

# Council



Listening Learning Leading

Contact Officer: Steven Corrigan

Tel: 01235 422526

E-mail: [steven.corrigan@southoxon.gov.uk](mailto:steven.corrigan@southoxon.gov.uk)

Textphone: 18001 01235 422526

Date: 9 May 2018

Website: [www.southoxon.gov.uk](http://www.southoxon.gov.uk)

## **Summons to attend the annual meeting of Council**

to be held on

**THURSDAY 17 MAY 2018 AT 6.00 PM**

at

**THE FOUNTAIN CONFERENCE CENTRE, HOWBERY PARK, CROWMARSH  
GIFFORD**

Alternative formats of this publication are available on request. These include large print, Braille, audio cassette or CD, and email. For this or any other special requirements (such as access facilities) please contact the officer named on this agenda. Please give as much notice as possible before the meeting.

A handwritten signature in cursive script that reads 'M Reed'.

MARGARET REED  
Head of Legal and Democratic

Note: Please remember to sign the attendance register.

# Agenda

## *Map*

A map showing the location of Howbery Park is attached, as is a plan showing the location of the Fountain Conference Centre on the Howbery Park site.

### **1 Election of chairman**

To elect a chairman of Council for the municipal year 2018/19.

### **2 Appointment of vice-chairman**

To appoint a vice-chairman of Council for the municipal year 2018/19.

### **3 Apologies for absence**

To record apologies for absence.

### **4 Minutes (Pages 6 - 14)**

To adopt and sign as a correct record the Council minutes of the special meeting held on 27 March and the meeting held on 19 April 2018 – **attached**.

### **5 Declarations of disclosable pecuniary interest**

To receive any declarations of disclosable pecuniary interests in respect of items on the agenda for this meeting.

### **6 Urgent business and chairman's announcements**

To receive notification of any matters which the chairman determines should be considered as urgent business and the special circumstances which have made the matters urgent, and to receive any announcements from the chairman.

### **7 Public participation**

To receive details of members of the public who have registered to address Council on items on the agenda.

### **8 Appointments to committees, panels and joint committees for 2018/19 (Pages 15 - 21)**

To consider the report of the head of legal and democratic on the appointment to those committees required to be politically balanced together with the Community Grants Panel, Licensing Acts Committee and joint committees and to authorise any consequential changes to the constitution (**attached**).

## **9 Changes to the council's constitution (Pages 22 - 56)**

To consider the report of the head of legal and democratic on proposed changes to the council's constitution - attached.

## **10 Report of the leader of the council**

MARGARET REED

Head of Legal and Democratic



Birmingham airport  


B4009 Watlington  
M40 J6

A4074 Oxford  


A4130 Didcot  




Sat Nav: OX10 8BA

Brightwell

Benson

Wallingford

Centre for Ecology & Hydrology  
South Oxfordshire District Council

Crowmarsh Gifford

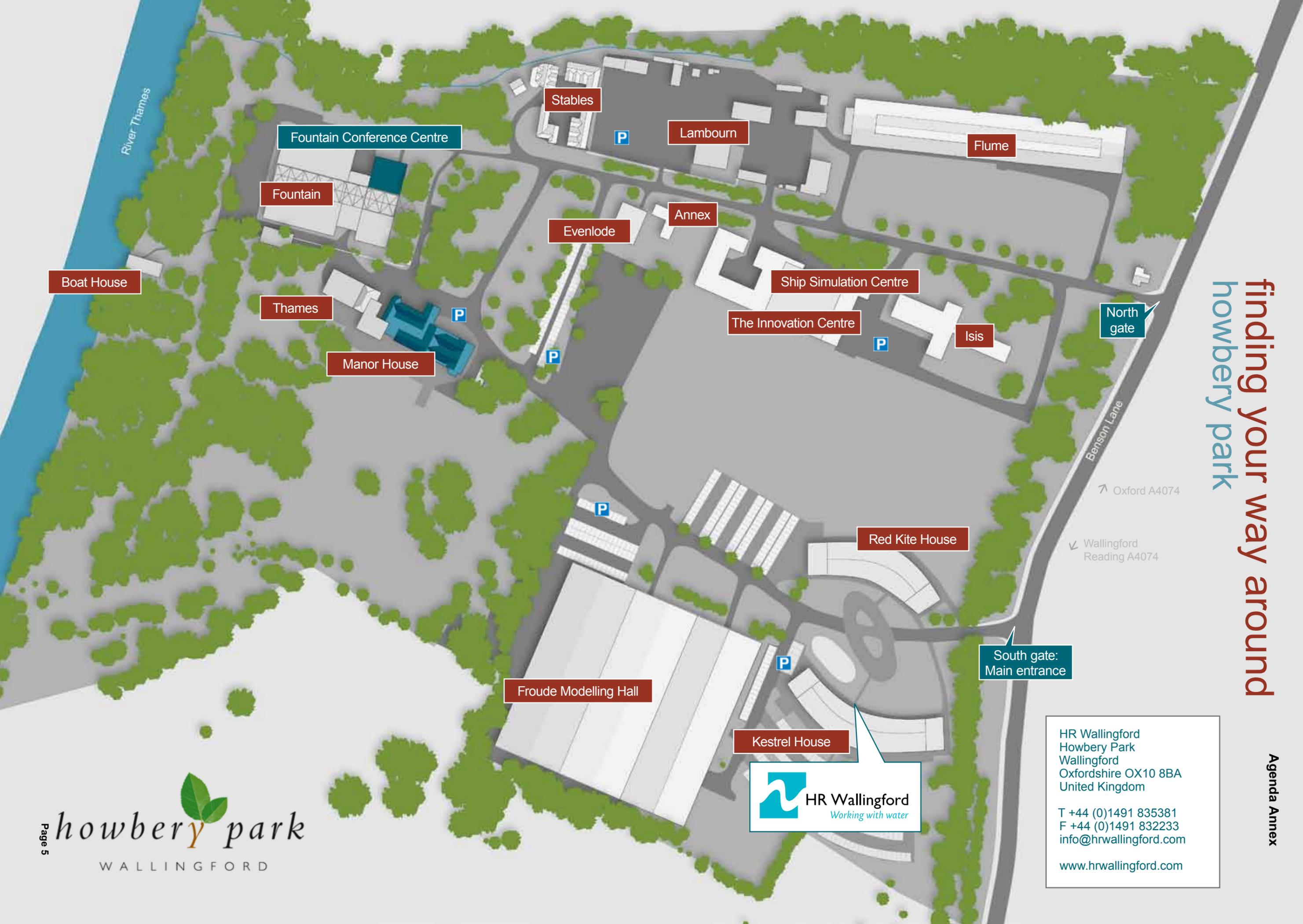
A4130 Henley  
M40 J4 

A4074 Reading  


London Heathrow  


Agenda Annex

finding your way around  
howbery park



HR Wallingford  
Howbery Park  
Wallingford  
Oxfordshire OX10 8BA  
United Kingdom  
  
T +44 (0)1491 835381  
F +44 (0)1491 832233  
info@hrwallingford.com  
  
www.hrwallingford.com





Listening Learning Leading

# Minutes

OF A SPECIAL MEETING OF THE

# Council

HELD ON TUESDAY 27 MARCH 2018 AT 7.00 PM

THE FOUNTAIN CONFERENCE CENTRE, HOWBERY PARK, CROWMARSH  
GIFFORD

## Present:

Jeannette Matelot (Chairman)

Anna Badcock, Joan Bland, Felix Bloomfield, Kevin Bulmer, Nigel Champken-Woods, Steve Connel, John Cotton, Pat Dawe, David Dodds, Stefan Gawrysiak, Elizabeth Gillespie, Will Hall, Tony Harbour, Paul Harrison, Lorraine Hillier, Elaine Hornsby, Mocky Khan, Sue Lawson, Lynn Lloyd, Imran Lokhon, Jane Murphy, Toby Newman, Caroline Newton, David Nimmo-Smith, Richard Pullen, Bill Service, David Turner, John Walsh and Ian White

## Apologies:

Charles Bailey, Anthony Nash, Robert Simister, Ian Snowdon and Alan Thompson tendered apologies.

**Officers:** Steven Corrigan, Adrian Duffield, Holly Jones, Margaret Reed and Mark Stone

## 87 Declarations of disclosable pecuniary interest

None.

## 88 Urgent business and chairman's announcements

There were no urgent items.

The chairman agreed, in accordance with provisions in council procedure rule 44, to allow councillors to speak for longer than five minutes. Council agreed to suspend council procedure rule 45 insofar as it limits councillors to speaking once.

On behalf of Council the chairman welcomed John Walsh to the Cabinet as deputy leader of the council and Cabinet member for finance.

She thanked those who had attended her recent dinner, at which £2,700 was raised for Oxfordshire Homeless Pathways.

## 89 Public participation

The chairman advised that a number of members of the public had registered to address Council. She extended the public speaking time to allow each member of the public who had registered to speak three minutes to make their address.

## 90 South Oxfordshire Local Plan

During the course of debate on this item, Council agreed, prior to the expiry of two and a half hours, in accordance with council procedure rule 12, to extend the duration of the meeting by half an hour.

Toby PejkoVIC addressed Council regarding the site allocation at Culham. He referred to the new Objectively Assessed Need figures (OAN) which could reduce the number of houses required in South Oxfordshire and allow for the removal of both the Chalgrove and Culham sites from the Local Plan. He suggested that new housing should be located in towns rather than villages.

Ann Pritchard, Chairman of Chalgrove Parish Council, addressed Council regarding the site allocation at Chalgrove airfield. She stated that the proposed development represented the least sustainable of all the options in the Local Plan and is not deliverable because there is no agreement to sell the site and the airfield is used by the RAF for training purposes and as an emergency airstrip.

Caroline Baird, representing Culham Parish Council addressed Council regarding the site allocation at Culham. She stated that the site, within the Green Belt, should be retained as open space to protect against urban sprawl. The site is unsustainable and is only included as a means to fund a river crossing. In her view, the Local Plan would be found unsound by a planning inspector and the council should delay submission until the revised OAN figures are known.

Professor Richard Harding, representing the Campaign to Protect Rural England, addressed Council. He stated that the current plan is undeliverable. The population growth rate in Oxfordshire is not sufficient to justify the proposed level of house building. He suggested that the council should revisit the plan in light of the government's revised housing numbers, which could reduce both South Oxfordshire's housing need figures and Oxford City's unmet housing need figures and reduce the need to build in the Green Belt.

Ken Glendinning, representing Homes England, addressed Council on their commitment to the delivery of the Chalgrove airfield site for the delivery of housing with the required infrastructure, the provision of a school and a healthcare facility. Homes England remain hopeful of an agreement with Martin-Baker but would consider the use of a Compulsory Purchase Order (CPO).

Ann Voss, representing Cuxham with Easington Parish, addressed Council regarding the site allocation at Chalgrove airfield. She urged Council to support Option Two as set out in the report of the head of planning. The Chalgrove development would negatively impact on Cuxham, particularly due to the increase in traffic. This impact is recognised by Homes England but the mitigation measures proposed would damage the environment and setting

of the village. She questioned the deliverability of the site, the use of CPO powers and the assertion that the housing would address Oxford City's housing need.

Christian Leigh, representing residents of the Rofford and Little Milton, addressed Council regarding the site allocation at Chalgrove airfield. He questioned the sustainability of the site and the council's faith in Homes England's ability to acquire the site. Martin-Baker had stated it had no intention of agreeing to a termination of their lease on part of Chalgrove Airfield. Any attempt to compulsorily purchase any part of their lease would be opposed. In addition, the airfield is a recognised defence industry site.

Graham Bell, representing Chalgrove Airfield Action Group, addressed Council regarding the site allocation at Chalgrove. He endorsed Oxfordshire County Council's view that the site does not represent a viable and deliverable solution as a strategic allocation and questioned the positive statements from Homes England. He supported the recommendation of officers to seek alternative sites and stated that support for Option One did not offer any contingency.

Sue Roberts addressed Council on the Local Plan. She questioned the need for the level of housing proposed and suggested that this was being used to fund infrastructure improvements. However, she questioned whether the proposed infrastructure would even address the current shortfall. She called for a reduction in the number of houses required in the Local Plan.

Ian Hill, Chairman of Watlington Parish Council, addressed Council on the site allocation at Chalgrove. He noted that the identified infrastructure money from the site would fund a Watlington bypass to mitigate against the increase in traffic. However, he stressed that the provision of a bypass should not be dependent on the Chalgrove development. The current traffic congestion in Watlington and poor air quality needed addressing.

Council considered Cabinet's recommendations, made at its meeting on 20 March 2018, on the Local Plan. Copies of the report considered by Cabinet and the supplementary papers for both Cabinet and Council meetings were made available to councillors and published on the council's website. The chairman advised that if Council wished to discuss the confidential appendix, it would need to vote on the exclusion of the public. In accordance with the council's budget and policy framework procedure rules, if Council objected to the proposals Cabinet would be required to reconsider in light of the objections. Cabinet could then submit revised proposals to Council, together with the reason for any amendments or inform Council of any disagreement it has with its objections. Council would then reconsider the matter. The decision taken at that meeting would be final and take effect immediately.

John Cotton moved and John Walsh seconded the recommendations of Cabinet to:

1. retain Chalgrove airfield as a proposed allocation in the South Oxfordshire Local Plan;
2. adopt Option One, set out in the report of the head of planning to Cabinet on 20 March 2018, and to proceed to the formal submission of the South Oxfordshire Local Plan for independent examination; and
3. authorise the head of planning, in consultation with the Cabinet member for the Local Plan, to make any necessary minor amendments and corrections; including the identification of any saved policies as considered appropriate prior to the

submission of the South Oxfordshire Local Plan to the Secretary of State, for the purpose of independent examination and leading up to and during the examination.

Those councillors who supported Cabinet’s recommendations expressed the view that Option One would allow the council to proceed to the formal submission of the Local Plan. Any further delay in the submission of the Local Plan would create further uncertainty and could give rise to further speculative planning applications. The redevelopment of the Chalgrove airfield site for housing would represent a good re-use of land. Homes England (HE) is committed to the delivery of the site and funding the necessary infrastructure improvements to facilitate the development which would also benefit existing communities in the area. Whilst acknowledging that there are risks associated with the deliverability of the site councillors expressed the view that Options Two and Three would delay the production of the Local Plan, undo the good progress made and potentially lead to greater threats to the countryside. Proceeding with Option One would avoid delays to the submission of the Local Plan, reduce the uncertainty about how the Housing Delivery Test and Objectively Assessed Need might impact upon the housing land supply for South Oxfordshire, and reduce speculative planning applications.

However, other councillors expressed the view that Option One is too reliant on the ability of HE to acquire the Chalgrove airfield site for housing. The site is not deliverable. Since the Council meeting in September Martin-Baker had, in letters dated 5 December 2017 and 22 March 2018, confirmed that negotiations with HE had finished without agreement, that their operational requirements for the site were not going to change, that there is no prospect of a negotiated settlement and that they had no intention of continuing discussions with HE. If HE decides to use compulsory purchase order powers (CPO) to obtain the Chalgrove Airfield site, this could cause further delay to the delivery of housing on the site and would be vigorously resisted by Martin-Baker. This introduces a significant risk because an inspector may conclude that reliance on CPO powers to secure the land for development would not meet the requirement for available and deliverable sites. This potential delay to securing the land could render the Local Plan unsound.

A number of councillors raised concern that HE had not provided assurances that the required infrastructure funding would be provided to mitigate the impact of the development of the Chalgrove airfield site on the surrounding area. Reference was made to Oxfordshire County Council’s concerns regarding this funding gap.

Other councillors expressed the view that the use of the site for housing would impact on its use by RAF Benson. Any loss of the airfield could also have a detrimental impact on both the national interest and the viability of a strategic defence supplier.

Some councillors also expressed concern regarding the inclusion of sites in the Green Belt, notably Culham. Alternative sites should be investigated.

In accordance with Council Procedure Rule 67, which provides for a recorded vote if three members request one, the chairman called for a recorded vote on the motion, which was declared lost with the voting as follows:

<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
John Cotton	Anna Badcock	Felix Bloomfield
Pat Dawe	Joan Bland	Sue Lawson
Elizabeth Gillespie	Kevin Bulmer	Bill Service
Will Hall	Nigel Champken-Woods	

<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
Tony Harbour	Steve Connel	
Elaine Hornsby	David Dodds	
Imran Lokhon	Stefan Gawrysiak	
Jeannette Matelot	Paul Harrison	
Richard Pullen	Lorraine Hillier	
John Walsh	Mocky Khan	
	Lynn Lloyd	
	Jane Murphy	
	Toby Newman	
	Caroline Newton	
	David Nimmo-Smith	
	David Turner	
	Ian White	
<b>10</b>	<b>17</b>	<b>3</b>

Whilst acknowledging that there are risks with pursuing Options Two and Three, as set out in the report of the head of planning to Cabinet on 20 March, the majority of councillors expressed the view that this required further consideration.

David Turner moved and Paul Harrison seconded a motion to refer the matter back to Cabinet to consider Options Two and Three set out in the head of planning's report to Cabinet on 20 March 2018 and submit recommendations to Council for consideration.

**RESOLVED:** to refer the matter back to Cabinet to re-consider Options Two and Three in the head of planning's report to cabinet on 20 March 2018 and bring recommendations to Council to progress the South Oxfordshire Local Plan.

The meeting closed at 9.40pm

Chairman

Date

# Minutes

OF A MEETING OF THE

# Council



Listening Learning Leading

HELD ON THURSDAY 19 APRIL 2018 AT 6.00 PM

THE FOUNTAIN CONFERENCE CENTRE, HOWBERY PARK, CROWMARSH  
GIFFORD

## Present:

Jeannette Matelot (Chairman)

Anna Badcock, Joan Bland, Felix Bloomfield, Kevin Bulmer, Steve Connel, Pat Dawe, Anthony Dearlove, David Dodds, Stefan Gawrysiak, Tony Harbour, Paul Harrison, Lorraine Hillier, Mocky Khan, Lynn Lloyd, Imran Lokhon, Jane Murphy, Toby Newman, Caroline Newton, David Nimmo-Smith, Bill Service, Ian Snowdon, Alan Thompson, David Turner, John Walsh and Ian White

## Apologies:

Charles Bailey, Nigel Champken-Woods, John Cotton, Elizabeth Gillespie, Will Hall, Elaine Hornsby, Sue Lawson, Anthony Nash and Robert Simister tendered apologies.

## Officers:

Steven Corrigan, Andrew Down, William Jacobs, Margaret Reed, Mark Stone and Chris Wheeler

## 91 Minutes

**RESOLVED:** to approve the minutes of the meeting held on 15 February 2018 as a correct record and agree that the chairman sign them as such.

## 92 Declarations of disclosable pecuniary interest

None.

## 93 Urgent business and chairman's announcements

There were no urgent items. The chairman provided housekeeping information.

On behalf of the council the chairman made the following statement following the resignation of Councillor Cotton as leader of the council:

“On behalf of the council, I would like to take the opportunity to say thank you to Councillor Cotton who has served as the council’s leader for the past three and a half years.

John had only been our leader for two months when our headquarters at Crowmarsh Gifford were burned to the ground in an arson attack and he did an admirable job of steering us through this very difficult time and the months that followed. He was a great support for councillors and officers and I am sure we are all grateful to him for this.

I think it’s fair to say that John has displayed a very strong community focus, encouraging all those within the council to support various schemes that have brought benefits to communities and the voluntary sector.

There have been a great deal of challenges facing local government during his time as leader, with changes at national level and the appointment of a new prime minister within months of him taking over the job. I know that John has done what he has considered best for South Oxfordshire throughout.

Being a council leader is no mean feat and I hope you will all join me in expressing your thanks to him and to wish him well with whatever the future holds for him”.

Councillor Jane Murphy, Conservative Group Leader, responded with the following statement:

“I have been fortunate to work with John over several years and would like to echo these thanks as leader of the Conservative Group.

John has been a district councillor for 19 years, a member of various committees and in addition to his role as leader, he held cabinet responsibility for planning policy and our key external partnerships. As the chairman pointed out, he has displayed his community focus with support for volunteering and schemes such as councillor grants and the recently launched SO Charitable Lottery, which I know are supported by many in our local communities. In addition to his council roles, he has remained an active member of his local community, being a strong voice and champion for the regeneration of Berinsfield and always maintaining a strong commitment to his role as a beaver scout leader.

I am sure that John will continue to passionately support his local electorate, as he carries on in his role as ward member for Berinsfield, Dorchester and Drayton St Leonard. I am equally sure you’ll all want to join me in wishing him all the best and to support the comments of the chairman”.

On behalf of Council the chairman thanked Richard Pullen, former councillor for the Benson and Crowmarsh ward, for his service to the council both as a ward councilor and as the chairman of the Scrutiny Committee.

## **94 Public participation**

None.

## **95 Petitions**

None.

## 96 Dorchester-on-Thames Neighbourhood Development Plan

Cabinet considered the recommendations of Cabinet, made at its meeting on 5 April 2018, on making the Dorchester-on-Thames Neighbourhood Development Plan part of the development plan for South Oxfordshire.

### RESOLVED to:

1. make the Dorchester-on-Thames Neighbourhood Development Plan so that it continues to be part of the council's development plan; and
2. authorise the head of planning, in agreement with the Qualifying Body (Dorchester-on-Thames Parish Council), to correct any spelling, grammatical, typographical or factual errors, together with any improvements from a presentational perspective.

## 97 Election of leader of the council

**RESOLVED:** to elect Jane Murphy as leader of the council for a term ending on the date of the annual meeting of Council in May 2019.

## 98 Appointments to the Cabinet

Jane Murphy appointed Felix Bloomfield as the deputy leader of the council and Anna Badcock, Kevin Bulmer, David Dodds, Paul Harrison, Lynn Lloyd, Caroline Newton and Bill Service as Cabinet members with portfolios as follows:

Jane Murphy: Leader and communications

Felix Bloomfield: Deputy leader and planning

Anna Badcock: Legal and democratic

Kevin Bulmer: Corporate services

David Dodds: Finance

Paul Harrison: Development and regeneration

Lynn Lloyd: Community services

Caroline Newton: Housing and environment

Bill Service: Partnership and insight

She appointed Cabinet members to the following:

Health and Wellbeing Board – Anna Badcock

Oxfordshire Growth Board – Jane Murphy with all other cabinet members as substitutes

Safer Oxfordshire Partnership Oversight Committee – Caroline Newton

South and Vale Community Safety Partnership – Caroline Newton

## 99 Report of the leader of the council

Councillor Murphy stated that she was very proud to have been elected as leader of the council.

She set out what she hoped to achieve as leader. She would seek to maintain and improve the council's deserved reputation as an efficient and effective organisation that delivers excellent services that help to maintain the high quality of life for all residents.

She would put greater emphasis on providing housing support where it is most needed by encouraging more key worker housing in South Oxfordshire to support other public services attract the very best staff and by providing appropriate and necessary housing shelters in line with national policy.

She would build on the work already begun to enable residents to volunteer more, including looking at the possibility of a community incentive scheme where residents would receive rewards for their voluntary work.

She expressed the view that the council does not make the most of some of the best features of the district particularly the River Thames. The council would consider employing a resource to help unlock the potential of the river and make the most of the thousands of people using it to pass through the district. This will help boost the local economy and provide business opportunities for residents. She hoped to see the previously announced environmental enhancement team become a reality.

She stated that she would work to improve key working relationships with surrounding districts, Oxfordshire County Council and others, to progress a number of very important ongoing projects including securing Housing Infrastructure Fund (HIF) funding to support the infrastructure needed to deliver Didcot Garden Town and the Local Plan, which will shape the development of the district for years to come. She would ensure the council fully engages with the National Infrastructure Commission on the work they are doing along the Oxford–Cambridge corridor to ensure that South Oxfordshire's voice is heard clearly by those making the key decisions that will impact all residents.

She personally pledged to commit to work constructively with all members of the council without exception, regardless of differing points of view or political party. All councillors are elected to make South Oxfordshire a better place for residents. To achieve this councillors must work together and constructively with officers to deliver the positive outcomes.

## 100 Questions on notice

None.

## 101 Motions on notice

None.

The meeting closed at 6.15pm

Chairman

Date

# Council report



Report of Head of Legal and Democratic

Author: Susan Harbour

Tel: 01235 422525

E-mail: susan.harbour@southandvale.gov.uk

To: COUNCIL

DATE: 17 May 2018

## Appointments to committees, panels and joint committees 2018/19

### Recommendations

That Council:

1. appoints the committees and panels for the 2018/19 year, allocates seats to each political group and appoints councillors and substitutes to sit on them in accordance with paragraphs 8-12 of this report and as set out in the schedule circulated at the meeting;
2. appoints chairmen and vice-chairmen as set out in the schedule circulated at the meeting;
3. appoints councillors and substitutes to the Community Grants Panel, in accordance with paragraphs 13-14 of this report and as set out in the schedule circulated at the meeting.;
4. appoints councillors to the Licensing Acts Committee in accordance with paragraphs 15-17 of this report and as set out in the schedule circulated at the meeting;
5. appoints a representative and a substitute on the Oxfordshire Joint Health Overview and Scrutiny Committee;
6. appoints a representative and an observer substitute on the Thames Valley Police and Crime Panel;
7. appoints three representatives to the Oxfordshire Growth Board Scrutiny Panel;
8. authorises the head of legal and democratic to make appointments to any vacant committee or panel seat and substitute positions in accordance with the wishes of the relevant group leader;
9. authorises the head of legal and democratic to amend the constitution as necessary to reflect the arrangements set out in this report.

## Purpose of report

1. This report invites Council to agree appointments to those committees required to be politically balanced together with the Community Grants Panel and the Licensing Acts Committee. It also invites Council to make appointments to joint bodies.

## Background

2. The Council is required by the Local Government and Housing Act 1989 to appoint committees, review the political balance and to appoint councillors to the committees annually.
3. In summary the Council has a duty to ensure the following principles are adhered to:
  - (i) not all seats are allocated to the same political group
  - (ii) a majority group should get the majority of seats on each committee
  - (iii) the seats allocated to groups on a committee reflect the membership of the Council as a whole
  - (iv) the allocation of the total number of seats on all committees reflects the membership as a whole.
4. Ordinary committees are those that have decision-making powers but excluding the Licensing Acts Committee.

## Strategic Objectives

5. This report supports the council's corporate plan objective of providing services that reflect residents' needs. It is also in line with the council's requirement to review the political complexion of committees and other bodies, having regard to the Local Government and Housing Act 1989.

## Political balance

6. The number of seats held by the various political groups is currently as follows:

Conservative	32	(88.89%)
Opposition Forum Group	3	(8.33%)
Vacancy	1	(2.78%)

7. The Local Government (Committees and Political Groups) Regulations 1990 require a constituted political group to be two or more members.

## Composition of committees

8. The ordinary committees and panels that are required to be politically balanced both individually, and overall, are set out below.

Committee	Members	Comments
South Scrutiny Committee	9	
Joint Scrutiny Committee	5	10 in total with Vale of White Horse District Council
Joint Audit and Governance Committee	4	8 in total with Vale of White Horse District Council
Planning Committee	11	
General Licensing Committee	12	
Community Governance and Electoral Issues Committee	6	
Appeals Panel (NNDR and Housing)	5	
Joint Staff Committee	3	6 in total with Vale of White Horse District Council
<b>Totals</b>	<b>55</b>	

- The membership of the General Licensing Committee and the Licensing Acts Committee are the same, although they are two separate entities. This allows for a sufficiently large, well trained pool of councillors from which to draw the Taxi Licensing and Licensing Panels, and avoids confusion as to which members are on which committee. These committees may appoint the same, or different chairmen and vice chairmen.
  - The co-chairs of the Joint Scrutiny committee should be the same as the chairs of the district Scrutiny committees to eliminate potential conflict around the call-in arrangements and work programmes.
9. The terms of reference of the council's committees and panels are set out in the constitution.
10. The political balance calculation and the entitlements to seats on committees are set out in the tables below. Fractional entitlements of less than one half are rounded down and entitlements of one half or more are rounded up. Some adjustments must be made to ensure that the overall percentage of seats is correctly apportioned.

<b>Group</b>	<b>Group members</b>	<b>Total of council</b>	<b>Total number of committee seats</b>
Conservative	32	88.89%	49
Opposition Forum Group	3	8.33%	5
Vacancy	1	2.78%	0
<b>TOTAL</b>	<b>36</b>	<b>100%</b>	<b>54 (+1) *</b>

\* one seat remains unallocated to any political group

<b>Committee</b>	<b>Total number of seats</b>	<b>Conservative</b>	<b>Opposition Forum Group</b>
Scrutiny	9	8	1
Planning	11	10	1
General Licensing Committee	12	11	1
Appeals Panel	5	4	0
Joint Scrutiny	5	4	0
Joint Audit and Governance	4	4	0
Community Governance and Electoral Issues Committee	6	5	0
Joint Staff Committee	3	3	0
<b>Total</b>	<b>55</b>	<b>49</b>	<b>3 (+2) **</b>

\*\* Three seats remain vacant – one each on the Appeals Panel, the Joint Scrutiny Committee and the Community Governance and Electoral Issues Committee. Council needs to allocate these three seats. To obtain balance across the committees and overall, the Opposition Forum Group must gain two seats.

11. If the Council wishes to allocate any seats not in accordance with the political balance requirements it can only do so if no councillor votes against the proposal.

## **Substitutes**

12. Each political group is entitled to the same number of preferred substitutes as the number of ordinary seats it holds on a committee or panel, and up to a maximum of three preferred substitutes where it has fewer than three members on a committee

or panel. All substitutes for regulatory committees must have met the relevant training requirement, regardless of whether they are preferred or other substitutes.

### **Community Grants Panel**

13. There is a maximum of nine seats (balanced politically) on the Community Grants Panel. This panel is not subject to the regulations detailed in paragraph 3 of this report and, therefore, has no effect on the overall allocation of seats. For this panel to be politically balanced alone, 8 seats are allocated to the Conservatives and 1 seat is allocated to the Opposition Forum Group.
14. In accordance with the Council's constitution, each political group is entitled to substitutes as detailed in paragraph 12 above.

### **Licensing Acts Committee**

15. The Licensing Acts Committee is a statutory committee and is not required to be included in the calculation of political balance. The whole committee meets rarely to deal with licensing and gambling policy matters but a membership of 12 provides a pool of councillors from which panels of three can be drawn to deal with hearings relating to premises licence applications and reviews, and gambling matters.
16. Council has previously agreed to appoint a committee in accordance with the political balance of the Council. The membership will mirror the membership of the General Licensing Committee and will, therefore, be politically balanced but will not in itself contribute to the total political balance of the council's committees.
17. As a statutory committee with a specified membership substitutes may not be appointed.

### **Eligibility to sit on committees and panels.**

- Any member of the council may be appointed to any committee with the following exceptions and caveats:
- No member of Cabinet may sit on any Scrutiny Committee;
- No member of Cabinet may sit on the Joint Audit and Governance Committee;
- No member of Cabinet may sit on the Planning Committee;
- No member of Cabinet may sit on the Community Grants Panel;
- The Chairman or Vice Chairman of Council may not be the Chairman or Vice Chairman of any committee or panel;
- No Cabinet member may be the Chairman or Vice Chairman of any committee or panel with the exception of the Joint Staff Committee;
- Most panels meet during the daytime, and only members who have some daytime availability should be selected for these panels. This includes General Licensing Committee and Licensing Acts Committee, which do most of their work through daytime panels.

## **Appointments**

18. Officers have invited group leaders to submit the names of councillors they wish to sit on each of the above bodies. A table of nominations will be circulated at the meeting.

## **Joint Health Overview and Scrutiny Committee**

19. Council is invited to appoint a representative and a named substitute to the Oxfordshire Joint Health Overview and Scrutiny Committee.

## **Thames Valley Police and Crime Panel**

20. Council is invited to appoint a representative to the Thames Valley Police and Crime Panel. The constitution of the panel does not provide for formally appointed substitutes but Council may appoint one in an observer capacity.

## **Appointments to sub groups of the Oxfordshire Growth Board**

21. The Oxfordshire Growth Board is now responsible for delivery of the Oxfordshire Housing and Growth Deal which was agreed by all Oxfordshire authorities and Government in February 2018. The Growth Board terms of reference have been updated to reflect these new responsibilities and new programmes of work required to deliver the commitment in the Deal.

## **Oxfordshire Growth Board Advisory Sub Groups**

22. The terms of reference establish advisory sub groups to the Growth Board to oversee programmes of work on infrastructure, housing and the Joint Statutory Spatial Plan. The purpose of the sub groups is to oversee the programmes of work to deliver the commitments in the Deal, to monitor progress against the key milestones and make recommendations to the Growth Board on decisions required. It is expected that the sub groups will normally meet on a quarterly basis.
23. The advisory sub groups will be made up of elected member representatives from each of the constituent councils appointed by the leader of that council and other representatives as agreed by members of the Growth Board Joint Committee. The chairmen of the sub-groups will be appointed by the Growth Board and normally drawn from the voting membership of the Growth Board acting as an independent chairman. The leader of the council will advise of the nominations and substitutes in their leader's scheme.

## **Oxfordshire Growth Board Scrutiny Panel**

24. The terms of reference also establish a new Growth Board Scrutiny Panel to enable effective and coordinated scrutiny of Growth Board functions and decisions. The Scrutiny Panel will be non-statutory to enable flexibility for the constituent councils to reflect local scrutiny membership. The ability of the constituent council scrutiny committees to scrutinise the Growth Board will remain. The terms of reference and working arrangements for the Scrutiny Panel will be developed with input from the

scrutiny committee chairmen of the individual councils. The chairman will be elected by the members of the Scrutiny Panel.

25. As a non-statutory panel, the Scrutiny Panel does not need to be politically balanced. It is suggested that Council appoints two Conservative and one Opposition Forum representatives to reflect the membership of the district Scrutiny Committee. There is no provision for substitutes.
26. Council is invited to appoint three representatives to the Scrutiny Panel.

### **Financial implications**

27. There are no direct financial implications.

### **Legal implications**

28. These are set out in the body of the report.

### **Conclusion**

29. In deciding the committees and panels it wishes to establish for the 2018/19 year, Council is required to allocate seats to political groups in the same proportion as they hold on the council as a whole. Against that background, Council is invited to establish the committees and panels set out in the table in paragraph 8 of this report and to appoint councillors to them. Council is also invited to appoint councillors to the Community Grants Panel and the Licensing Acts Committee and to appoint representatives to the Oxfordshire Joint Health Overview and Scrutiny Committee, the Thames Valley Police and Crime Panel and the Oxfordshire Growth Board Scrutiny Panel. If all committee and panel seats and substitute places are not filled at the meeting, Council is invited to delegate authority to the head of legal and democratic to make appointments in accordance with the wishes of the relevant group leader. Council is also invited to delegate authority to the head of legal and democratic to amend the constitution as necessary.

**Background Papers:** None

# Council



Report of Head of Legal and Democratic and Monitoring Officer

Author: Steve Culliford

Telephone: 01235 422522

E-mail: [steve.culliford@southandvale.gov.uk](mailto:steve.culliford@southandvale.gov.uk)

To: COUNCIL

DATE: 16 May 2018 (Vale) and 17 May 2018 (South)

## Changes to the council's constitution

### Recommendations

That Council agrees to:

1. amend the constitution in the Summary and Explanation section and the Cabinet Arrangements and Procedure Rules to update the key decision definition by amending paragraph (a) to read: "to incur expenditure, make savings or to receive income (except government grant) of more than £75,000.";
2. amend paragraphs 40 and 41 of the constitution's Summary and Explanation section relating to the authentication of documents and common seal of the councils to allow the head of legal and democratic, the chief executive, the legal services manager or a senior lawyer to sign and attest the sealing of documents;
3. delete reference to the Five Councils' Partnership Scrutiny Committee in paragraph 83 of the Scrutiny Committees Procedure Rules;
4. amend paragraph 3 of the Planning Committee Procedure Rules to reflect the Vale Council's decision on 14 February 2018 to reduce its Planning Committee membership from 11 to nine;
5. delegate authority to the head of corporate services "to act as the council's data protection officer under the General Data Protection Regulations" and reflect this responsibility in the Proper Officer and Authorised Officer section of the constitution;
6. delegate authority to the head of development and regeneration: "To determine applications from registered housing providers to waive the 80 per cent equity share restriction on shared ownership dwellings, on a case-by case basis, where such a restriction has been included within a section 106 planning agreement, and where the application meets the established criteria for granting the waiver.";

7. delegate authority to the head of development and regeneration: “To determine continuous market engagement requests and confirm support to Homes England for both grant and nil-grant applications from registered housing providers, for the inclusion of affordable dwellings or developments within the national affordable homes programme.”
8. amend the delegation to the head of housing and environment in paragraph 4.3: “To authorise and serve any notices and take all necessary actions relating to ~~the collection of waste, the provision of dustbins and to secure the removal of rubbish.~~ (S.34 PHA 1961) **the council’s duties as a waste collection authority as set out in sections 45 and 46 of the Environmental Protection Act 1990 (as amended).** *[N.B. deleted text is crossed through, added text is in bold type];*
9. delegate authority to the head of housing and environment: “To authorise and serve any notices and take all necessary actions relating to the council’s duties as a principal litter authority in accordance with section 89 of the Environmental Protection Act 1990 (as amended).”;
10. amend the delegation to the head of housing and environment in paragraph 19.2: “To exercise the council’s powers and duties under The Dangerous Wild Animals Act 1976, The Pet Animals Act 1951, The Breeding of Dogs Acts 1973 and 1991, The Animal Boarding Establishments Acts 1963 and 1970, The Zoo Licensing Act 1981, The Riding Establishments Acts 1964 & 1970, **and the Breeding and Sale of Dogs (Welfare) Act 1999**, including licensing and registration functions, taking of enforcement action, inspections, powers of entry and the appointment of inspectors.”;
11. move the delegations in relation to local amenity/overgrown gardens from the head of housing and environment (section 21 refers) to the head of planning;
12. delegate authority to the head of planning: “To authorise the making of footpath and bridleway dedication agreements.”;
13. amend paragraph 11.1 of the head of planning’s scheme of delegation regarding the collection of Community Infrastructure Levy: “To collect Community Infrastructure Levy revenue and calculate the chargeable amount under Regulation 40 of the Community Infrastructure Levy Regulations 2010. Appropriate budgets must be created as follows in accordance with the financial procedure rules:
  - (a) for the administration of Community Infrastructure Levy (five per cent of the Community Infrastructure Levy revenue)
  - (b) for the **towns and parishes** ~~councils~~ (15 or 25 per cent of the Community Infrastructure Levy revenue)
  - (c) for the district council (remainder of the Community Infrastructure Levy revenue).”;
14. amend the delegations to the head of planning (paragraph 11.3) and the head of development and regeneration (paragraph 3.2): “To make payments to the **towns and parishes** in relation to the Community Infrastructure Levy Regulation 59 and 59D and approve payments (by 28 October and 28 April in any financial year) to the relevant receiving town ~~and~~ **or** parish council **or parish meeting.**”;
15. amend paragraph 11.9 of the head of planning’s scheme of delegation regarding Community Infrastructure Levy recovery: “To deal with the recovery of the Community

Infrastructure Levy including stop notices, liability orders and other enforcement mechanisms under Regulations 89 to 94 and 111 of the Community Infrastructure Levy Regulations 2010.”;

16. amend paragraphs 74 and 75 of the Financial Procedure Rules to allow the head of planning to request and the head of finance to approve the creation of Community Infrastructure Levy budgets as follows:
  - “74. For section 106 or Community Infrastructure Levy agreements that provide clear and unambiguous details on how the receipts raised must be used, where that agreement has been approved by the Planning Committee and over which further discretion cannot be applied, then the ~~strategie management team~~ **head of planning** can request **and the head of finance can approve** the creation of the relevant revenue or capital budget.
  75. For all other section 106 and Community Infrastructure Levy agreements where contributions are received by the council, a budget for the spending of the receipt must be created as follows:
    - (a) For agreements of up to £20,000, budgets can be **requested by the head of planning and** approved by the ~~senior management team~~ **head of finance**.
    - (b) For agreements greater than £20,000 up to £100,000, budgets can be approved by the relevant Cabinet member in consultation with the Cabinet member for finance.
    - (c) For agreements of greater than £100,000, budgets must be approved by Council.”;
17. amend Financial Procedure Rule 90 to make it explicit that no request for a supplementary estimate is necessary where it arises from a government grant for a specific purpose;
18. amend Financial Procedure Rule 91 as follows to reflect the normal process for authorisations used elsewhere in the constitution: “~~The leader of council in consultation with the chief executive and chief finance officer~~ **chief finance officer in consultation with the leader of council and chief executive** may increase the revenue or capital budget after considering a request from the relevant head of service where the council has:
  - (a) Received government grant outside of the usual budget setting cycle for which no budget exists.
  - (b) Received additional income for fees and charges that has led to additional costs that require a budget to give authority to spend.
  - (c) Received additional income from insurance claims.
 In all instances a budget no greater than the increase in income can be created.”
19. agree to amend the Contract Procedure Rules as set out in appendix 1 to this report;
20. authorise the head of legal and democratic to update the constitution to reflect the agreed amendments with effect from 1 June 2018; and
21. authorise the head of legal and democratic to make any minor or consequential amendments to the constitution for consistency and to reflect the council’s style guide.

## Purpose of report

1. This report proposes revisions to the current constitution to ensure it is up-to-date and reflects the council's changing environment.

## Strategic objectives

2. The constitution underpins the council's decision-making and therefore supports its strategic objectives.

## Background

3. A full constitution review was undertaken and a revised constitution agreed by Council at its meeting in December 2016 in pursuance of the requirements of Section 37 of the Local Government Act 2000 to keep the constitution under review. Council has since approved further adjustments, the last being in December 2017. The Joint Constitution Review Group met on 15 March 2018 to consider matters that have arisen since 2017. Mostly, the changes are a tidying up of the document. This report sets out proposed changes supported by the review group, and recommends that these changes take effect from 1 June 2018.

## Key decisions

4. A key decision is subject to the scrutiny call-in process and is defined in the constitution as a decision of the Cabinet, individual Cabinet member or an officer acting under delegated powers, which is likely to:
  - (a) incur expenditure, make savings or to receive income of more than £75,000;
  - (b) award a revenue or capital grant of over £25,000; or
  - (c) agree an action that, in the view of the chief executive or the relevant head of service, would be significant in terms of its effects on communities living or working in an area comprising more than one ward in the area of the council.
5. The review group has noted that the receipt of a government grant over £75,000 becomes a key decision in the above definition. The review group considers it is unnecessary to allow scrutiny call-in of a decision to accept a government grant and recommends that paragraph (a) in the above definition should be amended to read "to incur expenditure, make savings or to receive income (**except government grant**) of more than £75,000." Council should note that it will still be a key decision to spend grant money over £75,000, and it will still be necessary to meet the requirements of Financial Procedure Rules 90 and 91 to create the necessary budgets.

## Authentication of documents and common seal of the council

6. Paragraphs 40 and 41 of the constitution's Summary and Explanation section refer to the authentication of documents and common seal of the council. This requires that the signing of documents and affixing of the common seal will be attested by the head of legal and democratic services or by the chief executive or a strategic director or a senior lawyer. Following the management restructure, there is a need to delete references to strategic director and to add reference to the legal services manager.

7. The review group considers that the head of legal and democratic, the chief executive, the legal services manager or a senior lawyer should be authorised to sign and attest the sealing of documents.

### **Scrutiny Committees Procedure Rules – Five Councils’ Partnership Scrutiny Committee**

8. When the Five Councils’ Partnership was set up in 2016, it established a joint scrutiny committee. Although this committee met a few times, late in 2017 it was disbanded by the partnership. Instead, the partnership agreed that scrutiny of the partnership’s work should be conducted through each partner council’s own arrangements. Therefore, the review group considers that reference to the Five Councils’ Partnership Scrutiny Committee in paragraph 83 of the Scrutiny Committees Procedure Rules should be deleted.

### **Planning Committee Procedure Rules – committee membership**

9. At its Council meeting in February 2018, the Vale Council reduced its Planning Committee membership from 11 to nine. This will need an amendment to paragraph 3 of the Planning Committee Procedure Rules. The review group considered whether a similar change should be recommended for South Oxfordshire’s Planning Committee.
10. The review group heard the views of two South Oxfordshire councillors on this subject, who both believed that South Oxfordshire’s Planning Committee should retain its 11 members due to the committee’s current high workload. The Review Group therefore did not support a reduction in the committee membership for South Oxfordshire’s Planning Committee at this time. However, the review group agreed that the committee’s membership could be revisited in six months’ time.
11. The review group also considered a suggestion that Cabinet members should be allowed to be full members of the Planning Committee. The review group did not support this suggestion as best practice suggested that Cabinet members could attend Planning Committee meetings and give advice but they should not be committee members. This maintained a separation of the policy-making and policy implementation roles.

### **Scheme of delegation to the head of corporate services**

12. The General Data Protection Regulations will come into force in May 2018. The scheme of delegation needs to allocate responsibility to an officer to ensure the council complies with these regulations. The review group considers that the following should be added to the scheme of delegation for the head of corporate services: “To act as the council’s data protection officer under the General Data Protection Regulations.”
13. This responsibility should also be reflected in the Proper Officer and Authorised Officer section of the constitution.

## **Scheme of delegation to the head of development and regeneration – staircasing restrictions**

14. A significant number of shared ownership homes are developed in parts of the district which are classified as Designated Protected Areas by the Secretary of State. Part of the purpose of a designated protected area is to ensure the retention of shared ownership units in areas where they may be hard to replace. A restriction is therefore placed in section 106 agreements which limit the amount of equity a shared owner can purchase, to 80 per cent of the open market value.
15. In recent years, this restriction has proved problematic with lending institutions and has significantly reduced the range of mortgages available to prospective purchasers. Moreover, Registered Providers have indicated that, in almost all cases, they will not be prepared to acquire sites where this restriction (known as the 'staircasing' restriction) will not be lifted. Government guidance allows the council to lift these restrictions if it deems this appropriate. The council has a mechanism and criteria in place for the lifting of this 'staircasing' restriction upon application from a registered housing provider. In recent years, the Cabinet member for housing has approved lifting such staircasing restrictions. It should be noted that shared ownership units on rural exception sites are not included under the waiver request option.
16. The review group considers that authority should be delegated to the head of development and regeneration as follows: "To determine applications from registered housing providers to waive the 80 per cent equity share restriction on shared ownership dwellings, on a case-by case basis, where such a restriction has been included within a section 106 planning agreement, and where the application meets the established criteria for granting the waiver."

## **Scheme of delegation to the head of development and regeneration – continuous market engagement requests**

17. Continuous market engagement is a data gathering mechanism within the National Affordable Homes Programme. It is used by Homes England (formerly Homes and Communities Agency) to help it determine requests from Registered Providers to include affordable homes within the affordable homes programme. These affordable homes are additional to those identified at the beginning of the programme period (currently 2016-2021). When Homes England receives a request, it consults the council. This request seeks specific information such as planning status, additionality, and contribution to local priorities.
18. Most of these requests are at nil grant (simply for inclusion within the national affordable housing programme). However, some bids seek a grant, and where grant funding is awarded, funds are transferred direct from Homes England to the registered housing provider, at nil cost to the council.
19. Officers sought a specific delegation to the head of development and regeneration to determine continuous market engagement requests and confirm support to Homes England for both grant and nil-grant applications from registered housing providers, for the inclusion of affordable dwellings or developments within the affordable homes programme. In each continuous market engagement case, the decision by the council is simply a confirmation of facts to Homes England; the decision whether to approve the application rests with Homes England.

20. The review group considers that authority should be delegated to the head of development and regeneration to determine continuous market engagement requests.

### **Scheme of delegation to the head of housing and environment – waste and litter**

21. In a tidying exercise, the review group considers the scheme of delegation to the head of housing and environment should be updated in paragraph 4.3: “To authorise and serve any notices and take all necessary actions relating to ~~the collection of waste, the provision of dustbins and to secure the removal of rubbish.~~ (S.34 PHA 1964) **the council’s duties as a waste collection authority as set out in sections 45 and 46 of the EPA 1990 (as amended).** [N.B. EPA = Environmental Protection Act]
22. The review group considers the scheme of delegation to the head of housing and environment should be updated to include a new delegation to allow the serving of notices and taking necessary actions as the principal litter authority: “To authorise and serve any notices and take all necessary actions relating to the council’s duties as a principal litter authority in accordance with section 89 of the EPA 1990 (as amended).”
23. The review group also identified the need to include a reference to the Breeding and Sale of Dogs (Welfare) Act 1999 in the head of housing and environment’s scheme of delegation paragraph 19.2: “To exercise the council’s powers and duties under The Dangerous Wild Animals Act 1976, The Pet Animals Act 1951, The Breeding of Dogs Acts 1973 and 1991, The Animal Boarding Establishments Acts 1963 and 1970, The Zoo Licensing Act 1981, The Riding Establishments Acts 1964 & 1970, **and the Breeding and Sale of Dogs (Welfare) Act 1999**, including licensing and registration functions, taking of enforcement action, inspections, powers of entry and the appointment of inspectors.”

### **Scheme of delegation to the head of housing and environment and the planning – local amenity and overgrown gardens**

24. The scheme of delegation to the head of housing and environment includes delegations to deal with local amenity and overgrown gardens (section 21 refers). The review group considers that as this work is now carried out by the planning enforcement team, these delegations should be transferred to the head of planning. They allow the council to serve notices in respect of the condition of land and buildings, to undertake clean up works in default of a notice, and take legal proceedings for failure to comply with a notice.

### **Scheme of delegation to the head of planning – delegation of applications with short time limits**

25. The head of planning presented a list of planning applications that had short time limits for the council’s determination, some as short as four weeks. The intention was to seek a delegation of these applications to the head of planning to allow the council to meet these time limits. The review group asked the head of planning to provide further information before it agreed to support the proposal. The review group asked

that a briefing session was organised for all councillors before bringing the proposal back to the next review group meeting for consideration.

### **Scheme of delegation to the head of planning – footpath dedication agreements**

26. The scheme of delegation to the head of planning includes authority to make and confirm footpath diversion orders. Currently there is no specific authorisation to make a dedication agreement where a landowner has offered to provide an additional or new path.
27. Although such agreements can be agreed under a general delegation 'to enter into agreements', the review group considers that a specific delegation should be added to the head of planning's scheme of delegation: "To authorise the making of footpath and bridleway dedication agreements."

### **Scheme of delegation to the head of planning – Community Infrastructure Levy**

28. Officers suggested amending paragraph 11.1 of the head of planning's scheme of delegation to allow Community Infrastructure Levy to be collected for parish meetings, in addition to town or parish councils. The review group agreed to recommend the following change to paragraph 11.1, encompassing the three types of local council into the phrase 'towns and parishes':  
"To collect Community Infrastructure Levy revenue and calculate the chargeable amount under Regulation 40 of the Community Infrastructure Levy Regulations 2010. Appropriate budgets must be created as follows in accordance with the financial procedure rules:
  - (a) for the administration of Community Infrastructure Levy (five per cent of the Community Infrastructure Levy revenue)
  - (b) for the towns and parishes councils (15 or 25 per cent of the Community Infrastructure Levy revenue)
  - (c) for the district council (remainder of the Community Infrastructure Levy revenue)."
29. The review group considers that a minor change is necessary to the head of planning's delegation paragraph 11.9 to reflect the Community Infrastructure Levy regulations correctly: "To deal with the recovery of the Community Infrastructure Levy including stop notices, liability orders and other enforcement mechanisms under Regulations 89 to 94 and 111 of the Community Infrastructure Levy Regulations 2010."

### **Scheme of delegation to the head of planning and the head of development and regeneration – Community Infrastructure levy spending**

30. Officers suggested that the scheme of delegation was amended to allow Community Infrastructure Levy payments to parish meetings, in addition to the current delegation to make payments to town and parish councils. The authority appears in the scheme of delegation for both the head of planning and the head of development and regeneration. Although the new management structure had moved the responsibility

for Community Infrastructure Levy spending to the head of development and regeneration, the structure changes have not yet been effected.

31. The review group considers that the delegation should enable officers to make community infrastructure levy payments to parish meetings. The review group considers the change should be made to both the scheme of delegation for both the head of planning and the head of development and regeneration during the transition of the Community Infrastructure Levy spending function to the head of development and regeneration.

## Financial Procedure Rules

32. The review group considered some suggested adjustments to the Financial Procedure Rules. With regard to the Community Infrastructure Levy, the review group considers the Financial Procedure Rules should be amended to allow the head of planning to request and the head of finance to approve the creation of budgets following the receipt of Community Infrastructure Levy. Currently, the Financial Procedure Rules only allow the strategic management team to create such budgets. This change affects paragraphs 74 and 75 of the Financial Procedure Rules.
33. Financial Procedure Rule 90 requires that requests for revenue supplementary estimates in excess of £100,000 shall be made to the Cabinet, which shall seek the approval of full Council. Currently revenue supplementary estimates are required when the council receives a government grant; the review group considers this is unnecessary if the council receives a grant from the government for a specific purpose and the review group recommends that this is made explicit in rule 90.
34. Financial Procedure Rule 91 currently authorises the leader of the council in consultation with officers to increase a revenue or capital budget after considering a request from a head of service. The review group considers that this should be amended to authorise the chief finance officer, rather than the leader of the council, thereby reflecting the normal process for authorisations used elsewhere in the constitution. The wording would be amended to:

~~“The leader of council in consultation with the chief executive and chief finance officer~~  
**chief finance officer in consultation with the leader of council and chief executive** may increase the revenue or capital budget after considering a request from the relevant head of service where the council has:

- (a) Received government grant outside of the usual budget setting cycle for which no budget exists.
- (b) Received additional income for fees and charges that has led to additional costs that require a budget to give authority to spend.
- (c) Received additional income from insurance claims.

In all instances a budget no greater than the increase in income can be created.”

## Contract Procedure Rules

35. Changes are needed to the Contract Procedure Rules to reflect the agreed management restructure, such as the removal of references to strategic director posts that no longer exist under the revised management structure. The responsibilities previously allocated to the strategic directors have been re-allocated to heads of service or the chief executive as appropriate, as shown in appendix 1 to

this report. The review group considers these changes are an appropriate re-allocation of responsibilities.

### **Financial Implications**

36. The democratic services budget for printing will meet the costs of producing copies of the amended constitutions.

### **Legal Implications**

37. Section 37 of the Local Government Act 2000 requires the Council to keep its constitution under review.

### **Conclusion**

38. This report sets out proposals to amend the constitution. Officers recommend Council approves the proposed changes for implementation on 1 June 2018, and authorises the head of legal and democratic to make these changes and any further minor or consequential amendments. The Joint Constitution Review Group supports the proposals set out in this report.

### **Background Papers**

None

# Contracts procedure rules

## Introduction

1. These contracts procedure rules (issued in accordance with section 135 of the Local Government Act 1972) are intended to promote good purchasing practice, public accountability and to deter corruption. These contracts procedure rules are the rules that regulate council contracts.
2. The purpose of the rules is to ensure that works, supplies/goods, or services are appropriate for their purpose, provide the right balance between price and quality and are procured in an open way that demonstrates probity and compliance with the law, best practice and council policies.
3. Contracts procedure rules apply to **all** council contracts excluding contracts of employment and contracts with employment agencies for the engagement of temporary employees. Contracts include:
  - works contracts;
  - the purchase of supplies/goods, services, computer hardware and software; leasing arrangements;
  - hire of plant and equipment;
  - consultancy services;
  - the acquisition and disposal of land; and
  - the disposal of goods and materials.
4. Contracts procedure rules apply irrespective of the size of the contract. A formal contract may not necessarily be involved e.g. the intention may be to issue an Order. The contract may involve expenditure by or income to the council.
5. The rules form part of the council's constitution.
6. These contracts procedure rules should be read in conjunction with all other elements of the council's constitution. These contracts procedure rules do not provide guidance on what is the best way to purchase works, supplies/goods, and services. They set out the minimum requirements to be followed. Further information and guidance are set out in the council's purchasing guide and procurement strategy and the council's tender evaluation policy available on the council's procurement intranet.

## Definitions

7. In these contracts procedure rules the following words and phrases mean as follows:
 

“Approved list”	A list of contractors, approved by the Cabinet or relevant Cabinet member or a committee, for types of works, supplies/goods or services with specified contract limits applicable to contractors from which limited lists of tenderers can be drawn.
-----------------	---

“Award criteria”	The criteria by which the successful quotation or tender is to be selected.
“Cabinet member”	The member of the Cabinet to whom the council has allocated responsibility for the service or in the Cabinet member’s absence an alternative Cabinet member.
“Cabinet or a committee”	The Cabinet or committee with budget and service responsibility for a particular contract.
“Certified contract”	A contract which may be certified under the Local Government (Contracts) Act 1997.
“Competitive dialogue procedure”	An EU procedure as an alternative to the open, restricted, and negotiated procedures, designed for the award of “complex contracts” and which provides for open dialogue with short listed providers.
“Contract”	A legally binding agreement between two or more parties which is intended to be enforceable at law.
“Contract sum”	The amount of expenditure or income specified in the contract or order.
“Contract value”	The estimated total value of an individual contract or series of contracts (both income generating and involving expenditure) calculated in accordance with contract procedure rule 34.
“EU”	European Union.
“EU procedure”	The procedure required by the EU where the total value of the contract exceeds the relevant EU threshold.
“EU threshold”	The current threshold value at which the EU public procurement directives must be applied for advertisement under the EU public procurement rules.
“Framework agreement”	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, (in particular with regard to price and, where appropriate, the quantity envisaged).
“Gateway review”	A review of all compliant procurement options and contracts available to the council.
“Head of service”	The head of service with responsibility for the contract, or an officer with authority to act on behalf of that head of service in relation to the contract, or <del>an officer with line management responsibility for the head of service</del> and in the absence of the <del>officer</del> <u>head of service</u> with

~~line management~~ responsibility, **any strategic director** ~~or an alternative head of service or~~ the chief executive.

- “Land acquisition” Any acquisition of land or buildings by the council by way of a freehold or leasehold purchase.
- “Land disposal” Any disposal of land or buildings by the council by way of a freehold sale or a lease for a term exceeding seven years.
- “Most economically advantageous offer” A tender or quotation which provides the best value for the council having regard to both price and other evaluation criteria relevant to the contract.
- “Negotiated procedure” An EU procedure where the council negotiates with one or more potential service providers and which may only be used in exceptional circumstances.
- “Order” A written priced and signed order authorised and issued in accordance with the council’s financial procedure rules.
- “Open procedure” A one-stage procedure where all contractors who respond to an advertisement are invited to complete a pre-qualification questionnaire and tender for the contract.
- “Portal” Any e-tendering portal that has been chosen by the council for the purposes of e-commerce.
- “Procurement strategy” The document setting out the council’s approach to procurement and key priorities and available on the council’s procurement intranet.
- “Purchasing guide” A suite of guidance documents, together with a number of standard documents and forms, which supports these contracts procedure rules and are available on the council’s procurement intranet.
- “Quotation” A price provided to the council as a contractor’s formal offer.
- “Restricted procedure” A two-stage procedure where contractors who respond to an advertisement are short listed by way of a pre-qualification assessment and then invited to tender.
- “Select list” A limited list of tenderers for a contract selected following advertisement, expression of interest, pre-qualification assessment and tender evaluation.

~~“Strategic director”~~ ~~The strategic director responsible for the contract, an officer with authority to act on behalf of that director in~~

~~relation to the contract and in the absence of the strategic director responsible for the contract, any strategic director or the chief executive.~~

“Tender”	A sealed bid submitted by a contractor by a specified date and time in accordance with terms specified by the council.
“Validator”	A person independent from the purchasing or audit process on the procurement, authorised to open the e-tenders on the Portal.

## General requirements

### COMPLIANCE WITH OTHER RULES, STATUTES, REGULATIONS AND EC TREATY AND EUROPEAN DIRECTIVES

8. All contracts made by or on behalf of the council shall comply with these contracts procedure rules and
  - (a) The budget and policy framework.
  - (b) Financial procedure rules.
  - (c) The scheme of delegation.
  - (d) All other parts of the council’s constitution.
  - (e) Statutes (including specific rules on advertising tenders).
  - (f) Regulations.
  - (g) EC treaty and EU directives.
9. Where there is any conflict between national law, European regulations and directives and these contracts procedure rules, national law and European regulations and directives shall prevail.

### COLLABORATIVE PARTNERSHIPS AND JOINT WORKING

10. Collaborative and partnership arrangements are subject to all United Kingdom and EU procurement legislation and must follow these contracts procedure rules.
11. Any partnerships or joint procurement arrangements with other local authorities or public bodies including membership or the use of purchasing consortia for procurements the aggregated contract value of which exceeds the relevant EU threshold shall be approved by the Cabinet member prior to the commencement of any procurement on behalf on the council.

### AGENCY ARRANGEMENTS

12. Where the council acts as an agent for another local authority, these contracts procedure rules shall apply unless that authority specifies the use of alternative procedures, or has chosen the contractor using its own selection procedures in accordance with contracts procedure rule 146.

### WORKING WITH OTHER PARTNERS

13. These contracts procedure rules apply to contracts in partnership with other bodies unless authorised as an exception under section J.

## CONTRACT DOCUMENTATION

14. The formal advice of the head of legal and democratic must be sought for the following contracts:
  - (a) where the contract value exceeds £75,000;
  - (b) those involving leasing arrangements;
  - (c) where it is proposed to use a supplier's own terms;
  - (d) those involving the purchase of application software;
  - (e) those that are complex in any other way.
15. Every contract made by or on behalf of the council shall be evidenced in writing. Where the contract value does not exceed £75,000 the contract may be by an order or an alternative method of recording the arrangements where permitted under financial procedure rules or, if the head of service considers appropriate, a formal written contract signed by the head of service.
16. Where the contract value exceeds £75,000 the contract shall be in writing in a form approved by the head of legal and democratic and shall be sealed with the common seal of the council unless the head of legal and democratic considers that the contract need not be made under seal.
17. Where appropriate the council's standard terms and conditions shall be used.
18. Every formal written contract for any contract value shall include the following provisions unless the head of service and head of legal and democratic considers it inappropriate to do so. The contract shall state:
  - (a) the purpose and basis of the contract;
  - (b) the nature of the works, supplies/goods or services to the council;
  - (c) the amount to be paid by the council including any terms for deductions and discounts;
  - (d) the duration of the contract;
  - (e) delivery arrangements;
  - (f) the council's requirements in respect of relevant council policies (e.g. health and safety);
  - (g) such additional conditions as the head of service or head of legal and democratic shall determine;
  - (h) a requirement that works, supplies/goods and services shall comply with any relevant international or European standard or where these do not exist any relevant British standard; and
  - (i) the provisions for the parties to terminate the contract.
19. Where the contract value exceeds £75,000 the contract shall unless the head of service and head of legal and democratic consider it inappropriate to do so state:
  - (a) any insurance requirements;
  - (b) health and safety requirements;
  - (c) data protection requirements, if relevant;
  - (d) that charter standards are to be met if relevant;
  - (e) equality and diversity requirements;

- (f) environmental requirements;
- (g) freedom of information requirements;
- (h) that the contractor must comply with the council's policies relevant to the delivery of the contract;
- (i) where agents are engaged to let contracts, that agents must comply with the council's contracts procedure rules;
- (j) a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant;
- (k) that if the contractor fails to perform the contract, the council may cancel all or part of the contract or may terminate the contract and recover from the contractor any additional sums incurred;
- (l) that the contractor shall be liable to liquidated damages if it fails to meet the terms of the contract;
- (m) that the contract may not be assigned or otherwise transferred by the contractor without the written permission of the council;
- (n) that the council may terminate the contract and recover any loss resulting from such cancellation if the contractor, its employees or anyone acting on the contractor's behalf do any of the following:
  - (i) offer, give or agree to give any person a gift or consideration of any kind as an inducement or reward for any action to show favour or disfavour to any person in relation to the contract or any contract with the council;
  - (ii) if the act or like acts have been undertaken by any person or party employed or acting upon the contractor's behalf (whether with or without the contractor's knowledge);
  - (iii) do anything improper to influence the council in the award of the contract; or
  - (iv) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117 (2) of the Local Government Act 1972 or the Bribery Act 2010
  - (v) commit any fraud in connection with this or any other council contract whether alone or in conjunction with councillors, contractors or employees.
- (o) that the contractor must comply with the comments and complaints procedure or an equivalent procedure agreed between the council and the contractor to serve the same purpose; and
- (p) whether and how the contractor must publicise or advertise the fact that the contract works being carried out or the services delivered are being carried out or delivered by the contractor on behalf of the council.

20. Where there is a standard form of contract recognised by a professional institution or body for a particular type of contract, the relevant head of service shall following consultation with the head of legal and democratic, use the standard form of contract subject to any variations or additions agreed by the head of service and the head of legal and democratic.

#### CERTIFIED CONTRACTS

21. In the case of certified contracts, every relevant contract shall be accompanied by a certificate under the 1997 Act and Regulations certified by the head of legal and democratic.

22. There shall be inserted in every certified contract a clause which states on the part of the council that the contract is a certified contract under the Local Government (Contracts) Act 1997 Act and that the certification requirements under the 1997 Act are intended to be satisfied by the council within six weeks of the signing of the contract.

#### MANAGEMENT AND SUPERVISION OF CONTRACTS

23. All council employees and anyone engaged by the council to manage and supervise a council contract shall comply with the requirements of these contracts procedure rules.
24. Heads of service shall appoint a named contract manager for the entirety of any contract for which they are responsible.

#### BONDS AND GUARANTEES

25. If the contract value exceeds £75,000 the contract manager for that contract shall carry out a risk assessment for the procurement and send this with suggested mitigation measures including the need for a performance bond or parent company guarantee and the level of such bond/guarantee and the need for a liquidated damages provision to the head of finance and the head of legal and democratic for their approval prior to commencing the procurement.
26. The terms of any performance bond or parent company guarantee required including provisions for its release shall be approved by the head of legal and democratic.

#### SIGNING/SEALING OF DOCUMENTS

27. A decision of the Cabinet, an individual Cabinet member, or a committee, or the exercise of any power delegated to an officer in relation to any contract will be sufficient authority for signing or sealing any document necessary to give effect to the decision.
28. The common seal of the council shall be affixed to those documents, which in the opinion of the head of legal and democratic should be sealed. The affixing of the common seal shall be attested by the head of legal and democratic or by the chief executive, ~~a strategic director~~ the legal services manager or a senior lawyer.

#### COMMENCEMENT OF CONTRACT

29. No works, services or supplies shall be commenced until a contract has been completed or an order has been issued to the contractor unless the strategic director head of service approves otherwise.

#### DECLARATION OF INTERESTS

30. Officers of the council shall declare to their head of service their direct or indirect pecuniary interest in contracts, which have or are proposed to be entered into by the council. An officer with an interest in a contract whether declared or not shall take no part in the procurement process or advise on the council's dealing with that contract.

31. Officers shall declare their interest if a contract in which they have an interest arises at a meeting at which they are present, and if appropriate withdraw from the proceedings.

#### NOMINATED SUB-CONTRACTORS AND SUPPLIERS

32. Where a sub-contractor or supplier is to be nominated to a main contractor, the head of service shall follow the requirements of these contracts procedure rules when inviting quotations or tenders in order to select a sub-contractor or supplier.

#### **Financial limits for quotations or tenders**

33. The contract value determines which quotation or tendering requirements apply.
34. The contract value is calculated (exclusive of VAT) in the following way:
  - (a) the estimated total value of a fixed term contract or a series of contracts;
  - (b) for contracts for an indefinite period by multiplying the estimated monthly value by 48;
  - (c) the total contract value for the purposes of clarifying whether or not the contract exceeds the relevant EU threshold means the total value of the contract to all councils participating in the procurement calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents)
35. These calculation methods apply to contracts involving both expenditure by and income generated for the council and a record shall be kept of the calculation.
36. If the contract value calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) does not exceed £10,000 one written quotation shall be obtained as a minimum, although the head of service may choose to seek additional written quotations if this is likely to obtain better value for money. The procedure for obtaining quotations is set out in section F.
37. If the contract value calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) exceeds £10,000 but does not exceed £75,000, three written quotations shall be invited as a minimum using the Portal, unless an exception set out in section J applies. The procedure for obtaining quotations is set out in section F. However, the head of service may instead choose to seek tenders if this is likely to obtain better value for money. The procedure for obtaining tenders is set out in section G.
38. If the contract value calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) exceeds £75,000, tenders shall be invited in accordance with the procedure set out in section G.
39. A summary of the financial limits and the application of contracts procedure rules are set out in appendix A.

40. If an officer knowingly and deliberately disassembles a contract or series of contracts to avoid the requirements of contracts procedure rules, which would apply to the complete scheme, this will amount to misconduct and may lead to disciplinary action.
41. No individual external contractor shall be awarded work totalling more than £75,000 (excluding any contracts awarded as an exception under section J) in any financial year by the same head of service on the basis of single written quotations. Allocation of work above this total shall only be made on the basis of a minimum of three written quotations or tenders being invited in accordance with these contracts procedure rules.

## **Steps prior to letting contracts**

### **GENERAL REQUIREMENTS / GATEWAY REVIEW**

42. The head of service shall appraise the contract, in a manner commensurate with its complexity and value, and take into account any guidance on the council's procurement intranet by:
  - (a) taking into account the requirements from any relevant review;
  - (b) appraising the need for the expenditure and its priority;
  - (c) defining the objectives of the contract;
  - (d) assessing the risks associated with the contract and how to manage them;
  - (e) considering what procurement method is most likely to achieve the contract objectives, including internal or external sourcing, partnering, relevant packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium;
  - (f) consulting users as appropriate about the proposed procurement method, contract standards, performance and user satisfaction monitoring; and
  - (g) setting out these matters in writing and by confirming that:
    - (i) there is a Cabinet/committee individual Cabinet member or delegated approval in accordance with the scheme of delegation as set out in the council's constitution for the contract and expenditure; and
    - (ii) if the contract is a key decision, all appropriate steps required by the constitution have been taken.

### **PROCUREMENT PROCEDURE**

43. Before engaging in a tender exercise officers shall establish whether any contracts including framework agreements placed by other public authorities (e.g. Office of Government Commerce, buying consortia) are available for the council's use, potentially saving time and money.
44. Where tenders are required to be invited any of the methods specified in these contracts procedure rules may be employed as well as any other method permitted under the EU Procedure.
45. The Office of Government Commerce (OGC) approved e-procurement technology may be used for tendering purposes.

## PROJECT MANAGEMENT

46. Procurements which are of sufficient value or complexity should also be considered as projects and as such the head of service and relevant officer must follow the council's project management system including the completion and agreement of key project documents.

## IDENTIFYING AND ASSESSING POTENTIAL CONTRACTORS

47. Officers shall ensure that, where proposed contracts, irrespective of their total value, might be of interest to potential candidates located in other member states of the EU, a sufficiently accessible advertisement is published.
48. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be.
49. The head of service is responsible for ensuring that all candidates for a relevant contract are suitably assessed. The assessment process shall establish that the potential candidates have sound:
- (a) economic and financial standing; and
  - (b) technical ability and capacity.

to fulfill the requirements of the council.

## PRE-TENDER MARKET RESEARCH / GATEWAY REVIEW AND CONSULTATION

50. The head of service:
- (a) may consult potential suppliers prior to the issue of the invitation to tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential candidate, but
  - (b) must not seek or accept technical advice on the preparation of an invitation to tender or quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential candidates or distort competition, and must seek advice from the head of legal and democratic\_ and from the procurement team.

## RECORDS

51. Where the contract value calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) is less than £75,000 the following records must be kept by the officer responsible for the purchase:
- (a) invitations to quote and quotations (where the work is conducted through the Portal this will automatically be held)
  - (b) a record:
    - (i) of any exemptions and the reasons for them; and
    - (ii) of the reason if the lowest price is not accepted.
  - (c) written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

52. Where the contract value calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) exceeds £75,000 the officer must record:
- (a) the method for obtaining tenders;
  - (b) any contracting decision and the reasons for it;
  - (c) any exemption together with the reasons for it;
  - (d) tender documents sent to and received from candidates;
  - (e) pre-tender market research;
  - (f) clarification and post-tender negotiation (to include minutes of meetings);
  - (g) the contract documents;
  - (h) post-contract evaluation and monitoring; and
  - (i) communications with candidates and with the successful contractor throughout the period of the contract.
53. Records required by this rule must be kept for six years after the end of the contract. However, written documents which relate to unsuccessful candidates need only be retained for 12 months from award of the contract, provided there is no dispute about the award.
54. A business case must be prepared for all procurements with a potential value over the EU threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
55. For all contracts with a value over the relevant EU Threshold Contract managers must maintain a risk register during the contract period, undertake appropriate risk assessments and for identified risks ensure contingency measures are in place.

## QUOTATIONS

56. Unless otherwise required by law or an exception set out in in rules 137 – 147 applies, the financial limits relating to quotations are:
- (a) up to £10,000 calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents).  
Minimum of one written quotation to be obtained.
  - (b) £10,001 to £75,000 calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents)  
Minimum of three written quotations to be invited.
57. Quotations may be invited from any of the following:
- open invitation via the Portal
  - contractors on approved lists
  - in the absence of an approved list or where the head of service considers it appropriate from identified providers of the required works, supplies/goods or service.
58. Requests for written quotations shall be made in writing. If the lifetime value of the contract exceeds £5,000 then any open invitation to quote must be published via the Portal.

59. The written quotations need not be received at the same time but should be considered according to the same evaluation criteria.
60. Quotations shall not be divulged to other contractors.
61. A quotation shall only be accepted if it is within an approved revenue or capital budget.
62. All relevant circumstances shall be taken into account when evaluating and accepting quotations. Where the accepted quotation is not the lowest (or highest in the case of income) the reasons for acceptance shall be recorded. quotations may be accepted as follows:
63. Up to £75,000 calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) by the head of service.
64. Where a minimum of three written quotations have been invited but fewer than three have been received, the head of service, in consultation with the Cabinet member, may accept one of them if satisfied that the quotation is suitable and inviting additional quotations is unlikely to achieve greater value for money.
65. Where written quotations have been sought based on a genuine estimate, but the one recommended for acceptance exceeds £75,000, it may be accepted by the Cabinet member if seeking Tenders is unlikely to provide greater value for money.
66. A quotation up to £75,000 shall be accepted by an order unless a formal written Contract is entered into or an alternative method of recording the arrangements is permitted under financial procedure rules. If a quotation above £75,000 is accepted under contracts procedure rule 64, the contract shall be in writing in a form approved by the head of legal and democratic and shall be sealed with the common seal of the council at the discretion of the head of legal and democratic.
67. A written record shall be kept of all requests for, receipt and acceptance of quotations (this will be automatic if the procurement is conducted via the Portal).
68. No individual external contractor shall be awarded work totalling more than £75,000 (excluding any contracts awarded as an exception under section J) in any financial year by the same head of service on the basis of single written quotations. Allocation of work above this total shall only be made on the basis of three written quotations or Tenders being invited in accordance with these contracts procedure rules.

## **Tenders**

### **GENERAL**

69. Tenders must be invited if the contract value exceeds £75,000 calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) unless an exception under section J applies.

70. Tenders may also be invited for contracts below this amount where this would be in the best interests of the council e.g. it is likely to provide better value for money and wider competition.
71. Tenders may also be preferred to quotations where it is known that the contract value is likely to be close to the £75,000 limit.
72. Unless a decision of the council or law requires otherwise, heads of service in consultation with the **head of finance HR, IT and technical services** and the Cabinet member shall select which of the following Tender procedures is in the best interests of the council:
- (a) Approved list.
  - (b) Select list.
  - (c) EU open/restricted/competitive dialogue procedure.
  - (d) EU negotiated procedure (if the use of this procedure is approved by the **head of service strategic director**, the monitoring officer and the chief finance (section 151) officer.
  - (e) EU framework agreements.
  - (f) Crown Commercial Service buying consortia agreements.

This will constitute a contract Gateway review.

73. In selecting contractors invited to tender or awarding a contract, heads of service shall assess and evaluate the suitability of contractors.

#### APPROVED LIST - (see rules 148 – 160)

74. Approved lists should be used where recurrent transactions of similar types are likely but not where such transactions need to be individually priced and cannot easily be aggregated and priced in a single tendering exercise.
75. Tenders shall be invited from at least five contractors on the approved list for contracts of the type and value in question.
76. The five contractors shall include:
- (a) at least one contractor from the approved list selected by rotation;
  - (b) up to two contractors from the approved list who have satisfied the head of service that they have previously provided value for money to the council for a similar Contract, taking into account overall performance and the final Contract cost.

#### SELECT LIST

77. Invitation for inclusion on a select list shall be by way of an open or restricted non-EU or EU open restricted or competitive dialogue procedure and shall be advertised:
- (a) on the council's website or Portal which is linked to Contracts Finder
  - (b) in a local newspaper, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and
  - (c) in an appropriate professional or trade journal, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and

- (d) on appropriate portal websites specifically created for public contract advertisements e.g. the South East Improvement and Efficiency Business Portal, My tenders, Contracts Finder, Constructionline.
  - (e) in the Official Journal of the European Union (OJEU)/tenders Electronic Daily (TED) where the head of service considers this appropriate or required by law.
78. Contractors responding to the advertisement may be required to complete a pre-qualification questionnaire to provide a basis for selection, unless they already have passed PAS91 or e-certis certification to a sufficient level for the tender.
79. Tenders shall be invited from at least five contractors who respond to the advertisement under contract procedure rule 75
80. Where fewer than five contractors express an interest, the head of service shall repeat the select list procedure, follow an alternative tender procedure or seek instructions from the Cabinet or relevant Cabinet member or a Committee.

#### OPEN PROCEDURE

81. The Contract shall be advertised:
- (a) on the council's website or Portal
  - (b) in a local newspaper, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and
  - (c) in an appropriate professional or trade journal, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and
  - (d) on appropriate portal websites specifically created for public contract advertisements e.g. the South East Improvement and Efficiency Business Portal, My tenders, Contracts Finder, Constructionline.
  - (e) in the Official Journal of the European Union (OJEU)/Tenders Electronic Daily (TED) where the head of service considers appropriate or required by law.
82. Tenders shall be invited from all contractors responding to the advertisement.
83. Where fewer than five contractors express an interest, the head of service shall repeat the open procedure, follow an alternative procurement procedure or seek instructions from the Cabinet or relevant Cabinet member or a committee.

#### RESTRICTED PROCEDURE

84. This is a two-stage procedure where contractors who respond to an advertisement or notice are short listed by way of a pre-qualification assessment and then invited to tender. Candidates must be selected on the basis of published pre-qualification criteria.
85. The advertisement/notice will specify a time limit within which interested parties must submit requests to be selected to tender. The head of service must send invitations in writing to all contractors selected to tender. The invitation will include the specification and contract documentation.

86. If the publication of a notice in the OJEU is not required, the advertising requirements are the same as in the open procedure except that the advertisement/notice shall state that the restricted procedure is being used.

#### COMPETITIVE DIALOGUE PROCEDURE

87. The competitive dialogue procedure may be used where the council wishes to award a particularly complex contract and the EU open or restricted procedure does not provide for the award of that contract (particularly complex contract and where it is not possible objectively to define the technical means capable of satisfying the council's requirements or objectives or objectively to specify the legal or financial makeup of a project or both).
88. The advertising requirements are the same as in the open procedure and the restricted procedure except that the advertisement/notice shall state that the competitive dialogue procedure is being used.
89. The head of service will send invitations in writing simultaneously to each candidate selected via a pre-qualification questionnaire to participate in the dialogue. The invitation will include the outline specification and Contract documentation.
90. The competitive dialogue procedure may take place in successive stages by applying the award criteria in the contract notice or tender documents and number of contractors invited to participate in the final stage must be sufficient to ensure genuine competition. The competitive dialogue procedure may continue until it can identify one or more solutions capable of meeting the council's needs.
91. When the head of service declares that the dialogue is concluded he/she must inform each participant, and request that each participant submit a final tender containing all elements required and necessary for the performance of the contract.

#### NEGOTIATED PROCEDURE

92. The negotiated procedure may be used in limited circumstances and only where the EU Open, Restricted or competitive dialogue procedure is not appropriate.
93. This procedure applies when the head of service, with the approval of the strategic director, the monitoring officer and the chief finance (section 151) officer considers it appropriate to consult and negotiate with one or more potential service providers and specifies the conditions under which work, supplies/goods and services shall be provided.
94. The head of service will publicise the council's intention to seek offers in relation to the contract by sending a notice to OJEU inviting requests to be selected to negotiate. In certain limited circumstances the negotiated procedure may be used without prior publication of a contract notice.
95. The Contract shall be advertised:
- (a) on the council's website or Portal
  - (b) in a local newspaper, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and

- (c) in an appropriate professional or trade journal, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and
- (d) on appropriate portal websites specifically created for public contract advertisements e.g. the South East Improvement and Efficiency Business Portal, My tenders, Contracts Finder, Constructionline.
- (e) in the Official Journal of the European Union (OJEU) / Tenders Electronic Daily (TED) where appropriate or required by law.

96. The notice will specify a time limit in which the contractor must return a request to be selected to negotiate and the head of service must send invitations in writing to all contractors selected to tender. The invitation will include the contract documentation.

97. On receipt of expressions of interest the Cabinet or relevant Cabinet member or a Committee shall select and invite a contractor to negotiate.

#### FRAMEWORK AGREEMENTS

98. The term of an EU Framework Agreement must not exceed four years and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three.

99. Contracts based on Framework Agreements may be awarded by either:

- (a) applying the terms set out in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or
- (b) where the terms set out in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
  - (i) inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit tenders;
  - (ii) fixing a time limit which is sufficiently long to allow tenders for each specific Contract to be submitted, taking into account factors such as the complexity of the subject of the contract; and
  - (iii) awarding each Contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the tender documents of the Framework Agreement.

#### STANDARDS AND AWARD CRITERIA

100. The head of service shall ascertain the relevant British, European or international quality standards which apply to the subject matter of the contract. The head of service shall include those standards which are necessary to describe the required quality. The head of legal and democratic and the **head of finance HR IT and technical services** must be consulted if it is proposed to use standards other than British or where appropriate European quality standards.

101. The head of service shall define award criteria that are appropriate to the contract and designed to secure an outcome giving value for money for the council. The basic criteria shall be:

- (a) a lowest price provided the tender/quotation meets the specification and any stated minimum standards where payment is to be made by the council or
- (b) Most Economically Advantageous Offer with weighting as specified in the council's tender evaluation policy unless for a particular contract an exception to the weighting has been considered and agreed by the relevant head of service in consultation with the relevant Cabinet member prior to invitations to quote/tender have been sought.

If the latter criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters. The head of service must record their justification for using the selected criteria

102. Award criteria must not include matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement.

#### INVITATIONS TO TENDER

103. Invitations to tender shall:

- (a) include copies of all Contract documents;
- (b) give instructions to tenderers, including the latest day, time and place for the delivery of tenders;
- (c) if the tender is submitted in hardcopy, state that it must be submitted in the tender envelope supplied by the council or in a packet marked in the same manner sealed and addressed to the **Head of HR, IT, and Technical Services Finance** and bearing the words "tender – Do Not Open" and the name of the project but with nothing on the envelope to identify the tenderer;
- (d) if the tender is submitted electronically, state that it must be submitted to the council's specified email address for tenders and must include in the subject a specific key word relating to the tender as notified in the tender documentation.
- (e) state that the council shall not be bound to accept a late or any tender.

104. The head of service may respond to requests from tenderers for supplementary information or clarification of tender documentation provided that this does not provide a tenderer with a competitive advantage.

105. The head of service, in relation to contract procedure rule 102 shall use discretion to send information to all tenderers to ensure that they are not disadvantaged.

#### RECEIPT AND OPENING OF TENDERS (INCLUDING LATE TENDERS)

106. Tenders opened from the Portal will be opened by the Validator at the appointed time on the system.

Hard copy/envelopes received shall:

- (a) not be opened on receipt (and if opened shall be reported to the monitoring officer);
- (b) be marked at the time of receipt or as soon as practical with the date and time of receipt and initials of the officer receiving the tender;

- (c) be retained by the hHead of HR, IT and technical servicesfinance who shall be responsible for the tenders until they are opened.
107. Tenders shall be opened at a meeting convened by the head of service and only in the presence of the following:
- (a) the head of service and / or a member of staff representing him / her;
  - (b) a member of staff from HR, IT and technical servicesfinance or a person appointed by him/her.
108. Electronic tenders shall be retained in a secure portal area until opened by the Validator.
109. Hard copy tenders shall be recorded in the council's standard schedule of tenders opened with the full names of the contractors tendering and the amounts of the tenders submitted.
110. Any hard copy tender not delivered to the council's offices by the due date and time for tendering or not received in the envelope supplied by the council or in a sealed packet marked in the same manner shall be returned promptly to the tenderer by the head of service. The tender may be opened to ascertain the name of the tenderer, but no details of the tender shall be disclosed.
111. Any tender delivered electronically but after the due date and time for tendering shall be placed in the late tenders folder and shall be returned promptly to the tenderer by the head of service.
112. In exceptional circumstances a strategic directorhead of service in consultation with the monitoring officer and the Chief Finance (Section 151) Officer may decide to include and assess/evaluate a late tender.

#### ALTERATION TO THE TENDER SUM AND POST TENDER NEGOTIATIONS

113. Providing clarification of an invitation to tender to potential or actual candidates or seeking clarification of a tender, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an EU Procedure where this might distort competition, especially with regard to price.
114. If post-tender negotiations are necessary after a single-stage tender or after the second stage of a two-stage tender, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best tender and after all unsuccessful candidates have been informed.
115. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the tender documents. Officers appointed by the head of service to carry out post-tender negotiations must ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

116. The head of legal and democratic together with the ~~finance~~ **head of HR, IT and technical services** must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by at least two officers or one officer with a consultant engaged by the council.
117. Where post-tender negotiation results in a fundamental change to the specification (or Contract terms) the contract must not be awarded but re-tendered.

#### ACCEPTANCE OF TENDERS

118. Before accepting any tender, the head of service must consider whether the contractor seems sufficiently capable and financially sound to undertake the contract.

#### UP TO £75,000

119. Where the contract value does not exceed £75,000 calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents) and does not relate to the disposal of land and property with an estimated value exceeding £10,000 (see section H), the head of service shall have authority to accept the tender which is the lowest where payment is to be made by the council or highest where payment is to be received by the council or is the Most Economically Advantageous Offer provided that the following conditions are met:

- (a) no fewer than three valid tenders were submitted. If fewer than three valid tenders were submitted in response to the invitation, the head of service in consultation with the Cabinet member may decide to include and assess/evaluate the tender.
- (b) the amount of the tender does not exceed by 10 per cent or £10,000, whichever is the less, the estimated tender sum for the scheme where one exists, and does not exceed the overall budget provision available. If the amount of the tender exceeds the above limits, the head of service shall either re-tender the contract or seek instructions from the Cabinet or relevant Cabinet member or a committee.
- (c) there have been no post tender negotiations. Acceptance of tenders following post tender negotiations is dealt with in contract procedure rule 120.
- (d) unless otherwise approved by the **head of service strategic director**, any Government consents, planning and financial approvals have already been granted.
- (e) where no specific sum has been agreed by the council the Cabinet or relevant Cabinet member or a Committee, subject to ~~consultation with approval by~~ the **head of service strategic director** and the Cabinet member where the contract value exceeds £10,000.

120. Where a head of service considers that a tender should be accepted other than the lowest, where payment is to be made by the council or highest, where payment is to be received by the council or not the Most Economically Advantageous Offer authority must be sought to accept an alternative tender from the Cabinet or relevant Cabinet member or a committee.

#### BETWEEN £75,001 AND EU THRESHOLD

121. Where the contract value calculated over the lifetime or term of the contract (including any provision for extension of the term specified in the contract documents)

exceeds £75,000 but does not exceed the EU Threshold the tender shall be referred to the Cabinet member or a Committee for acceptance with full details of the evaluation procedure, unless acceptance in an alternative manner is authorised in advance.

#### ABOVE EU THRESHOLD

122. Where the contract value exceeds the EU Threshold the tender shall be referred to Cabinet or relevant Cabinet member or a Committee for acceptance with full details of the evaluation procedure, unless acceptance in an alternative manner is authorised in advance.
123. Officers may take a report to Cabinet or relevant Cabinet member at the start of the procurement in order to:
- (a) authorise the procurement; and
  - (b) authorise the head of service in consultation with the Cabinet member to accept a tender in accordance with the evaluation criteria stated in the invitation to tender.

#### POST TENDER CLARIFICATION

124. Tender sums revised following post tender clarification may be accepted as follows:

Up to £75,000	by the <del>head of service</del> <del>strategic director</del> , in consultation with the Cabinet member.
£75,001 to EU Threshold	by the Cabinet member or a committee.
Over EU Threshold	by the Cabinet or relevant Cabinet member or a committee.

#### TENDER RECORDS AND REGISTERS

125. A written record shall be kept of all invitations and acceptance of tenders.
126. A record shall be kept of the receipt and opening of tenders.
127. The ~~h~~~~Head of HR, IT and technical services~~~~finance~~ shall keep a tenders' register which every councillor may inspect at any reasonable time. This will generally be held on the Portal.

#### Land

128. Contracts procedure rules apply to land disposals and land acquisitions except those:
- (a) under a statutory obligation;
  - (b) where a tenant has a right to renew a lease;
  - (c) under a confirmed compulsory purchase order; or
  - (d) under a scheme for the disposal of more than one piece of land or more than one building which has been previously approved by the council.

129. Disposals of surplus land and property with an estimated value of up to £10,000 can be authorised by a head of service. Consultation evidenced in writing with the Cabinet member is required for disposals of land and property with a book value between £5,000 and £10,000. Above that value disposals must be authorised by the Cabinet member as a formal delegated decision up to a book value of £50,000 and by Cabinet or relevant Cabinet member if the value exceeds £50,000. Before deciding whether to dispose of land or property the head of service or Cabinet or relevant Cabinet member shall consider a report setting out all relevant information, including the planning position, potential use, current or proposed development restrictions and estimated value.
130. Unless otherwise agreed by the Chief Finance (Section 151) Officer and the monitoring officer all disposals with an estimated value over £5,000 shall be by way of a competitive tender process with bids invited from as many interested parties as is commensurate with the estimated value and intended use.
131. If land is sold by tender, the procedures in rules 69 to 127 shall apply.
132. For all disposals, a qualified valuer must provide an initial written valuation. If the likely value exceeds £100,000 then this must be supplemented by a second external valuation.
133. All disposals shall be on the best financial terms unless otherwise agreed by the Chief Finance (Section 151) Officer in consultation with the Cabinet member. Except where a general consent exists specific consent shall be obtained from the Secretary of State prior to an interest in land or property being disposed of for a price less than the reasonable market consideration.
134. Heads of Service may enter into negotiations for land disposals and land acquisitions provided that:
- (a) all necessary consents, budgetary approvals and Cabinet or relevant Cabinet member, committee and Council decisions are obtained and financial procedure rules complied with before the council is legally committed; and
  - (b) any procedures adopted by the council for the disposal of Council-owned land are followed.
135. No officer shall allow a party to take up occupancy of council-owned land until a transfer, lease, licence or other suitable document approved by the head of legal and democratic has been completed.

## **Surplus goods**

136. Heads of service shall follow the requirements of these contracts procedure rules to obtain quotations or tenders and of financial procedure rules when disposing of any surplus goods or obsolete items of stock or stores or items on an inventory.

## Exceptions

### GENERAL

137. A Contract may be approved by or on behalf of the council without seeking quotations or tenders if there are special circumstances justifying an exception. There can be no exception if the EU Procedure applies.

### RECORDS OF EXCEPTIONS

138. The head of service shall keep a record of every exception and the reasons for it.

139. Tenders or quotations need not be invited in the following circumstances:

### EMERGENCIES DISASTERS AND IMMEDIATE ACTION

140. If immediate action is necessary to let a contract to prevent significant loss to the council or danger, injury or serious hardship to persons in the council's area, the best practicable means of obtaining value for money in the selection of the contractor shall be used, using an approved list wherever practical. If the contract value exceeds £10,000, the relevant Cabinet member shall be consulted.

### NEGOTIATIONS WITH AN EXISTING CONTRACTOR

141. If, after a contract has been let, circumstances arise which were not foreseen when the original tenders or quotations were invited, variations to, extension of or a further Contract with the original contractor may be made provided that:

- (a) it is permitted by law;
- (b) the terms and conditions of the original Contract apply;
- (c) the total value of the addition or modification does not exceed 25% of the original Contract Sum unless the **strategic director** head of service -in consultation with the relevant Cabinet member is satisfied that value for money will be achieved;
- (d) the variation follows any method of variation specified in the original Contract;
- (e) if the value of the variation exceeds £75,000, the relevant Cabinet member shall be consulted;
- (f) the cost is within the budget provision; and
- (g) any changes to the contract period are agreed with relevant head of service, head of legal and democratic and recorded in the contracts register.

### PROPRIETARY ARTICLES

142. If supplies/goods, materials or services are proprietary articles, are sold by a single supplier or their prices are wholly controlled by Government Order or in the case of repairs to or the supply of parts of existing proprietary articles, tenders or quotations need not be invited if no reasonably satisfactory alternative is available.

### SPECIALIST CONTRACTS

143. If the supplies/goods, services or works are of such a specialist nature that quotations or tenders cannot be obtained or can only be obtained from fewer contractors than normally required by contracts procedure rules or, can only be

purchased under a trade name or description or, in the case of professional services, e.g. the use of barristers or external solicitors where a particular individual or firm has specialist expertise in the field and the head of service is satisfied that value for money will be provided in all the circumstances.

#### LOCAL AUTHORITIES AND STATUTORY UNDERTAKERS

144. If the services are to be provided by another local authority, by a statutory undertaker or by a supplier of gas, electricity or water services.

#### CONSORTIUM

145. If tenders have been invited by a consortium, collaboration or similar body of which the council is a member, the council may follow that body's procedures or the procedures set out in these contracts procedure rules. Also, the council may access Government catalogue-based procurement schemes, e.g. Office of Government Commerce buying solutions agreements under Customer Access Agreements subject to compliance with the contract financial limits and reporting requirements of these contracts procedure rules and the requirement to secure the Most Economically Advantageous Offer for the council.

#### AGENCY ARRANGEMENTS

146. The council is acting as agent for another local authority and that authority specifies the use of alternative procedures or has chosen the contractor using its own selection procedures.

#### EXCEPTIONS AUTHORISED BY THE CABINET OR RELEVANT CABINET MEMBER OR COMMITTEE

147. If any other exceptions are specifically authorised by the Cabinet or relevant Cabinet member or a Committee.

### **Approved lists – compilation and maintenance**

148. Heads of service may compile approved lists for use in relation to future contracts for works, supplies/goods and services (including consultancy).

149. Approved lists shall be available for corporate use.

150. Approved lists shall be compiled following advertisement in:

- (a) on the council's website or Portal
- (b) in a local newspaper, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and
- (c) in an appropriate professional or trade journal, unless the head of service is satisfied that this would not provide additional competition and is not required by law; and
- (d) on appropriate portal websites specifically created for public contract advertisements e.g. the South East Improvement and Efficiency Business Portal, My tenders, Contracts Finder, Constructionline; and
- (e) in the Official Journal of the European Union (OJEU)/tenders Electronic Daily (TED) where appropriate or required by law.

151. A minimum period of four weeks shall be given to respond to the advertisement.
152. All contractors responding to the advertisement shall be invited to complete an application form, including where appropriate, a pre-qualification questionnaire, to provide the basis for inclusion on the approved list.
153. Approved lists shall be compiled on the basis of categories of works, supplies/goods or services and appropriate maximum contract values shall be applied to individual contractors.
154. The minimum number of contractors on an approved list shall be six.
155. Approved lists shall be submitted to the Cabinet or relevant Cabinet member or a Committee for approval.
156. Approved lists shall be reviewed at least every five years.
157. Heads of Service may add contractors to an existing approved list subject to suitability following assessment and evaluation.
158. Contractors on approved lists shall be required to advise the council of any changes in circumstances relevant to their inclusion.
159. Heads of service shall have discretion to remove contractors from an approved list because of changes in circumstances or poor performance.
160. ~~Strategic directors~~ The chief executive or an alternative head of service appointed by him/her shall provide an appeals procedure for contractors refused admission or excluded from an approved list.

## Contract management

### MANAGING CONTRACTS

161. Heads of service shall name contract managers for all contracts for the entirety of the contract period. Contract managers shall follow the contract management requirements agreed in the contract and information available on the procurement intranet.

### CONTRACT MONITORING, EVALUATION AND REVIEW

162. All contracts which have a value higher than the EU Threshold limits, or which are considered high risk, shall be subject to monthly formal review with the contractor. The review may be conducted quarterly if permitted by the head of service ~~and strategic director~~.
163. For all contracts with a value higher than the EU Threshold limits, or which are high risk, an annual report shall be submitted to the Scrutiny Committee.

## Appendix A

### Application of contracts procedure rules requirements

Contract Value	One Written quotation	Three Written quotations	Tenders	Tenders Opened by officers or Validator	Acceptance of tenders by officers	Acceptance of tenders by relevant Cabinet/member or Committee	Order / Contract Signed by head of service	Contract Approved and Sealed by HLD	Bond Required
Up to £10,000	Yes	Optional	No	N/A	N/A	N/A	Yes	Optional	N/A
£10,001 - £75,000	No	Yes	Optional	Yes	If within Budget	If exceeds Budget	Yes	Optional	N/A
£75,001 - EUT	No	No	Yes	Yes	No	Cabinet member	No	Yes	Risk Assessment must be carried out
Over EUT	No	No	Yes/EU	Yes	No	Cabinet or relevant Cabinet member or committee	No	Yes	Risk Assessment must be carried out