scheduled elections with an electoral cycle of whole council elections.

ection_Timetable_in_England_2019.pdf (updated to take account of Derby City Council's recent adoption of all out elections).



Table B Scheduled elections if holding whole council elections



- 6.4 What is evident from Table B, and it is important to members to note, is that whilst a change to all out elections will reduce the frequency of local elections, the continued challenges and demands of both scheduled and unscheduled national elections remain.
- 6.5 On the 24 March 2022, the Dissolution and Calling of Parliament Act 2022 came into force. This repealed the Fixed-term Parliaments Act 2011. This means that between June 2022 and January 2025, a UK Parliamentary General Election may be called. The delivery of this election would be under the provision of the statutory timetable of 25 days. A “snap” unscheduled general election impacts significantly when combined with existing scheduled elections irrespective of the “cycle” of elections in place.



7.0 Policy context and comparisons of election cycles

7.1 The Electoral Commission (the independent body which oversees elections) recommended in its publication [The cycles of local government elections in England](#) that “ *each local authority in England should hold whole council elections, with all councillors elected simultaneously once every four years*”.² The Electoral Commission recommended a move back to whole council elections in order to provide a “stronger local democracy”, “greater clarity” for the electorate and to encourage a “greater understanding” of elections.

7.2 The table below sets out the advantages and disadvantages of each election cycle. This includes learning from the Electoral Commission, the Association of Electoral Administrators and other Local Authorities who have undertaken a review of their election cycle.

	Election by thirds	Whole council elections
Advantages	<ul style="list-style-type: none"> • A regular process that is known and understood • More frequent opportunities for voters to engage • Councillors and political parties held to account by their constituents • Reduces the risk of local issues being confused with national issues • Allows for gradual change at the council and reduces the risk of significant changes every four years. • Can ensure that the political composition of authorities more accurately reflects the local political context • Provide a more current reflection of the views of local people • Continuity of Councillors 	<ul style="list-style-type: none"> • Political Stability - Voters will be able to see a four-year manifesto and longer-term commitments • Continuity of elected members • Clearer opportunity for the electorate to change the political composition of the council • Significant cost savings • Income generation opportunities for core specialists’ staff to “consult” for other LAs in fallow years. • Increase understanding of the election cycle • Comparable electoral cycle to Police and Crime commissioner elections and Combined Authority Mayoral elections that take place four yearly.

² https://www.electoralcommission.org.uk/sites/default/files/electoral_commission_pdf_file/cycleoflocalelectfinal_11595-9056__E__N__S__W__.pdf



	Election by thirds	Whole council elections
	<ul style="list-style-type: none"> • Regular intake of newly elected members promotes the opportunity for change and new ideas • Enables development and builds experience of Returning Officer staff, offers the ability to implement new processes and practices regularly – regular redesign and transformation 	<ul style="list-style-type: none"> • Reduced voter apathy and election fatigue for voters resulting in an increase in turnout
Disadvantages	<ul style="list-style-type: none"> • Less stability – regular changes of political control can affect local businesses and council services • Confusing for the electorate as to which candidate is to be elected and what the process is. • Difficult to see though major policy decisions or large infrastructure or regeneration projects in a single year. • Difficult or unpopular decisions can be put off for future years rather than decided when needed, which does not support the council in its continuous improvement plan • Constant year on year campaigning by Councillors and political parties may lead to voter apathy and lack of interest, resulting in reduced turnout 	<ul style="list-style-type: none"> • Risk that some electors will disengage • Risk that change would be perceived as less democratic • A large turnover of Councillors may lead to disruption of the council if changed significantly • Political complacency • Increase in by-elections impacts the financial position • Loss of experienced elected members • Less frequent elections could be detrimental to encouraging candidates to stand for election as the opportunity to serve on the council will be less frequent

7.3 Benefits of the current system of elections by thirds

7.4 The benefits of this system have previously been stated as providing greater political stability for the council in terms of its membership. Electing by thirds reduces the risk of wholesale change and allows for succession planning because there is a mixture of new and experienced councillors.



- 7.5 It should be noted that five local authorities - Rotherham, Doncaster, Birmingham, Slough and most recently Liverpool³ have moved to a cycle of whole council elections following differing levels of government intervention, to assist with creating political stability.
- 7.6 It could be argued that some smaller political parties would find it difficult to field the required number of candidates to contest all seats at a whole council election. However, electing by thirds does not necessarily create a greater availability of candidates, more so that those candidates who are willing to stand, have more frequent opportunities to do so.
- 7.7 **Benefits of whole council elections**
- 7.8 There is a limited amount of research on the subject of election cycles and their benefits. The Electoral Commission report referenced in section 7.1 of this report is the most recent official document. In this report, the Commission concluded that whole council elections would provide a clearer and more equitable system of voting for electors in the area.
- 7.9 The Commission report discusses issues around clarity and understanding for electors, which it claims is reduced by a system that elects by thirds. This confusion can particularly affect younger voters or those from BME groups. Therefore, this does highlight equality issues that need consideration before moving towards a change in the electoral system. This is further highlighted in the implications section of the report.
- 7.10 There are differing conclusions referenced in the Electoral Commission's report analysing the impact of changing election cycles. Data suggested that in some areas, a change of electoral cycle to whole council elections increased levels of turnout.⁴ The report also suggests that turnout is marginally better amongst councils who conduct all out elections. However, there are also other factors which can affect voter turnout such as combining a local election with a UKPGE, voter engagement/apathy and the local/national political climate.

³ Local government boundary commission for England

⁴ Local Government Chronical Elections Centre, University of Plymouth



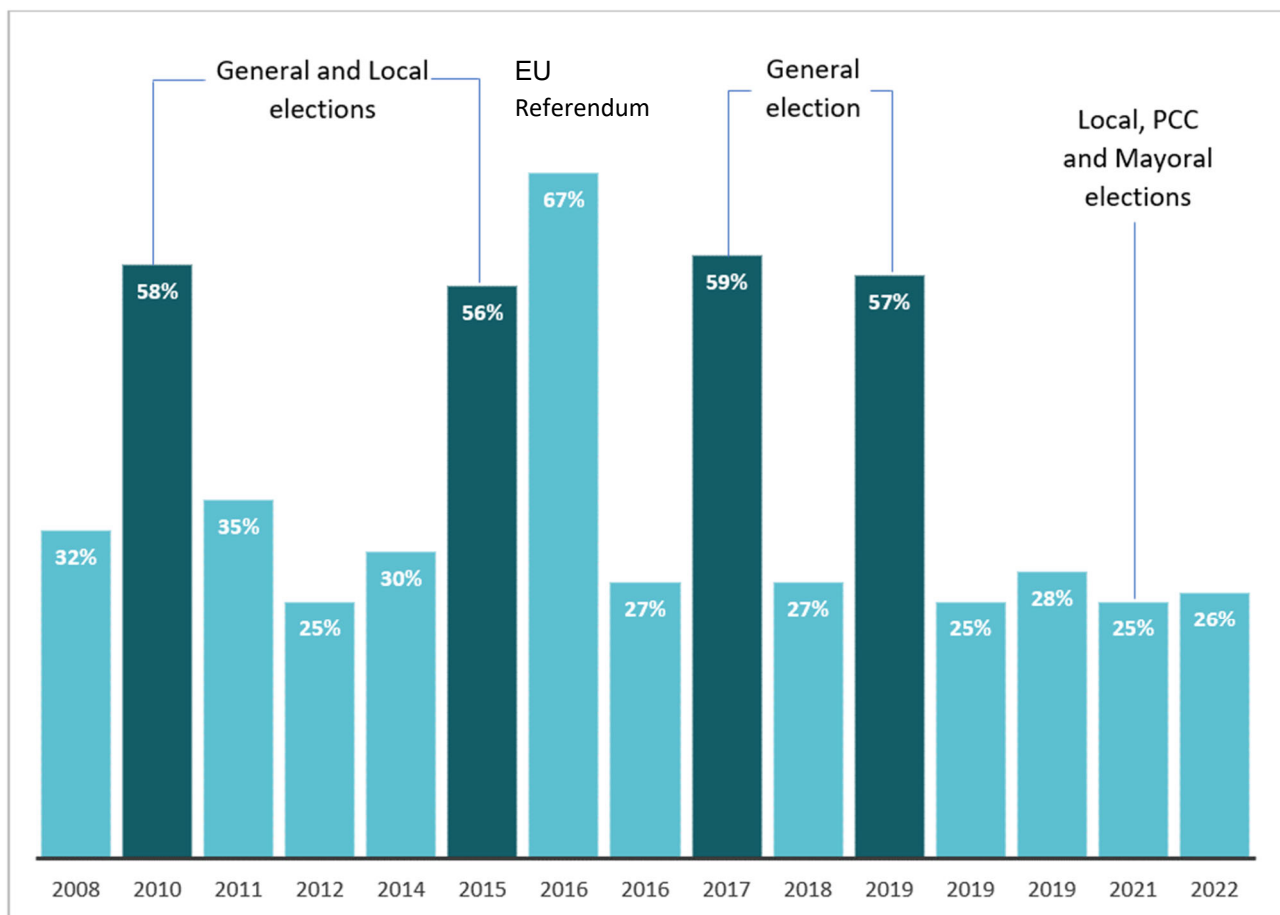
7.11 The table below shows the election turnout figures for three metropolitan councils who moved from elections by thirds to whole council elections

	Last election elected by thirds		First election whole council elections		Subsequent whole council elections	
Birmingham	2016	32%	2018	32%	Scheduled for 2022	
Doncaster	2014	33%	2017	29%	2021	28%
	2015	56% (combined UKPGE)				
Rotherham	2014	35%	2016	33%	2021	29%
	2015	59% (combined UKPGE)				

7.12 The research shows no significant impact on voter turnout levels in changing electoral cycles. It is clear however, that turnout increases when local elections are combined with general elections, this trend is seen on a national scale.

7.13 On a local level the table below sets out turnout for Local and National elections in Sandwell from 2008 to 2022.





The turnout figures for standalone local elections are similar year upon year, similarly as shown in the table above the significant increase in turnout are where elections are combined with General Elections. Members will need to consider the impact of combined cycles in the final decision-making process of changing electoral cycles.

- 7.14 Since 2003, there has been a notable shift by councils from electing in thirds to whole council elections. The most cited reason are the financial benefits and the argument that whole council elections support better long-term decision making and stability.
- 7.15 More recently in April 2021, a Best Value Report on Liverpool City Council by the Government Appointed Lead Inspector, Max Caller CBE, recommended that the City Council move from electing by thirds to a whole council electoral system, noting that *“LCC being in election mode every year provides less opportunity to scrutinise the Mayor’s*



actions.....and that a whole council electoral system would provide LCC a better ability to have a longer term focus”⁵

- 7.16 It is also notable that Slough Borough Council commenced a public consultation in December 2021 (for a period of six weeks) with a view to moving to whole council elections as part of its response to addressing its governance and financial difficulties.⁶
- 7.17 Similarly in 2021, as part of the Local Government Association’s Corporate Peer Challenge for Wokingham Borough Council, it was recommended that the council should formally consider the benefits of moving to whole council elections.
- 7.18 The Elections Act 2022 seeks to improve the security, accessibility and transparency of elections and campaigning. A significant part of the elections act is the introduction of Voter ID in polling stations.
- 7.19 It is intended that Voter ID will be implemented for any elections in England in 2023. Members will need to consider the impact of the introduction of Voter ID alongside the change in electoral cycle and potential combination elections, when it makes its final decision on whether to change the election cycle.

8.0 Financial Implications for changing electoral cycles

- 8.1 It is the case that whole council elections cost less to run in the long term than electing by thirds, particularly when those whole council elections are combined with other national elections.
- 8.2 It is important to note that if the council were to move to whole council elections, the costs for the delivery of the local election would rise marginally. These increased costs would include:
- Printing costs (ballot papers are likely to be larger)
 - Postal vote issue and opening costs
 - Training costs for Returning Officer staff

⁵ <https://liverpool.gov.uk/council/vision-aims-and-values/best-value-inspection-report/>

⁶ <https://www.gov.uk/government/collections/intervention-at-slough-borough-council#:~:text=Slough%20Borough%20Council%20was%20one,of%20an%20external%20assurance%20review.>



- Additional costs for the counting of the votes. (increased length of time counting would take)

8.3 The estimated revenue cost of running a standalone whole council election is £420,000.

8.4 Table C below provides estimated costs under whole council and elections by thirds over a ten-year period. It should be noted that actual costs and savings may vary depending on the number of by-elections, and whether combination elections are run (i.e local elections and UKPGE, Police and Crime Commissioner and/or Combined Authority Mayoral Elections).

Table C. Cost of elections by third compared to whole council elections over a ten year period

Year	Election(s)	All out elections every four years	Elections by thirds
2023	Local	£420,000	£380,000
2024	Local, Police and Crime Commissioner, Combined Authority Mayoral, UKPGE?	£0	£225,000
2025	Fallow year	£0	£0
2026	Local	£0	£380,000
2027	Local	£420,000	£380,000
2028	Local, Police and Crime Commissioner, Combined Authority Mayoral.	£0	£260,000
2029	UKPGE?	£0	£0
2030	Local	£0	£380,000
2031	Local	£420,000	£380,000
2032	Local, Police and Crime Commissioner, Combined Authority Mayoral	£0	£260,000
2033	Fallow year	£0	£0
	Total Costs	£1,260,000	£2,645,000

8.5 The table shows the savings that could be achieved over a ten-year period are £1.38m. Any unscheduled combination elections would result in the revenue savings being more significant.

8.5.1 Over a four-year period, subject to no unscheduled “snap” elections the savings would be in the region of £550,000.

8.5.2 Should council approve the recommendations set out in this report to commence a consultation on changing the council’s electoral cycle, a more detailed financial analysis would be



provided as part of a final report presented to council on 22 October 2022.

9.0 Legal Process of changing election cycles

- 9.1 The decision to commence a consultation would need to be taken by full council under section 33(2) of Local Government and Public Involvement in Health Act 2007.
- 9.2 Should council approve the recommendations in this report and commence the process to explore the move to whole council elections, there are certain steps that must be taken, which are required and in accordance with the legislation.
- 9.3 The council must take reasonable steps to consult with those that it thinks are appropriate on the proposed change.
- 9.4 A draft consultation strategy is set out in **Appendix A**.
- 9.5 Whilst the consultation period is not prescribed, it is considered, following a benchmarking exercise with other Local Authorities, that a six-week period is proportionate and reasonable.
- 9.6 It is important to note that proceeding with a public engagement consultation does not bind the authority to pass a resolution to amend the election cycle.
- 9.7 Subject to approval of the recommendations within this report, following the consultation, the results will be reported back to the Governance and Constitution Review Committee. The committee will share all relevant information. the results of the consultation and, if it wishes to do so, make a formal recommendation to an extraordinary meeting of council. Council will be the final arbiter on whether the council changes its election cycle.
- 9.8 Under section 33(3) of the LGPIH Act 2007, the council must then vote, with a two thirds majority, to resolve to move to whole council elections. The if this threshold is not met, the current election cycle would continue.



- 9.9 The resolution must specify the year for the first ordinary elections of the council of which all councillors are to be elected.
- 9.10 If the resolution is passed, the council is required to produce an explanatory document available for public inspection and give the Local Government Boundary Commission for England notice that the resolution has been passed.
- 9.11 There is then a detailed process for the implementation of the change to the electoral cycle that is detailed through the Act and related guidance.

10.0 Decision Timetable

- 10.1 The earliest practicable opportunity to implement any change approved by council to the cycle of elections is May 2022 providing a decision by Council is made before the end of November 2022.
- 10.2 **Appendix B** sets out the timetable for Council to make the final decision on whether to change the election cycle.
- 10.3 The further report to Council will provide details on the operational implications linked to the implementation of whole elections, which vary depending on the year any change is introduced. These are considerations relevant to the subsequent decision rather than for the decision to go out for consultation which is the focus of this report.

11.0 Local Government Boundary Commission for England (LGBCE): Sandwell Electoral Review.

- 11.1 The council was informed in September 2021 the LGBCE intends to undertake an electoral review in Sandwell. The last review of this kind in Sandwell was in 2004.
- 11.2 Following a response from Officers to the LGBCE in December 2021, the council was advised that the review would commence following the local elections in 2023 and the implementation of the review would take effect in 2026 with whole council elections and all seats contested.
- 11.3 In view of the council's commitment to explore the change of elections cycle to move to whole council elections, the LGBCE have confirmed their support that should council resolve to implement whole council



elections in 2023 or 2024, the review would be delayed which would then enable a uniform pattern for whole council elections of every four years. Therefore, if whole council elections were to take place in 2023, all elected councillors would serve a four-year term as opposed to a reduced term of three years.

12.0 Alternative Options

12.1 There are no alternative options to consider. The council's Improvement Plan which was approved by Council confirmed a commitment to adhere to the directions issued by the Secretary of State. This included the need to consider the change to whole council elections as soon as practicable possible.

6 Implications

<p>Resources:</p>	<p>A change to the Council's current electoral cycle from election by thirds to whole council elections would save an estimated £550,000 over the four-year period.</p> <p>The current budget resource for Electoral Services covers both Elections and Registrations for which there is an ongoing budget pressure. The 2021/22 outturn position was breakeven with a pressure of £0.189m being funded through Covid 19 Emergency Grant funding to offset the additional cost of Elections due to Covid19.</p> <p>The financial implications are outlined in the main body of the report.</p>
<p>Legal and Governance:</p>	<p>The legal implications are set out in the main body of the report. To move to whole council elections, the council must fulfil the requirements of sections 32 – 36 of the Local Government and Public Involvement in Health Act 2007.</p> <p>The Local Government and Public Involvement in Health Act 2007 does not stipulate how the Council</p>



	<p>must consult on changes to its electoral cycle. The Act states that the Council need to have ‘taken reasonable steps to consult on the change’ and that ‘it is for the council to decide which persons it is appropriate to consult’. No minimum or maximum timescale for consultation is described.</p> <p>The Consultation must give sufficient reasons for its proposals. This is to allow consultees to clearly understand and respond to the consultation adequately and within adequate timescales. All responses must be given due consideration and form part of the final decision-making process resolved at a specially convened meeting of the council in December 2022</p> <p>The decision to formally change electoral cycles can only be made after consultation and at an extraordinary meeting of the council. This requires a two-thirds majority vote in favour of the change.</p> <p>A decision to proceed to consultation on exploring the change of election cycle would require a simple majority vote.</p>
<p>Risk:</p>	<p>In March 2022, Sandwell Council received Statutory Directions from the Secretary of State for Levelling Up, Housing and Communities. (DLUHC) The Directions set out the requirement of the council to develop, agree and deliver an Improvement Plan.</p> <p>In response to the directions on the 1 June 2022, the council published its Improvement Plan. The plan outlines a number of objectives, workstreams and aims. Page 24 of the plan, Theme 4 - Decision Making states the council will “explore options around a four-year electoral cycle”</p> <p>The recommendations within this report support the council’s commitment to the effective and successful delivery of the council’s Improvement Plan.</p>



	<p>Should the Council not agree to take positive steps to explore the move to a system of whole council elections, the Secretary of State holds the power to require a change by order laid in Parliament, under the provision of Section 86 (A10) of the Local Government Act 2000 as amended.</p> <p>This power has been exercised on three councils in recent years. These are Stoke, Birmingham and Doncaster who have all been required to move to whole council elections.</p> <p>The draft Liverpool order was laid in Parliament in January 2022 with a requirement to cancel the scheduled elections for May 2022 and introduce whole council elections in 2023.</p>
<p>Equality:</p>	<p>In its report, the Electoral Commission references research which suggests that both younger age groups and those with an ethnicity other than white, were less likely to be aware of when local elections were taking place and that moving to a pattern of whole council elections would improve enfranchisement for these groups compared to those who do not share their characteristics. The Council is under duty to advance equality of opportunity between persons who share a relevant protected characteristic (in this particular case age and ethnicity). A move to whole council elections may provide an opportunity for the council to positively impact on the opportunities of these groups to participate and vote in elections.</p> <p>An equalities impact assessment will be undertaken to ensure that the consultation will be carried out with due regard to facilitating participation by those with protected characteristics under the Equality Act 2010. Subject to the recommendations of this report being agreed, this would be considered by a specially convened meeting of the Council in October 2022.</p>



Health and Wellbeing:	There are no health and wellbeing implications arising from this report.
Social Value	There are no social value implications arising from this report.

7 Appendices

- Appendix A - Changing Electoral Cycles – Draft Public Consultation Strategy
- Appendix B - Decision Timetable

8 Background Papers

- The Electoral Commission *The cycle of local government elections in England*, January 2004
- Local Government Boundary Commission for England <https://www.lgbce.org.uk/policy-and-publications/policy-and-researchList>
- External Assurance Review DLUCH2 November 2021.
- Local Government Chronical Elections Centre, University of Plymouth
- Sandwell Council’s Improvement Plan
- Election timetables in England.gov.uk <https://www.gov.uk/government/publications/election-timetable-in-england>
- Local Government Association <https://www.local.gov.uk/our-support/leadership-workforce-and-communications/comms-hub-communications-support/resident>
- Turnout at Elections <https://commonslibrary.parliament.uk/research-briefings/cbp-8060/>
- [Briefing Note - LEADERSHIP TEAM - Electoral Cycle Review \(June 2022\).docx](#)



Draft Consultation Strategy

Methodology

The public consultation will be published online between **1 August 2022 – 16 September 2022** for a six-week period. All responses will be captured through an online form on the Council’s website. A dedicated link will be created to ease the completion of the form. Upon request, a paper version of the form will be issued. Paper versions of the form, together with a leaflet, will be made available in Libraries, Town Halls and One Stop Shops.

The online consultation will be supported by a comprehensive communications campaign to encourage participation and responses.

Specific email invitations to respond to the consultation will be sent to.

- All Borough Councillors
- Members of Parliament for the Borough

Excluding the above, respondents will be asked to supply their name and post code and other demographic information such as age, ethnicity and gender to enable the council to demonstrate a wide ranging and representative response.

The Local Government Association produced a checklist for delivering “effective consultations”. It includes a checklist which forms the basis of Sandwell Council’s framework for delivery of the consultation.

Draft Consultation Questions

1. How often would you prefer to elect councillors to Sandwell Metropolitan Borough Council.?

Option 1	Option 2
<p>I would prefer to elect councillors by thirds (a third of councillors are elected every year for 3 out of four years – the current system)</p> <div style="text-align: center;"> <input data-bbox="411 1619 502 1682" type="checkbox"/> </div>	<p>I would prefer to elect <u>all</u> councillors once every four years</p> <div style="text-align: center;"> <input data-bbox="970 1619 1061 1682" type="checkbox"/> </div>

2. Do you have any comments you would like Sandwell Metropolitan Borough Council to take into account when deciding whether or not to move to whole council elections once every four years.?

Draft Consultation Strategy

The table below sets out the proposed communication channels:

<p>Audience</p> <ul style="list-style-type: none">• Electors and general public• Council staff• All elected members (including cabinet members, town chairs, ward members)• MPs• Voluntary and community sector:• Other stakeholders including WMCA, partners, etc
<p>Consultation method</p> <p>Online consultation shall be via Microsoft Forms or Survey Monkey or their equivalent.</p>
<p>Channels</p> <p>Promotion of the consultation via all appropriate comms channels including:</p> <ul style="list-style-type: none">• Website (consultation webpage under Elections and Voting with promotion via Elections homepage banner and carousel)• Social media channels• Leaflet and paper versions in libraries and One Stop Shops across the borough• E-newsletter to residents• Gov.Notify – text alerts to voters via Elections Team• Press releases• Member updates (e-newsletter)• Voluntary and community sector (e-newsletter)• Internal comms to staff including intranet, Weekly News updates etc• Digital screens in council buildings• Newspaper adverts

Draft Consultation Strategy

Accessibility

Paper copies of the consultation to be made available to those who cannot fill it in online via the Elections Team. An Equality Impact Assessment will be completed prior to the consultation process.

Translation options will be considered and made available upon request.

Cost of the consultation

Indicative costs of running an online consultation are minimal, due to digital channels being the primary method. Funding of the consultation will be from existing budgetary provisions. The main costs will be associated with:

- Printing and postage of online forms
- Production and printing costs of any campaign materials (leaflets)

Actual and necessary costs will be detailed as part of the final report presented at the extraordinary meeting of the council.

Monitoring and Reporting

The Electoral Services team alongside Communications officers will monitor and collate the responses.

A draft report will be prepared by officers which includes a detailed analysis of the responses and submitted to the MD Commissioner/Leadership Team, who will refer a report to council for decision. The decision timetable is outlined in Appendix B.

Draft Consultation Strategy

Draft Consultation Document (online) will be adapted for paper version

Have your say on how often elections are held for Sandwell Metropolitan Borough Council.

Sandwell Metropolitan Borough Council is running a public consultation between 1 August 2022 and 16 September 2022 on a potential change to its election cycle.

How many Councillors does the council have?

Sandwell Metropolitan Borough Council currently has 72 councillors representing 24 wards across Sandwell. All 24 wards have three councillors representing them. The councillors are elected to and represent their local ward.

What is the council's current election cycle?

The council currently uses a "by thirds" electoral system. This means that over four years, elections are held in years one, two and three for a third of the council. There are no elections held in the fourth year and this is known as a fallow year.

What alternative elections cycle is being considered?

The council is considering whether it should move to a whole council (all-out) electoral system. Under the whole council model, all seats on the council would be elected at the same time, once every four years. There would be no borough elections in between these four years, except for any by-elections as a result of a casual vacancy.

Benefits of elections by thirds

- Provides regular opportunities for the public to vote and decide on how the council should be run.
- One councillor is elected for each ward at a time, allowing the electorate to focus on the aptitude of candidates.
- Keeping the current system would retain a large proportion of councillors along with their knowledge and experience.
- Candidates who wish to stand for election have more opportunities to do so.

Benefits of whole council elections

- Deliver a clear mandate from the electorate once every four years.
- Give a controlling political party time to set a clear four-year vision, enabling longer term strategic decision making and accountability.
- Holding whole council elections once every four years would result in around £550,000 savings per four-year election cycle.
- The electoral system is clearer and easier to understand.

Draft Consultation Strategy

How is the decision to change the elections cycle made?

Councillors will consider all the consultation feedback received during the public consultation at an Extraordinary Council Meeting in late October 2022. Two thirds of the councillors present would have to vote in favour of the change to make it happen.

Questions

1. How often would you prefer to elect councillors to Sandwell Metropolitan Borough Council.?

Option 1	Option 2
<p>I would prefer to elect councillors by thirds (a third of councillors are elected every year for 3 out of four years – the current system)</p> <p style="text-align: center;"><input type="checkbox"/></p>	<p>I would prefer to elect <u>all</u> councillors once every four years</p> <p style="text-align: center;"><input type="checkbox"/></p>

2. Do you have any comments you would like Sandwell Metropolitan Borough Council to take into account, when deciding whether or not to move to whole council elections once every four years.?

**Draft Consultation Strategy
Consultation Checklist**

Ensure the consultation is necessary	On 22 March 2022, the Secretary of State for Levelling Up, Housing and Communities announced an intervention package and a set of Directions to ensure the council was able to comply with its best value duty under Part 1 of the Local Government Act 1999. The Council published its Improvement Plan in response to the Secretary of State in which it states its commitment to explore the move to whole council elections.
Legal and Governance requirements including any data protection considerations	A Data Protection Impact Assessment (DPIA) will be prepared and a member of the information governance team will have sight of material prior to issue.
Set clear objectives	The objective of the consultation is to seek the views of the public, elected members and other stakeholders around changing the electoral cycle in Sandwell.
Co-ordination of the exercise	A number of officers will co-ordinate the consultation. This will be a corporate, cross-departmental project.
Sufficient timescales	Best practice guidance suggests the consultation should be between six and twelve weeks. Sandwell's consultation will run for six weeks.
Document costs	All costs related to the consultation will be recorded and outlined in a final report presented to council.
Identify participants	Key participants have been identified and listed as part of this strategy.
Promote the exercise	A communications and engagement plan will ensure that key messages are delivered, and public awareness of the consultation is achieved.
Gather and input data	All online data will be recorded directly into spreadsheet format and results collated.
Monitor the responses	Responses to the consultation will be monitored weekly and any issues highlighted and escalated.

Draft Consultation Strategy

<p>Analyse the results</p>	<p>The data received from the consultation will be analysed and formulated into a detailed report for consideration by either the Governance and Constitution Review Committee or Leadership. The Committee/Leadership Team will subsequently prepare a final report for Council.</p>
<p>Determine Outcomes</p>	<p>The outcomes of the consultation will form part of a final report that will be presented at an extraordinary meeting of the Council. The results will assist Council with making a decision on whether to move to whole council elections.</p>
<p>Feedback and Evaluation</p>	<p>The evaluation of the consultation results, in relation to the objectives, will take place following any Council resolution to change the electoral cycle.</p>

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Timeline

Activity	Date
Council decision to launch consultation	26 th July 2022
Consultation launch (6 weeks) (with Public and Members)	1 st August 2022
Consultation closes	16 th September 2022
Analysis of consultation and draft report	19 th Sept - 7 th October 2022
MD Commissioner/Leadership Team considers consultation feedback and agrees further report on election cycle to enable decision to be taken	w/c10th October 2022
Finalise report for Council & prep statutory notices/explanatory note	By 17 th October 2022
Call Extraordinary Council meeting (agenda publication)	17 th October 2022
Extraordinary Council meeting	25 th October 2022
Publish statutory notice and give notice to LGBCE	w/c 31 st October 2022

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Report to Council

26th July 2022

Subject:	Proposed departure from the Development Plan at land Newcomen Drive Open Space, Newcomen Drive, Tipton
Director:	Tony McGovern Director of Regeneration & Growth - Neighbourhoods
Contact Officer:	William Stevens Principal Planning Officer William_stevens@sandwell.gov.uk


1 Recommendations

- 1.1 That approval be given to an exception to the Development Plan in respect of planning application DC/21/66125 (Proposed industrial/warehousing development (use classes B2/ B8) together with associated access, servicing, parking and landscaping).

2 Reasons for Recommendations

- 2.1 The proposal is on land allocated for residential use and as such is contrary to adopted council policy. The site has remained undeveloped and attracting fly tipping. The proposal would add to the Council's need for quality industrial land.

3 How does this deliver objectives of the Corporate Plan?

	A strong and inclusive economy
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4 Context and Key Issues

- 4.1 Following a site visit by Members earlier in the year, Planning Committee are due to consider planning application DC/21/66125 on 19 July 2022 (Proposed industrial/warehousing development (use classes B2/ B8) together with associated access, servicing, parking and landscaping).
- 4.2 The application was publicised by neighbour notification letters, site notice and press notice with objections which are contained within the original planning committee report attached.
- 4.3 Should the application be approved by Planning Committee, Council will need to approve the departure from the Development Plan before planning permission can be granted. In the event the application is not approved, the report will be withdrawn from the Council agenda.
- 4.4 The site is currently allocated for residential use under the Site Allocations and Delivery Plan Policies Map but has been in private ownership for a number of years. The site has remained undeveloped due to viability issues and ground conditions. It is necessary for the Council to consider whether or not to grant an exception to adopted policy to allow the application to proceed.
- 4.5 The purpose of this report is to discuss the 'departure' from the Development Plan only. It is not the role of Council to reconsider the wider planning merits of the application which have already been considered by Planning Committee.
- 4.6 The application has been publicised by neighbour notification letters, and site and press notice, with response.
- 4.7 The Council's Highways, Planning Policy, and Environmental Health teams have also been consulted on the proposal. No overall objections have been received from consultees which cannot be overcome by condition.



5 Alternative Options

- 5.1 Refusing the departure is an option, in doing so clear planning justification would have to be provided as any refusal of planning permission could result in an appeal and costs being awarded against the Council.

6. Implications

Resources:	The granting of exceptions to the Development Plan would not have any implications for the resources of the Council.
Legal and Governance:	The Planning Committee has delegated powers to determine planning applications within current Council policy. The decision to grant permission for this proposal would be contrary the Development Plan. Consequently, the Committee has referred the application to the Council to consider whether or not an exception to the development plan should be granted.
Risk:	None Relevant.
Equality:	None Relevant.
Health and Wellbeing:	None Relevant.
Social Value	The proposal would create jobs and apprentices during the construction phase.

7 Appendices

None

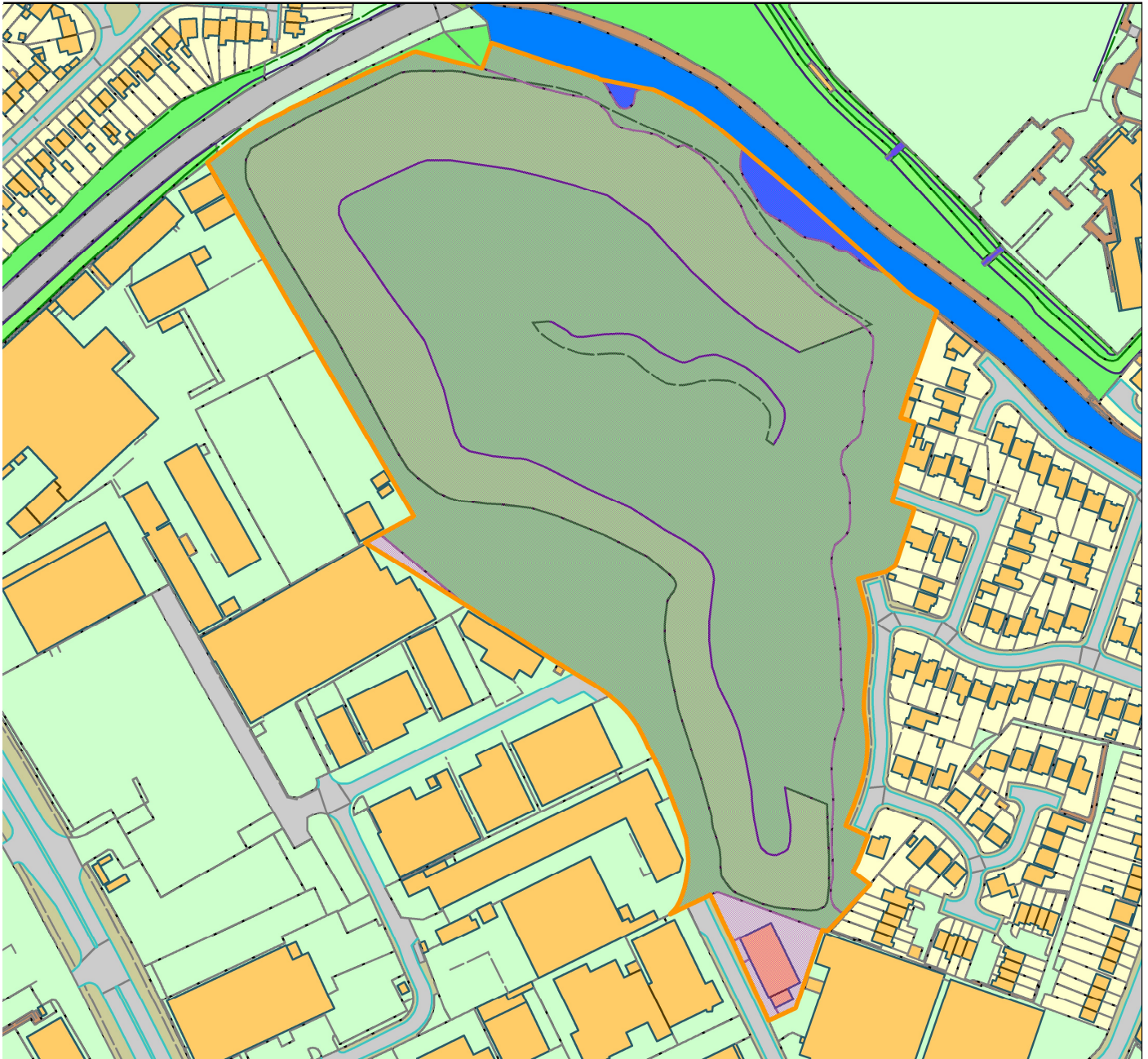
8. Background Papers

- 8.1 Planning application reference DC/21/66125

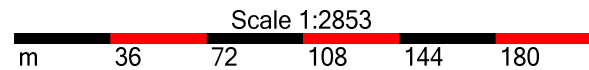


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DC/21/66125
Newcomen Drive, Tipton



Legend



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Ordnance Survey Licence No 100023119

Organisation	Not Set
Department	Not Set
Comments	Not Set
Date	07 July 2022
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Report to Council

26 July 2022

Subject	Delegation of decision-making authority to Birmingham City Council to determine cross-boundary planning application for proposed demolition of structures at land to the rear of Anderson Road, Smethwick and erection of two-storey building to provide 17 assisted living units with associated car parking and landscaping
Director	Tony McGovern – Director of Regeneration and Economy
Contact Officer	Carl Mercer - Principal Planner carl_mercer@sandwell.gov.uk

1 Recommendations

- 1.1 That Council delegate Sandwell Metropolitan Borough Council’s decision-making authority to Birmingham City Council in respect of the above cross-boundary planning application.

2 Reasons for Recommendations

- 2.1 At its meeting on 22 June 2022, Planning Committee considered planning application DC/22/66919 and resolved to recommend to Council that the council’s decision-making function should be delegated to Birmingham CC only in the instance of this planning application.



2.2 The majority of the application site lies within the administrative area of Birmingham CC except for a small triangular area of land at the southwest boundary. This area of land lies within the administrative boundary of Sandwell MBC. Given that there are no strategic cross-boundary implications associated with the proposal, and much of the site area and access is within Birmingham CC's administrative area, it is recommended that Birmingham CC is granted the authority to determine the application in this instance.

3 How does this deliver objectives of the Corporate Plan?

N/A

4 Context and Key Issues

4.1 An application for the '*demolition of existing structures on site, to allow for the erection of a two-storey detached building to provide 17no. assisted living residential units, with associated car parking and landscaping works*' (for residents with disability and support needs) was submitted to Birmingham CC on 15 June 2021 (application reference 2021/05314/PA).

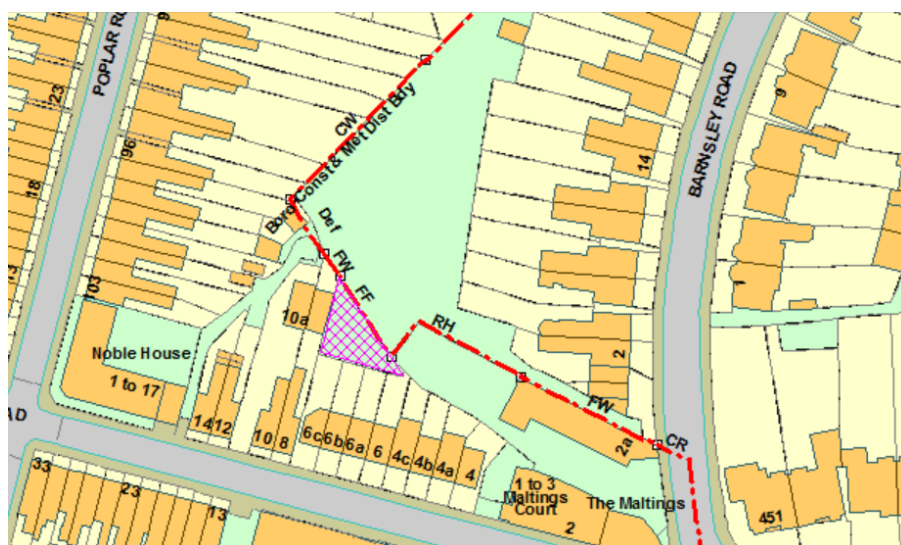
Fig 1 Proposed site plan



4.2 A triangular part of the application site falls within the administrative area of Sandwell MBC (approximately 7% of the site area):



Fig 2 Area within Sandwell MBC authority (shown hatched)



In circumstances where an application site crosses the administrative boundary between two local planning authorities (LPA) two identical applications should be submitted, one to each LPA, seeking planning permission for the development of land falling within each LPA's administrative area. Accordingly, an identical planning application was submitted to Sandwell MBC on 7 April 2022. No planning application fee is payable to Sandwell MBC, as it has the smaller portion of the site area within its authority.

- 4.3 In the absence of alternative administrative or statutory arrangements, a planning application should be determined by the LPA in whose administrative area the development is proposed to be carried out. In the case of cross-boundary applications, this can lead to two LPAs making individual determinations and imposing different conditions on the permissions. However, this is not recommended as it does not promote a coordinated approach to development management and the permissions granted by each LPA may be inconsistent in terms of the conditions attached to them. This is, of course, highly undesirable in terms of achieving a coordinated approach to delivering development. It is also contrary to the overall tenor of Government guidance, which encourages joint working between LPAs in relation to the use of their planning powers and the duty to cooperate in relation to plan-making.



- 4.4 Section 101(1) of the Local Government Act 1972 authorises a local authority to arrange for the discharge of functions by any other local authority. This provision could be relied on by an LPA to delegate its development management functions to another local authority in respect of a specific cross-boundary planning application.
- 4.5 Therefore, the council could delegate its decision-making powers to Birmingham CC in respect of its determination of this planning application. Birmingham CC, which has been paid the full application fee in any event, would then determine both the application submitted directly to it and the application initially submitted to Sandwell MBC but delegated to Birmingham CC. As Birmingham CC has granted consent for the cross-boundary development, it would thereby grant planning permission authorising the development applied for in both administrative areas.
- 4.6 As mentioned above, it should be noted that Birmingham CC's Planning Committee approved their planning application on 7 April 2022. Delegation of decision-making authority to Birmingham in this instance would thereby ratify Birmingham CC's approval for the entire site.
- 4.7 Given that the access and a majority of the site (some 93%) lies within the administrative area of Birmingham CC, it is considered appropriate in this case for Sandwell MBC to delegate its development management functions to Birmingham CC. The proposal raises no significant concerns from a policy, design or residential amenity perspective. Highways have been consulted and raise no overall objection (10 parking spaces are required, nine are provided).
- 4.8 With reference to Birmingham's Planning Committee report, all statutory publicity for the proposal has been carried out, including with Sandwell residents. It should be noted that objections have been raised by residents in response to the Birmingham CC consultation, which its Planning Committee considered when making the determination.



- 4.9 As Sandwell MBC has not received a planning fee for the application the council would assume all associated processing costs, including publicity (neighbour notification letters, site and press notices), administration, officer and member's time. Consequently, the application has not been validated and public consultation has not been carried out for the application submitted to Sandwell MBC. However, residents who share a boundary with the site were notified of the Planning Committee meeting in June and the proposal to delegate authority to Birmingham CC.
- 4.10 Taking into account the circumstances highlighted above, Planning Committee recommends that Council permit Birmingham CC to issue a planning decision within a portion of its administrative area. Council has the ultimate authority over the decision to delegate.

Alternative Options

- 5.1 Refusal to delegate authority to Birmingham CC is an option, but the planning application would then have to be processed and determined by Sandwell MBC; which unduly complicates the decision-making process, considering there are no strategic cross-boundary implications. Determining the application also has resource implications which are exacerbated by the fact that the council is not entitled to a planning fee for the application.

6 Implications

Resources:	The granting of authority to Birmingham CC in this instance would conserve council resource.
Legal and Governance:	The council may discharge its functions to any other local authority under section 101(1) of the Local Government Act 1972.
Risk:	None relevant.
Equality:	None relevant.
Health and Wellbeing:	N/A
Social Value	N/A



7. Appendices

None.

8. Background Papers

Planning application DC/22/66919.



Report to Council

26 July 2022

Subject:	Annual Report of the Licensing Committee and Licensing Sub Committees for the year of 2021/22
Director:	Director, Borough Economy Alice Davey
Contact Officer:	Service Manager, Nicola Plant Nicola_plant@sandwell.gov.uk

1 Recommendations



- 1.1 That the Annual Report of the Licensing Committee and Licensing Sub Committee activity and decisions for the year of 2021/22 be approved.

2 Reasons for Recommendations

- 2.1 The Licensing Committee is responsible for exercising the powers and duties of the Council with regard to licensing matters under relevant legislation set out in section 6 of this report.
- 2.2 It is required to produce an annual report to Council detailing activities completed throughout the year including the outcomes of the Committee. The Licensing Committee annual report for 2021/22 outlines the activity and responses to local issues. A copy of the annual report is provided at Appendix 1.



3 How does this deliver objectives of the Corporate Plan?

	<p>People live well and age well</p> <p>The Licensing Authority exercises its powers with regard to licensing matters under relevant legislation, with the purpose of licensing drivers, vehicles and operators to provide a safe and comfortable transport option to residents and visitors to Sandwell, and licensing premises whilst ensuring public safety is of paramount importance at all times.</p>
	<p>A strong and inclusive economy</p> <p>The Licensing Committee and the Licensing Authority seeks to ensure that taxis and private hire vehicles are a safe and viable transport option for residents and visitors to Sandwell,</p>

4 Context and Key Issues

- 4.1 The annual report of the Licensing Committee for 2021/22 has been prepared and is provided in Appendix 1.
- 4.2 The report has been prepared and was agreed on 14 June 2022 by the Licensing Committee for submission to Council.

Consultation (Customers and Other Stakeholders)

- 4.3 Consultation is not required on this matter as the Annual Report provides a retrospective overview of the activity and responses undertaken by the Licensing Committee during 2021/22.
- 4.4 The Licensing Committee have considered the report and agreed for it to be submitted to Council for approval.
- 4.5 In the wider context the Sandwell Private Hire and Hackney Carriage Licensing Handbook was published in 2022 following consultation in 2021 on proposed changes in response to the Department for Transport Statutory taxi and private hire vehicle standards.



- 4.6 The Taxi Licensing Team are to undertake a further review of the Sandwell Private Hire and Hackney Carriage Licensing Handbook in 2022. A full consultation will be undertaken on any proposed updates and changes to the handbook.
- 4.7 The General Licensing Team undertook a consultation on a reviewed Gambling Act 2005 Statement of Principles in 2021 which has since been implemented in 2022. The General Licensing Team will review the Statement of Principles again in line with the legal requirement under the Act every three years.

Sustainability of Proposals

- 4.8 The annual report provides an overview of the activity and decisions reached by the Licensing Committee during the year. Therefore, there are no matters of sustainability to consider in relation to this report.

5 Alternative Options

- 5.1 There are no alternative options given for consideration as it is a requirement under the legislation that an annual report of the activities of the Licensing Committee is produced.

6 Implications

Resources:	<p>There are no strategic resource implications relating to this report.</p> <p>There are no implications in this report for council land or property.</p>
Legal and Governance:	<p>Licensing Committee is responsible for the exercising of the powers and duties of the Council , i.e. those matters that are not the responsibility of the Executive/Cabinet, with regards to Licensing matters under the Licensing Act 2003, the Gambling Act 2005, the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 as extended by the Public Health Act 1875.</p>



	<p>The Licensing Act 2003, (Alcohol Licensing) The Gambling Act 2005 (The Licensing of Gambling) and the Local Government Act 1972, (Licensing of Taxis) allow the Licensing Committee to arrange for the discharge of any of its functions by a sub-committee or an officer of the Licensing Authority in accordance with its terms of reference and officer scheme of delegation. Arrangements may provide for more than one sub-committee or officer to discharge the same functions concurrently.</p> <p>The membership of the Sub Committee is reviewed each year following the appointment of members to the Licensing Committee at the Annual Council Meeting.</p> <p>The Licensing Committee has already delegated the majority of its licensing functions to the Sub Committee and/or Officers.</p> <p>A Data Protection Impact Assessment is not required as the proposals in this report do not include the processing of any personal or sensitive data.</p>
Risk:	<p>There are no risks identified in relation to crime and disorder from the recommendation of this report.</p> <p>The activity undertaken by Licensing Committee seeks to reduce instances of crime and disorder that may impact on residents and visitors to the Sandwell borough.</p> <p>Application of the 'Fit and Proper Person Test' is used as part of the Licensing process to safeguard the public.</p>
Equality:	<p>An initial equality screening has been undertaken and no adverse impact on protected groups has been identified.</p>
Health and Wellbeing:	<p>The Licensing Committee undertakes its activities and reaches decisions in order to reduce the risk of harm posed to children and vulnerable adults and seeks to maintain high standards of public safety.</p>



Social Value	The Licensing Committee undertakes its activities in the interest of public safety. The deliverables in turn results in increased public confidence of Sandwell licenced Taxis and private hire vehicles, licenced drivers and private hire operators.
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7. Appendices

Appendix 1 – Annual report of the Licensing Committee 2021/22.

Appendix 2 – Equalities Impact Assessment 2021/22.

8. Background Papers

Annual report of the Licensing Committee 2021/22.



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Annual Report of the Licensing Committee



Chair's Foreword

The last year proved significant for the Licensing Committee, both with dealing with the impact of COVID and the many fresh faces on the Licensing Committee.

We still had to deal with issues arising during COVID and faced a very difficult task in doing this remotely, online. In some cases, the technology let us down and proved challenging. Those who were called to a Committee hearing found it challenging staying online for the duration of a hearing, often attending via only a mobile phone sometimes in their vehicles with their Legal representatives attending via a separate link. However, with excellent work by officers, Committee members and great patience all round we came through it without any major disasters.

To enable the new Committee members, to be more ready to serve on the Committee, we are introducing a more robust learning and development offer for them to receive the necessary training to enable them to undertake their role on this important Committee.

For our license holders and applicants a new online application system is now available with further development of the system to follow which will provide further opportunity for them to engage with the Licensing Team and for the Licensing Officers to respond to their enquiries in a more efficient way.

The latter part of the year is now seeing ALL licensing enforcement activities back to the pre-pandemic levels.



Cllr Pete Allen, Chair of Licensing Committee



Introduction to the ... Committee

What is the role of the Committee

The purpose of the Licensing Committee which is established by Council each year is to determine all matters in relation to the Council's powers and duties under the following Acts and Regulations:-

- Town Police Clauses Act 1847;
- Local Government (Miscellaneous Provisions) Act 1976;
- House to House Collections Act 1939;
- Local Government (Miscellaneous Provisions) Act 1982;
- The Police, Factories etc. (Miscellaneous Provisions) Act 1916;
- Consumer Credit Act 1974;
- Safety of Sports Grounds Act 1975;
- Part II of the Local Government (Miscellaneous Provisions) Act 1972.


Who sits on the Committee

Membership of the Licensing Committee for 2021/22 was as follows:-

- Councillor Allen (Chair)
- Councillor Rouf (Vice Chair)
- Cllr T Mabena (Vice Chair)
- Cllr Chidley
- Cllr Fenton
- Cllr Gavan
- Cllr Hadley
- Cllr Z Hussain
- Cllr S Singh
- Cllr G Gill
- Cllr S Gill
- Cllr R Jones
- Cllr O Jones
- Cllr Webb
- Cllr Williams



How does the work of the Committee Contribute to the Corporate Plan?

	<p>Strong resilient communities</p> <p>The work of Licensing Committee enforces key council policies and provides an effective response to local issues as they arise.</p>
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Committee Development Activity

Training has been provided to all members of the Committee on the following topics:-

- Licensing Act 2003
- Taxi Licensing
- Gambling Act

Training included licensing procedures, natural justice, understanding the risks of child sexual exploitation, and disability equality, as well as any additional issues deemed locally appropriate.

Councillor Allen and Councillor Mabena were both able to attend the Local Government Association (LGA), Licensing Decision Making at Licensing Committee course on 10th and 11th March 2022. Looking forward, the LGA training course will be included as an option in the Member learning and development plan for committee members in 2022/23.

Committee Activity Overview

Work Programme Spotlight – Taxi Licensing

Between 1 April 2021 to 31 March 2022 the Committee considered 14 reports regarding the grant of new license applications or the renewal or review of existing licenses.



Date	Granted	Renewed	Suspended	Revoked	Refused	Adjourned/ Deferred	Warned	No Action	Total
12/04/21	1					1			2
17/05/21									N/A
21/06/21									N/A
28/06/21				2		1	1		4
19/07/21	2								2
16/08/21			1						1
20/09/21					1				1
18/10/21							1		1
15/11/21							1		1
13/12/21				1		1			2
24/01/22				1					1
22/02/22							1		1
01/03/22									N/A
04/04/22	1					2			3
Total	4	0	1	4	1	5	4	0	19

Delegated officer decisions

During the same period the following delegated officer decisions were made by the Taxi Licensing Managers which resulted in fewer reports being taken to Committee for member consideration and decision:

	Year 2021/22
Licensed drivers who had their licence revoked or suspended with immediate effect on the grounds of public safety	1
Licensed drivers who had their licence suspended with immediate effect as their DBS certificate had expired	26
Licensed drivers who were issued with a 21 days suspension notice for failure to sign up to the DBS update service	3
Licensed Drivers who had their licence suspended with immediate effect as their Medical certificate had expired	94
Licensed drivers who had their licence suspended with immediate effect as they were not medically fit	31



Warning letters issued due to failing to declare minor road traffic endorsements on application or within the designated period	6
Drivers issued with an exemption certificate from carrying guide and assistance dogs due to a medical condition	1
Warning Letters issued at conclusion of complaint Investigation	3

Numbers of licences

The numbers below are the registered licences for the year of 2021/22 broken down by licence type.

Licence type	Total number of current licences 2021/22
Private Hire Operator	45*
Private Hire Driver	923*
Hackney Carriage Driver	18*
Dual Licence Holder	328*
Private Hire Vehicle	1068*
Hackney Carriage Vehicle	81*

*the figures quoted are extracted from the system retrospectively. Any licence that was current during 2021/22 but which has not renewed since that year cannot be reported on retrospectively as once a licence lapses and is not renewed the system archives that licence and it can no longer be reported on.

Policy Position

Private Hire and Hackney Carriage Policy Handbook

The current policy handbook was last fully reviewed in October 2017 with subsequent amendment in August 2018. The policy handbook should be reviewed at least every three years.

A policy review was undertaken following the publication of the Department for Transport Statutory Taxi and Private Hire Vehicle Standards in July 2020.

Following a consultation between December 2021 and March 2022, the policy was amended to take account of the standards and this was considered by Committee on 23 September 2021 and approved by Cabinet on 13 April 2022.

A further full review of the policy is planned before the end of 2022.



Service Improvements

During the course of the 2021/22 work has continued on the digital transformation of the licensing activities. The objective of digitalisation is to enable customers to apply and communicate with the Licensing Department with greater control and flexibility. The change in approach aims to improve efficiency and accessibility of service.

Great focus has been given to the project during 2021/22 resulting in the successful introduction of online applications which were launched in January 2022. Customers can now apply for new licences, renew licences, make payment and submit supporting documents for applications online. The system has also started to open up further opportunities for digital communication which is streamlining and speeding up processing timescales.

Work has continued from January 2022 on phase 2 of the digitalisation project which will deliver further functionality for vehicle licensing.

Work will continue into the year of 2022/23 to go live with phase 2 and continue to work on further phases of the project which includes additional licensed driver and licensed operator functionality.

Enforcement Activity

Between 1 April 2021 and 31 March 2022 the Taxi Licensing Team have been unable to arrange any inhouse Multi Agency Safety Operations (MASO's) due to the impact of the Covid-19 pandemic which has left the team along with partner agencies focussing on priorities during the initial reset and recovery.

Whilst scheduling MASO's during 2021/22 has not been possible, the Enforcement Officers have been securing partners commitment to future dates and are scheduling dates to recommence MASO's from June 2022.

The Enforcement Officers have focussed on reactive investigation of complaints received and completion of Operator base visits to ensure compliance with licence conditions.

Enforcement Officers have worked in partnership with the Travel Assistance Service and Adult Social Care Transport (TAS) Team to undertake mini MASO operations at schools across Sandwell.



Work Programme Spotlight – General Licensing

Detailed in the table below is a breakdown of the type of applications considered by the Licensing Sub Committees between 1 April 2021 to 31 March 2022 together with further information on the responsible authority requesting the review for the same period:

Reviews

Agency triggering review	Total 2021/22
Trading Standards	0
Police	0
Court order	1
	Total 1

Reasons for review	Total 2021/22
Serious Crime and Disorder	0
Crime, disorder and Public Safety	1
	Total 1

Other hearings	Total 2021/22
Grant application	6
Vary premises licence application	1
Sex Establishment applications	2
Temporary Event notices	2
Expedited review	0
	Total 11



Delegated officer decisions

The table below states the total number of delegated officer decisions on Licensing applications for 2021/22 which negated the need to seek member consideration and decision via a Committee hearing:

Decision Type	2021/22
New Premises licences	36
Minor Variations	20
Full Variation	18
Vary Designated Premise Supervisor	250
Transfer Premise Licence Holder	160
Licences surrendered	11
Licences suspended	42
Change of name/address Premises Licence	30
Personal licences	142
Change of name/address Personal Licence	104

Number of Licences

The numbers below are the current registered licences for the year 2021/22 broken down by licence type.

Licence type	Total number of current licences for 2021/22
Premises licences	959
Personal licences	4,427
Casino	2
Bingo	7
Alcohol Licenced Gaming Machine Permit (ALPGM)	33
Adult Gaming Centre (AGC)	12
Betting (BET)	44
Betting Premises (TRACK)	1



Licence type	Total number of current licences for 2021/22
Unlicensed Family Entertainment Centre (UFECP)	3
Family Entertainment Centre (FEC)	0
Club Machine Permit (CMP)	37
Sexual Entertainment Venues) (SEV)	2
Scrap Metal	71
Temporary event notice (TEN)	92

Policy Position

Gambling Act 2005 Statement of Principles

Gambling Act 2005 statement of principles have effect for a maximum of three years and must be reviewed thereafter. The statement of principles was last reviewed in 2020.

The statement of principles has been reviewed and subsequently consulted upon over a 12 week period between December 2021 and March 2022. Following the analysis of consultation feedback, Committee reviewed the statement of principles further and gave support for implementation.

The revised Gambling Act 2005 Statement of Principles were formally approved by Full Council on 21 April 2022.

Service Improvement

During the course of the 2021/22 year focus on the digital transformation of the licensing activity has mainly focused on Taxi Licensing. The key objective of digitalisation is to enable customers to apply and communicate with the Licensing Department.



Work on the licensing system for General Licensing was paused due to limited capacity to undertake business as usual activity, navigate through reset and recover and balance project support and management of the system for both teams.

Work will continue into the year of 2022/23 on a revised workplan and timeline of the digitalisation project for the General Licensing elements of the project.

Enforcement activity

The General Licensing Team has conducted enforcement and compliance visits to 183 Licensed premises during 2021/22 following complaints received, accompanying partners on planned visits or undertaking compliance and enforcement visits as part of the reset and recovery following COVID restrictions being lifted. The team works closely with various partners and responsible authorities such as West Midlands Police, Trading Standards, Environmental Health, Planning and West Midlands Fire Service to visit 'problem' premises to ensure licence holders are compliant with the operating schedule and conditions of their licence.

Temporary Event Notices (TEN's)

TEN's permit licensable activities on unlicensed premises, or outside the hours of an existing licence, for short periods of time and are subject to restrictions on the number that can be given for premises or to an individual during a specified period.

The process of applying is formally known as 'serving' a Temporary Event Notice.

A TEN is needed for each event held at a specific premises. An individual premise can have up to 20 TENs applied for in one year, as long as the total length of the events is not more than 26 days.

An individual who does not hold a personal licence can get up to 5 TEN's per year, 2 of which can be late TEN's within the year.

Individuals who hold a personal licence can be given 50 TEN's per year, 10 of which can be late TEN's within the year.

Late TENs count towards the total number of permitted TENs.



A notice given more than ten working days before the event is a standard notice, when given between nine and five working days before the event it is a late notice.

Only the Police or Environmental Health may object. Objections to a standard notice may result in a hearing, for a late notice a counter notice is given meaning the event cannot go ahead.

During the course of 2021/22 there were 94 TEN's, 29 of these were late notices, and 1 counter notice was issued.

Looking Ahead

Moving into the year of 2022/23 work will continue on the digitalisation of the Taxi Licensing activities and to bring the project for digitalisation for General Licensing activities back online also.

The Taxi Licensing Team will be reviewing the Private Hire and Hackney Carriage Policy Handbook before the end of 2022 which will take an in-depth look into the policy in general.

The Team will also be considering the impact of the recent 'Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022' and the impact on the policy handbook.

The Taxi Licensing Team will also be keeping in view the recently published Department for Transport (DfT) 'Taxi and Private Hire Vehicle Licensing – Best Practice Guidance for licensing Authorities in England' published on 28 March 2022.

The DfT has issued guidance on taxi and private hire vehicle licensing since 2006 to assist local authorities with their responsibilities for the regulation of taxi and private hire vehicle trades.

The DfT are currently seeking views as part of a consultation which closed on 20 June 2022. Once published as a final version this document will be viewed in conjunction with the Sandwell Private Hire and Hackney Carriage Policy Handbook to any impact.



Concluding Remarks

The Committee carries out its role with a view to ensuring the public are kept safe from harm. In making its decisions, the Committee puts this perspective at the forefront of its decision making. This should provide further assurance to the public that the Council views the safety of its citizens as paramount in carrying out this function.

Members and officers are constantly reviewing Council Policy and delegations to reduce Committee time and further improve the level of service offered to license holders. During the course of the year 2021/22 the following activities were completed:

- Completion of the review of the Private Hire and Hackney Carriage Policy Handbook in order to implement the DfT National Standards
- Completion of the review of the Gambling Policy
- Development and introduction of a new ICT system to enable online applications for all licence types for Taxi Licensing

The new ICT system and move of operational activity online aims to offer the customer greater flexibility and control and improve accessibility when they engage with the Licensing Department and provide them with a more efficient service. Information will be more readily available for the Committee and the Licensing Team in order to meet both the Legal requirements of Licensing and its contribution to the delivery of the 2030 Vision. Work continues on the new ICT system which is anticipated to continue throughout 2022/23.



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Report to Council

26 July 2022

Subject:	Constitution and Political Balance of Committees and Boards and Revised Appointments to Committees, Boards and Other Bodies
Director:	Surjit Tour - Director of Law and Governance and Monitoring Officer
Contact Officer:	Surjit Tour Surjit_tour@sandwell.gov.uk

1 Recommendations







- 1.1 To approve the political balance of the committees, boards and other fora for the remainder of 2022-23, as set out in Appendix A.
- 1.2 That the appointments to Licensing Committee be revised with Councillor W Gill replacing Councillor Bostan.
- 1.3 That subject to 1.2 above, the nominations received be approved and appointed to those bodies with immediate effect.

2 Reasons for Recommendations

- 2.1 An elected member has changed political party, it is therefore necessary for the Council to consider the constitution and political balance of committees and boards for the remainder of 2022-23 Municipal Year.
- 2.2 Council is also asked to consider any revisions to appointments to committees, boards and other bodies.



3 How does this deliver objectives of the Corporate Plan?

		The Council's decision-making structures are designed to support the delivery of the Corporate Plan.
		
		

4 Context and Key Issues

4.1 Section 15 of the Local Government and Housing Act 1989 provides, amongst other things, that where a local authority is divided into different political groups, it will have regard to the allocation to the different political groups on the Council, of all of those seats on any ordinary committee, sub-committee and Joint Authorities established pursuant to Part IV of the Local Government Act 1985.

4.2 The regulations provide for a political group to comprise two or more elected members of a local authority.

4.3 Notification has been received of 3 groups –

Labour	61
Conservative	10
Independent	1
	72

The seats on committees have been allocated according to proportionality rules (as set out in Appendix A).

Following the calculation, there is a reduction of one seat allocated to the Labour Party.

4.4 A political group represented on the Council may choose to allocate a proportion of its allocation of seats to an elected member who is not in a political group on the Council, without affecting proportionality.



4.5 It is proposed to allocate an additional seat on the Licensing Committee to the Conservative Group with Councillor W Gill replacing Councillor Bostan.

5 Alternative Options

5.1 There is no alternative option, the Council has a duty to allocate seats according to political party, in accordance with the Act and appointment of elected members to committees and other/outside bodies can only be made by full Council.

6 Implications

Resources:	There are no direct resources arising from this report.
Legal and Governance:	There is a duty on the Council to allocate seats to political groups, as per the Local Government and Housing Act 1989. Council can determine the making of non-executive appointments to committees and other fora. Council is under a legal and constitutional obligation to make appointments to its committees, boards and other fora to ensure the effective operation of the Council's functions and other obligations, duties and responsibilities.
Risk:	There are no direct implications arising from this report.
Equality:	
Health and Wellbeing:	
Social Value	

7. Appendices

Appendix A – Political Balance of Committees and Boards

8. Background Papers

None



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**Sandwell Metropolitan Borough Council
Constitution of Boards, Committees and
Other Fora 2022/23**

	Labour	Conservative	Total
Scrutiny Boards			
Budget and Corporate	5	1	6
Health and Adult Social Care	10	1	11
Economy, Skills, Transport and Environment	10	1	11
Safer Neighbourhoods and Active Communities	10	1	11
Children's Services and Education	9	2	11
			50
Constitutional and Quasi-Judicial Committees/Panels			
Select Committee for Policy Review	6	1	7
Audit and Risk Assurance Committee	6	1	7
Planning Committee	14	2	16
Licensing Committee	12	3	15
General Purposes and Arbitration Committee	6	1	7
Governance and Constitution Review Committee	7	1	8
Land and Asset Management Committee	6	1	7
Ethical Standards and Member Development Committee	7	1	8
Chief Officer Terms and Conditions Committee	6	1	7
Emergency Committee	6	1	7
			89
	120	19	139

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Minutes of Cabinet

**Wednesday 22 June at 3.30pm
at Council Chamber, Sandwell Council House**

Present: Councillor Carmichael (Chair);
Councillors Piper, Ahmed, Hartwell, Hughes, Padda
and Rollins.

In attendance: Councillors Fenton, E M Giles and Shackleton.

Also present: Kim Bromley-Derry (Managing Director Commissioner),
Simone Hines (Director of Finance), Surjit Tour
(Director of Law and Governance and Monitoring
Officer), Alice Davey (Director of Borough Economy),
Tony McGovern (Director of Regeneration and
Growth), Gillian Douglas (Director of Housing),
Lisa McNally (Director of Public Health),
Elaine Newsome (Service Manager – Democracy),
Matthew Huggins (Interim Service Manager Parks and
Grounds), Suky Suthi-Nagra (Democratic Services
Manager).

118/22 **Leader's Announcements**

The Leader made reference to the matters to be considered at the meeting of the Cabinet and the impact to the residents of Sandwell:-

- the Covid Recovery Fund used Fairer Sandwell Principles to provide support where it was most required; the Drug Strategy Grant built on the Council's excellent work by allocating an additional £0.5m on top of current services; the Black Country Cycling and Walking Infrastructure Plan, which supported people in making healthy choices and help keep Sandwell air

clean; the Green Spaces Strategy; and how the Council would provide its leisure services.

- the Towns Fund Programme proposed £63.6m of investment across the borough and bids for round 2 of the Levelling Up Fund as part of investing in Sandwell;
- the Black Country Plan; new council homes in Smethwick, West Bromwich and Rowley Regis; more new homes with the LHC Framework Alliance in West Bromwich, Rowley Regis and Tipton; and looking into the future with the Council House build programme;
- underpinning this, Cabinet would be making decisions on print services and planning contract to ensure best value for money and resources were used efficiently;
- preparation for the Commonwealth Games.

119/22 **Apologies for Absence**

Apologies for absence were received from Councillors Hackett, E M Giles, Millard and Moore.

120/22 **Declarations of Interest**

The Chair declared a pecuniary interest in Minute No.141/22 (Management Options Appraisal – Leisure).

121/22 **Minutes**

The minutes of the meetings held on 18 May and 1 June 2022 were approved as a correct record.

122/22 **Additional Items of Business**

There were no additional items of business.

New Homelessness and Rough Sleeping

Approval was sought for the refreshed Homelessness and Rough Sleeper Strategy 2022.

The Chair of the Children's Services and Education Scrutiny Board asked whether it was anticipated that Sandwell Council would provide more of this type of accommodation in other parts of the borough and if tenants received support and guidance about employment and financial issues.

In response, the Cabinet Member for Housing stated that Sandwell would continue to maximise the use of its own stock for the provision of temporary accommodation, but the ambition was to reduce the use of temporary accommodation by increasing sustainable housing options, this included the development of new Council properties, single property acquisitions and appropriation/conversion of unused Council assets into the council stock. Incentives and support was also offered to private landlords to increase the availability of affordable good quality private rented accommodation.

The Chair of the Safer Neighbourhoods and Active Communities Scrutiny Board enquired about the key performance indicators in place to monitor the effectiveness of the strategy and to ensure regular contact with service users.

In response, the Cabinet Member for Housing stated that there were a range of prevention tools and measures both in place and in development, this included:-

- Communication and education – inform the residents of Sandwell of the help that was available to them should they be struggling to pay their rent or mortgage and the importance of approaching us for support as early as possible. This would include access to advice on income maximisation, including pathways to work and / benefit entitlement.

- Homelessness prevention fund – resource available to help prevent homelessness which could be used in a variety of ways including but not limited to helping people with short term rent arrears, or helping people secure a new home by paying for deposit and other set up costs.
- Better partnerships with private rented sector landlords – “Call Before You Serve” was a project that supported landlords who were considering evicting their tenants. Sandwell would help landlords work with their tenants to sustain their tenancies. Work was also underway with landlords to incentivise them in offering affordable properties to homeless households, increasing the range of housing options available.
- Support for people with mental health and drug and alcohol related issues – the Council had secured funding to provide a mental health and drug and alcohol support worker specifically to support homeless clients who present with these complex issues.
- Improved partnership working with internal and external partners – Sandwell were working with partners to ensure that they contact us when they were working with households whose are at risk of becoming homelessness now or in the future.

Reason for Decision

Under the Homelessness Act 2002, local authorities to produce a homelessness review and a homelessness strategy, on a maximum five-year cycle, that set out the strategic direction that the local authority would take to tackle homelessness. The Council last adopted a homelessness strategy in April 2018 and in partnership with Sandwell’s Homelessness Partnership, officers had produced a revised and refreshed strategy to provide this strategic direction from 2022-2027.

Alternative Options Considered

There were no alternative options. The Council was obliged under law to have a Homelessness and Rough Sleeper Strategy.

Agreed:-

- (1) that details of the progress made to date in reviewing the Homelessness and Rough Sleeper Strategy be received;
- (2) that the refreshed Homelessness and Rough Sleeper Strategy 2022, be approved.

124/22 **COVID Recovery Fund**

Approval was sought for use of the remaining COVID-19 funding to deliver COVID recovery related projects based on our Fairer Sandwell principles, subject to ensuring £2m of funding was retained for a COVID resilience fund in the event of further COVID restrictions.

Approval was also sought to the use of £8m of COVID funding during 2022/23 to 2024/25 to deliver the proposals and a £1m COVID Community Fund to which the voluntary and community sector can bid for funding to deliver their own COVID recovery projects.

The Chair of the Children's Services and Education Scrutiny Board asked whether it was possible to be kept updated on the outcomes of the Covid Recovery Fund.

In response, the Cabinet Member for Finance and Resources stated that progress reports would be brought back to Cabinet on the COVID Recovery Fund and Leadership Team were also exploring other priorities where COVID funding may be appropriate, linked to the Corporate Plan and Fairer Sandwell Principles.

The Chair of the Children's Services and Education Scrutiny Board also enquired about the gym/play equipment in local parks that required replacing or repairing. The Cabinet Member for Finance and Resources stated that there was a separate item on the agenda on the Council's Green Spaces Strategy which set out the Council's priorities and funding strategy for this service.

The Local Community Fund was also a way for Councillors to seek funding for specific projects.

Reason for Decision

During the COVID pandemic, all local authorities were given additional funding from central government to mitigate the spend pressures and loss of income caused by COVID restrictions, and to support the Public Health activities needed to contain the spread of the virus.

The Council was required to report on how it was spent and the COVID pressures that the funding was used for. Given the improved level of COVID infection and impact nationally, it was recommended that the remaining funding was used towards a COVID Recovery Strategy to focus on services where there was either a backlog of work due to the impact of the pandemic or where residents/businesses required extra support to recover from the longer-term impact of COVID. It was also suggested that a proportion was set aside as a contingency for any further restrictions should a new variant emerge.

Alternative Options Considered

The alternative options were to approve the proposals or to ask for amended proposals to be presented at a future Cabinet meeting.

Agreed:-

- (1) that approval be given to the use of the remaining COVID-19 funding to deliver COVID recovery related projects based on our Fairer Sandwell principles, subject to ensuring £2m of funding is retained for a COVID resilience fund in the event of further COVID restrictions;
- (2) that approval be given to the use of £8m of COVID funding during 2022/23 to 2024/25 to deliver the proposals set out in Appendix A, as now submitted;

- (3) that approval be given to a £1m COVID Community Fund to which the voluntary and community sector can bid for funding to deliver their own COVID recovery projects;
- (4) that subject to Resolution (3) above, the Director of Business Strategy and Change, in consultation with the Cabinet Member for Finance and Resources, be authorised to implement the COVID Community Fund scheme;
- (5) that the Director of Finance, in consultation with the Cabinet Member for Finance and Resources, be authorised to agree further spend proposals from the COVID Recovery earmarked reserve.

125/22 **Towns Fund – Inclusion in Capital Programme and Assurance Framework**

Approval was sought for the sum of £63.6m for the Towns Fund Programme to be included in the Capital Programme across 2022-2026 with £26.8m being included for 2022/23.

It was also proposed to approve the Towns Fund Assurance Framework to enable the Accountable Body to deliver the programme successfully.

Reasons for Decision

Sandwell Council was the Accountable Body for the Towns Fund Programme and as such, was responsible for discharging its responsibilities in the management of the programme.

Alternative Options

Failure to have key processes and procedures for the Towns Fund Programme could impact on future funding allocations being released.

Agreed:-

- (1) that approval be given to the Towns Fund Programme of £63.6m to be included in the Capital Programme across 2022-2026 with £26.8m being included for 2022/23;
- (2) that details of the roles and responsibilities of the Section 151 Officer and Accountable Body in managing the Towns Fund Programme be received;
- (3) that approval be given to the Towns Fund Assurance Framework to enable the Accountable Body to deliver the programme successfully;
- (4) that in connection with Resolution (3) above, the Towns Fund Programme Manager, in consultation with the Director of Regeneration & Growth, Section 151 Officer and Cabinet Member for Regeneration and Growth, be authorised to make any amendments to the Framework subject to updated government guidance or council procedures.

126/22 **Draft Black Country Plan: Consultation on Additional Housing Sites and amendment to the Local Development Scheme**

Approval was sought for Regulation 18 consultation on the additional sites identified in Walsall for the Black Country Plan (BCP) and to seek approval for the updated Local Development Scheme (LDS) and timeline 2022.

Reasons for Decision

Authorisation was sought to consult on those additional suitable housing sites in Walsall for the Draft Plan version of the Black Country Plan.

The next stage was the production of a Regulation 19 plan. By including the sites in the Regulation 19 BC Plan, officers would be closer to meeting the housing need of the Black Country for the period up to 2039. This gave a more robust and sound Plan.

Whilst the additional sites only lay in Walsall, similar reports were being taken to the respective Cabinets meetings of Dudley, Walsall and City of Wolverhampton.

For these reasons it was recommended that approval to consult on the additional sites identified in Walsall be accepted.

Alternative Options Considered

If a consultation was not conducted on the additional Walsall sites, the BCP could be found unsound at Examination In Public by the Planning Inspector.

Preparation of a LDS was a requirement of the Planning Compulsory Purchase Act 2004. As such there was no alternative to its preparation.

Agreed:-

- (1) that approval be given to an additional Regulation 18 consultation to include in the Black Country Plan the additional Walsall sites;
- (2) that approval be given to the approach to the consultation as set out in Appendix B and the Sustainability Appraisal Report as now submitted;
- (3) that approval be given to update the Sandwell Local Development Scheme 2021 and updated timeline set out in Appendices C & D;
- (4) that the Director for Regeneration and Growth be authorised to make any necessary minor amendments to the Draft Plan and other consultation documents prior to the

commencement of the Regulation 18 consultation process;

- (5) that the Director for Regeneration and Growth be authorised to make minor changes to the Local Development Scheme that may be required prior to making it available to the public, in consultation with the Cabinet Member for Regeneration & Growth.

127/22 **Award of Corporate Hybrid Print and Mail Contract**

Approval was sought for the Director of Business Strategy and Change, in consultation with the Director of Finance – Section 151 Officer and the Cabinet Member for Finance and Resources, be authorised to award a contract for corporate Hybrid Print and Mail Services, via the ESPO Framework Agreement RM6017-19 Postal Goods, Services and Solutions for a 5 year period commencing on 1 September 2022 with an option to extend for up to a further 2 years.

Reasons for Decision

The report sought approval to award a contract for corporate Hybrid Print and Mail Services following a compliant procurement process.

Implementation of a Hybrid Print and Mail solution would deliver a number of benefits to the Council:

- Fully supports and enables the Council's Workplace Vision Programme and Smart Working Policy
- Reduces storage requirements (paper, envelopes etc)
- Achieves contractual savings (Multi-Functional Devices, Central Print, peripherals)
- Achieves financial savings through reduced mail charges as providers prepare the mail to a high standard which removes several of the preparation stages normally carried out by Royal Mail
- Improves document quality and consistency – control letterheads, stationery and attachments and achieve high quality and consistent production of documents

- Can control and restrict the use of expensive print and mail options such as colour printing and first-class mail
- Production of detailed management information about what we print which can be used to identify opportunities for on-line notifications, reducing postage costs further.

The estimated cashable savings that would be achieved upon successful implementation of Hybrid Print and Mail were over £220,000 per annum. Savings would increase further as we use the intelligence about what was printed to identify opportunities for online/digital notifications.

Alternative Options Considered

The Council could continue with the current printing arrangements where most of the printing and dispatch is done from Council Offices. This option would not realise any of the benefits outlined. The Council would also incur additional expense in the future as machinery in the Central Print Unit would need to be replaced.

Agreed:-

- (1) that the Director of Business Strategy and Change and the Director of Finance - Section 151 Officer, in consultation with Cabinet Member for Finance and Resources, be authorised to award a contract for corporate Hybrid Print and Mail Services, via the ESPO Framework Agreement RM6017-19 Postal Goods, Services and Solutions for a 5 year period commencing on 1 September 2022 with an option to extend for up to a further 2 years;
- (2) that the Director Law and Governance – Monitoring Officer be authorised to execute any documentation necessary to enable the action referred to in Resolution (1) above.

Drug Strategy Grant: Supplemental Substance Misuse Treatment and Recovery Grant

Approval was sought for the Director of Public Health to distribute the Supplemental Substance Misuse Treatment and Recovery Grant (SSMTRG) as required by Office for Health Improvement & Disparities (OHID) grant conditions.

Approval was also sought for the Director of Public Health to be authorised to have final sign off on the distribution of the funds over the grant period covering the following financial

Reasons for Recommendations

Sandwell's allocated SSMTRG amount for the 2022/23 period was £532,036.

The funding must be spent on interventions that aimed to achieve the Drug Strategy ambition to reduce drug and alcohol related deaths and harms. The Strategy therefore required that local areas rebuild and reinvest into local support systems towards "a world class drug treatment and recovery system". Monies could only be spent on provisions that fit within OHIDs menu of interventions.

Cabinet approval had already been secured to vary the existing Cranstoun contract to accommodate SSMTRG provisions up to a maximum value of £280,066 and to procure future treatment services including use of SSMTRG within those future contract provisions (given the current Cranstoun contract would expire on 31 January 2023 therefore ending before the SSMTRG grant term period).

Therefore, it was proposed to secure approval to use the remaining and any future SSMTRG (the monies not already covered by previous Cabinet approvals) as required by Office for Health Improvement & Disparities (OHID) grant conditions.

Alternative Options

The alternative option was to not approve distribution of the SSMTRG as required by OHID and not utilise the additional funding but simply return the monies to government.

This would mean that the local treatment population would not benefit from the potential quality and capacity improvements that the monies could afford.

Agreed:-

- (1) that the Director of Public Health be authorised to distribute the Supplemental Substance Misuse Treatment and Recovery Grant (SSMTRG) as required by Office for Health Improvement & Disparities (OHID) grant conditions;
- (2) that the Director of Public Health be authorised to have final sign off on the distribution of the funds over the grant period covering the following financial years: 2022/23, 2023/24 and 2024/25.

129/22 **Permission to consult on the Black Country Cycling and Walking Infrastructure Plan**

Approval was sought for the public consultation of the Black Country Cycling and Walking Infrastructure Plan.

The Chair of the Children's Services and Education Scrutiny Board asked whether Councillors were involved in the consultations relating to the Plan, particularly in the ward and towns they represented.

In response, the Cabinet Member for Regeneration and Growth gave assurance that all ward members would be consulted along with the Economy, Skills, Transport and Environment Scrutiny Board going forward,

Reasons for Decision

The West Midlands Combined Authority had developed a LCWIP that identified and enabled a plan to develop strategic cycling and walking networks throughout the West Midlands up to 2028. Subsequently, Sandwell developed an LCWIP that identified and enabled a plan to develop strategic cycling and walking networks throughout Sandwell up to 2030.

The West Midlands had secured £1.05bn funding to expand the regions tram, train, bus, walking and cycle networks and drive a green transport revolution. The funding came from the government's City Region Sustainable Transport Settlement (CRSTS), which would kickstart a wide range of projects including walking and cycling Infrastructure in a move to decarbonise the region's transport system, create new jobs and opportunities for local people and bolster the fight against climate change.

Alternative Options Considered

For each scheme within the BCLCWIP, the options considered and the reasons for the recommended option would be set out in the individual approval reports as they are submitted to the Cabinet Member for Environment.

Agreed that approval be given to the public consultation of the Black Country Cycling and Walking Infrastructure Plan.

130/22 **Disposal of Grafton Lodge, Grafton Road, Oldbury**

Approval was sought to declare Grafton Lodge, Grafton Road, Oldbury, the former Adult Services led care home, surplus to all Council use.

It was proposed that the site should be advertised on the open market for sale including to all the Registered Providers who are active or interested in being active in Sandwell.

The proposal to redevelop the site for residential purposes would be subject to a selection criterion with percentage weighting to price, tenure mix, and any other required factors. It may also be necessary to consider managing the development outputs via a restrictive covenant.

An external valuation has been undertaken by Lambert Smith Hampton dated 6 January 2022. If the site were sold for re-use as a care home the value would be in the region of £630k. If the site was sold and redeveloped for housing, then the current market value would be in the region of £600k.

Both valuations were approximately in line with the council's current holding value as at the 31 March 2020 of £644k.

The Chair of the Safer Neighbourhoods and Active Communities Scrutiny Board questioned whether the option to lease out to a private provider was explored and if the option of building Council housing on the site was considered.

In response, the Cabinet Member for Regeneration and Growth stated he would undertake to provide a response to this query and would report back to the member.

Reasons for decision

Disposal of the property is sought to provide much needed housing within Sandwell. Disposal and subsequent redevelopment would also remove the ongoing management costs associated with an empty building.

The former care home and current site have been declared surplus to both Adult Services requirements and wider council service provision.

Alternative options considered

To retain the asset in the General Fund. The building was currently surplus to General Fund needs. There was an opportunity to make better use of this asset and remove ongoing revenue and maintenance costs.

Subject to no realistic bids being received or bids not meeting the set criterion, via the open market exercise, the asset could be considered for appropriation into the Housing Revenue Account. It would then support housing development, possibly modular build to deliver 100% affordable housing on the site. These homes would be part of SMBC stock. This option had been considered initially. However, by considering disposal on the open market for a developer or registered landlord to deliver the scheme the council would look to obtain a sizable capital receipt whilst still providing affordable housing helping to meet housing targets for the area. In the event of no suitable bids being received this option can be reconsidered.

Agreed:-

- (1) that Grafton Lodge, Grafton Road, Oldbury B68 8BJ, the former Adult Services led care home, as shown on site plan SAM/20100/007, be declared surplus to all council use;
- (2) that the Director of Law and Governance and Monitoring Officer be authorised to dispose of the site, on terms and conditions to be agreed by the Director of Regeneration & Growth, in consultation with the Director of Housing and Director of Finance;
- (3) that subject to Resolution (1) above, the Director of Regeneration and Growth, in consultation with the Director of Housing and the Director of Finance, be authorised to prepare sale particulars and subsequently dispose, in accordance with any statutory regulations and the Council's Procurement and Financial Regulations, the site to a Developer or a Registered Provider to develop, a suitable housing scheme; to enter into or execute under seal any financial or conditional agreement in relation to the delivery of a suitable scheme on terms and conditions to be agreed by the Director of Finance;
- (4) that subject to Resolution (2) above, the Director – Law and Governance and Monitoring Officer be authorised to enter into or execute under seal any documentation in relation to the disposal and/or development agreement, licence, undertaking, any consents or applications required for Planning or Highways appertaining to the delivery of the scheme and any other agreements with the procured developer(s) or Registered Provider(s) as may be deemed necessary to facilitate development of the site with a housing scheme on terms and conditions

to be agreed by the Director of Regeneration and Growth;

- (5) to agree that the property referred to in Resolution (1) above, may be sold at below market value to secure a higher level of affordable housing, if in the opinion of officers, the most advantageous bid received is on this basis.

131/22 **Council new build homes on land at West End Avenue, Smethwick**

Approval was sought to develop land at West End Avenue, Smethwick with new council housing for affordable rent, subject to planning permission.

Reasons for recommendations

The site was located within the West Smethwick area on land off West End Avenue, Smethwick, approximately 1km to the North West of Smethwick town centre.

The Council was able to develop this site with circa 11 homes, subject to planning permission, as part of the new strategic approach to provide more and better housing in the borough.

Alternative options considered

Option A – Dispose of the site on the open market.

Option B – Work in partnership with a Registered Provider Partner with the assistance of Homes England to build new affordable home for rent.

Option C – Leave the site undeveloped.

Agreed:-

- (1) that approval be given to develop approximately 3002.3 m2 of land at West End Avenue Smethwick with new council housing for affordable rent, subject to planning permission, as shown for identification purposes only at Appendix E as now submitted;

- (2) that the Director of Finance be authorised to allocate adequate resources from the Council's Housing Revenue Account to deliver the scheme and to utilise grant funding offered by Homes England, under the extended Homes England Strategic Partnership 1 Programme 2016 to 2021 to assist with the delivery of the project;
- (3) that in connection with Resolution (1) and (2) above, approval be given to authorise the necessary steps for the delivery of the proposed project, including:
 - (a) the Director of Regeneration and Growth in consultation with the Director of Finance and the Director of Housing be authorised to prepare tendering documentation and subsequently procure, in accordance with any statutory regulations and the Council's Procurement and Financial Regulations;
 - (b) execute any requirements in accordance with the Homes England Delivery Partner Dynamic Purchasing System (DPS) framework including appointing a contractor(s) to develop, on behalf of the Council, the proposed housing scheme; to enter into or execute under seal any financial agreement in relation to the Homes England grant on terms and conditions to be agreed by the Director of Finance;
 - (c) that any necessary exemptions are made to the Council's Procurement and Contract Procedure Rules to enable the course of action referred to b above to proceed;
 - (d) subject to a, b and c above, the Director – Law and Governance and Monitoring Officer be authorised to enter into or execute under seal any documentation in

relation to award of the contract and/or development/partnership agreement, Homes England developer status, licence, undertaking, framework joining agreement, any consents or applications required for Planning or Highways appertaining to the delivery of the scheme and any other agreements with the procured contractor(s) and with the Homes England, as may be deemed necessary to facilitate development of the site with a housing scheme as described in below on terms and conditions to be agreed by the Director of Regeneration and Growth;

- (e) the Director of Regeneration and Growth in consultation with the Director of Housing and the Director of Finance be authorised to accept a tender of up to 10% above the approved estimated costs as a contingency to mitigate uncertain market conditions and inflationary cost uplifts.
- (f) subject to the practical completion of each property, the Director of Housing be authorised to manage and let the properties built in accordance with the Council's housing allocation policy.
- (g) that the following action points identified within the financial appraisal of the funding application by Strategic Finance, be implemented to reduce the risk to the Council:
 - that Cabinet consider the alternatives and are satisfied that the proposal to construct the new build homes will meet the Council's objectives in the most appropriate manner.
 - that a process is developed to prioritise the development of sites against pre-determined criteria and

alternative options for achieving the Council's housing objectives within each locality.

132/22 **Council new build homes on land at Whitgreave Street, West Bromwich**

Approval was sought to develop land at Whitgreave Street, West Bromwich with new council housing for affordable rent, subject to planning permission.

Reasons for Recommendations

The site was located within the Greets Green area on land off Whitgreave Street, approximately 2km to the West of West Bromwich town centre.

The Council was able to develop this site with circa 6 homes, subject to planning permission, as part of the new strategic approach to provide more and better housing in the borough.

Alternative options considered

Option A – Dispose of the site on the open market.

Option B – Work in partnership with a Registered Provider Partner with the assistance of Home England to build new affordable homes for rent.

Option C – Leave the site undeveloped.

Agreed:-

- (1) that approval be given to develop approximately 2355 m² of land at Whitgreave Street, West Bromwich with new council housing for affordable rent, subject to planning permission, as shown for identification purposes only at Appendix F, as now submitted;
- (2) that the Director of Finance be authorised to allocate adequate resources from the Council's Housing Revenue Account to deliver the scheme and to utilise grant funding offered by Homes England, under the extended Homes England

Strategic Partnership 1 Programme 2016 to 2021 to assist with the delivery of the project;

- (3) that in connection with Resolution (1) and (2) above, approval be given to authorise the necessary steps for the delivery of the proposed project, including:
 - (a) the Director of Regeneration and Growth in consultation with the Director of Finance and the Director of Housing be authorised to prepare tendering documentation and subsequently procure, in accordance with any statutory regulations and the Council's Procurement and Financial Regulations;
 - (b) execute any requirements in accordance with the Homes England Delivery Partner Dynamic Purchasing System (DPS) framework including appointing a contractor(s) to develop, on behalf of the Council, the proposed housing scheme; to enter into or execute under seal any financial agreement in relation to the Homes England grant on terms and conditions to be agreed by the Director of Finance;
 - (c) that any necessary exemptions are made to the Council's Procurement and Contract Procedure Rules to enable the course of action referred to b above to proceed;
 - (d) subject to a, b and c above, the Director – Monitoring Officer be authorised to enter into or execute under seal any documentation in relation to award of the contract and/or development/partnership agreement, Homes England developer status, licence, undertaking, framework joining agreement, any consents or applications required for Planning or Highways appertaining to the delivery of

the scheme and any other agreements with the procured contractor(s) and with the Homes England, as may be deemed necessary to facilitate development of the site with a housing scheme as described in below on terms and conditions to be agreed by the Director of Regeneration and Growth;

- (e) the Director of Regeneration and Growth in consultation with the Director of Housing and the Director of Finance be authorised to accept a tender of up to 10% above the approved estimated costs as a contingency to mitigate uncertain market conditions and inflationary cost uplifts.
- (f) subject to the practical completion of each property, the Director of Housing be authorised to manage and let the properties built in accordance with the Council's housing allocation policy;
- (g) that the following action points identified within the financial appraisal of the funding application by Strategic Finance, be implemented to reduce the risk to the Council:
 - that Cabinet consider the alternatives and are satisfied that the proposal to construct the new build homes will meet the Council's objectives in the most appropriate manner.
 - that a process is developed to prioritise the development of sites against pre-determined criteria and alternative options for achieving the Council's housing objectives within each locality.
 - that the planned use of Right to Buy receipts is reviewed prior to the submission of a 'firm scheme' to

Homes England to ensure that the project secures the most appropriate and financially advantageous source of funding.

- That the relocation of the electricity sub-station and related lease are completed as a matter of urgency to ensure no delays to project timescales.

133/22 **Proposed West Bromwich Definitive Map and Statement for Public Rights of Way**

Approval was sought to authorise the Director of Regeneration and Growth and the Director of Law and Governance and Monitoring Officer to make representations to the Secretary of State requesting formal abandonment of the West Bromwich Draft Map under Section 55 (1)(b) of the Wildlife and Countryside Act 1981 and take the necessary steps, under this legislation, to create the West Bromwich Definitive Map and Statement.

Reasons for Recommendations

The Council proposed to abandon the draft map and statement under the 1949 Act and commence the creation of a new Definitive Map & Statement under the 1981 Act. To do this, the Council was required to make an application to the Secretary of State seeking a direction to abandon the survey carried out under the 1949 Act in relation to West Bromwich in its entirety. If the Secretary of State approved the abandonment under section 55, the Council would be required to prepare a new draft map and statement for the West Bromwich area in accordance with the 1981 Act.

The abandonment process and subsequent creation of the definitive map and statement for the West Bromwich area would allow the Council to comply with its statutory duty of having a Definitive Map and Statement and keeping it up-to-date and under continuous review as required by the 1981 Act. Furthermore, once the West Bromwich Definitive Map and Statement was confirmed, the Council could consolidate

the nine separate maps into a single Sandwell Definitive Map and Statement.

The Definitive Map and Statement would also give much greater certainty for property search enquiries in the West Bromwich area. The map would also allow a more robust method of managing the public right of way network, particularly where issues were raised in relation to lack of maintenance or obstructed routes. The Definitive Map would also allow formal map modification to remove routes that had been legally stopped up or diverted. Current legislation did not allow formal modification of a draft map.

Alternative options considered

In September 2016, members were briefed on the West Bromwich draft map and statement situation.

In November 2016, advice was sought from a leading PRow Barrister on this alternative approach and how best to proceed. The advice from the Barrister stated that the principal risk of the alternative approach was the significant delay in preparing the Definitive Map for West Bromwich. This was because the Council would continue to be in breach of its statutory duty as it would be neither completing the process of preparing its Definitive Map under the 1949 Act, nor would it be abandoning that process and proceeding to prepare a Definitive Map under the 1981 Act. Instead, pursuing the extinguishment/diversion of obstructed highways was undertaken using legislation entirely separate from that of preparing the Definitive Map. Consequently, whilst pursuing the stopping up and diversion orders, the Council would not be actively preparing its Definitive Map and so would continue to be in breach of its statutory duty, with no real defence against judicial review.

In addition, the advice identified that stopping up and diversion of highway must be held in the public domain, with newspaper advertising and site notices (with plans) inviting comments. Therefore, the issue of property blight could be raised by the public at any time for any stopping up or diversion application. This risk was heightened by the number of individual routes to be stopped up.

Until the Council formally abandoned the survey undertaken under the 1949 Act, it was under a statutory duty to either complete the process of preparing the Definitive Map, or to abandon the survey and create a new Definitive Map under the 1981 Act – and to do so as soon as reasonably practicable.

Agreed:

- (1) that the Director of Regeneration and Growth and the Director Law & Governance & Monitoring Officer be authorised to make representations to the Secretary of State requesting formal abandonment of the West Bromwich Draft Map under section 55 (1)(b) of the Wildlife and Countryside Act 1981;
- (2) that the Director of Regeneration and Growth and the Director Law & Governance & Monitoring Officer be authorised to take the necessary steps under section 55 of the Wildlife and Countryside Act 1981 to create the West Bromwich Definitive Map and Statement;
- (3) that the Director of Regeneration and Growth be authorised to procure external support to carry out this work as required.

134/22

Council new build homes on land at Higham's Close, Rowley Regis

Approval was sought to appropriate land at Higham's Close, Rowley Regis from the General Fund to the Housing Revenue Account for housing purposes with the accounts being adjusted accordingly and to develop the site with circa 6 new affordable rent council houses, subject to planning permission.

Reasons for Recommendations

The site was historically an area of mineworking for coal within the vicinity of Scotwell Colliery to the North-West. The Colliery became disused and was replaced with residential development.

The Council was able to develop this site with circa 6 homes, subject to planning permission as part of the new strategic approach to provide more and better housing in the borough.

Alternative options considered

Option A – Dispose of the site on the open market

Option B – Work in partnership with a Registered Provider Partner with the assistance of Homes England to build new affordable homes for rent.

Option C – Leave the site undeveloped.

Agreed:

- (1) that approval be given to appropriate approximately 1961.7 m² of land at Higham's Close, Rowley Regis from the General Fund to the Housing Revenue Account for housing purposes with the accounts being adjusted accordingly and to develop the site with circa 6 new affordable rent council houses, subject to planning permission, as shown for identification purposes only at Appendix G, as now submitted;
- (2) that the Director of Finance be authorised to allocate adequate resources from the Council's Housing Revenue Account and the Right to Buy one for one receipts to deliver the scheme;
- (3) that in connection with Resolution (1) and (2) above, approval be given to authorise the necessary steps for the delivery of the proposed project, including:
 - (a) the Director of Regeneration and Growth in consultation with the Director of Finance

and the Director of Housing be authorised to prepare tendering documentation and subsequently procure, in accordance with any statutory regulations and the Council's Procurement and Financial Regulations;

- (b) execute any requirements in accordance with the Homes England Delivery Partner Dynamic Purchasing System (DPS) framework including appointing a contractor(s) to develop, on behalf of the Council, the proposed housing scheme; to enter into or execute under seal any financial agreement in relation to the Homes England grant on terms and conditions to be agreed by the Director of Finance;
- (c) that any necessary exemptions are made to the Council's Procurement and Contract Procedure Rules to enable the course of action referred to b above to proceed;
- (d) subject to a, b and c above, the Director – Monitoring Officer be authorised to enter into or execute under seal any documentation in relation to award of the contract and/or development/partnership agreement, Homes England developer status, licence, undertaking, framework joining agreement, any consents or applications required for Planning or Highways appertaining to the delivery of the scheme and any other agreements with the procured contractor(s) and with the Homes England, as may be deemed necessary to facilitate development of the site with a housing scheme as described in below on terms and conditions to be agreed by the Director of Regeneration and Growth;

- (e) the Director of Regeneration and Growth in consultation with the Director of Housing and the Director of Finance be authorised to accept a tender of up to 10% above the approved estimated costs as a contingency to mitigate uncertain market conditions and inflationary cost uplifts;
- (f) subject to the practical completion of each property, the Director of Housing be authorised to manage and let the properties built in accordance with the Council's housing allocation policy;
- (g) that the following action points identified within the financial appraisal of the funding application by Strategic Finance, be implemented to reduce the risk to the Council:
- that Cabinet consider the alternatives and are satisfied that the proposal to construct the new build homes will meet the Council's objectives in the most appropriate manner.
 - that a process is developed to prioritise the development of sites against pre-determined criteria and alternative options for achieving the Council's housing objectives within each locality.
 - that the site is appropriated from the Council's General Fund to the Housing Revenue Account and the corresponding adjustment to the Capital Financing Requirement made to reflect the appropriation.

Planning, Building Consultancy, Land Charges and Associated Computer Systems Contract Renewal

Approval was sought to authorise the Director of Regeneration and Growth to enter into a contract with Idox Software Limited for the provision of a Hosted Managed Service for the provision of a Planning, Building Consultancy and Local Land Charges Database, Document Management System and a Public Access module ICT system, for a 5 year period from 6 October 2022 to 5 October 2027 at a cost of £133,000 (ex VAT) per annum.

The Chair of the Safer Neighbourhoods and Active Communities Scrutiny Board questioned whether safeguards had been put in place to ensure that procurement exercises were conducted in future.

In response, the Cabinet Member for Regeneration and Growth stated that this was not the only contract that would have experienced this due to staffing issues over the last few years, however comments would be taken on board.

Reasons for Recommendations

A new contract with Idox Software Limited was preferred on the basis that:

- the new 5-year proposal from Idox at £132,283 per annum is very much close to the existing yearly contract value of £129,000.
- any alternative proposal to migrate will incur yet unidentified additional costs and require additional staff resources with potential service disruption.
- continued provision of the existing hosted service to ensure service delivery under legislative guidelines for Planning, Building Consultancy and Local Land Charges.

Alternative options considered

Go out to full OJEU tender which would involve extending the existing contract to cover the time to tender, award and implement any alternative system. It was anticipated that a procurement exercise in line with OJEU legislation would take around 12 – 18 months from the invitation to tender to the implementation of a new system.

Agreed that the Director of Regeneration and Growth be authorised to enter into a contract with Idox Software Limited for the provision of a Hosted Managed Service for the provision of a Planning, Building Consultancy and Local Land Charges Database, Document Management System and a Public Access module ICT system, for a 5 year period 6 October 2022 to 5 October 2027 at a cost of £133,000 (ex VAT) per annum.

136/22 **Birmingham Commonwealth Games Act 2020**

Approval was sought to authorise the Director of Borough Economy to exercise the statutory provisions of the Birmingham Commonwealth Games Act 2020 and to revise the Scheme of Delegation to Officers (executive side).

Reasons for Recommendations

The Birmingham Commonwealth Games Act provided temporary measures to make provisions for the delivery of the Commonwealth Games and ensure no unauthorised association with the Games. This also meant that only those individuals, businesses or organisations that had been authorised by the Organising Committee could associate themselves and their brand with the Games.

The Birmingham Games Act 2020 was new legislation and authorisation would be needed to carry out responsibilities as a host authority during the Commonwealth Games period.

The local authority can authorise officers to act in order that the Council could be compliant with any provisions of the Act.

Alternative options considered

None. The Council was required to appoint in accordance with the legislation.

Agreed:

- (1) that the Director of Borough Economy be authorised to exercise the statutory provisions of the Birmingham Commonwealth Games Act 2020;
- (2) that the Director of Law and Governance be authorised to revise the Scheme of Delegation to Officers (executive side) in the Council's Constitution with the inclusion of the following within the Director of Borough Economy: -

The Birmingham Commonwealth Games Act 2020

To act and authorise others to act on his/her behalf under the Council's functions under the provisions of the Commonwealth Games Act 2020.

137/22 **Council house new build programme – approval of sites and amendment to funding sources**

Approval was sought to approve the allocation of sites for the Council New Build programme for the provision of new Council affordable rent housing accommodation in order to meet the external funding requirements for Homes England grant and Right to Buy 1-4-1 replacement generated from the sale of HRA dwellings under Right to Buy.

The Cabinet Member for Regeneration and Growth highlighted that the report was one of five reports on the agenda on social housing and commended officers for moving forward with this issue.

Reasons for Recommendations

The proposals would realign the Council's short term new build programme in order to meet the council's contractual requirements with Homes England and also contribute to ensuring Right to Buy 1-4-1 receipts are utilised within the required time periods. The Council would continue to complete feasibility works on any future new build

opportunities as part of a pipeline programme to ensure availability of sites for future Right to Buy 1-4-1 receipts and other funding opportunities. If any sites encountered issues that would prevent delivery within the designated timescale other sites will be substituted, if available. This would be monitored to ensure the most appropriate use of funding for each scheme.

Alternative options considered

Option A – Dispose of the sites on the open market or to Registered Provider

Option B – Develop the sites utilising other funding sources

Both Option A and Option B had the potential of having a long term detrimental effect on the Council being able to access Homes England Grant funding as a Developer Partner should the contracted timescales of the Strategic Partnerships 1 programme not be met. For this reason, both of these options have been discounted.

138/22 **Green Spaces Strategy – Implementation and Business Plan 2022/23**

Approval was sought to approve the Green Spaces Strategy Implementation and Business Plan 2022-25.

The Chair of the Children's Services and Education Scrutiny Board questioned whether repair of playground equipment would be a priority of the Strategy.

In response, the Cabinet Member for Leisure and Tourism gave assurance that the focus of 2022/23 would be on those priority works to resolve current health and safety or significant community impacts in parks and playgrounds.

The Chair of Safer Neighbourhoods and Active Communities Scrutiny Board asked whether funding would be available to the nature reserves that were not well known in the borough.

In response, the Cabinet Member for Leisure and Tourism stated that officers were currently reviewing the designation of nature reserves, therefore this would ensure that the sites mentioned would be captured within the Strategy.

The Chair of the Children's Services and Education Scrutiny Board commended officers responsible for the greenery added to roundabouts around Sandwell. However, concerns with the continual change of officers who were responsible for green spaces in Sandwell. In response, the Cabinet Member stated that there were some vacancies in the Parks team which were currently being recruited to. It was advised that all issues should be reported via the Portal to ensure the correct team were aware of it.

The Cabinet Member for Finance and Resources thanked officers and the Cabinet Member for Leisure and Tourism for the report and noted the number of green flag park in the borough. It was also highlighted that there were lots of green spaces that were underdeveloped, often in deprived areas, therefore this should form part of the public health strategy.

The Cabinet Member for Regeneration and Growth commended officers for the work undertaken forming the Green Spaces Strategy.

Reasons for Recommendations

The Green Spaces Strategy Implementation and Business Plan set out a clear programme of activity and direction for the service for the next three years. Specifically, the completion of the following objectives (detailed outputs within the Green Spaces Strategy).

Alternative options considered

An alternative option would be to not approve the Green Spaces Strategy Implementation and Business Plan 2022-25, which would, however, be detrimental in terms of lack of improvement programme for green spaces in Sandwell for the next 3 years.

Agreed:-

- (1) that approval be given to the Green Spaces Strategy Implementation and Business Plan 2022-25 as now submitted;
- (2) that in connection with Resolution (1) above, approval be given to the planned programme of works for 2022/23 as now submitted;
- (3) that approval be given to pilot income generation initiatives in green spaces, as specified within the Green Spaces Strategy;
- (4) that approval be given to the Governance Arrangements, as set out within the Green Spaces Strategy;
- (5) that approval be given to the proposed new ways of working with Friends Groups, and the Cabinet Member for Leisure and Tourism be authorised to approve the final agreement with Friends Groups following consultation;
- (6) that the Director of Borough Economy be authorised to develop additional programme of works for green spaces in-year (2022/23), if funding becomes available for additional works, in consultation with the Cabinet Member;
- (7) that the Director of Borough Economy authorise – through the Service Manager – emergency works for green spaces, as required for health and safety reasons.

139/22 **Exclusion of the Public and Press**

Resolved that the public and press be excluded from the rest of the meeting to avoid the possible disclosure of exempt information under Schedule 12A to the Local Government Act, 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006, relating to:-

Minute No 139/22, 140/22 and 141/22 - any individual or information which is likely to reveal the identity of an individual and;

141/22 - information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.

140/22 **Provision of new council homes on 3 sites to be delivered via LHC Framework Alliance Contract**

Approval was sought to the development of three sites across Sandwell with new affordable rent council housing, subject to planning permission being obtained.

Reasons for recommendations

This project would design/deliver circa 30 new Council-owned affordable rented properties on a maximum of three council-owned sites which subject to design and planning requirements could include houses, bungalows and apartments.

Alternative options considered

Option A – deliver the schemes through the in-house design team and procure a development contractor through the traditional route

Option B – Develop the sites utilising other funding sources

Both Option A and Option B had the potential of having a long term detrimental effect on the Council being able to access Homes England Grant funding as a Developer Partner should the contracted timescales not be met.

Agreed:-

- (1) that approval be given to design and develop three sites across Sandwell with new affordable rent council housing, subject to planning permission being obtained, at Harvest Road, Rowley Regis, Coppice Street, West Bromwich and Railway Street, Tipton;
- (2) that the Director of Finance be authorised to allocate adequate resources from the Council's Housing Revenue Account, subject to being satisfied that the proposal provides value for money, to deliver the scheme designs and enable the agreed Homes England delivery programme to be met utilising grant funding offered under the extended Homes England Strategic Partnership 1 Programme 2016 to 2021;
- (3) that approval be given to authorise the steps necessary for the delivery of the proposed projects, including:
 - (a) subject to (2) above, the Director of Regeneration and Growth in consultation with the Director of Finance and the Director of Housing be authorised to prepare tendering documentation and subsequently procure, in accordance with any statutory regulations and the Council's Procurement and Financial Regulations to use the LHC Framework Alliance procurement route to undertake the Design and development documents to RIBA (Royal Institute of British Architects) stage 4 level;

- (b) subject to a) above, the Director – Monitoring Officer be authorised to enter into or execute under seal any documentation in relation to award of the contract for the Design RIBA stage 4 of three sites and/or development/partnership agreement, any consents or applications required for Planning or Highways appertaining to the delivery of the schemes and any other agreements with the procured contractor(s), as may be deemed necessary to facilitate development of the sites with housing schemes to RIBA stage 4;

- (c) that subject to receiving the necessary Strategic Investment Unit appraisal approval mark of 65 or above for each individual site, the Director of Regeneration and Growth in consultation with the Director of Finance and the Director of Housing be authorised to accept the Financial closure offer for the construction of Council new build properties, in accordance with any statutory regulations and the Council's the Director – Monitoring Officer be authorised to enter into or execute under seal any documentation in relation to award of the contract for the development of each of the individual sites and/or development/partnership agreement, any consents or applications required for Planning or Highways appertaining to the delivery of the schemes and any other agreements with the procured contractor(s), as may be deemed necessary to facilitate development of the sites with housing schemes on terms and conditions to be agreed and implemented by the Director of Regeneration and Growth.

Approval of bids from Sandwell Metropolitan Borough Council to Round 2 of Levelling Up Fund

Approval was sought for the four priority bids for submission into Round 2 of the Levelling Up Fund.

Authorisation was also sought to establish an Assurance Panel for the purposes of assuring Levelling Up Fund bid proposals.

The Chair of the Children's Services and Education Scrutiny Board stated that members of the Board were briefed on the proposals for the Youth Facility in West Bromwich and welcomed the proposals. The Chair highlighted that all Councillors were not engaged in the consultation process and scrutiny was denied an opportunity to discuss Sandwell's youth offer. It was asked whether further consultation in relation to youth services would involve members in future.

In response, the Cabinet Member of Regeneration and Growth stated that the timescales for officers for the business cases were extremely tight. Various projects were brought to the Economy Skills Transport and Environment Scrutiny Board. Furthermore, prior to submission, project information was provided at a town level. Despite this, officers were working to improve the consultation process.

The Chair of the Safer Neighbourhoods and Active Communities Scrutiny Board questioned why consultation took place after projects were formed and whether projects would reflect residents' views. In response, it was reported that that officers had attended all town meetings. Timescales meant that officers had four months to put together the priorities and business cases. Further to this, another challenge was reconciling MP's views with Councillor's views to agree on the priority. While there would be a significant amount of opportunity to engage with Councillors in shaping the details of the proposals, it was accepted that the consultation process could be improved in the future. The process set by Government entailed MP's signing off the bids which made it difficult for officers to engage in a consultation process. Going forward, Sandwell needed to be ahead of

timescales for the next round of bids to ensure the full process could be conducted.

Reasons for recommendations

The Levelling Up Fund Guidance stated that bid submissions were to be compliant with the HM Treasury Green Book (2020), which entailed projects having a Full Business Case (FBC) which address five cases; Strategic, Economic, Commercial, Financial and Management.

Under the proposed LUF Assurance Panel model, the Strategic Investment Unit would undertake a review of the financial case of each bid, on the basis that the Full Business Cases had been prepared by a specialist consultant. That specialist consultant would be required to present the Full Businesses Cases to the Assurance Panel for consideration. Should the panel accept the proposal, they would then have delegated authority from Cabinet to submit those bid proposals.

Alternative options considered

The alternative option would be to keep the existing assurance arrangements contained within the Financial Regulations, but this would create a risk that the submission deadline of noon 6 July 2022 would not be achieved. The LUF investments were critical to addressing a range of issues and delivering real improvements in the Borough.

Agreed:-

- (1) that approval be given to the following four priority bids for submission into Round 2 of the Levelling Up Fund:
 - Tipton Town Centre, Tipton (West Bromwich West)
 - Haden Hill Leisure Centre, Rowley Regis (Halesowen & Rowley Regis)
 - Grove Lane, Smethwick (Warley)
 - Youth Provision Facility, West Bromwich (West Bromwich East;

- (2) that the Director of Finance be authorised to allocate adequate resources from the Council's Housing Revenue Account, subject to being satisfied that the proposal provides value for money, to deliver the scheme designs and enable the agreed Homes England delivery programme to be met utilising grant funding offered under the extended Homes England Strategic Partnership 1 Programme 2016 to 2021;
- (3) that the Director of Finance be authorised to sign and submit the Levelling Up funding applications and any necessary ancillary documentation for the maximum value of £80m;
- (4) that approval be given to make an exemption from the Council's Financial Regulations to enable Resolution (1) and (2) above;
- (5) that the Director of Finance be authorised to identify the minimum 10% match funding contribution to the Levelling Up Fund programme up to the maximum value of £8,000,000 through a combination of funding sources, including Council-owned assets and Prudential Borrowing;
- (6) that the Director of Law & Governance be authorised to enter into or execute under seal funding agreements or necessary ancillary documentation for the receipt of the funding, on terms to be agreed in collaboration with the Director of Regeneration & Growth and the Director of Finance;
- (7) that the Director of Finance in consultation with the Director of Housing and the Director of Regeneration & Growth be authorised to appropriate assets from the HRA to the General Fund, or vice versa, that fall within the scope of the bids in order to meet the match funding

contribution for the Levelling Up Fund and adjust the accounts accordingly.

[Councillor Carmichael left the room at this point. Councillor Piper subsequently took the Chair]

142/22 **Management Options Appraisal – Leisure**

Consideration was given to management options for the provision of leisure facilities in Sandwell.

In response to a question raised by the Chair of the Safer Neighbourhoods and Active Communities Scrutiny Board, the Cabinet Member for Culture and Tourism stated contract management and performance would be a priority. Furthermore, the vision was not only to compete with other local authorities, but also with the private sector.

The Cabinet Member for Finance and Resources that the Council's role was not only to monitor the performance of the contract with performance indicators as part of the contract, but the Council also sought to offer a holistic leisure facility.

Reasons for recommendations

The recommendation sought to implement a sustainable management solution in the long term based on the detailed appraisal of the management options, and to provide a solid evidence basis to enable the Council to make a well-informed decision with the benefit of a clear audit trail.

The recommendation supported an appropriate sports and leisure facility management solution able to support and to address the holistic leisure needs of Sandwell residents.

Alternative options considered

Option 1 - In House Leisure Services for the future operation of this portfolio of the Council's leisure facilities;

Option 2 - Local Authority Trading Company (LATC) for the future operation of this portfolio of the Council's leisure facilities;

Option 3 - External Provision for the future operation of this portfolio of the Council's leisure facilities.

Having considered all three options, it was deemed that option 2 should be progressed.

Agreed that the Director of Borough Economy be authorised to undertake detailed preparation in liaison with the Director of Finance and the Cabinet Member for Culture and Tourism to progress Option 2: 'Local Authority Trading Company (LATC) for the future operation of this portfolio of the Council's leisure facilities.

Meeting ended at 5.01pm.

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Minutes of Budget and Corporate Scrutiny Management Board

Wednesday 13 July 2022 at 6.00 pm
In Committee Room 2 - Sandwell Council House, Oldbury

Present: Councillor Moore (Chair);
Councillors Shackleton, Fenton, Akhtar, E M Giles, Hinchliff,
Simms and Taylor.

In attendance: Neil Cox (Director of Business Strategy and Change), Surjit
Tour (Director of Law and Governance and Monitoring
Officer), Elaine Newsome (Service Manager of Democracy),
Suky Suthi-Nagra (Democratic Services Manager), Matt
Powis (Senior Democratic Services Officer) and Anthony
Lloyd (Democratic Services Officer)

23/22 Apologies for Absence

An apology was received from Councillor Anandou.

24/22 Declarations of Interest

There were no declarations of interest.



25/22

Minutes

Resolved that the minutes of the meeting held on 16 March 2022 are approved as a correct record.

26/22

Additional Items of Business

There were no additional items of business to consider.

27/22

Budget and Corporate Scrutiny Management Board Work Programme 2022-23.

The Chair presented an overview of the Board's work programme for the 2022-23 municipal year. It was noted that each Council directorate was invited to a work programming session on 30 June 2022 which allowed Members of the Board to discuss services, key issues and priorities.

The Board would be conducting a scrutiny review on the Council's 'Customer Journey' and as part of this, a visit to the Council's Contact Centre would be arranged by the Director of Business Strategy and Change.

Members also discussed the impact on staff as a result of the consequences of COVID-19 with particular focus on working from home. Members raised following questions in respect of the review item:

- had productivity increased or decreased since staff had begun working from home?
- how could the Council increase productivity, if required?
- with the majority of staff still working from home, did this present a saving to the local authority or cost more?
- how the council could support the health and well-being of staff?
- how could the Council improve communication with staff and future outlook of working from home employees.

It was agreed by the Board that the above concerns were to be collated into a new item for work programme.

Resolved that the work programme for the Budget and Corporate Scrutiny Management Board for 2022-23 municipal year be approved.

Scrutiny Boards Work Programme 2022-23

The Chair invited each Scrutiny Chair to present their work programme for the 2022-23 municipal year which was outlined as follows:

Children's Services and Education Scrutiny Board

The Chair of the Children's Services and Education Scrutiny Board presented the 2022-2023 work programme. The Children's Services COVID Recovery Funds item was highlighted as an upcoming item.

As a result of the pandemic, members suggested that scrutiny should consider reviewing how the Council monitored home-schooled children. Concerns were raised around the well-being of the children as it appeared several may not be getting the support they need. The Senior Democratic Services Officer confirmed that this was an item to be scheduled and that conversations were taking place with the relevant officers to begin the process.

Members sought clarification on the safeguarding aspect of this issue. The Chair of the Children's Services and Education Scrutiny Board reassured the Board that safeguarding concerns would be presented at the next meeting of the Board.

Economy, Skills, Transport and Environment

The Chair of the Economy, Skills, Transport and Environment Scrutiny Board presented the 2022-23 work programme. It was noted that the Board had a mixture of strategic items of importance such as the Black Country Enterprise Partnership, Local Transport Plan and the Outcome of the E-Scooters Trial.

Health and Adult Social Care

The Chair of the Health and Adult Social Care Scrutiny Board highlighted the work programme for the Health and Adult Social Care Scrutiny Board which remained under review pending further discussions with NHS and Black Country Partners.

It was proposed to include an item on men's mental health as a future Board item. Concerns were raised around the considerable

high rate of suicide in males and was therefore deemed a priority. Additionally, members discussed the possibility of expanding further on this topic by including a review into domestic abuse aimed towards men.

Safer Neighbourhoods and Active Communities

The Chair of the Safer Neighbourhoods and Active Communities Scrutiny Board presented the work programme for 2022-23. In particular, a scrutiny review in relation to Brandhall Golf Course was highlighted as a priority of the Board. Due to the vast number of items to be covered by the Scrutiny Board, it was agreed that further meetings could be scheduled if required.

Members offered a suggestion of reviewing current policies around loft conversions as part of the Housing Strategy review. Many Sandwell Council tenants had stated that the Council had refused to allow them to convert loft spaces. It was proposed that this may alleviate some of the issues currently faced when considering social housing shortages. This also prompted discussion around the need for more bungalows to help older citizens downsize during their later years. The Chair of the SNAC Scrutiny Board noted the recommendation.

SMB Chair Summary

The Chair of the Budget and Corporate Scrutiny Management Board reminded members that, this municipal year, each of the Scrutiny Boards will hold pre-meetings as well as agenda setting meetings. This would help officers in feeding information in a timely and effective manner to their respective Boards.

It was noted that the Scrutiny Recommendation Action Tracker had been implemented across all Scrutiny Boards and regularly presented to the Council's Leadership Team for monitoring.

The Chair encouraged Members to have regular meetings with Directors and Cabinet Members. The Director of Law and Governance & Monitoring Officer expressed how keeping good scrutiny practices would help play a key role in demonstrating to central government that the Council was making improvements with decision-making processes overall.

Resolved:-

- (1) that the work programme for the Children's Services and Education Scrutiny Board, the Economy, Skills, Transport and Environment Scrutiny Boards and the Safer Neighbourhoods and Active Communities Scrutiny Board for 2022-2023 be approved;
- (2) that the Chair and Vice Chair of Health and Adult Social Care Scrutiny Board, in consultation with the Chair of the Budget and Corporate Scrutiny Management Board, agree the work programme for Health and Adult Social Care Scrutiny Board 2022-23 following the work programming session with the Board;
- (3) that the Chairs of Scrutiny Boards be authorised to make any further amendments to their respective Scrutiny Board work programmes, as deemed necessary.

Meeting ended at 6.42pm.

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Minutes of Audit and Risk Assurance Committee

**Tuesday 28 June 2022 at 6.00 pm
at Council Chamber, Sandwell Council House**

Present: Councillor Preece (Chair)
Councillors Anandou and L Giles.
Mr Ager (Independent Member).

Officers: Rebecca Maher (Head of Finance);
Rebecca Jenkins (Senior Lead – Service Improvement);
Matt Powis (Senior Democratic Services Officer);
Amundeeep Johal (Democratic Services Officer);

24/22 **Apologies for Absence**

Apologies were received from Councillors Choudhry and Hinchliff and Independent Member, J Hussain.

25/22 **Declarations of Interest**

There were no declarations of interest.

26/22 **Minutes**

Resolved

That, the minutes of the previous meeting held on 17 March 2022 be confirmed as a correct record.



27/22

Urgent Business

The Chair agreed for two additional items to be added to the agenda which included the Committee's work programme for the 2022/23 municipal year and the Cabinet Forward Plan.

28/22

Strategic Risk Register Update Report

The Committee received an update on the Strategic Risk Register since the last reporting in March 2022.

The Risk Register identified 19 risks, 9 of which were red, 5 amber and 4 green.

Changes to the risk register included:

- Business continuity management was highlighted as a red risk due to an incident occurring in an ICT room in May 2021, which resulted in a temporary loss of access to Council systems and SBS (the Council's finance/human resources procurement system). The Council had requested a review of resilience arrangements in relation to this matter and it was hoped the risk would reduce in future.
- Towns Fund Programme was originally regarded as a risk at the time of submission of business cases. However, since the last reporting period, the business case had been successfully submitted therefore the risk had reduced. It was highlighted that a new risk would be assessed to reflect the next phase of the programme once ministerial decisions had been made and funding was officially secured.
- Improvement Plan risk had reduced as a result of the submission of the Improvement Plan to the Secretary of State. The Plan had been approved by the Minister and two commissioners had been appointed.
- The Interim and Future Management of the Council's Leisure Centres had reduced from red to green following an agreement with Sandwell Leisure Trust to continue providing the services in the interim period.



The following was noted in response to members' comments and questions:-

- The Council's period 2 budget monitoring had been reviewed for the 2021/22 financial year and included an estimated budget increase for utilities of 20%. However, due to the current climate with energy markets this uplift was not likely to be sufficient to cover expenses. It was highlighted that this was not a Sandwell specific issue but was a national challenge. It was noted that the inflation rise would be considered as part of the budget planning process for 2023/24 and the potential use of reserves if necessary to allow for flexibility during the current financial year.
- Whilst it was difficult to ascertain the full effect on inflation rises on services and officers were continuing to monitor the situation and its impact on the Borough and its residents.
- The latest data suggested that the Council's expenditure on energy was expected to increase by up to 70% in comparison to the previous financial year.
- The risk relating to the Sandwell Leisure Trust was in respect of the old contract. However, an agreement had been put in place on an interim arrangement, this would be reassessed to identify whether a new risk for the new permanent arrangement was required.
- A national review on Children's Services was conducted by Josh McCallister (Chair of the Independent Review of Children's Social Care). It was advised that the Council would examine and ascertain whether recommendations from the national review had been incorporated in mitigating the current risks within Children's Social Care.
- With regard to the business continuity management risk, damage had occurred to the servers at the Council House which initially resulted in disruption in access to all files across the Council network. Whilst the issue was resolved swiftly, due to the damage, the servers that hosted the Oracle e-Business Suite which hosts the Council's financial system was unusable. Therefore, manual methods of making emergency payments was used in the interim period. It was highlighted that the



Council was looking to upgrade servers to the Oracle cloud system over the next 12 months to prevent issues such as this occurring again in the future.

- As the risk with the business continuity management had increased, the Chair requested that a report on the incident and the mitigation measures implemented as a result be reported to a future meeting of the Committee.
- It was suggested that the current actions and ongoing controls for each risk had timestamps to allow the Committee to monitor the risk register in future.
- The risk in respect of to the compliance with the Data Protection Act 2018, GDPR and Freedom of Information Act 2000 was in relation to the retention of Council documentation. The Cabinet had approved an agreement on retention periods which would hopefully result in a reduction in the overall risk. The Chair informed the Committee that he would determine whether a report on this matter should be brought back to the Committee at a future meeting.
- In relation to the risk associated with the Oracle E-Business, officers were assessing and evaluating tenders for a new implementation partner which would ensure that the required resources were in place. Following the implementation period, the project could progress.

The Chair thanked officers for their attendance.

Resolved:

That, the Committee receive an item at a future meeting regarding the incident relating to the Business Continuity Management Risk Reference (6b 04/18) and the mitigation measures implemented following the incident.



The Committee received and noted the contents of the Improvement Plan.

In response to the Grant Thornton review, Council approved an Improvement Plan in January 2022 to address all 45 recommendations in the report as well as reporting mechanisms to ensure progress was managed effectively. The Council had received the findings of the Chartered Institute of Public Finance and Accountancy (CIPFA) Financial Management Review (January 2022) and LGA Corporate Peer Challenge (March 2022). Following this, the Council received further Statutory Directions from Government which was received in March 2022.

On 7 June 2022, Council approved an Improvement Plan that combined the actions to address not only the Grant Thornton Review, but also the findings of the CIPFA Financial Management Review (January 2022) and the LGA Corporate Peer Challenge (March 2022).

The Improvement Plan provided the organisation with a clear direction for its improvement journey that would enable the continued delivery of the strategic priorities in the Corporate Plan 2021-2025. In addition, the Plan would incorporate measures to address the requirements of the Statutory Direction to strengthen the effectiveness of scrutiny and associated audit functions.

The Value for Money Governance Review identified several specific recommendations relating to audit as follows:

- Key Recommendation 7: Delivering effective Elected Member development training with particular focus on those in key statutory roles, relating to Cabinet, Scrutiny, Standards and Audit functions. In addition, the Member development programme would be reviewed to ensure corporate governance forms part of the training for members with governance roles.
- Improvement Recommendation 14: Inclusion of the Cabinet forward plan on Audit and Risk Assurance Committee and Scrutiny Board agendas to assist with agenda planning.



- Improvement Recommendation I34: Managing the Council's long-term Governance position to focus on its corporate objectives.

Following a review of all the recommendations from the external reviews, key themes were identified to set the focus for the council's improvement journey:

- Organisational Culture
- Corporate Oversight Strategic Direction
- Decision Making
- Procurement and Commercial
- Partnerships and Relationships

Each theme was allocated objectives, milestones, deliverables, and measures of success used to track the Council's progress against expected timescales and achievements.

A detailed delivery plan setting out activity to achieve the deliverables, responsible officer and timescales was allocated to each theme. The delivery plan also set out how specific actions to address recommendations in the various external reviews, thus enabling direct reporting for different audiences as required.

The following was noted in response to members' comments and questions:-

- The Chair stated that a distinct approach to the Improvement Plan had been agreed with the Chair of the Budget and Corporate Scrutiny Management Board to avoid overlap with oversight. Primarily, the Committee would focus on the assurance and risk management of the Plan, whereas the Scrutiny Board would focus on challenging policy and performance.
- The Improvement Plan would regularly be brought before the Committee.
- The Statutory Direction received from Government outlined the requirement for the Council to give due consideration to the options around a four-yearly election cycle.
- A detailed monitoring tool would be reviewed monthly to look at the progress of the Improvement Plan that looked at the actions



and progress of each risk. This would be reported to Cabinet quarterly. This Chair requested that this document be brought before the Committee at a future meeting for review.

- With regard to the governance structure, Improvement Plan Review meeting allowed Chief Officers to monitor the progress against all actions in the Plan on a monthly basis, whilst also considering risks, changes, arising issues and resources pressures.
- The Senior Lead for Service Improvement confirmed that she would produce the governance structure in a visual form and distribute at a future meeting of the Committee.
- Work was being undertaken for the Member Development Plan and was due to be considered by the Ethical Standards and Member Development Committee.
- An online training session on the introduction to internal auditing, counter fraud and risk management had taken place with all Elected Members.
- It was highlighted that it may be useful for Members of the Committee to attend an LGA training course to understand how other local authorities conducted auditing and risk assurance to assist with learning and improvement.

29/22

Improvement Plan Risk Register

The Committee received the Risk Register, which accompanied the Improvement Plan.

The initial risk capture was undertaken by Leadership Team and followed the Corporate format for reporting on risk.

The Strategic Risk Register contained a risk on the Council's Improvement Plan and was currently rated amber.

Within the Improvement Plan Risk Register, there were 12 risks – 3 of which were green, 7 amber and 2 red. The 2 red risks were as follows:



- Investment and Financial Resources – Resource gaps and pressures associated with actions within the Improvement Plan had been identified. On 7th June 2022, Council approved use of Improvement & Capacity Reserve and 2021/22 underspend allocated to the Improvement Plan actions. It was expected that the risk rating would reduce following the recruitment to posts that formed current capacity gaps after the allocation of funding. Resource issues and risks associated with the Improvement Plan were to be reviewed regularly by Leadership Team and register maintained.
- Performance Management Framework (PMF) and Data Quality –Data was collected for the Council’s overall performance management framework and with the Improvement Plan specifically to understand evidence of the progress being made. The implementation of a Performance Management System was under consideration to provide capability for performance management. The Council was analysing methods to turn the evidence of success criteria into a detailed evidence framework which set out which measures were required to be captured and the frequency of review.

The following was noted in response to Members’ comments and questions:-

- In compiling the Improvement Plan, Leadership Team conducted a capture and considered the areas of major risk, as detailed in the Risk Register.
- It was expected that further risks would be added to the Register as the Plan would begin rolling out.
- Each of the risks had been scored according to the standard corporate definition, taking into account the risk of likelihood and severity.

The Chair thanked the Senior Lead for Service Improvement for her attendance.



The Committee noted the Cabinet's Forward Plan, which set out the key decisions that the Cabinet was due to take at forthcoming meetings. The Plan was presented for information and to give the Committee an opportunity to contribute to any items or raise any issues with the Executive.

31/22 **Work Programme**

The Committee noted the work programme for 2022/23.

Resolved that the following items be added to the Committee's work programme for 2022/23:-

- The Business Continuity Management risk as detailed the Strategic Risk Register
- Updates on the actions and progress of risks with the Improvement Plan

Meeting ended at 6:53pm.

Contact: democratic_services@sandwell.gov.uk



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Minutes of Ethical Standards and Member Development Committee

Tuesday 21st June at 3:00pm
in Committee Room 1, Sandwell Council House, Oldbury

Present: Councillor Allcock (Chair)
Councillor Crompton, E M Giles, W Gill, Lewis and Rahman.
Mr John Tew and Mr Richard Phillips (Independent Persons).

Officers: Surjit Tour (Director of Law and Governance – Monitoring Officer), Maria Price (Service Manager-Legal Services), Vanessa Mahersmith (Governance and Business Support Principal Lead & Solicitor) and Trisha Newton (Senior Democratic Services Officer).

27/22 Apologies for Absence

Apologies were received from Councillor G Gill.

28/22 Declarations of Interest

No declarations of interest were made.

29/22 Minutes

The minutes of the meeting held on 22 March 2022 were agreed as a correct record.

30/22 Additional Items of Business

There were no additional items of business to consider.

Appointment to Ethical Standards Sub Committees and Ethical Standards Working Group

The Localism Act 2011 required authorities to adopt arrangements for dealing with complaints about breaches of the Member Code of Conduct. The Council's arrangements for dealing with complaints provided for a Sub-Committee of the Ethical Standards and Member Development Committee to consider investigation reports referred to it by the Monitoring Officer and to conduct hearings (including the imposition of sanctions).

The Committee also considered appointments to the Ethical Standards Working Group, alongside the Chair and Vice Chair, for the municipal year 2022/23.

Resolved:-

- (1) that the membership of the two Ethical Standards Sub-Committees for the 2022/23 municipal year, with flexibility between membership to cater for availability and workload, with delegated powers to carry out the functions set out in the following terms of reference, be approved as set out below:-

Terms of reference of the Ethical Standards Sub Committee

- To consider investigation reports referred to it by the Monitoring Officer.
- To conduct hearings (including the imposition of sanctions).

SUB-COMMITTEE 1		SUB-COMMITTEE 2	
Member	Substitute	Member	Substitute
Allcock	Substitute members taken from remainder of committee	Allcock	Substitute members taken from remainder of committee
Crompton		G Gill	
Lewis		E M Giles	
Jalil		Rahman	
W Gill (or sub)		W Gill (or sub)	
+ Independent Person		+ Independent Person	

- (2) that the Chair and Vice Chair, Councillors E M Giles, W Gill and Rahman be appointed to the Ethical Standards Working Group.

32/22

Government Response to Committee on Standards in Public Life's Ethical Standards Review

In January 2019 the Committee on Standards in Public Life ("CSPL") published its review report into ethical standards. In the report the CSPL made 26 recommendations (24 of which were directed at Government), which included various amendments to legislation as well as a number of examples of best practice that Local Authorities could implement without the legislative changes.

The Committee noted the response of the Government to the recommendations made by the Committee on Standards in Public Life.

33/22

Local Government (Disqualification) Act 2022

The Local Government (Disqualification Act 2022) came into force on 28th June 2022.

The Act amended the current legislation to extend the disqualification criteria for Local Authority members (Councillors, Mayors of Combined Authorities, the Mayor of London and London Assembly Members).

Its provisions included disqualifying a person, depending on the status of the relevant order or notification, from being elected or being a member of a local authority or the mayor for the area of a combined authority in England, if they were subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 or a sexual harm prevention order, sexual risk order or related relevant orders.

In relation to criminal activity (not related to election practices) the current disqualification criteria for Councillors, directly elected Mayors and London Assembly Members was that they were disqualified from standing for election or holding public office if they had been convicted of any offence and had received a sentence of imprisonment (suspended or not) for a period of not less than three months without the option of a fine.

As a result of new offences and new sentencing guidelines, some sexual offences did not result in a custodial sentence. Therefore, councillors convicted of offences, which previously would have resulted in disqualification, were now able to retain their role if elected or run for election even if recently convicted.

The Act now ensured that those who have unintentionally fallen out of scope were now included.

The Act ensured that those who hold public office are held to the highest standards of integrity and conduct in public life and supports the Nolan Principles.

The Committee noted the details of the Act.

34/22 **Gifts and Hospitality Register**

No new entries had been made to the Gifts and Hospitality Register.

35/22 **Complaints Update**

The Committee received an update in relation to complaints received under the Member Code of Conduct arrangements.

36/22 **Work Programme**

The Committee considered the draft work programme for 2022/23.

The Committee requested that the report on DBS checks be brought forward to the September meeting and this matter would be swapped with the Network Opportunities with Neighbouring Authorities item in the programme.

Resolved that the work programme for 2022/23 be approved and kept under review during the year.

Meeting ended at 3.35pm

Contact: democratic_services@sandwell.gov.uk

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Written Questions from the public at Meetings of the Council

(1) Where any member of the public wishes to give written notice of a question to be asked at a meeting of the Council to any of the persons listed below, he/she/they shall give notice of the question, in writing, to the Proper Officer no later than 12.00 noon on the eighth working day before the day of the meeting to which the question is to be asked, but not including the day of the meeting itself: -

- (a) the Mayor (or in his/her/their absence the person presiding);
- (b) the Leader of the Council;
- (c) any other member of the cabinet;
- (d) any person appointed to preside at a committee or sub-committee
- (e) the member or members of the Council nominated pursuant to Section 41 of the Local Government Act 1985, on the discharge of the functions of any joint authority or any joint board of which the Council is a constituent authority;
- (f) a nominated member appointed by the Council to the board of Sandwell Homes or of Sandwell Sports and Leisure Trust;
- (g) a member of the Council who is, as a result of action taken by or on behalf of the Council, a member or director of any company;

(2) Every question under (1) above, must be relevant to some matter to which the Council has functions and responsibilities, or which affects the Borough, or part of it, or its citizens or a number of them. Provision for the asking of such questions shall be included on the agenda for each ordinary meeting of the Council. Copies of all questions will be circulated to all members of the Council with the summons and agenda for the meeting. Copies will also be available to the public attending the meeting.

(3) A member may not give notice of more than one question for any particular meeting.

(4) The Proper Officer may reject a question if it - is not about a matter for which the Council has functions and responsibilities, or which does not affect the Borough, or part of it, or its citizens or a number of them; - in the opinion of the Monitoring Officer, is or is likely to be defamatory, and/or inflammatory, and/or frivolous and/or offensive; - is substantially the same as a question that has been put at a meeting of the Council in the last six months;

(5) The Proper Officer will keep a record of each question submitted, which will be open to public inspection and retained for a period of 12 months. Details of all rejected questions will include the reasons for their rejection.

(6) A member of the public may withdraw a question he/she/they has submitted by giving written notice to the proper officer. That member shall then be entitled to give notice of an alternative question providing this is done within the timescales set out in this Standing Order.

(7) In special circumstances, if the person presiding at the meeting considers that there is merit in a question(s) being asked, although the required notice has not been given, he/she/they may permit the question(s) to be asked provided that the question is given to the Proper Officer not later than 12 noon on the day of the meeting.

(8) Every question shall be asked as reproduced under Standing Order 2 and answered without discussion. The person to whom it was put may, however, seek clarification as to its meaning. The person to whom the question has been asked may decline to answer it.

(9) Where the member having given notice of the question is not present at the meeting, the person presiding will direct that the question be deferred to the next ordinary meeting of the Council or that a written response be provided

(10) A member asking a question under this Standing Order may, once their question has been responded to, ask one relevant supplementary question which must arise directly out of the original question, whether it is answered or not, or arising from the reply. The question must be put as a direct question and not preceded by a statement. The person presiding at the meeting will determine if the supplementary question is valid in accordance with the criteria in paragraph (4) above. The supplementary question shall otherwise be responded to without discussion. The person to whom it is asked may ask for clarification or further detail of the meaning of the question.

(11) A response to a question or supplementary question may be given by the person to whom it has been asked, or by a person on his/her/their behalf, in the form of:- (a) an oral response; (b) a reference to information contained in some official publication; (c) a written response, to the member asking the question