



Audit and Risk Management Committee

Date:	Monday, 24 September 2018
Time:	6.00 p.m.
Venue:	Committee Room 1 - Wallasey Town Hall

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AGENDA

1. APOLOGIES FOR ABSENCE

2. MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Members are asked to consider whether they have any disclosable pecuniary interests and/or any other relevant interest in connection with any item(s) on this agenda and, if so, to declare them and state the nature of the interest.

3. MINUTES (Pages 1 - 12)

To approve the accuracy of the minutes of the meeting held on 23 July 2018.

4. INTERNAL AUDIT UPDATE (Pages 13 - 22)

5. PROCUREMENT - USE OF PROCEDURE RULES APPROVAL DOCUMENT PERMITTED UNDER THE COUNCIL CONTRACT PROCEDURE RULES (Pages 23 - 34)

6. LEADER DECISION REFERRAL - CODE OF PRACTICE FOR GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES (Pages 35 - 88)

7. IMPROVEMENTS TO THE CORPORATE RISK MANAGEMENT FRAMEWORK (Pages 89 - 94)

8. DEVELOPMENT OF THE REVISED CORPORATE RISK REGISTER (Pages 95 - 98)

9. **MANAGEMENT OF INSURANCE AND CORPORATE RISK**
(Pages 99 - 102)
10. **EXTERNAL AUDIT - ANNUAL AUDIT LETTER 2017/18**
(Pages 103 - 120)
11. **RIPA** (Pages 121 - 126)
12. **ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR**

AUDIT AND RISK MANAGEMENT COMMITTEE

Monday, 23 July 2018

<u>Present:</u>	Councillor	AER Jones (Chair)	
	Councillors	RL Abbey A Davies P Doughty	D Elderton JE Green L Grey
<u>Deputies:</u>	Councillors	C Carubia (In place of P Gilchrist) L Rowlands (In place of T Anderson)	

1 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

Members were asked to consider whether they had any disclosable pecuniary interests and/or any other relevant interest in connection with any item(s) on this agenda and, if so, to declare them and state what they were.

No such declarations were made.

Councillor Jeff Green, with the permission of the Chair, then expressed his thanks to Councillor Christina Muspratt for her contribution to the Committee over the past year and indeed to all retiring Members from the Committee.

The Chair echoed the sentiments expressed and commented that all the Committee would agree.

2 MINUTES

Resolved – That the minutes of the meeting held on 12 March, 2018 be approved.

3 HIGHWAYS MAINTENANCE CONTRACT

Further to minute 64, of 12 March, 2018, the Strategic Commissioner for Environment, Mark Smith, introduced his report on the re-commissioning of Highway Services from October, 2018. Bam Nuttall (BAMN) recently agreed that the current strategic contract for Highway Services, worth approximately £6M per annum, would come to an end on 30 September 2018 after a six month extension to the original four year contract that commenced in April 2014.

Following an options appraisal process, approval was given in November 2017 to bring the Highways contract back under Wirral Council's control from 1st October 2018.

At the last meeting of the Committee on 12 March 2018, the high-profile nature and progress of the Highways Re-commissioning Project was discussed and it was resolved that 'the Committee wish to be satisfied by way of a written report that the procedures are in place to ensure full preparation for transfer i.e. costings are in place for plant, equipment, materials, adequate supervision and management resources; and that the issue be subject of an additional entry in the risk register'.

The report gave details of the management of the transfer project, including:

- HR / staffing and health and safety
- Depot premises and ICT / Communications
- Commissioned work
- Plant, equipment, vehicles and stock and materials

He expanded on a number of these areas and confirmed his expectation that the transfer would all run smoothly for 1 October, 2018.

In response to Members' comments, Mark Smith's comments included:

- BAMN, along with any other company would be able to bid to undertake contracted out works, they did not have any status on any preferred list and these works would be placed on the Chest (the North West's Local Authority Procurement Portal) for bids
- He would be able to supply a copy of a staffing structure.
- The seven 'planned structural and transport' contracts listed in the report had always been delivered externally as there were only certain firms which could do some types of work; all local authorities used big firms within the Highways industry.
- Once the contract was in-house the authority would be looking at all the routine and reactive work, currently worth approximately £2m per annum, and he had already had suggestions from Members and the public as to how some of this work could be undertaken in new and innovative ways.
- He did expect a large number of the 25 BAMN employees, eligible to transfer under the TUPE regulations, to transfer. There were a mix of employees within the 25 including some senior people too.
- Once the transfer had gone through there would be an operational arm through delivery services and client and supervising teams within the Council with the need to ensure a robust contract management function was in place. Some opportunities would arise as there was a separate client team of inspectors and some supervisors working in BAMN, who would transfer across working alongside Highways Inspectors in the

Council. Further work would be undertaken over the next 6 to 12 months in transforming the service.

- He assured the Committee that he had talked to colleagues in Risk Management and service risk plans would be updated to take account of the transfer on 1 October, 2018.
- Discussions had been held with staffing agencies regarding temporary cover being provided within a week if not all staff chose to transfer at the last possible minute.
- With regard to quality of work, he confirmed that a performance management framework would be in place for all of this work and there would be a Service Level Agreement between delivery services and those in a supervisory role. Indeed, the Council would from 1 October have a greater degree of control in that sub-contractors would be reporting directly to the Council.

Resolved – That the report be noted.

4 **INTERNAL AUDIT UPDATE**

The Chief Internal Auditor, Mark Niblock, introduced his report which identified and evaluated the performance of the Internal Audit Section and included four items of note arising from the actual work undertaken during the period 1 March to 31 May 2018. The items of note were:

- Accounts Payable
- Merseyside Pension Fund
- Wirral Growth Company
- ICT Audit

and he gave details of audit work undertaken in these areas and identified how any actions arising were being addressed by officers.

In response to a question raised at the previous meeting in March (minute 66 refers) Mark Niblock referred to HMRC IR35 regulations and of 187 active placements only 4 were outside IR35 and he had been advised by HR that engaging staff in this way was fairly rare and was certainly not a developing trend.

In response to comments from Members, Mark Niblock's comments included:

- A number of audits had been completed since the report was written so the target for the period had now been reached.
- He confirmed that a report on Council Partnerships would be brought back to a future meeting of the Committee by relevant officers identifying and mapping governance arrangements currently in place.

- With regard to the Wirral Growth Company his team would continue to input to the Project Board advising on risks and controls and he would be able to provide some more information in future updates to the Committee.
- The Director for Children did attend the last meeting of the Committee and further information would be provided at the next meeting as to where Children's Services were up to in terms of training with regard to grievances.

Resolved – That the report be noted.

5 CHIEF INTERNAL AUDITORS ANNUAL REPORT 2017-18

The Chief Internal Auditor, Mark Niblock, introduced his Annual report for 2017/18 which provided an overall opinion as to the effectiveness of the Council's control environment. He directed the Committee's attention to Sections 4 and 5 of the report that set out the Audit Outcomes for 2017/18 and the Effectiveness of Internal Audit for the same period. He stated that his overall opinion was that:

“On the basis of our programme of work last year, I can provide good assurance overall that there is a generally sound system of internal control, designed to meet the Council's objectives, and controls are generally being applied consistently.

However some weaknesses in the design and inconsistent application of controls put the achievement of some key objectives at risk. The key governance, risk and internal control issues of which the Chief Internal Auditor was made aware during the year and that impact on the overall opinion are included within Sections 3 and 4 of this report.”

Responding to comments from Members, Mark Niblock stated that with regard to compliance with Council Policy on absence management and other corporate systems there had clearly been underlying issues experienced during the year and that action was now being taken by senior management to address these that included the Director of Finance and Investments (Section 151 officer) leading an officer group to identify and implement actions required to improve arrangements.

The Director of Finance and Investment, Shaer Halewood, then responded to further questions from Members and her comments included:

- The Transformation programme was discussed in the Medium Term Financial Strategy report later in the agenda and had been reset. The Transformation savings of nearly £40m, some now wouldn't be delivered in the way they were due to be delivered and a comprehensive process had been set in place to found out why this was.

- A review of spending was now in place, not a 'spending freeze', this was nothing to do with not being able to balance the budget, the first quarter report had just been presented to Cabinet, which showed a slight overspend currently of £617,000 on a £301m budget for the year.
- Plans were in place to mitigate this overspend and two spending panels were in place, one for vacancies and one for expenditure with three separate people on each, no spends had as yet been rejected but examples of best practice had been found which would lead to efficiencies across the Council.
- There was a £37.8m programme for transformation savings over 3 years within five areas: Leisure and Cultural review due to be delivered in 2021; Access Wirral due to be delivered in 2021, some savings to come out earlier than that; Adult Social Care Integration due to be delivered over three years, fully on target and all these savings would be delivered; Children's Services savings due to be delivered over three years were on target; Community Safety, the Safer Wirral Hub savings to be delivered by 2021 but hoping to deliver earlier, so the majority of these savings were on target.
- For 2018/19 there was one off funding of £10m from capital receipts which the Government had enabled the Council to use for revenue funding as long as it could be demonstrated that it was transforming a service.
- The re-basing of transformation savings was undertaken in February, 2017 at £37.8m and a report would be going to Cabinet in December, so a report could be brought back to this Committee on how the programme was being managed and the savings realised.

Resolved – That the report be noted.

6 **ARMC ANNUAL REPORT 2017-18**

The Chair, supported by the Chief Internal Auditor, introduced the Audit and Risk Management Committee Chair's Annual Report 2017/18.

Prepared in consultation with Internal Audit, the Chair's Annual Report for 2017/18 had been compiled in accordance with the CIPFA best practice publication, 'Practical Guidance for Local Authority Audit Committees.'

Councillor Jeff Green referred to the fact that he was the Conservative spokesperson on the Committee in 2017/18 and not former Councillor John Hale.

Resolved – That the draft Annual Report be approved and submitted to Cabinet, subject to the amendment to the membership list at paragraph 4.1 of the Annual Report.

7 **ANTI-MONEY LAUNDERING POLICY UPDATE**

The Chief Internal Auditor, Mark Niblock, introduced a report which sought the Committee's approval for the draft Anti-Money Laundering Policy and its accompanying guidance notes. This would ensure that the Anti-Money Laundering Policy was up to date and complied with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

Responding to a Member's comment Mark Niblock informed the meeting that targeted instruction and training would be undertaken with relevant front line staff once the policy was approved.

Resolved –

That the following Policy and accompanying guidance notes be approved:

- (1) Anti-Money Laundering Policy (Appendix A);**
- (2) Briefing Note for front line Employees (Appendix 1);**
- (3) Verification of Customer Identity form (Appendix 2);**
- (4) Customer Due Diligence Procedure – Evidence document (Appendix 3);**
- (5) Offences Table (Appendix 4).**

8 **IMPROVEMENTS TO THE CORPORATE RISK MANAGEMENT FRAMEWORK**

Further to minute 72 (12 March, 2018), the Senior Risk and Insurance Officer, Mike Lane, introduced a report which summarised subsequent developments in relation to those proposals for ensuring that the corporate risk register reflected the most significant risks to delivery of the Council's objectives and enhanced arrangements for its oversight but which also set out a number of actions to support broader improvements to the Council's approach to risk. The Strategic Leadership Team had considered an initial set of proposals and then undertaken the first of a number of workshops on the subject and the report outlined the action to be taken over the coming months.

In response to comments from Members, Mike Lane agreed that it would be a very sensible idea for Members to have a workshop to give their input into an improved framework. He assured the Committee that officer discussions and improvements to the risk register would be discussed with the Committee and not presented as a fait accompli.

A Member suggested and it was agreed that, 'This Committee should engage in the process of defining and identifying the Council's risk management strategy and the key corporate risks. That this Committee is involved in that

process and looks for greater clarity in terms of the responsibilities for the Council, this Committee (under its terms of reference) and the Cabinet, with an understanding of where the baseline for risk starts.'

Resolved -

(1) That Progress reports on improvement actions are brought to future meetings of the committee.

(2) That this Committee should engage in the process of defining and identifying the Council's risk management strategy and the key corporate risks. That this Committee is involved in that process and looks for greater clarity in terms of the responsibilities for the Council, this Committee (under its terms of reference) and the Cabinet with an understanding of where the baseline for risk starts.

9 MANAGEMENT OF INSURANCE AND CORPORATE RISK

The Senior Risk and Insurance Officer, Mike Lane, introduced the report of the Director of Finance and Investment which provided a regular update on the work undertaken in relation to Insurance and Risk Management activities and the key actions planned for 2018/19. Progress since the last report in respect of the following key actions was summarised in the report:

- Corporate Risk Register
- Improvements to the Risk Management Framework
- Traded Services for Schools and Academies
- Procurement of Property / Business Interruption, Museums, Crime, Terrorism and Personal Accident / Business Travel Insurance
- Annual Renewal of Liability, Motor, Engineering and Computer Insurance Policies
- Liability Claims Handling
- Insurance Fund Annual Report

In response to comments from Members, Mike Lane stated that the increase in the number of Academy Schools was something his team was very much alive to as the pool of contributors to the Insurance Fund shrank. Although they could offer support to Academies through the procurement process, for which they did receive a fee, they could not provide the insurance as the Academies were separate legal entities. The list of schools outsourcing their insurance arrangements was a concern as in 2010/11 there were 120 schools contributing and currently this was down to 90. He acknowledged that a point could be reached where some arrangements became unsustainable.

The Committee thanked Mike Lane and all his team for all their work.

Resolved – That the report be noted.

10 INSURANCE FUND ANNUAL REPORT

The Senior Risk and Insurance Officer, Mike Lane, introduced the report of the Director of Finance and Investment which provided a review of Risk and Insurance activity during 2017/18 and the plans for 2018/19 and beyond. It detailed the underwriting arrangements and recent loss histories for the principal areas of insured risk and described the impact of measures taken to improve their management. The provisions and reserves within the Insurance Fund at the end of 2017/18 were also confirmed.

Responding to Members' comments, Mike Lane commented that although the Council didn't have any of its own housing stock, it did have many buildings in which a large number of people gathered, such as schools and leisure centres and that was the reason why it would be looking at increasing the limit of indemnity on its liability insurance from the current £50m to at least £100m following the tragic fire at Grenfell Tower in June 2017.

The Committee thanked Mike Lane for his report.

Resolved –

(1) That the Committee endorses the release of monies from the Insurance Fund to the General Fund indicated as follows:

(i). The release of £675,000 from the provision and reserve for Liability claims to the General Fund.

(ii). The release of £1,325,000 from the reserve for Business Continuity and Resilience to the General Fund.

(2) That the Insurance Fund Budget 2019/20 be prepared for presentation to this committee in January 2019.

11 PENSION COMMITTEE MINUTES

The Audit and Risk Management Committee considered minute 4 of the Pensions Committee (16 July 2018) in respect of the Audit Findings, Statement of Accounts MPF 2017/18 and Letter of Representation.

Resolved – That the minute of the meeting held on 16 July 2018, be received.

12 COUNCIL ACCOUNTS 2017/18

At the suggestion of the Director of Finance and Investment, Shaer Halewood, the Chair then agreed that the External Audit Findings for both the Merseyside Pension Fund and the Council be considered concurrently.

Mr Robin Baker of Grant Thornton UK LLP, presented the reports and thanked both the Grant Thornton team and the Council's Finance Department for all their work in preparing the accounts two months earlier than would normally be the case. They had concluded that there were no material errors or uncertainties and would be issuing an unqualified audit opinion in respect of both sets of accounts, subject to the Committee approving the accounts.

The Draft Annual Governance Statement (AGS) was not included with the accounts but was prepared by 8 June and he recommended that in future the AGS be included on time.

Mr Baker referred to the fact that although progress had been made with Children's Services following the Ofsted inspection because they were still assessed as 'inadequate' a 'qualified except for' Value for Money conclusion would be issued.

In response to Members' comments, Mr Baker confirmed that they had had good co-operation in terms of completing the audit and the outstanding work had now been completed satisfactorily. He clarified that as he understood it only a further full Ofsted inspection could alter the current 'inadequate' assessment. He elaborated on the outstanding objection with regard to Lender Option Borrower Option and he would hope to determine this in the near future, he was aware of similar objections at other Councils.

Shaer Halewood responded to a Member's comment that there were no plans for the use of one-offs, reserves and asset sales for future budgets from 2019/20 and that she would only allow these if there was a longer term sustainable plan to pay these back in future years. She would also be reviewing the two types of reserves, general fund balances and earmarked reserves.

Shaer Halewood then confirmed the items which the Committee were being asked to approve which were:

- the Merseyside Pension Fund Accounts
- the Council's Statement of Accounts including the Annual Governance Statement
- the Audit findings in respect of the MPF and the Council

Shaer Halewood thanked all the team in Finance who had worked on getting the accounts ready in time led by Jenny Spick, Senior Manager Financial Planning and Policy, who then introduced the report on the accounts.

Shaer Halewood then responded to further comments regarding the Annual Governance Statement and confirmed that 98 per cent of officers (excluding those in Children's Services) had received performance appraisals in 2017/18 and that she would be happy to amend the wording in the AGS to this effect.

A Member expressed concerns regarding some of parts of the AGS, including the sentence, 'Utilising the Wirral View publication and associated website to communicate and share information with stakeholders.' He also referred to the sentence, 'Effective use of transformational expertise and capacity', when the Transformation programme had been pushed back to 2021 having started in 2016 for three years. He was content to support the financial statement but could not support the Annual Governance Statement and suggested that the vote be separated out on approving the AGS.

With regard to the matter of Equality Impact Assessments, the Director of Governance and Assurance, Philip McCourt, confirmed that this was built into the Cabinet reports processes. He then clarified what the Committee were being asked to approve.

On a motion by Councillor Ron Abbey, seconded by Councillor Angela Davies, it was –

Resolved (5:4 on the Chair's casting vote) – That the voting be taken en bloc on the matters before the Committee.

On a further motion by Councillor Ron Abbey, seconded by Councillor Angela Davies, it was –

Resolved (5:4) – That:

- (1) Having considered the amendments to the accounts, the Audit Findings Report and the Letter of Representation the audited Statement of Accounts for the Merseyside Pension Fund for 2017/18 be approved and signed accordingly;**
- (2) the Audit Findings Report presented by Grant Thornton be noted, agreeing the actions taken over the amendments to the Statement of Accounts as detailed in section 3 of the report now submitted;**
- (3) the Council's 2017/18 Statement of Accounts, incorporating the Annual Governance Statement (amended to take account of the comments on performance appraisals), be approved as presenting a true and fair view of the Council's income and expenditure for the year and its overall financial position;**
- (4) the Chair of the Audit and Risk Management Committee and Director of Finance and Investment (S151) be authorised to sign off the Letter of Representation.**

13 **MEDIUM TERM FINANCIAL STRATEGY 2019/20 - 2022/23**

The Director of Finance and Investment, Shaer Halewood, introduced a report on the Medium Term Financial Strategy (MTFS) 2019/20 to 2022/23, as shown in Appendix 1 to the report which was agreed at Cabinet on the 16 July 2018. The MTFS represented the financial plan required to deliver the pledges and outcomes as set out in the Wirral Plan. It was also a key element in the improvement of the Council's financial sustainability.

Responding to comments from Members, the Director of Governance and Assurance, Philip McCourt, stated that it was Cabinet's job to formulate the budget over the year and for the budget to then be put before Council in March for approval. If there was an adjustment to the budget during the year which resulted in a decision contrary to the budget set in March then that decision would need to go before Council. He clarified that the budget approved by Council in March set out various funds which the Executive had to spend on various services and set a ceiling (subject to virement) but it didn't require that money to be spent.

In response to a Member's comment, Shaer Halewood stated that the temporary investment into Children's Services was being paid back and that £5.2m had already been paid back in 2018/19 with proposals in place for a further £3.7m to be paid back in 2019/20.

Resolved – That the Council's Medium Term Financial Strategy 2019/20 to 2022/23, be noted.

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**Audit and Risk Management Committee
Monday, 24 September 2018**

REPORT TITLE:	INTERNAL AUDIT UPDATE
REPORT OF:	CHIEF INTERNAL AUDITOR

REPORT SUMMARY

This report identifies and evaluates the performance of the Internal Audit Service and includes details of any issues arising from the actual work undertaken during the period 1st July to 31 August 2018. There are three items of note concerning audit work undertaken that are brought to the attention of the Members for this period and these are identified at Section 3.2.

RECOMMENDATION

Members note the report.

SUPPORTING INFORMATION

1.0 REASON FOR RECOMMENDATION

- 1.1 To provide the Members with assurance that the Council is taking appropriate measures to ensure that the control environment is effective and to comply with statutory requirements to provide an adequate and effective internal audit service.
- 1.2 To ensure that risks to the Council are managed effectively.
- 1.3 To ensure that the Council complies with best practice guidance identified in the CIPFA publication 'A Toolkit for Local Authority Audit Committees'.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 No other options considered.

3.0 BACKGROUND AND AUDIT OUTPUT

- 3.1. Internal Audit operate an effective reporting mechanism for Members of the Audit and Risk Management Committee that summarises audit work completed and identifies issues raised on timely bi-monthly basis. This report supports these arrangements by focussing on the following:

- Any items of note arising from audit work conducted,
- Any issues arising that require actions to be taken by Members,
- Performance information relating to the Internal Audit Service,
- Developments being undertaken to improve the effectiveness of the Internal Audit Service.

The information contained within this report is for the period 1st July to 31st Aug 2018.

3.2. Items of Note

3.2.a Wirral Growth Company

Internal Audit has to date maintained continuous ongoing involvement with the developing Wirral Growth Company in the following manner:

- Attendance and input to regular Finance work stream meetings which feed into the overall project governance,
- Regular meetings with Project Sponsor and Project Managers to discuss risks and implementation of mitigating controls,
- Meetings with Muse Directors to discuss governance and operational controls over planned operational systems,
- Ongoing access to all related documentation including minutes of meetings and associated reports including those of a confidential nature

and the provision of opinion and insight into ongoing related governance arrangements.

Audit points raised to date concern the project risk register, clarity of the basis for the development fees, and the process for ensuring that any future contractual claims on the Growth Company have been satisfactorily addressed. Internal Audit will continue to seek appropriate evidence for these and other salient risk issues arising in future months as the business plan is finalised and contracts formalised.

A visit to the head office of the development partner is scheduled for this month to gain full assurance regarding access to project and contractor costs and relevant records should this be required, the intention is to commence producing an 'Audit Position Statement' on the project to the Project Sponsor and Accountable Officer detailing assurances and highlighting any risks and concerns and this will be reported to this Committee in due course. When contracts have been completed and work is scheduled the activity of the Wirral Growth Company will be reviewed and reported on in the customary manner with outcomes being presented to this Committee for note or action as appropriate.

3.2.b Data Centre Security

Audit work has been completed to evaluate and test the effectiveness of the physical security arrangements in operation at the Council's new Data Centre located at Mersytravel's Georges Dock site to provide assurance that robust controls are in place to prevent unauthorised access and protection from environmental risks.

The findings from the audit indicated that overall security was effective however a small number of recommendations to improve arrangements were agreed with the Data Centre Manager and senior officers from the Council that included access rights and protocols and some minor contractual adjustments; and a moderate organisational risk opinion was identified.

All of the agreed actions have been implemented.

2.c Referrals

The section is currently investigating a number of referrals that are of a fairly complex nature and have required resources to be utilised from elsewhere within the service. This work has to date been accommodated from within the contingency element of the Audit Plan and has not had a significant impact upon overall delivery of the plan. I will however continue to monitor this and report upon any problems as they materialise so that appropriate action can be taken.

3.3 Outstanding Audit Recommendations

3.3.a Attached at Appendix 1 is a 'tracker' table identifying information relating to those audits where recommended actions included in audit reports for the

current year to date have not been fully implemented within agreed timescales and yet still present a serious risk.

3.3.b Where items are addressed by officers those entries are removed from the report on a rolling basis.

3.3.c All of the reports identifying outstanding actions are currently BRAG rated as 'amber' indicating that progress is being made to address identified issues

3.4 Internal Audit Performance Indicators

3.4.a The Service constantly evaluates and measures the effectiveness of its performance in terms of both quality and productivity by means of a number of performance indicators in key areas as identified below. These include delivery of the annual Internal Audit Plan and ensuring that all of the audits identified in the plan are completed on schedule. This is particularly important at the present time as the requirement for Internal Audit involvement in a number of important corporate initiatives has increased dramatically.

IA Performance Indicator	Target & (No)	Actual
Percentage delivery of Internal Audit Plan 2018/19.	30	27
Percentage of High priority recommendations agreed with clients.	100	100
Percentage of returned client survey forms for the reporting period indicating satisfaction with the Internal Audit service.	90 (10)	100
Percentage of internal audit reports issued within 10 days of the completion of fieldwork.	100	100

3.4.b There are currently no significant issues arising.

3.5 Internal Audit Developments

3.5.a Continuous Improvement

This is important to the overall efficiency and effectiveness of the Internal Audit Service and as such a Continuous Internal Audit Improvement and Development Plan has been formulated that incorporates new and developing areas of best practice from across the profession, ensuring that the service continues to constantly challenge how efficient and effective it is at delivering its service to all of its stakeholders and making any relevant changes and improvements as required. Some of the actions currently ongoing include:

- Successful integration of risk management function into the service;

- Ongoing improvement of corporate counter fraud awareness across the Council as evidenced in Counter Fraud Update reports presented to this Committee;
- Continuing development of more automated working papers and reports to evidence and support audit findings;
- Continued ongoing development of the Mersey Region Counter Fraud group led by Wirral Internal Audit to include more joint fraud exercises and training across the local region and the North West of England including counter fraud publicity campaign scheduled for November 18;
- Continuing development of the Wirral Assurance Map identifying areas of assurance for the Council for utilisation in audit planning process;
- Ongoing improvements to the audit reporting format;
- Development of a comprehensive ICT Schools assessment questionnaire incorporating information governance and GDPR compliance;

4.0 FINANCIAL IMPLICATIONS

4.1 There are none arising from this report.

5.0 LEGAL IMPLICATIONS

5.1 There are none arising from this report.

6.0 RESOURCE IMPLICATIONS

6.1 There is none arising from this report.

7.0 RELEVANT RISKS

7.1 Appropriate actions are not taken by officers and Members in response to the identification of risks to the achievement of the Council's objectives.

7.2 Potential failure of the Audit and Risk Management Committee to comply with best professional practice and thereby not function in an efficient and effective manner.

8.0 ENGAGEMENT/CONSULTATION

8.1 Members of this Committee are consulted throughout the process of delivering the Internal Audit Plan and the content of this regular routine report.

9.0 EQUALITY IMPLICATIONS

9.1 There are none arising from this report.

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APPENDICES

Appendix 1: Audit Recommendations Status Report

REFERENCE MATERIAL

Internal Audit Plan 2018/19

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Audit and Risk Management Committee	Routine report presented to all meetings of this Committee.

**INTERNAL AUDIT OUTSTANDING AUDIT RECOMMENDATIONS
PERIOD: 01 APRIL 2017 TO 31 AUGUST 2018**

<u>Summary</u>	Total	R	A
1. Completed Audits	2	0	2
2. Follow Up Audits Completed	0	0	0
3. Advice And Guidance / Consultancy	0	0	0

1. Completed Audits - RED or AMBER flag

Audit	Date	Business Area	Organisational Risk	Summary of Findings and Conclusions	Total Recs (H,M)	Implementation timescale for all actions Responsible Officer	Status	RAGB Status
Floral Pavilion	05/01/2018	Delivery	Moderate	The high priority recommendations relate to: Documented procedures, declarations of interest, security door access control and the transportation of cash around the building.	14 (4,8)	March 2018 Venue Manager	Final report issued, action plan and customer satisfaction survey returned.	A
GDPR	01/04/2018	ICT	Moderate	Good progress in developing key planning project delivery documents however IG DG members need to be better informed on a more timely basis. In addition, not all business areas attend IG DG and there is a lack of consistency in the Chair of the group. 11 of the "12 steps to take now" publication as outlined by the ICO are work in progress.	5 (3, 2)	May 2018 GDPR Project Manager	Final report issued, awaiting return of action plan.	A

KEY:

Organisational Risk	
MAJOR	A major organisational risk opinion indicates that the likelihood/impact of the risks identified during the review, should they materialise, would leave the Council open to major risk of a fundamental or material nature. This opinion suggests that there are some potentially serious weaknesses in the design and/or operation of the control environment that may have a significant impact on the achievement of systems and or corporate objectives if not addressed.
MODERATE	A moderate organisational risk opinion indicates that the likelihood/impact of the risks identified during the review, should they materialise would leave the Council open to moderate risk of a fundamental or material nature. This opinion suggests that there are some weaknesses in the design and/or operation of the control environment that may have varying degrees of impact on the achievement of the systems and/or corporate objectives.
MINOR	A minor organisational risk opinion indicates that the likelihood/impact of the risks identified during the review, should they materialise, would leave the Council open to minor risk.
NEGLIGIBLE	A negligible organisational risk opinion indicates that there were no weaknesses identified during the review and that the Council is not exposed to any risks directly associated with the findings.

RAGB status		
B	Audits	All actions agreed and implemented, with no further Internal Audit action necessary.
	Follow Ups	All actions implemented, with no further Internal Audit action necessary.
G	Audits	Most actions agreed and implemented, e.g. low priority recommendations are outstanding, with no further Internal Audit action planned.
	Follow Ups	Most actions implemented, e.g. low priority recommendations are outstanding, with no further Internal Audit action planned.
A	Audits	Actions agreed and officers committed to implement within agreed timescale.
	Follow Ups	Actions in process of being implemented within agreed timescale with some implemented.
R	Audits	Actions agreed
	Follow Ups	Little or no progress made to implement actions within agreed timescale.

Recommendation Priority Rating	
HIGH	A matter that is fundamental to the control environment for the specific area under review. The matter may cause a system objective not to be met. This needs to be addressed as a matter of urgency (suggested timescale: within one month).
MEDIUM	A matter that is significant to the control environment for the specific area under review. The matter may threaten the achievement of a system objective.
LOW	A matter that requires attention and would improve the control environment for the specific area under review. The matter may impact on the achievement of a system objective.

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**Audit and Risk Management Committee
Monday 24 September 2018**

REPORT TITLE	PROCUREMENT - USE OF PROCEDURE RULES APPROVAL DOCUMENT PERMITTED UNDER THE COUNCIL CONTRACT PROCEDURE RULES
REPORT OF	HEAD OF PROCUREMENT

REPORT SUMMARY

This report informs the Committee of the range and number of contracts awarded which have been subject to Contracts Procedure Rules (“CPRs”) Rule12 Extension/Variation; Rule 11 Waiving the Rules, as required under the CPRs.

The Appendix details the contracts subject to the Extension/Variation or Waiver rules for the period 1 October 2017 to 31 March 2018 which under Contracts Procedure Rule 16 requires that all contracts which meet the following criteria are reported to Audit and Risk Management Committee, updates are provided to Committee on a six monthly basis:-:

- a) A contract is awarded the total value of which exceeds £500,000.
- b) A variation or extension to a contract approved by the Director of Finance and Investment (S151 Officer) and by others as per the Appendix.
- c) A waiver or breach of the Contract Procedure Rules in relation to a contract which exceeds £50,000 in value.

RECOMMENDATIONS

That the report be noted.

SUPPORTING INFORMATION

1.0 REASONS FOR RECOMMENDATIONS

- 1.1 To provide Committee with assurance that the Council is taking appropriate measures to comply with Contract Procedure Rules.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The Council's Contract Procedure Rules require this report be presented to this Committee. The frequency of the reporting now covers the previous six month period as approved by this Committee on the 21st November 2017.

3.0 BACKGROUND INFORMATION

- 3.1 Revised Contracts Procedure Rules, approved by this committee on the 24 November 2015, came into effect on the 1 April 2016.

- 3.2 The Rules place the responsibility for the approval of contracts on officers of the Council.

- 3.3 Each contract is posted on the Council's Contracts Register 'The Chest', which is the Regional e-Sourcing Portal for the North West local authorities.

- 3.4 Within the revised Rules, four, distinct, **Procedure Rules Approval Documents (PRAD)** - documents of approval are 1-4, for Exceptions to CPR's (1); Extensions to Contracts (2); Variations to Contracts; (3); Contract Award (4). These form the basis of all reports to this Committee in accordance with Rule 16.

- 3.5 The revised CPRs included the adoption of the Public Procurement Regulations 2015, the Transparency Code 2014, and the requirement to publish all contracts over £5,000 in value.

- 3.6 There have been 24 Exceptions (**PRAD 1**) to the CPR's approved for the period. Requests to waive the CPR's for under EU threshold contracts (or where the thresholds do not apply) have been authorised only in the following circumstances, supported in all cases by appropriate evidence;

- a. goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative.
- b. compatibility issues such that procurement from another source would be uneconomic given the investment in previous infrastructure;
- c. a waiver of the rules would be in the interests of the Council, be lawful, and provide value for money;
- d. Where there is a legal requirement to contract with a particular supplier.
- e. Call-offs under framework agreements, providing procedures are adopted which are broadly equivalent to these rules and compliant with national and EU legislation
- f. Contracts awarded to sole suppliers because of exclusive rights.

- 3.9 The remainder of PRAD's, detailed within the appendix, are as follows:

- Extensions (**PRAD 2**) 23 (extended within Contract terms)
- Variations (**PRAD 3**) 14 (within the interests of the Council)
- Awards (**PRAD 4**) 9 (over £500,000.00, under a full tender process)

4.0 FINANCIAL IMPLICATIONS

4.1 The appendices detail a total of 70 PRAD's, approved in compliance with the Council's Contract Procedure Rules against an overall third party spend of in excess of £200 million during 2017/18.

5.0 LEGAL IMPLICATIONS

5.1 The Council must comply with its Contract Procedure Rules and relevant procurement legislation.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

6.1 The revised CPR's resulted in changing workloads in order to improve the efficiency and effectiveness of the Council's commissioning and procurement processes.

6.2 The PRAD process includes assurances that the financial resources are available to fund the contracts and also achieves value for money prior to any approval being given.

7.0 RELEVANT RISKS

7.1 There are none arising directly from this report.

8.0 ENGAGEMENT / CONSULTATION

8.1 There was no specific consultation undertaken in respect of this report.

9.0 EQUALITY IMPLICATIONS

9.1 This is a report for information so there is no requirement of an Equality Impact Assessment.

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APPENDICES

Appendix 1 Procedure Rules Approval Documents 1 October 2017 – 31 March 2018

SUBJECT HISTORY (last 3 years)

Meeting	Date
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PRAD 1 – Exceptions								
Date	Project Status	Project Title	Directorate	Service Area	Project Description	Value	Signed By	Approval By
01/03/2018	Exception	Healthwatch and Healthwatch Advocacy Healthwatch Wirral	Health and care	Health and care	Providing Wirral's local Healthwatch and complaints advocacy service in relation to Health and Social care. Giving the public a voice to influence design and delivery of local services. Contract Period (Months) 24 - Contract Start Date 01 Apr 2018 Contract End Date 31 Mar 2020 CPR Clause applied : Goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative. Justification as to why this CPR clause is selected Referring to the King fund Report Local healthwatch progress and process p52 that recommends that existing healthwatch's should be worked with to improve and develop rather than re tender.	£376,000.00	Jayne Marshall	Ray Williams/Colin Hughes
15/03/2018	Exception	Specialist Nursing Support Hepatitis B and C Screening and treatment, Specialist Substance Misuse Liaison Nurse, Community Tuberculosis Service. Wirral University Teaching Hospital	Strategic Hub	Health and wellbeing	Specialist Nursing Support Hepatitis B and C Screening and treatment, Specialist Substance Misuse Liaison Nurse, Community Tuberculosis Service, Community Paediatrician input to the child death review process. Contract Period (Months) 12 - Contract Start Date 01 Apr 2017 Contract End Date 31 Mar 2018 CPR Clause applied : Goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative. Justification as to why this CPR clause is selected A key component of these services is that they are delivered within Wirral University Teaching Hospital by nurses / pediatrician who are employed by the Trust and have access to the patient population.	£200,000.00	Julie Webster	Ray Williams/Surjit Tour
07/12/2017	Exception	Wirral Ark Redevelopment grant Magenta Living	Business Services	Business Services	Grant to enable Wirral Ark to refurbish to accommodate 27 units ensuring 2 of those units are adapted and available for those who need adapted accommodation to enable Wirral Ark to support and accommodate more complex clients. Contract Period (Months) 12 - Contract Start Date 03 Nov 2017 Contract End Date 31 Mar 2018 CPR Clause applied: Goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative. Justification as to why this CPR clause is selected Wirral Ark is an existing scheme which provides accommodation and access to service to improve the physical and mental health of rough sleepers and supports them innovatively towards independent living. The grant will enable a refurbishment of the building to make it fit for purpose and adapted units will support more complex clients and those with physical disabilities.	£163,704.00	Lisa Newman	Ray Williams/Colin Hughes
05/12/2017	Exception	Supported Housing Contract - Forum Housing Birkenhead Forum Housing Association Ltd	Delivery Services	Environmental services	Supported housing for homeless/at risk young people in various schemes on Wirral, including: direct access hostel; 24hr supported housing and low level/move on supported housing. The contract provides 163 units of accommodation with support. The schemes also support CYPD's statutory duty regarding housing children who are Looked After/leaving care and young people know to them. CPR Clause applied : A waiver of the rules would be in the interest of the Council, be lawful, and provide value for money. Justification as to why this CPR clause is selected The services within this contract are being tendered during the next 8 months (in a phased process). This extension will allow competitive tender to be completed without a break in service to vulnerable people. The extension is on same terms as the existing contract and does not involve a change in the nature of the service provided (Reg. 72, Public Contracts Regs 2015).	£162,213.46	Lisa Newman	Ray Williams/Legal
15/11/2017	Exception	External Audit - Fees Grant Thornton UK LLP	Business Services	Law and Governance	Contract for the provision of external Audit work. This is audit work on the Statement of Accounts, AGS and VFM opinion. Contract Period (Months) 12 - Contract Start Date 01 Apr 2017 Contract End Date 31 Mar 2018 CPR Clause applied: Contracts awarded to sole suppliers because of exclusive rights. Justification as to why this CPR clause is selected Following the disbanding of the Audit Commission Grant Thornton have been appointed to act this appointment was made by the Audit Commission (before disbandment). Following closure of the Audit Commission the contract is currently managed by Public Sector Audit Appointments Limited (PSAA), the transitional body set up by the LGA with delegated authority from the Secretary of State CLG.	£159,860.00	Jenny Spick	Ray Williams/Legal
15/11/2017	Exception	Supported Housing Contract Wirral Churches Ark Wirral Churches Ark	Delivery Services	Environmental services	Short term housing support in a hostel housing up to 25 single homeless people with chaotic behaviour/multiple complex need aged 18 +, CDE + move on housing/support for 12 most vulnerable & chaotic people. Support clients to gain access to appropriate move on accommodation, ongoing support and treatment programme. The service supports the Council in responding to statutory homelessness duties. Contract Period: Contract Start Date 27 Nov 2017 Contract End Date 30 Apr 2018	£159,672.44	Lisa Newman	Ray Williams/Legal

					CPR Clause applied : A waiver of the rules would be in the interest of the Council, be lawful, and provide value for money.			
					Justification as to why this CPR clause is selected The services within this contract are being tendered during the next 7 months (in a phased process). This extension will allow competitive tender to be completed without a break in service to vulnerable people. The extension is on same terms as the existing contract and does not involve a change in the nature of the service provided (Reg. 72, Public Contracts Regs 2015).			
07/11/2017	Exception	Agreement for build of affordable housing scheme and grant of nomination rights relating to land at the former United Reformed Church Site, Tranmere Wirral Methodist Housing Association	Delivery Services	Environmental services	Agreement for build of affordable housing scheme and grant of nomination rights relating to land at former United Reformed Church Site, Tranmere . To build 3 no. 2 bed bungalows and 4 no. 2 bed flats and provides 100% nomination rights to the Council for first lets through Property Pool Plus. Contract Period (Months) 1 - Contract Start Date 23 Oct 2017 Contract End Date 23 Nov 2017 CPR Clause applied: Goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative. Justification as to why this CPR clause is selected This grant is only available to the recipient who owns the land of the former United Reformed Church Site, Tranmere, and is part of a legal grant agreement. The funding is from the Council's £1.5M Affordable Housing Programme which is only available to Registered Providers of Affordable Housing as approved by Cabinet and further approved by Councillor George Davies under his delegated powers.	£154,000.00	Lisa Newman	Colin Hughes
23/01/2018	Exception	Council Tax and Housing Benefit Processing Agents - Temporary Meritec Flex Ltd	Delivery Services	Customer Services	Wirral Council is seeking to source high calibre external support to address its backlog in Council Tax Processing & Housing Benefits and to quickly improve the speed of processing to protect the annual grant claim. Meritec currently provide highly skilled experienced processing agents to work as required on a flexible basis in accordance with the changing performance and needs of the service. Contract Period (Months) 12 months - Contract Start Date 05 Feb 2018 Contract End Date 04 Feb 2019 CPR Clause applied : A waiver of the rules would be in the interest of the Council, be lawful, and provide value for money. Justification as to why this CPR clause is selected Previous efforts working with Matric have proven unable to provide the caliber of agents. We sourced these at a significantly reduced rate through Meritec. The relationship requirements of Matrix will not work with requirements of the service which is to liaise directly with Meritec. Procurement have agreed this arrangement does not work so to work direct with Meritec is best option. NB advised.	£150,000.00	Lisa Jamieson	Ray Williams/Colin Hughes
15/11/2017	Exception	Supported Housing Contract - YMCA Birkenhead YMCA	Delivery Services	Environmental services	Short term housing support for up to 56 single homeless people aged 18+, often with chaotic behaviour/multiple complex needs. Support clients to ensure they gain access to appropriate move on accommodation, support and treatment programmes. The service assists the Council in responding to statutory homelessness duties. Service also includes provision of a Controlled Drinking Environment. Contract Period (Months) 5 - Contract Start Date 27 Nov 2017 Contract End Date 30 Apr 2018 CPR Clause applied : A waiver of the rules would be in the interest of the Council, be lawful, and provide value for money. Justification as to why this CPR clause is selected The service within this contract is being tendered during the next 5 months (as part of a phased process). This extension will allow competitive tender to be completed without a break in service to vulnerable people. The extension is on same terms as the existing contract and does not involve a change in the nature of the service provided (Reg. 72, Public Contracts Regs 2015).	£145,424.36	Lisa Newman	Ray Williams/Legal
29/11/2017	Exception	Supported Housing Contract - Forum Birkenhead Forum Housing Association Ltd	Delivery Services	Environmental Services	Supported housing for homeless/at risk young people in 3 schemes on Wirral, including Direct access Hostel and 24hr supported housing. The contract provides 129 units of accommodation with support. The schemes also support CYPD's statutory duty regarding housing children who are Looked After/leaving care and young people know to them. Contract Period (Months) 3 - Contract Start Date 31 Jan 2018 Contract End Date 30 Apr 2018 CPR Clause applied: A waiver of the rules would be in the interest of the Council, be lawful, and provide value for money. Justification as to why this CPR clause is selected The services in this contract are being tendered, 1 at end Nov. and 2 in April 18. This extension will allow competitive tender to be completed without a break in service to vulnerable people. The extension is on same terms as the existing contract and does not involve a change in the nature of the service provided (Reg. 72, Public Contracts Regs 2015).	£113,139.73	Lisa Newman	Ray Williams/Legal
28/02/2018	Exception	Slimming World Ltd Slimming World	Strategic Hub	Health and wellbeing	A Tier 2 Weight Management service to support Wirral adults to lose weight and maintain healthy weight behaviours. Contract Period (Months) 12 - Contract start date 01 Apr 2018 Contract end date 31 Mar 2019 Value for money justification: Evidence to be submitted as requested.: C. Other evidence is available that confirms that the fees demonstrate value for money	£100,000.00	Julie Webster	Donna Long

					Justification why a procurement process could not be applied: Services are delivered on a payment by results basis with an annual budget of up to £100K. This represents an annual saving of £222K based on previous service provision. An award of a further 12 Months will allow an opportunity to assess the feasibility of integrating this service with Tier 3 Weight Management Services currently commissioned by CCG.			
22/01/2018	Exception	Supported Housing Contract - Local Solutions Local Solutions	Delivery Services	Environmental services	Supported lodgings for young people at risk/homeless aged 16-25 housed throughout Wirral. Provides housing and support to enable vulnerable young people to gain the skills needed so they can live independently in the future and to help them to find and then keep their own homes; supports Social Care objective of keeping vulnerable young people healthy and safe. Contract Period (Months) 6 - Contract Start Date 01 Feb 2018 Contract End Date 31 Jul 2018 CPR Clause applied: Goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative. Justification as to why this CPR clause is selected The service was subject of an unsuccessful tender exercise (issued October 2017). There was no suitable bid submitted within the allocated funding. It remains of strategic importance and currently has 22 vulnerable young people housed and supported within the scheme. Therefore, it is necessary to extend the contract to allow time to review the specification and retender the service.	£94,147.33	Lisa Newman	Ray Williams
15/01/2018	Exception	Intelligence and Evidence Services Liverpool John Moores University	Strategic Hub	Health and wellbeing	Provision of academic support Contract Period (Months) 12 - Contract Start Date 01 Apr 2018 Contract End Date 31 Mar 2019 CPR Clause applied: Goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative. Justification as to why this CPR clause is selected The service was recently tendered but no viable bids were received. Options to retender were considered but it was felt that the market is so small locally (higher education institutions) and the spec unable to be materially changed (i.e. increased funding) that it would be unlikely to yield a different result.	£93,602.00	Dawn Leicester	Ray Williams
09/01/2018	Exception	Enforcement of On Street and Off Street parking contraventions NSL Services Ltd	Strategic Hub	Commissioning Support	Delivery of a provision for the Enforcement of On Street and Off-street parking contraventions. Contract Period (Months) 2 - Contract Start Date 01 Apr 2018 Contract End Date 31 May 2018 CPR Clause applied : A waiver of the rules would be in the interest of the Council, be lawful, and provide value for money. Justification as to why this CPR clause is selected Following further discussions with HR colleagues, this has raised concerns about the remaining timescale available as is has become clear that there are TUPE transfer requirements. • To ensure the TUPE process is delivered with as little disruption as possible by allowing a sufficient mobilisation period a small further extension was requested.	£92,048.00	Nicola Butterworth	Ray Williams
09/03/2018	Exception	Children and Adolescent Mental Health Service for Children Looked After (CLA) Contract Cheshire and Wirral Partnership NHS Foundation Trust	Children's Services	Children's	Provides a fast response for CLA who are suffering mental health and well-being difficulties. Contract Period (Months) 3 - Contract start date 01 Apr 2018 Contract end date 30 Jun 2018 CPR Clause applied: Goods, services or execution of works are obtainable only from one source or contractor and there is no reasonably satisfactory alternative. Justification as to why this CPR clause is selected: This PRAD 1 is to extend the service delivery for an additional three months. During this time, Children's Commissioning will undertake a review of the service.	£83,434.25	Carly Brown	Ray Williams
29/11/2017	Exception	Supported Housing Contract – Forum Birkenhead Forum Housing Association Ltd	Delivery Services	Environmental Services	Supported housing for homeless/at risk young people in 2 schemes on Wirral, with 24hr supported housing. The contract provides 103 units of accommodation with support. The schemes also support CYPD's statutory duty regarding housing children who are Looked After/leaving care and young people know to them. Contract Period (Months) 2.5 - Contract Start Date 01 May 2018 Contract End Date 21 Jul 2018 CPR Clause applied: A waiver of the rules would be in the interest of the Council, be lawful, and provide value for money. Justification as to why this CPR clause is selected The services in this contract are being tendered in April 18. This extension will allow competitive tender to be completed without a break in service to vulnerable people. The extension is on same terms as the existing contract and does not involve a change in the nature of the service provided (Reg. 72, Public Contracts Regs 2015).	£72,339.73	Lisa Newman	Ray Williams
15/12/2017	Exception	Expertise in development of the Wirral Growth Company Forge House Associates	Business Services	Business Services	Please see attached specification. The budget code is F2000 Contract Period (Months) 6 - Contract Start Date 02 Jan 2018 Contract End Date 30 Jun 2018 CPR Clause applied: Compatibility issues such that Procurement from another source would be uneconomic	£72,000.00	Paul Satoor	Ray Williams

					given the investment in previous infrastructure. Justification as to why this CPR clause is selected The experience of this supplier and relationships developed with stakeholders has been integral to the delivery of the project to date and this will be the case as it enters the next stage which is critical to its success. This supplier is therefore required for a further period of up to 6 months in the best interests of the Council.			
07/12/2017	Exception	Payment Service Post Office Paypoint Capita	Delivery services	Customer Services	Enable customers to pay using the Post Office and Paypoint and to interface with the Council's CAPITA payment system. In normal circumstances this would have been purchased when the Council purchased the payment receipt system however there was an existing contract in place with the COOP bank. Contract Period (Months) 12 - Contract Start Date 01 Apr 2018 Contract End Date 31 Mar 2019 CPR Clause applied: A waiver of the rules would be in the interest of the Council, be lawful, and provide value for money. Justification as to why this CPR clause is selected There are 2 suppliers CAPITA and Allpay, CAPITA are the incumbent and are PCIDSS compliant, removing any work from the Council. The interfaces are in place as is the reference number to allow receipt of barcoded payments. The Council does not have any resources to process a change in supplier and amend the print files prior to the issue of bills and invoices for 2018/19.	£70,000.00	Lisa Jamieson	Keith Patterson
15/11/2017	Exception	Supported Housing Contract Phoenix Futures Phoenix Futures	Delivery Services	Environmental services	Supported Housing for up to 23 people with substance misuse issues delivered at various addresses on Wirral. Clients are supported with their substance misuse issues and to gain the skills needed to live independently in the future, also receive help to find and keep their own homes. The scheme helps meet statutory responsibilities re homelessness and supports health and criminal justice system. Contract Period (Months) 8.2 - Contract Start Date 27 Mar 2017 Contract End Date 26 Nov 2017 CPR Clause applied: A waiver of the rules would be in the interest of the Council, be lawful, and provide value for money. Justification as to why this CPR clause is selected The 6.5 month extension will allow time for competitive tender to be completed with no break in service to vulnerable people. The extension is on same terms as the existing contract and does not involve a change in the nature of the service provided (Reg. 72, Public Contracts Regs 2015).	£69,020.00	Lisa Newman	Ray Williams
22/03/2018	Exception	Leisure Services IT - Annual Contract Gladstone MRM	Delivery Services	Community Services	Provision of front of house IT and licenses and systems for all leisure services: leisure centres, golf and sailing. Support for reporting processes, joining on line, APP support and development. Contract Period (Months): 12 Contract start date 01 Mar 2018 Contract end date 28 Feb 2019 CPR Clause applied: Compatibility issues such that Procurement from another source would be uneconomic given the investment in previous infrastructure. Justification as to why this CPR clause is selected: Gladstone are current providers and will continue to provide support and systems whilst we explore all options and maintain current levels of service formally.	£65,000.00	Damian Walsh	Ray Williams
02/02/2018	Exception	Organisational Review and Restructure Phase 2 CIPFA Business	Corporate Resources and Reform	Finance	Broader organisational restructure incorporating additional tiers from original specification. Contract Period (Months) 3 - Contract Start Date 26 Nov 2017 Contract End Date 31 Mar 2018 CPR Clause applied: Compatibility issues such that Procurement from another source would be uneconomic given the investment in previous infrastructure. Justification as to why this CPR clause is selected An initial piece of work was procured which has lead to further requirements. Given the successful bidder has undertaken the original work and the urgency to complete this wider piece by March 2018, it is necessary to progress through PRAD1.	£60,000.00	Paul Satoor	Ray Williams
22/03/2018	Exception	Nurse Practitioner Service for the Homeless Cheshire and Wirral Partnership NHS Foundation Trust	Strategic Hub	Health and wellbeing	This service will provide improved access, and particularly early access, to health promotion and harm reduction interventions and services for homeless people. It will Contribute towards the reduction in the number of A&E presentations by homeless people and towards their improved health. Contract Period (Months) 12 - Contract start date: 01 Apr 2018 Contract end date: 31 Mar 2019 CPR Clause applied: A waiver of the rules would be in the interest of the Council, be lawful, and provide value for money. Justification as to why this CPR clause is selected: This is delivering in line with original objectives and ongoing contract monitoring and performance measurement indicates that the provider is generally achieving required standards.	£59,220.00	Julie Webster	Ray Williams
14/12/2017	Exception	E-change in Circumstance Automation ADDENDUM TO AGREEMENT No. 924 CAPITA	Corporate resources and reform	Transformation office	10% of the onetime costs due on signature of this agreement 90% on project go live or 1st April 2018 whichever is the earlier. The annual charge will be deferred to 1st April 2019 and due annually thereafter and will be subject to annual increases in accordance with AWE. Following the minimum 1 year term the customer shall have the option to extend the agreement annually on a rolling basis. Contract Period (Months) 12 - Contract Start Date 01 Jan 2018 Contract End Date 01 Jan 2019	£55,000.00	Lisa Jamieson	Ray Williams

Appendix

					<p>CPR Clause applied: Compatibility issues such that Procurement from another source would be uneconomic given the investment in previous infrastructure.</p> <p>Justification as to why this CPR clause is selected This is an addition to an existing Capita product (eCIC portal) that will allow us to automate workstream directly in to the Capita owned back office system (Academy).</p>				
22/03/2018	Exception	<p>BME Health Improvement Service</p> <p>Wirral Change Ltd</p>	Strategic Hub	Health and wellbeing	<p>The BME Health Improvement Service operates to remove barriers and engage with people from the BME community in order to increase the uptake of activities and behaviours that support a positive lifestyle. This will improve engagement with the BME community to address the issue of poor representation within health improvement services.</p> <p>Contract Period (Months) 12 - Contract start date 01 Apr 2018 Contract end date 31 Mar 2019</p> <p>CPR Clause applied: A waiver of the rules would be in the interest of the Council, be lawful, and provide value for money.</p> <p>Justification as to why this CPR clause is selected: This service is delivering in line with original Objectives and ongoing contract monitoring and performance measurement indicates that the provider is generally achieving required standards.</p>	£52,528.00	Julie Webster	Ray Williams	

PRAD 2 – Extensions to existing contracts (within contract terms)									
Date	Project Status	Project Title	Directorate	Service Area	Project Description	Annual Contract Value	Extension Contract Value	Signed By	Approval By
17/01/2018	Extension	Wirral Street Lighting Equipment Replacement and Upgrades	Strategic Hub	Commissioning Support	<p>Works to replace backlog of 'condemned' street lighting equipment including lanterns and columns. Some 'free issue' stock has already been purchased via an alternative framework contract. Works contract was to be completed by December 2017 and was to be extended until March 2018 subject to performance and capital funding release.</p> <p>Extension Term (Months) 3 - Start Date 27 Dec 2017 to End Date 26 Mar 2018</p>	£240,000.00	£500,000.00	Nicola Butterworth	Pete Molyneux
18/12/2018	Extension	Wide Access Network	Business Services	Digital	<p>The provision of Wide Access Network services to Wirral corporate and school sites. This encompasses data and telephony services and provides a secure private network across which IP traffic is routed in a PSN compliant way. The new WAN replaces an existing WAN which was aging and utilised as part of the network the BT LES2 product which has been decommissioned and withdrawn from service.</p> <p>Extension Term (Months) 12 - Start Date 10 Nov 2017 End Date 09 Nov 2018</p>	£400,000.00	£400,000.00	Jeff Ashworth	Pete Molyneux
21/03/2018	Extension	Wide Area Network	Business Services	Digital	<p>The provision of Wide Area Network services to Wirral corporate and school sites. This encompasses data and telephony services and provides a secure private network across which IP traffic is routed in a PSN compliant way.</p> <p>Required Extension Term (Months) 13 - Start Date 10 Nov 2018 End Date 17 Dec 2019</p>	£350,000.00	£379,166.67	Jeff Ashworth	Jenny Spick
27/11/2017	Extension	NGA ResourceLink License	Corporate resources and reform	Human resources and OD	<p>License for use of corporate Payroll and HR system for all Council and SLA contract (including schools) employees.</p> <p>Required Extension Term (Months) 60 - Start Date 12 Oct 2009 End Date 31 Dec 2022</p>	£174,764.00	£179,231.00	Chris Hyamas	Tom Sault
09/02/2018	Extension	Supported Housing Contract - Greenbank Road	Delivery services	Environmental services	<p>Provision of 3 self-contained flats with onsite support delivered 24:7 to 3 young people, aged 16-17 years old. Clients are leaving care and are owed a statutory duty. The contract includes an option to extend for 12 months. The contract was developed and funded in partnership with CYP and is held by and monitored by Supported Housing.</p> <p>Required Extension Term (Months) 12 - Start Date 09 Jan 2018 End Date 06 Jan 2019</p>	£146,500.00	£146,500.00	Lisa Newman	Pete Molyneux
18/12/2017	Extension	Support for Oracle Ebusiness Suite (CRM/ERP)	Business Services	Digital	<p>This contract is to Support 1Business. We signed a 2+1+1 in Jan 2016 and would like to take up another year.</p> <p>Extension Term (Months) 12 - Start Date 10 Nov 2017 End Date 09 Nov 2018</p>	£75,000.00	£75,000.00	Jeff Ashworth	Pete Molyneux
15/02/2018	Extension	Short Breaks Service	Delivery services	Adult and Disability	<p>Provide short breaks across the full spectrum of disability and meet their needs, ensuring there is provision for low, moderate and complex disability.</p> <p>Extension Term (Months) 3 - Start Date: 01 Apr 2018 End Date 30 Jun 2018</p>	£213,873.00	£56,468.25	Carly Brown	Pete Molyneux
21/03/2018	Extension	Executive recruitment	Corporate resources and reform	Human resources and OD	<p>to undertake the services for recruiting senior management roles within the Council (chief officers)</p> <p>Extension Term (Months) 12 - Start Date 01 Oct 2018 End Date 30 Sep 2019</p>	£30,000.00	£30,000.00	Chris Hyams	Jenny Spick
15/02/2018	Extension	Missing from Home and Child Sexual Exploitation Service	Children's Services	Joint Safeguarding	<p>Missing from Home and Care service for children and young people across Wirral aged 10 to 18 years and for children who are at risk of sexual exploitation whether they perceive themselves to be at risk or not</p> <p>Extension Term (Months) 3 - Start Date 01 Apr 2018 End Date 30 Jun 2018</p>	£105,000.00	£26,250.00	Carly Brown	Pete Molyneux

Appendix

11/12/2017	Extension	M3 Public Protection Systems (Environmental Health, Private Sector Housing, Trading Standards & Licensing) – CRM 64198	Delivery Services	Environmental services	Critical database system for statutory services; Environmental Health, Private Sector Housing, Trading Standards & Licensing. Services unable to function without a supporting database system.NWCE8Z8CL6 M3 Public Protection System CRM 64198. For the period: 12 months from 01/04/2018 to 31/03/2019	£23,500.00	£23,500.00	David Ball	Pete Molyneux
					Extension Term (Months) 12 - Start Date 01 Apr 2018 End Date 31 Mar 2019				
09/02/2018	Extension	Nursing Transfer 2 Assess Beds	Health and care	Health and care	Transfer 2 Assess Nursing Beds	£45,060.00	£22,530.00	Jacqui Evans	Pete Molyneux
					Required Extension Term (Months) - 1.5 Start Date 02 Jan 2018 End Date 26 Mar 2018				
09/02/2018	Extension	Transfer 2 Assess Nursing Beds	Health and care	Health and care	Transfer 2 Assess Beds	£45,060.00	£22,530.00	Jacqui Evans	Pete Molyneux
					Required Extension Term (Months) - 1.5 Start Date 02 Jan 2018 End Date 26 Mar 2018				
09/02/2018	Extension	Nursing Transfer 2 Assess	Health and care	Health and care	Nursing beds to support Winter pressures discharge process	£45,060.00	£22,530.00	Jacqui Evans	Pete Molyneux
					Required Extension Term(Months) 1.5 months - Start Date 02 Jan 2018 End Date 26 Mar 2018				
29/01/2018	Extension	Supported Housing Contract - Your Housing Group	Delivery services	Environmental services	Provision of Emergency supported accommodation, with 24 hour onsite support, for homeless/at risk 16/17 year olds. The contract provides short term safe emergency accommodation for 6 young people along with access to advice and support. The scheme supports CYPD in its statutory duties to secure appropriate accommodation for young people.	£118,971.35	£21,512.63	Lisa Newman	Tom Sault
					Extension Term (Months) 2 - Start Date 01 Dec 2017 End Date 31 Jan 2018				
05/03/2018	Extension	Supported Housing Contract - Your Housing Group	Delivery Services	Environmental services	Provision of Emergency supported accommodation, with 24 hour onsite support, for homeless/at risk 16/17 year olds. The contract provides short term safe emergency accommodation for 6 young people along with access to advice and support. The scheme supports CYPD in its statutory duties to secure appropriate accommodation for young people.	£118,971.35	£19,828.56	Lisa Newman	Peter Molyneux
					Extension Term (Months) 2 - Start Date 01 Mar 2018 End Date 29 Apr 2018				
09/02/2018	Extension	Transfer 2 Assess Nursing Beds	Health and care	Health and care	T2A Nursing beds	£27,036.00	£13,518.00	Jacqui Evans	Pete Molyneux
					Required Extension Term (Months) 1.5 - Start Date 02 Jan 2018 End Date 26 Mar 2018				
30/10/2017	Extension	Hardware and Software Support and Maintenance for two EMC Centera Storage Systems 9ZDD-UAKLRT	Business Services	Digital	Support and maintenance for EMC Centera Storage Systems. As Revenues and Benefits scanned documents reside on this storage this support is necessary. We need the support from EMC as they are the sole suppliers of the patches for the operating system of this storage. The renewal price is the best that EMC have been willing to supply. Revised renewal price in Email trail attachment. Original (disputed) quote for 17330.91 attached.	£12,170.00	£12,170.00	Jeff Ashworth	Peter Molyneux
					Extension Term (Months) 12 - Start Date 01 Oct 2016 End Date 28 Sep 2017				
07/11/2017	Extension	Supported Housing Contract Sahir House	Delivery Services	Environmental services	Provision of short term housing related floating support service for up to 7 people with HIV/AIDS. Aims: to improve health, wellbeing and quality of life; ensure clients live in good quality housing; reduce crime and tackle other social issues. Purpose: to assist clients to establish and maintain suitable permanent accommodation working in partnership with other agencies.	£21,282.38	£7,288.49	Lisa Newman	Tom Sault
					Required Extension Term (Months) 4 - Start Date 01 Dec 2017 End Date 31 Mar 2018				
09/02/2018	Extension	Transfer 2 Assess Residential EMI Beds	Health and care	Health and care	T2A Residential EMI Beds	£13,344.00	£6,672.00	Jacqui Evans	Jenny Spick
					Required Extension Term (Months) 1.5 - Start Date 08 Jan 2018 End Date 01 Apr 2018				
07/11/2017	Extension	Collection, storage and disposal of vehicles abandoned or voluntarily surrendered	Strategic Hub	Commissioning Support	This contract is primarily for the collection, storage and disposal of vehicles abandoned or voluntarily surrendered. This is a Statutory duty of the Council	£5,000.00	£5,000.00	Nicola Butterworth	Tom Sault
					Extension Term (Months) 12 - Start Date 08 May 2018 End Date 07 May 2019				
21/12/2017	Extension	Supported Housing Contract - LHT Community Alarms	Delivery Services	Environmental services	Community Alarms for up to 32 people. Funding quoted is max., actual 2017/18 = £1,753.59; Charge included in tenancy. The alarm is hard wired into the accom.; is part of rental cost/condition of living in the accom. The tenant cannot opt out. CA allows clients to live independently; if they have an emergency they can get help from response centre. Subsidy is means tested.	£2,075.28	£2,075.28	Lisa Newman	Peter Molyneux
					Extension Term (Months) 12 - Start Date 25 Dec 2016 End Date 24 Nov 2017				
16/11/2017	Extension	Bailiff contract Ref A33P2X5N8T	Delivery Services	Customer Services	Supply of Enforcement Agency Services Lot 1 (Bailiff contract Ref A33P2X5N8T)	£0.00	£0.00	Neil Powell	Tom Sault
					Extension Term (Months) 12 - Start Date 01 Dec 2017 End Date 30 Nov 2018				
22/11/2017	Extension	Disposal of IT Equipment	Business Services	Digital	The original contract was a 2 + 2. We have extended the contract last year for the first extension and now require a further and final extension available on this contract	£0.00	£0.00	Jeff Ashworth	Tom Sault
					Extension Term (Months) 12 - Start Date 01 Dec 2017 End Date 30 Nov 2018				

PRAD 3 – Variations to contracts									
Date	Project Status	Project Title	Directorate	Service Area	Project Description	Existing Budget Provision	New Budget Provision	Signed By	Approval By
09/10/2017	Variation	Supply and Installation of Parking Pay & Display System	Strategic Hub	Commissioning Support	Contract for the supply and installation of parking Pay & Display equipment. The tender price didn't include for the removal of existing Pay & Display equipment. This is a variation to include the removal of Pay & Display equipment.	£494,315.00	£511,275.00	Nicola Butterworth	Tom Sault
07/11/2017	Variation	Wirral Street Lighting Equipment Replacement and Upgrades	Strategic Hub	Commissioning Support	To replace life expired and condemned street lighting equipment.	£499,999.00	£499,999.00	Tom Sault	N/A
14/03/2018	Variation	Transfer 2 Assess Nursing Winter Pressure Care Beds	Health and care	Health and care	Transfer 2 Assess Nursing Winter Pressure Care Beds	£157,710.00	£221,545.00	Jacqui Evans	Jenny Spick
14/03/2018	Variation	Transfer 2 Assess Core Residential EMI	Health and care	Health and care	Transfer 2 Assess Residential EMI Beds	£86,736.00	£201,272.00	Jacqui Evans	Jenny Spick
01/11/2017	Variation	Asset Management System	Business Services	Assets	The existing contract is for 5 years/option to extend for 5 years. We have to date implemented Reactive Maintenance Helpdesk, Oracle Interface, Supplier Portal, Asset Valuation Module, School Net Capacity, Integrated Schedule of Rates and Sites. The system is also owned and used by the Transformation Office, Policy and Performance, IT, Transaction Centre and Insurance. There are now 1400 users.	£74,000.00	£135,000.00	Tom Sault	N/A
09/02/2018	Variation	Organisational Review and Restructure	Corporate resources and reform	Finance	Extension of current review and restructure.	£65,000.00	£119,000.00	Paul Satoor	Pete Molyneux
07/11/2017	Variation	Safe Families for Children	Children's Services	Performance Qual and Improve	Safe Families for Children provides support to children aged 0-12 years old (up to Secondary School Year 7) and their families who are living in Wirral. The service will work closely with children's services to deliver two categories of intervention. The first is Early help and the second is Edge of Care	£60,000.00	£100,000.00	Deborah Gornik	Tom Sault
16/11/2017	Variation	Getting It Right	Delivery Services	Customer Services	Customer have been undertaking work within our Customer Services providing a Getting it Right programme. This is essential in order to provide the stable platform for the development of Access Wirral in 2018. Weekly updates are sent to me on progress and fortnightly telephone calls take place to discuss progress and next steps.	£300,000.00	£55,000.00	Joe Blott	Tom Sault
22/12/2017	Variation	Transfer to Assess Residential EMI Care Beds (Winter Pressure)	Health and care	Health and care	2 additional Winter Pressure T2A Residential EMI Care Beds to be added to cover an initial period of 8th January 2018 19th February 2018.	£130,104.00	£43,448.00	Jacqui Evans	Peter Molyneux
21/03/2018	Variation	Nursing T2A Winter Pressure Beds	Health and care	Health and care	Nursing Transfer 2 Assess Winter Pressure Beds	£27,036.00	£36,048.00	Jacqui Evans	Jenny Spick
27/12/2018	Variation	Professional Services to Reimagine Leisure, Cultural and other Selected Services	Corporate resources and reform	Transformation office	Professional expertise to code sign sustainable services within a broad leisure and culture portfolio. The redesign may encompass changes in structure, ownership or operation, in order to reshape services to reduce significantly, over three to five years, the current overall level of subsidy to leisure and cultural services.	£284,709.00	£25,000.00	Paul Satoor	Peter Molyneux
14/03/2018	Variation	DocStore Migration from Documentum	Corporate resources and reform	Human resources and OD	DocStore Migration from Documentum	£9,000.00	£9,000.00	Chris Hyams	Pete Molyneux
21/03/2018	Variation	T2A Winter Pressure Nursing Care Beds	Health and care	Health and care	Transfer 2 Assess Winter Pressure Nursing Care Beds	£27,036.00	£7,412.37	Jacqui Evans	Jenny Spick
22/01/2018	Variation	Merseyside Environmental Advisory Service	Delivery services	Environmental services	Annual contribution to shared local authority service providing specialist statutory environmental advice. Includes essential core services to support development management and the Wirral Local Plan, monitoring for the Joint Waste Local Plan, the Joint Historic Environment Record and Advisory Service and the annual license for Cheshire Record. PRAD 1.1 174116 approved on 09 February 2017.	£47,523.00	£5,818.47	David Ball	Pete Molyneux

PRAD 4 – Award in compliance with Public Contract Regulations									
Date	Project Status	Project Title	Directorate	Service Area	Project Description	Annual Spend £k	Total Contract Spend £K	Signed By	Approval By
12/12/2017	Award	MPF - Actuarial, Benefit & Governance Consultancy Services	Delivery Services	Merseyside Pension Fund	Provide Consultancy to Merseyside Pension Fund and its participating employers	£720,000.00	£5,040,000.00	Peter Wallach	N/A
30/01/2018	Award	Client devices	Business Services	Digital	Initial requirement for 300 Microsoft Surface Pro with Type Cover & Pen Bundles (+ compatible Microsoft Surface Docks).	£1,300,000.00	£2,600,000.00	Jeff Ashworth	N/A
02/02/2018	Award	CCS Framework GCloud 9RM1557ix Customer Experience Platform	Corporate Resources and Reform	Transformation office	The GCloud 9 Framework facilitates the purchase of commoditised cloud based services only. The contract is for a low code Platform that delivers harmonious multichannel end-to-end customer experience services and channel shift. Functionality customer selfservice, CRM replacement with CRMLight, case management, eForms, bookings, SSO, with full integration and work flow capabilities	£500,000.00	£2,000,000.00	Paul Satoor	N/A
18/01/2018	Award	Term Service Contract Intelligent Transport Systems Maintenance & Installation	Strategic Hub	Commissioning Support	The annual contract value for Maintenance element of traffic signals is £159,000. However, additional work will be given to the Contractor for Capital funded works for Highway improvement Projects. This likely to increase the Annual Contract Value to approximately £300,000, however, this figure is subject to change.	£300,000.00	£1,800,000.00	Nicola Butterworth	N/A
22/12/2017	Award	Supported Housing & Homelessness	Delivery services	Environmental services	Provision of safe/secure accommodation and housingrelated support service for minimum of 25 homeless 16 & 17 year olds and Care Leavers up to the age of 21. Provision includes: tenancy sustainment skills, such as budgeting; assistance accessing other services; personal and emotional support; help to engage in employment, education and training activities. Aim: Enable transition to independence.	£419,108.50	£838,217.00	Lisa Newman	N/A
06/10/2017	Award	Wirral Street Lighting Equipment Replacement and Upgrades	Strategic Hub	Commissioning Support	Works to replace backlog condemned street lighting equipment including lanterns and columns. Free issue stock already purchased via alternative contract. Contract to be completed by December 2017 and will be extended until March 2018 subject to performance and capital funding release (tbc at November Cabinet).	£750,000.00	£750,000.00	Nicola Butterworth	N/A
18/01/2018	Award	Soft Facilities Management Services – Tunsgate Quarter, Guildford	Corporate resources and reform	Merseyside Pension Fund	Cleaning, Security and Waste Management Services	£221,533.00	£664,599.00	Peter Wallach	N/A
21/12/2017	Award	Northbank East STEP cycleway scheme	Strategic Hub	Commissioning Support	Public realm, cycling, pedestrian connectivity along the Dock Road public highway from Tower Road to the East Float apartments.	£550,000.00	£550,000.00	Mark Smith	N/A
01/03/2018	Award	LED - Luminaire Equipment - Phase 2	Delivery Services	Environmental services	Supply of LED lanterns	£500,000.00	£500,000.00	David Ball	N/A

EXECUTIVE MEMBER DECISION FORM

DECISION TO BE TAKEN BY: Cllr Phil Davies

KEY DECISION NO

PORTFOLIO AREA: Leader

PORTFOLIOS AFFECTED: LEADER

WARDS AFFECTED: All

**SUBJECT: CODE OF PRACTICE FOR GOVERNANCE OF COUNCIL
INTERESTS IN COMPANIES**

1. RECOMMENDATION:

1.1 The Cabinet Member is requested to:

- (a) consider the Draft Council Code of Practice for the Governance of Council Interests in Companies as attached at Appendix A and agree the Terms of Reference of the Shareholder Board;
- (b) Refer the Draft Code to
 - the Business Overview and Scrutiny Committee
 - the Audit and Risk Committeeand request that the committees note the role of the Code of Practice, and the principles within it, in relation to the Council's own Code of Corporate Governance
- (c) Request a subsequent report in order to adopt the Draft Code by the Cabinet Member with portfolio or full Cabinet as desired

2. REASONS FOR THE DECISION

2.1. The intention of such a code of practice is to provide a reference point to the Council and interested parties (Councillors, officers, company representatives, etc.) in understanding the requirements of the Council in setting up a local authority company, and a local authority trading company (LATC) in particular, and how the governance arrangements for those companies are expected to work once set up.

3. STATEMENT OF COMPLIANCE

3.1 The recommendations are made further to legal advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been completed. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

4. DECLARATION OF INTEREST

<p>Signed: <i>P.L. Davies</i> .</p> <p>Executive Member: <i>CLL.R. PHIL DAVIES</i></p> <p>Date: <i>5.9.18</i> .</p> <p>Also present:</p>	<p>Signed: <i>ADaw</i></p> <p>Chief Officer: <i>Deputy Monitoring officer</i></p> <p>Date: <i>5/9/18</i></p>
<p>Date of Senior Policy Team Meeting(s):</p>	

A list of background papers on this issue is held with:

Contact Officer:

Date:

Date of Publication:

Date of Expiry of Call-In Period:

EXECUTIVE MEMBER DECISION
Shareholder Board 29th August 2018

SUBJECT:	CODE OF PRACTICE FOR GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES
WARD AFFECTED:	All
REPORT OF:	Director of Governance and Assurance
RESPONSIBLE PORTFOLIO HOLDER:	Cllr P Davies
KEY DECISION?	No

1. REPORT SUMMARY

- 1.1 This report invites the Cabinet Member with portfolio as shareholder representative to consider the approach to the governance of the Council's subsidiary companies and, in particular, the part that the introduction of a *Council Code of Practice for the Governance of Council Interests in Companies* has in promoting and ensuring good governance in relation to those company interests.

2. RECOMMENDATION/S

- 2.1 The Cabinet Member is requested to:
- (a) consider the Draft Council Code of Practice for the Governance of Council Interests in Companies as attached at Appendix A and agree the Terms of Reference of the Shareholder Board;
 - (b) Refer the Draft Code to
 - the Business Overview and Scrutiny Committee
 - the Audit and Risk Committee
 and request that the committees note the role of the Code of Practice, and the principles within it, in relation to the Council's own Code of Corporate Governance
 - (c) Request a subsequent report in order to adopt the Draft Code by the Cabinet Member with portfolio or full Cabinet as desired

SUPPORTING INFORMATION

3. BACKGROUND AND KEY ISSUES

- 3.1 Wirral Borough Council and other local authorities have long had an interest in several kinds of corporate bodies and companies. Never before, however, has there been such an interest in establishing companies and in particular, in this age of austerity and self-reliance, interest in the local authority trading company.
- 3.2 In establishing their company interests, local authorities have had to wrestle with the means by which their company interests are to be governed and how the distinct company commercial activities are to meld with the local authority and public body activities.
- 3.3 In establishing their approach to governance for their authorities, local authority lawyers and their advisors recognised that, to be successful, local authority trading companies will need to obtain from the authority the right balance between their needs as new ventures for freedom (for example, to excel in the open market, to have specialist tools and to develop a culture that enables success), whilst also acknowledging the need for democratic accountability, a commitment to the sponsoring organisation's goals, and compliance with that organisation in systems and data terms. Above all, there was recognised by each authority that, however ambitious and worthy the ventures might be, those ventures, be they jointly or by the local authority alone, involve the expenditure of public money and the stewardship of public resources. The result was a recommendation that a code of practice for the governance of council interests in companies be produced.
- 3.4 Consideration was therefore given to how to organise the establishment and continuing governance of these company ventures, not just individually but on a more planned and co-ordinated basis. Whether pertaining to just one company or several companies distinctly or in a group structure, it was acknowledged that this debate should lead to a model for all such companies, to explain the status of such companies to stakeholders and to provide a 'blue-print' for future company ventures.
- 3.5 Once established in a few councils, it quickly became apparent that there was a commonality in approach and a need amongst local authorities and a project providing a common approach was sponsored by Lawyers in Local Government (LLG) and produced by Philip McCourt (then of Weightmans LLP).
- 3.6 The intention of such a code of practice is to provide a reference point to the Council and interested parties (Councillors, officers, company representatives, etc.) in understanding the requirements of the Council in setting up a local authority company, and a local authority trading company (LATC) in particular, and how the governance arrangements for those companies are expected to work once set up.

- 3.7 The resulting example Codes of Practice for the Governance of Council Interests in Companies has now been adopted by LLG
- 3.8 Attached is that LLG common Code as adapted for Wirral Borough Council. As explained in it, this and the examples it follows adopt the approach of the code of corporate governance of this and most local authorities, which in turn follow the CIPFA/Solace model in which LLG was a part.
- 3.9 The Code sets out
- the law and guidance which govern how local authority companies are to be established and run;
 - the way in which a local authority might wish to organise its company interests;
 - how those interests may be best governed according to a set of principles;
 - how decisions will be taken as shareholder;
 - how scrutiny is to be conducted, where there is a scrutiny function and where there is not; and
 - how regulatory matters and conflicts of interest may be best managed.
- 3.10 The key relationship between the company, the executive decisions (in whatever form) to hold the company to account and as shareholder, the scrutiny or committee function in holding that decision making to account in turn is handled through the medium of a suggested shareholder board.

4. OTHER OPTIONS CONSIDERED

- 4.1 Drafting a different Code
- 4.2 Not operating under a common governance code

5. BACKGROUND INFORMATION

- 5.1 The Council is currently a shareholder and sole member of two local authority companies, one active and one dormant, is a member of a co-owned company and is a member of several others alongside various partner bodies.
- 5.2 The Council plans, as part of its commercial approach, to establish or buy shares in several further companies.

6. FINANCIAL IMPLICATIONS

- 6.1 The adoption of a common approach has no direct financial implications.

7. LEGAL

- 7.1 The Council, in order to exercise its powers to do something for a commercial purpose, is required to do so through the medium of a company. A local

authority is empowered to be a member of a company under the provisions of the Local Government and Housing Act 1989.

8. RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

8.1 None directly. Wider resource implications are dealt with in the Code.

9. RELEVANT RISKS

9.1 There are no risks arising directly from this report, although a number of opportunities and risks do arise out of the Council's approach to local authority trading companies, which are dealt with elsewhere.

10. ENGAGEMENT / CONSULTATION

10.1 The example Code on which this was based was the subject of consultation at two Lawyers in Local Government (LLG) conferences over a period of eighteen months and discussion with partner authorities, involving Bristol City Council in particular. Consultation and discussion was held with LLG's corporate partner law firms, including Bevan Brittan, Eversheds Sutherland, Trowers and Hamlins and Weightmans.

11. Relationship to Overview and Scrutiny Committee(s)

11.1 The Code itself refers to Overview and Scrutiny in the following manner at section 7, which is reflected in the recommended terms of reference and membership of the Shareholder Board. The summary excerpt is that:

"The key role of overview and scrutiny is then to advise the executive and hold it to account on behalf of the wider public interest and its role within the Council...

"Overview and Scrutiny, to fulfil its role, requires a means of access to the sensitive information and debate that inform the Shareholder Group and the Leader's decision making, without either oppressing that process or endangering its own strictly non-executive role.

"To this end it is considered that the Chair of the appropriate Overview and Scrutiny Committee is best placed to be involved, use his/her knowledge of this committee and its remit to sift the information and be alert to those matters that need to be brought to the overview and scrutiny committees' attention and be investigated further. Accordingly, the Chair will be invited to the forum created to handle this crucial information flow, the Shareholder Board. To retain the independence required of the O&S Chair, this is not membership as direct advisor as part of the decision making, but as an informed observer."

12. Relationship to Audit Committee

11.2 In a similar manner to the Council's wider Code of Corporate Governance, it is envisaged that the operation of the Code of Practice, and the authority's performance against the principles contained within it, will be included in the Annual Governance Statement and be subject to periodic review by the authority's Audit Committee and recommendations to Cabinet.

11.2 The Code itself refers to audit in three places

- At para 3.5 "The Council itself has adopted a Bristol City Council Code of Corporate Governance and the approach of this Code of Practice will fall to be associated with the provisions of that Code.
- At para 10.5 "The Bristol Holding Limited Bristol Holding Limited's will have two standing committees, which will be as follows: ... The Audit Committee, which will fulfil the same role and function as the Council's Audit Committee, the outputs of which will feed into the holding company board, the company business plans and the Council's own statement of accounts and Annual Governance Statement.
- The terms of reference of the Shareholder Group, which provides that the Shareholder Group may: "make reports to and consult the Audit Committee, in relation to that Committee's particular functions"

13. EQUALITY IMPLICATIONS

13.1 None necessary for this report

REPORT AUTHOR: Philip McCourt,
Director of Governance and Assurance

APPENDICES

Appendix A: Draft Governance of Council Interests in Companies - A Code of Practice

Appendix B: Explanatory conference slides

REFERENCE MATERIAL

LLG Guidance Note for England & Wales February 2018

WIRRAL BOROUGH COUNCIL

DRAFT

GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES **A CODE OF PRACTICE**

Contents

1.	Introduction	1
2.	Background	1
	(a) local authority trading	
	(b) the local authority company	
	(c) other local authority entities	
3.	Guidance	4
4.	Principles of Governance of Council Companies	5
	I. Controls and freedoms	
	II. Relationship, integrity and accountability	
	III. Understanding of roles	
5.	Ownership and Control of the Company	7
6.	Shareholder Board	8
7.	Scrutiny	9
8.	Investment and Finance	11
9.	Companies Structure	11
10.	The Company's Board	13
11.	Conflicts of Interest	14
12.	Managed Services, Support Arrangements and Employees	15
	Appendices	
A1.	Shareholder Board Terms of Reference	18
A2.	Shareholder Agreement Outline	22
A3.	Director's duties Briefing Note	23

1. Introduction

- 1.1 The purpose of this Code of Practice is to provide a reference point to the Council and interested parties (councillors, officers, company representatives and contractors) in understanding the requirements of the Council in setting up a local authority company, and in particular a local authority trading company (LATC), and how the governance arrangements for that company will work once set up.
- 1.2 The OECD/G20 helps define corporate governance by saying that it:
- *“involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders; and*
 - *“provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined”*.¹
- 1.3 This Code of Practice therefore sets out how the Council will normally go about managing those relationships and ensuring that a company will go on to deliver the objectives established for it by the Council. It also briefly explains and makes reference to the law and basic requirements placed upon a local authority in establishing or owning companies.
- 1.4 The Code of Practice is set out as:
- an explanatory background;
 - a set of guiding principles; and then
 - a set of working expectations.
- 1.5 Attached, as appendices, are also key documents used in this process.

2. Background

(a) Local authority trading and the local authority trading company ²

- 2.1 There are long-established powers for councils to trade. Among the most important is the Local Authorities (Goods and Services) Act 1970, which authorises councils to enter into agreements with other local authorities and other designated public bodies, for the provision of goods, materials and administrative, professional and technical services, for the use of vehicles, plant and apparatus and associated staff, and for the carrying out of maintenance. Payment terms are set out in an agreement. These are not limited to cost recovery. The 1970 Act is the bedrock of trading within the public sector and there is substantial experience of its operation. But the Act is limited in scope. For example, it does not allow trading with the private sector or the public at large. Other established trading powers are specific in nature,

¹ “G20/OECD Principles of Corporate Governance - OECD Report to G20 Finance Ministers and Central Bank Governors” - September 2015

² Source: Local Government Association Briefing

such as the Local Government (Miscellaneous Provisions) Act 1976, which enables councils to enter into agreements with anyone for the use of spare computer capacity.

- 2.2 The Local Government Act 2003 added new possibilities to charge for services, to both provide extra services at cost and to trade with the private sector. Under the 2003 Act, the Government authorizes trading by means of a trading order. The Trading Order currently in force was made in 2009³, which permits all councils in England to trade or "to do for a commercial purpose", anything which they are authorised to do for the purpose of carrying on their ordinary functions, which includes use of the granted general power of competence.
- 2.3 Under that 2003 Act and Trading Order, as augmented by the Localism Act 2011, for a local authority to exercise the power to do things for a commercial purpose (which the authority couldn't otherwise do), then it must be done through a company. Councils are thus enabled to establish a company by which they can trade with the private sector for a profit - that is to enter into commercial contracts. The profits may then go back to the council through dividends or service charges.
- 2.4 The reason given for this legislative requirement is that:

"local authorities and their trading arms have to be on a level playing field with the private and commercial sector in both a positive and negative way. They should not be at a disadvantage, but they should not have an outstanding advantage. Taxation is a particular issue. It is right to carry forward the requirement that such bodies should be companies and trading as such."
- 2.5 To exercise the power to establish a company and trade, a local authority must first approve a business case ('a comprehensive statement') covering:
 - the objectives of the business;
 - the investment and other resources required to achieve those objectives;
 - any risks the business might face and how significant these risks are; and
 - the expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.
- 2.6 That business case is then implemented and refreshed by way of a business plan, which should be updated and submitted for approval each year, to guide the company in carrying out its continuing activities.
- 2.7 The local authority must also recover the costs of any accommodation, goods, services, staff and anything else they supply to the company under any agreement or arrangement. This is an absolute requirement and distinct from the various rules on procurement or providing state aid.
- 2.8 Other important legal, commercial and financial considerations for councils or

³ The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009

fire and rescue authorities setting up a trading company include company law issues, the cost of bidding for contracts, tax liability (corporation tax and VAT), EU procurement law and state aid rules and employment law (TUPE and pensions).

(b) The Local Authority Company

- 2.9 The kind of company that must be utilized to enable the Council to trade in this way is defined in Part V of the Local Government and Housing Act 1989 ('LGHA 89'). That lists:
- a company limited by shares;
 - a company limited by guarantee and not having a share capital;
 - a company limited by guarantee and having a share capital;
 - an unlimited company;
 - a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965.
- 2.10 The LGHA 89, and the current Order⁴ made under it, places local authority companies into one of three categories, being controlled or influenced by the local authority (a regulated company) or a company in which the local authority has a minority interest. It then goes on to set out a number of additional restrictions and requirements to which the local authority and the companies must adhere.
- 2.11 The reasons for these limitations were described by the Government of the day, when setting out the reasons for the LGHA 89, as being that:
- "when a company is effectively under the control of a local authority... the most significant controls that Parliament has laid down for the conduct of local authorities should apply to that company."*
- 2.12 A regulated local authority company and any subsidiary of it, for example, is required to state on all correspondence that it is "**a local authority controlled company**" or "**a local authority influenced company**" (as the case may be) and name the relevant authority or authorities and is subject to rules concerning access by the Council's auditors and for delivery of information to the authority and its members.

(c) Other Local Authority Entities

- 2.13 If it isn't needed as a means by which it can trade, a local authority is free to involve itself in any one of a number of different forms of sole and joint ventures to best assist it in achieving its goals and aims, which may or may not involve establishing an entity that has a separate legal personality. These may also be as above, companies as defined by the Companies Act and which can include an industrial or provident society or a community interest company. They may alternatively be established as a distinct trust, with the council or appointees as trustee. They may be embodied as limited liability partnerships. They may also exist simply as unincorporated partnerships, with

⁴ *The Local Authorities (Companies) Order 1995*

other public bodies or private persons (that can often act as if they were a distinct entity), such as the Local Economic Partnership.

- 2.14 There are certain rules yet to be brought into force, and the Secretary of State holds reserve powers, that may require, prohibit or regulate the taking of specified actions by entities connected with a local authority and those appointed to or representing the local authority at them⁵. In this respect:
- “entity” means any entity, whether or not a legal person, and
 - an entity is stated to be “connected with” a local authority if financial information about that entity must be included in the local authority’s statement of accounts.
- 2.15 Whilst this Code of Practice will apply to all companies in which the Council has an interest, it may not be as appropriate for the governance of the Council’s relationship with other entities which it is connected to, is a member of or has an interest in. In these instances, regard will be had to this Code but its application will be determined on a case by case basis.

3. Guidance

- 3.1 In exercising the power to establish a local authority trading company (LATC), local authorities were obliged under the 2003 Act to have regard to Statutory Guidance. The “*General Power for Local Authorities to Trade in Function Related Activities Through a Company*”⁶ was issued and it is to this document that this and other councils in establishing the companies have had regard to.
- 3.2 That Statutory Guidance is now out of date, however, and was withdrawn as of 17th June 2014. Whilst new guidance is awaited, the withdrawn guidance nevertheless remains useful and largely very relevant. Where it is still relevant, this Code has had regard to it and, where associated with the principles of this Code, accompanying direct quotes from the Government Guidance are included throughout.
- 3.3 All listed companies are subject to the *UK Corporate Governance Code*⁷. The Council will expect all of its companies and their subsidiaries, and indeed any company with which it is associated, to adopt the “comply or explain” approach of the UK Corporate Governance Code as a demonstration of best practice in corporate governance.
- 3.4 The *Corporate Governance Guidance and Principles for Unlisted Companies in the UK*⁸ and also the *Corporate Governance Handbook*⁹ have additionally

⁵ s.212 *Local Government and Public Involvement in Health Act 2007*

⁶ First published: 29 July 2004: UK Govt Archive

⁷ September 2014: Financial Reporting Council

⁸ First edition: November 2010: Institute of Directors (IoD) and European Confederation of Directors’ Associations (ecoDa)

⁹ Third edition 2013: Institute of Chartered Secretaries and Administrators (ICSA)

been utilised in the compiling of this Code of Practice.

- 3.5 The Council itself has adopted a Code of Corporate Governance and the approach of this Code of Practice will fall to be associated with the provisions of that Code.

4. Principles of Governance of Council Companies

- 4.1 In setting out the governance relationship between the Council and its companies, group of companies and organisations it has invested in, this Code has three key underpinning principles. These are as follows, preceded by a relevant quote on the subject from the Government Guidance.

I. Controls and Freedoms

The Guidance:

- 4.2 *“A successful company will be one that works alongside the authority in delivering joint objectives. The authority will have to consider how to balance the need to assist the company to achieve its trading objectives with the principles of transparency, accountability and probity.”*

The Principles

- 4.3 It is recognised that, whilst appreciating this should not be unfettered, a trading company needs to be given commercial freedoms to enable it to succeed.
- 4.4 Accordingly, governance arrangements will seek to ensure that:
- the company will be provided with sufficient freedoms to achieve its objectives; and
 - the Council will retain sufficient controls to ensure that its investment is protected, that appropriate social and financial returns on investment can be obtained and that the trading activities of the companies are conducted in accordance with the values of the Council.

II. Relationship, Integrity and Accountability

The Guidance:

- 4.5 *“It is important that trading companies can operate on an equal footing with their competitors, but it is equally important that they are not used as a device for inhibiting legitimate public access to information about local government and local government services.”*

The Principles

4.6 It is recognised that, whilst appreciating its procedures operate in a way that protects the company's commercial interests, those procedures should ensure that the Council can carry out its functions as an investor, as a trustee of public funds and a local authority committed to both due responsibility for the exercise of its functions and for providing a vision for the City.

4.7 Accordingly, governance arrangements will seek to ensure that:

- the executive can make investment decisions based upon complete and accurate consideration of business cases and business plans;
- the executive can evaluate social and financial benefits and returns on investment; and
- the Council's overview and scrutiny committees are able to exercise their powers in relation to the executive's decision making

in a manner that ensures the companies can provide full and frank financial and business reporting against their business plans and be open to an appropriate level of scrutiny without fear of commercial confidentiality being breached.

III. Understanding of role

The Guidance:

4.8 *"A trading company will be a separate legal entity from a local authority. It will derive its legal authority from its Memorandum of Association and the Companies Acts. Its directors and officers will derive their authority from the articles of association and the law relating to companies.*

...

"Those "who are appointed directors will participate directly in the activities of the company and are answerable to the company and have the powers and duties of company directors whilst they do so.

...

"Local authority members and officers should be aware of potential conflicts of interest when carrying out their roles for their authorities, or when acting as directors of trading companies."

The Principles

4.9 It is recognised that, as company ventures have a separate legal personality to the local authority, the success and good governance of the company venture depends upon those involved understanding their role and responsibilities collectively and individually.

4.10 Accordingly, governance arrangements will seek to ensure that there is sufficient induction, training and other materials in place so that:

- their legal duties;
 - stewardship of assets;
 - the provisions of the governing documents;
 - the external environment; and
 - the total structure of the organizations and the venture
- are appropriately understood by Members of the Council in their role as part of the executive or of overview and scrutiny, by officers of the Council associated with these duties and by the directors of the companies.

5. Ownership and control of the company

- 5.1 Wirral Borough Council, the local authority as a corporate body, will be a member of the company. The membership will be as guarantor if a company limited by guarantee or, as will be the norm if a LATC, the holder of shares (perhaps the only share) in a company limited by shares.
- 5.2 The rights and duties as a member of the company will, however, almost always fall to be exercised as an executive responsibility. This means that, at the Council, decisions to be taken as a member of the company (as shareholder) fall to be decided on by the Leader. In the normal way, therefore, these functions may be delegated by the Leader to the Cabinet, a member of the Cabinet or to an officer and will be subject to key decision and access to information rules, call-in and review by overview and scrutiny committee.
- 5.3 For ease of use, where decisions are to be taken by the local authority as a member of a company, those decisions are referred to in this Code as being taken by 'the executive'.
- 5.4 The authority of the shareholder is exercised where decisions of the company are reserved for approval of the executive before they can be implemented, but also directly in the form of a shareholder's written resolution or at the company's general meetings.
- 5.5 At the company general meetings the executive will be present and voting as a member of the company, where this presence and voting will be in the form of a single person known as the 'shareholder representative'.
- 5.6 Decisions to be made by the executive, rather than left to the company itself, are known as 'reserved matters'. Reserved matters cover such things as the approval of the company's annual business plan or mid-year amendments to it, the appointment of directors, certain key financing decisions and so forth. These are established either through agreement with the company, known as a shareholders' agreement, or as set out in the company's governing articles of association.
- 5.7 The relationship between the local authority (and the companies it is a member of) is governed by these and other key documents that are required

to establish a local authority company, and a trading company in particular. In establishing the local authority's company and then in governing the relationship with what is now a separate legal personality, the executive will need to put in place the following documents:

- The **business case** which assesses the risk involved in the proposed trading enterprise and decides whether or not it should be established and proceed to trade. It starts the process of business planning.
- The **articles of association**, or the memorandum and articles of association as it used to be called, which is the constitution of the company. This is the legal documents required to set up a limited company and give details of its name, aims and authorised share capital, conduct of meetings, appointment of directors and registered office.
- The **shareholders agreement**, or management agreement, which sets out the rights of the Council as the sole or co-shareholder and how it can exercise those rights. It details the powers of the board of the company and how and when the shareholder might influence those powers. It is important to note that the shareholder agreement is capable of being developed and added to as the company develops.
- The **financial agreements** which are the commercial agreements that set out what assistance is to be provided and on what terms. This may be purely financial, such as a direct loan or a facility such as a parental guarantee, and made on commercial terms. It may also be in the form of goods, services or staff to be provided and set out in a resourcing agreement or a service level agreement, which is likely to be on a service charge or cost recovery basis. The agreements may require regular and detailed access to information and financial reporting to the Council and/or holding company.
- The **business plan** which sets out the objectives of the business, how they are to be achieved and standards met adjusted in the light of experience and changing circumstances. It is a comprehensive analysis of the business situation at a particular point in time. It is often referred to as the annual business plan because it is expected to be submitted for shareholder approval annually.

5.8 A model shareholder agreement for use with the holding company, setting out the principal decisions reserved for the executive's approval, including subsidiaries of the company as a group, is outlined at Appendix 2.

6. Shareholder (Advisory) Board

6.1 The structure described above creates a governance process whereby, so far as appropriate under this Code's Principles, the company is left to get on with its business. Following the UK Corporate Governance Code, the companies will utilise a unified board, with appropriate non-executive directors providing outside expert help and with board committees (such as an audit committee) to provide oversight and ensure delivery.

- 6.2 The Leader and cabinet, in turn, will seek to inform the executive decisions and holding the company to account utilising a reflection of the company board structure in the form of a Shareholder Board, including external expertise and sub-groups. The role of this group is to provide the necessary oversight from a shareholder's perspective that the parameters, policies and boundaries that the executive as the shareholder has established for the company are being adhered to. In it, the Leader or the appointed member of Cabinet with portfolio remains the decision maker but the Shareholder Board act as advisors in the making of those executive decisions.
- 6.3 Such a Shareholder Board is considered to be an effective means of governance of the companies. This is because it allows for decision making and discussion in an informed atmosphere, which also provides the executive with:
- a mechanism to communicate the shareholders' views to the company; and
 - a means to evaluate the effectiveness of the company board and the delivery of the company performance against strategic objectives.
- 6.4 It is intended that the Leader, or the appointed member of Cabinet with portfolio, will make most decisions concerning the executive's role in respect of company interests at meetings of the Shareholder Board. It is envisaged that key decisions concerning the companies will, however, still normally be made at meetings of the Cabinet.
- 6.5 The Terms of Reference for the Shareholder Board are set out at Appendix 1.

7. Scrutiny

- 7.1 The overview and scrutiny committees have a significant role to play to ensure that the company is able, and the executive has properly required the company, to make sufficient returns for the investment to be worthwhile and, indeed, ensure that the social objects set for it are not lost in the drive towards the overriding and essential requirement for the company to be economically successful.
- 7.2 It is the executive, the Leader and Cabinet, who is responsible for approving the business case to establish a company, of setting the right balance between the economic, social and environmental objects of a company when it is established and of subsequently exercising the Council's powers as shareholder.
- 7.3 Once established, the company must then get on with the business of delivering the objectives with which it has been tasked, within the parameters set for it. It must be otherwise free, however, to operate in its own best interests and to compete on an even basis with its competitors in the marketplace.
- 7.4 Again, it is the executive, either generally or when considering reserved

matters, to whom the company must answer and by whom it is held to account for its success, or failure, in achieving the objectives set for it.

7.5 The key role of overview and scrutiny is then to advise the executive and hold it to account on behalf of the wider public interest and its role within the Council.

7.6 This creates a flow of information and accountability, in which

- the company needs to get on with the business of delivery;
- the executive needs to make the company decisions reserved to it and to hold the company to account for performing against them; and
- Members as part of overview and scrutiny need to advise on or scrutinise the decisions of the executive.

This needs to be done in a trading environment that requires them all to make speedy and reactive commercial decisions and to handle often highly valuable and commercially sensitive information.

7.7 Overview and Scrutiny, to fulfil its role, requires a means of access to the sensitive information and debate that inform the Shareholder Group and the Leader's decision making, without either oppressing that process or endangering its own strictly non-executive role.

7.8 To this end it is considered that the Chair of the appropriate Overview and Scrutiny Committee is best placed to be involved, use his/her knowledge of this committee and its remit to sift the information and be alert to those matters that need to be brought to the overview and scrutiny committees' attention and be investigated further. Accordingly, the Chair will be invited to the forum created to handle this crucial information flow, the Shareholder Board. To retain the independence required of the O&S Chair, this is not membership as direct advisor as part of the decision making, but as an informed observer.

7.9 Overview and Scrutiny committees may then review any matter concerning the Council's companies and make proper use of its full powers and function, having had these matters drawn to its attention by, and with the benefit of, a fully informed Chair.

7.10 In carrying out any such review, the Government Guidance states that:

"The local authority should ensure that its overview and scrutiny committees are able to exercise their powers in relation to the discharge of local authority functions under the relevant legislation.

7.11 To this end, the legal framework for local authority companies includes an express requirement concerning the provision of information to Members of the Council, which reflects the similar provision in relation to local authorities generally. This states that a local authority regulated company "*shall provide to a Member of the Council such information about the affairs of the company*

as the member reasonably requires for the proper discharge of his duties."¹⁰

- 7.12 The exception here is that the company cannot be required to provide information in breach of any enactment, or of an obligation owed to any person.
- 7.13 It is also worth noting that, where a Member or an officer has become a member or director of a local authority company, the local authority must make arrangements for them to be open to questioning about the company's activities by Members of the Council at a meeting of the authority, or a committee or sub-committee, or by cabinet members in the course of proceedings of the cabinet or a committee of the cabinet. Importantly, the Member or officer is not required to disclose confidential information about the company.

8. Investment and Finance

- 8.1 The balance of how each company venture may be financed will be assessed and set out in the business case, required at the very beginning of the venture and the incorporation of the company as described above, and in business plans as made or amended and agreed by the executive. Each decision will take into account state aid implications and such matters as where legislative and regulatory requirements demand full cost recovery or standard commercial terms to be applied.
- 8.2 Where the purpose of a company is to better utilise assets owned by the Council, for example, the principal investment in the company is likely to be those assets. The assets may then be made use of by the company through their being transferred in their entirety from the Council to the company or by being provided to the company by the Council under a lease, loan or use agreement.
- 8.3 Investment at the initial stage of a trading company will normally be by way of purchase of share capital, often together with a loan or loan facility on commercial terms. This is to fund those costs which arise at the start of the company or company joint venture, including the holding company and its subsidiaries, to cover initial set up costs, working capital costs and collateral costs. For purchased company interests, share value should reflect the fair value of the going concern.
- 8.4 Direct investment may well also be by various other forms of agreement. This may be for the supply of monies, directly as a loan or under a parental guarantee, credit agreement, facility and so forth, which should be on standard commercial terms. It may also be for the supply of goods, property or staff, as described above and at section 12 below.

¹⁰ Article 7, Local Authorities (Companies) Order 1995

9. Companies Structure

- 9.1 Wherever advantageous and reasonably practicable to do so, the Council's companies and any subsidiary companies will be expected to adopt a common 'group' approach. Especially where a Teckal company, this will involve the companies using existing Council policies and strategies where appropriate and, in particular, the Council will require the company and its subsidiaries to adopt a common approach across the group on branding and its finance, ethics and procurement policies and practices wherever practicable. For example, the Council will require a Teckal and potentially other companies owned by the Council to approve the procurement and authorisation of spend levels set by each company for its directors and staff.
- 9.2 More detailed matters may also be set as a common approach by the Council, where it considers that that will increase effectiveness, efficiency and engender common understanding. This is likely to include such things as group financial procedure rules, fraud and whistle-blowing policies, decision making levels and procedures, capability and disciplinary procedures, health and safety practices and so forth.
- 9.3 The Council and any holding company may similarly provide a natural home and conduit for support and control roles that will be common across the group, such as company secretarial services, procurement, finance and human resources. These fall into two groups. The first is those services that would be better employed directly by the company within any group structure, such as financial and payroll systems for example. The other are those provided as managed services to the companies by the Council, under a resourcing agreement (or service level agreement), because this is more cost effective, appropriate or is a demand of the shareholder, such as HR or company secretarial and legal services. (This is described further at section 12 below).
- 9.4 The secondary purpose is financial, in that a range of company activities can share VAT registration where appropriate and more than one company, one arranged as a subsidiary to another, can be treated as holding group accounts. The latter means that reporting is as one set of accounts and that profit and loss can be distributed across the group, setting one off against another, as might be desired to meet the aims and values set for the group.
- 9.5 The executive will approve the appointment of auditors for any company and its accounts may be required to appear as part of the Council's financial statements.

10. The Company's Board

- 10.1 The Government Guidance advised that a local authority company will be run by its board of directors answerable to the shareholders, in accordance with the articles of association, and goes on to suggest that a board of between 3 and 8 directors is most likely to be practical (although this will be dependent

on the circumstances of each company). The participating Local Authority should be represented on the board of its company.

- 10.2 The representatives who are appointed directors by the executive will participate directly in the activities of the company and are answerable to the company and have the powers and duties of company directors whilst they do so. Accordingly, the Government Guidance goes on to suggest that this requirement in a trading company and the accompanying conflict of interests that may arise means that officers are better placed to fulfil this role.
- 10.4 Specific arrangements may be required outside of the norm in certain circumstances. For example, the Council may require that it appoints the Chair of the board of directors and that the Chair will have a deciding say to be exercised through means of a 'golden vote' procedure on the board. This approach may be needed in a specific kind of company, for instance, to ensure that the Council's officers will always be able to out-vote the directly appointed directors on the holding company. Such matters as the quorum requirement for board meetings of the company and the like will be expected to reflect that objective.
- 10.5 A Council owned company will normally be required to have two standing committees, which will be as follows:
 - The Remuneration Committee, which will conduct appointments and remuneration decisions and recommendations to the Council (where an appointment is not wholly reserved to the Council).
 - The Audit Committee, which will fulfil the same role and function as the Council's Audit Committee, the outputs of which will feed into the holding company board, the company business plans and the Council's own statement of accounts and Annual Governance Statement.
- 10.6 In respect of the individual wholly owned trading companies, non-trading (Teckal) companies and joint ventures, the appointment of directors of the company will be as are considered best to meet the requirements of the subsidiary or venture concerned.
- 10.7 Where an officer is placed on a company board, he or she will be provided with an indemnity for their actions in that role. This is provided for under the Local Authorities (Indemnities for Members and Officers) Order 2004. It should be noted, however, that any such indemnity only covers actions taken honestly and in good faith.
- 10.8 Appointments to company director will be of the relevant post or office of the Council, not as an individual. This will be reflected within each of the companies' articles in that if any one of the Council appointed directors ceases to be an employee or office holder of the Council, then they automatically also cease to be a director of the company.
- 10.9 The remuneration of Council appointed directors to a company controlled or influenced by the Council, other than permitted expenses, will be met by the

Council and not the company. This is because, whilst that director's overriding duty is to the company, that person's role as director on the company board is only because of, and in fulfilment of, their employment as an officer of the Council, for which they are remunerated by the Council under that contract of employment. The position on the company is an inherent part of their job, for which payment is not to be made twice, directly or by different persons, for the same work

- 10.10 That is not to say that the Council would fail to recognise that the position of an officer appointed as a company director or company officer will include distinct and potentially onerous additional responsibilities. Rather, it is that it is the Council that needs to recognise the value of those responsibilities, through a job evaluation process or other means by which the Council sets salaries, in considering any review of an officer's remuneration. To do otherwise risks a future action against the officer or the Council and, if a payment were made to a Council officer by the company that was considered to be a fee or reward accepted under the colour of his or her office or employment other than his proper remuneration, that officer may also have committed a criminal offence¹¹.
- 10.11 For the purposes of completeness, where a Member of the Council is a director of a regulated company the law only permits such a Member to receive payment for that directorship up to the amount payable for that role under the authority's Special Responsibility Allowance (SRA)¹², set as a result of the recommendation of the Independent Remuneration Panel¹³. These payments may be made by the company directly or, more normally and as would be the case here, by the Council for reasons of simplicity, accounting and accountability.
- 10.12 The view behind this is that the regulated company is, in fact, simply a part of the Council. In the same way that there is a bar on Members of the Council being employees, the philosophy runs akin to that for officers in that the Council may not pay a councillor for any other activities they may carry out as a Member of the Council other than through their SRA.

11. Conflicts of interest

- 11.1 The Government Guidance states that "*Local authority members and officers should be aware of potential conflicts of interest when carrying out their roles for their authorities, or when acting as directors of trading companies.*"
- 11.2 There will always arise a point where, in matters of reporting, contractual discussion, investment requests or resourcing agreements, there is potential

¹¹ s117(2) of the Local Government Act 1972

¹² Article 5 of the Local Authorities (Companies) Order 1995

¹³ Reg 21 of the Local Authorities (Members' Allowances) (England) Regulations 2003.

for the same person to be a decision maker or advisor both for the Council and the company.

- 11.3 This is a reflection of the position of each company as a separate legal entity and that the directors of each company are subject to. As the Corporate Governance Guidance and Principles puts it:

‘An important principle of Company Law is that directors have a duty to promote the success of the company as a whole. They are specifically prohibited from directing the activities of the company in favour of themselves or particular shareholders and/ or stakeholders’.

- 11.4 Appendix 3 sets out a briefing for directors’ duties.

- 11.5 An essential element of this in terms of this Code is that, whilst changes to the Companies Act and current articles of association allow for appropriate provisions dealing with conflicts of interest and the ability of company directors to authorise them, an officer of the Council or a Member can never waive their duty to act in the public interest in exercising their responsibility for functions of the Authority. This will, on occasion therefore, create an inescapable conflict of interest between someone’s role as a Member or, more likely, as an officer of the Council and as a director of a company, of which those involved need to be aware.

- 11.6 There are also natural points where it is expected that the Council and one of its trading companies will take a different approach. In this respect, the Government Guidance states that:

“The local authority should consider appointing a ‘contract officer’ and/or ‘contract member’ with primary responsibility for liaison between the company and the authority, and for access to information about it. It might wish to place limitations on these individuals to ensure that they are fully accountable to the authority as a whole and to ensure that the Section 151 Officer/Monitoring Officer countersigns major decisions about the company’s operations.”

- 11.7 This is the role of the Shareholder Board. In support of that function, the Council will appoint a lead authority and client-side officer to lead on managing contractual arrangements with the companies and in holding of the companies to account.

- 11.8 A certain form of wholly owned local authority also exist to provide services directly to or for the Council (known as a ‘Teckal’ company). The relationship between the authority and the company are set out in a contract for services. In this scenario, clear separation is required between commissioner and provider and there will be a requirement for further support to be provided, beyond the position of lead authority and client officer.

- 11.9 Officers placed into any of these roles are, at some point, likely to find themselves in a position where they are, or are negatively seen to be, acting against the interest of their own authority and also challenging the Council as

their employers or senior managers to whom they might normally answer to. As a result of such activities, their performance in the company or actions they feel are required of them by the company, some of those officers may even find themselves in a position where it is no longer felt tenable that they can be appointed by the authority as a director of a company. The Council as an employer, from the viewpoint of both the executive and overview and scrutiny, wholly recognises these unusual positions that such officers may find themselves. The Council therefore undertakes that no officer will suffer any ill affect to his or her employment or career with the authority for fulfilling these activities to the best of their ability or in undertaking these actions asked of them.

12. Managed Services, Support Arrangements and Employees

- 12.1 The authority is required under the 2009 regulations to recover the costs of any accommodation, goods, services, staff or any other thing it supplies to a company in pursuance of any agreement, or arrangement in place. It cannot subsidise the operation of the company in this way.
- 12.2 The Government Guidance in addition clarifies that
- “Because the power to trade is subject to a restriction requiring it to be exercised through a company, it follows that the authority has the requisite power to enter into arrangements with a company in order for the trading power ... to be exercised. It is not necessary therefore, for the company to be expressly designated as a public body under the Local Authorities (Goods and Services) Act 1970, in order for the authority to be able to provide it with staff, goods etc, for the purpose of exercising the power to trade.”*
- 12.3 This means that the authority may enter into an agreement with the companies to provide services at cost or as a surplus service charge and that staff time and resources utilized for company purposes should be carefully accounted for. Where this is done at cost, which shall be the norm, it is helpfully stated in the Guidance that the approach should be in accordance with the CIPFA definition of ‘whole cost’.
- 12.4 Referred to above as the ‘managed services’, those areas of the authority’s resources so utilized might include project management, initial set-up staff, human resources, audit, business continuity, communications, procurement, legal or finance and so on. It is for the company and the executive to agree what is the appropriate level of authority led resource that is appropriate, should or can be delivered to the company in each case. The parameters of those services can be agreed through a Resourcing Agreement or what is known as a Service Level Agreement (SLA).
- 12.5 The authority as shareholder, however, does need to be assured that there are effective and robust support services in place in certain areas. This is to satisfy itself that sufficient standards of operational governance, legal and company secretarial compliance and effective financial management within

the company are adhered to. The authority will reserve to itself the ability under the Shareholder Agreement to insist on supplying these services to a controlled company, at cost, if it feels that these standards are not otherwise being met or are not in its opinion likely to be met.

- 12.6 In particular, the Company Secretary role should have a consistent approach across all of the Council owned companies or group of companies. This is to ensure consistent interpretation of the compliance standards across the companies and of the governance relationship between the companies and between the companies and the Council. In addition, it ensures that appropriate and proper intelligence is shared across the companies and the authority. In relation to all authority-controlled companies and their subsidiaries, therefore, the position of company secretary as an officer (not a director) of each company in the group is to be fulfilled by the Council's Monitoring Officer, being the equivalent corporate governance, assurance and general counsel position for the Council. All company secretarial and general counsel duties for the companies will then be carried out through that office, either directly or through the position of an assistant company secretary, with the exception of where a conflict of interest is identified and is acknowledged by that officer.
- 12.7 In relation to company staffing, it is expected that staff of the local authority trading companies will be directly recruited and employed by the companies themselves, with the exception of those support staff supplied by or seconded from the authority as described above. Where the business case includes that staff are transferred, however, this will be subject to full reporting and then consultation and requirements under TUPE legislation and guidance.

Draft

(Based on the LLG Guidance Note for England & Wales February 2018)

WIRRAL BOROUGH COUNCIL
SHAREHOLDER BOARD - TERMS OF REFERENCE

1. Overview

The purpose of the Shareholder Board is to advise the Cabinet Member in the exercise of his/her responsibility for the Council's functions as corporate shareholder of a company or group of companies and in their role to represent the interests of the Council as Shareholder Representative at meetings of a company.

2. Decision making

The Cabinet Member may make decisions concerning companies in which the Council is or is proposed to become a shareholder, either:

- (a) within Cabinet; or
- (b) in the presence of the Shareholder Board.

3. Membership and Arrangements

The Shareholder Board shall consist of the Cabinet Member with relevant portfolio (or other Cabinet Member as may be appointed by the Leader for this purpose) in the presence of:

- (a) at least one relevant senior officer of the Council as are appointed by the head of paid service (or their deputies);
- (b) such other Members of the Cabinet as may be invited by the Cabinet Member;
- (c) up to two co-opted members, who may be appointed from time to time, who will be independent persons providing relevant expertise and appointed on merit (but which process may be carried out in association with the Audit Committee's arrangements for co-opted appointments); together with
- (d) a Chair (or representative) of a relevant Overview and Scrutiny Committee, who may be invited by the Cabinet Member to act in the capacity of Observer.

The s.151 officer and the monitoring officer, or their deputies, will be advisors to the Shareholder Board to provide open and strong advice.

4. Restrictions on Membership

As the Shareholder Board is to advise on the discharge of executive functions in relation to company matters and the role of the Shareholder Representative, only executive members may be members of the Shareholder Board and, only then, where there is no conflict of interest between the role of the Shareholder Board in advising the Shareholder Representative on behalf of the Council's corporate interest and that member's role as portfolio holder or company director.

5. Meetings

The Shareholder Board shall meet on a basis agreed by itself and normally in private.

The quorum of Shareholder Board Meetings must include the elected member of the Cabinet together with at least one officer of the Council to give advice on the matters to be discussed.

Where an invitation to attend is made to the Chair of Overview and Scrutiny Committee (or their nominated deputy) it should be made at least three clear days in advance of the meeting taking place. This notice period may be waived if the Chair of Overview and Scrutiny Committee (or their nominated deputy) so agrees.

An invitation to attend must also have been provided to the section 151 officer and the monitoring officer (or their nominated deputies), which will normally be at least three clear days in advance of the meeting taking place.

The Cabinet Member will chair the Shareholder Board and is the sole decision maker.

6. Functions

The purpose of the Shareholder Board is to provide strategic direction to a Council regulated company which shall, in particular, include to:

- (a) Oversee the performance of a company in relation to its Business Plan, including but not limited to monitoring the company's performance:
 - (i) in financial matters;
 - (ii) against the social goals of the company as set out in the company's Objects, Business Case or Business Plan; and
 - (iii) against the values of the Council.

- (b) Evaluate and monitor:
 - (i) the financial and social returns on investment (be that shareholding, loans or direct investment); and
 - (ii) risks and opportunities including those arising from joint ventures or new opportunities.

- (c) Consider matters reserved to the Council for shareholder approval, such as:
 - (i) Varying Articles of Association
 - (ii) Varying ownership and structure
 - (iii) Variations to shares (number of, rights, etc.
 - (iv) Appointment, removal and the remuneration of directors (members of the Company Board);
 - (v) Entering contracts that:
 - (1) have a material effect on Council business (including other companies or partnerships within which the Council holds an interest);

- (2) are outside of the Company's Business Plan or do not relate to the business of the Company; or
 - (3) are significant in relation to the size of the business of the Company, the Business Plan, etc.;
 - (vi) Acquiring or disposing of any material assets of the Company (as may be defined in the Annual Business Plan) (whether by one transaction or a series of transactions);
 - (vii) Material legal proceedings outside of ordinary business;
 - (viii) Adopting and amending business plans each year and strategic plans (3 years);
 - (ix) Appointment of auditors
 - (x) Issue of dividends
- as may be more particularly set out in a Company's Articles of Association or Shareholder Agreement.

7. Relationship

The Shareholder Board as it considers appropriate in accordance with its functions described above, may:

- (a) report and make formal recommendations to the Leader, directly or to the wider Cabinet;
- (b) make reports to and consult Overview and Scrutiny (including full Council) or
- (c) make reports to and consult the Audit Committee, in relation to that Committee's particular functions.

OUTLINE OF THE
SHAREHOLDER AND COMPANY AGREEMENT

1. DEFINITIONS AND INTERPRETATION
2. FINANCING THE COMPANY
3. DIVIDEND POLICY
4. SUBSIDIARIES
5. MANAGEMENT OF THE COMPANY
6. SHAREHOLDER GROUP
7. THE BUSINESS PLAN AND COMPLIANCE WITH THE BUSINESS PLAN
8. REPORTING AND ACCOUNTING MATTERS
9. BANKING ARRANGEMENTS
10. TERMINATION
11. UNLAWFUL FETTER ON THE COMPANY'S POWERS
12. ASSIGNMENT AND SUB-CONTRACTING
13. FURTHER ASSURANCE
14. REMEDIES AND WAIVERS
15. ENTIRE AGREEMENT
16. VARIATION
17. CONFLICT WITH THE ARTICLES
18. SEVERANCE
19. CONFIDENTIALITY
20. NOTICES
21. NO PARTNERSHIP OR AGENCY
21. COUNTERPARTS
22. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
23. GOVERNING LAW AND JURISDICTION

Guidance Note to Council Members and Officers when acting as
Directors of Council Companies

To be inserted

Council Interests in Companies

GUIDANCE NOTE & EXAMPLE CODES OF GOVERNANCE



LLG | Legal training

LLG
Lawyers in Local Government

Where the Code is from

Page 66

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AND OTHERS

With thanks to

Those who attended the consultation sessions and discussions

- LLG Monitoring Officer Conference & LLG Commercialisation Conference

The partner firms who discussed it with us

- ***Trowers and Hamlins***
- ***Bevan Brittan***
- ***Weightmans***
- ***Eversheds***



WHY?

GOVERNANCE AND CONFLICTS OF INTEREST

- Ownership and accountability
- Company control: directors, officers, Members and scrutiny
- Having a Code of Practice & Principles of Governance of Council Companies

Councils will have shares in several companies

To make money or to trade - *why we're here*

- Except where expressly authorised, a council can only do something for a commercial purpose (ie trading) through a company

Some are for community reasons

- As part of community interest company (CIC) or charity and interest is limited by guarantee

Some are for project reasons

- Council holds an interest in a special purpose vehicle for build projects (e.g., PFI deal with a builder)

For alternative delivery

- In-sourcing of contract of 'half-way' Teckal company

Question of Why

Page 70



Knowing when there is an opportunity or a need to enter or create markets



Question of How

Council is permitted to own interests in companies, but the establishment and structure and financing is tightly regulated

Plus lots of ideas, from lots of directions, each re-inventing or copying the previous (linked?) wheel



Question of Governance

In separate legal entities, each acting in their own best interests, how to best manage the interface between

- the proper governance of democratic body, the Council, investing public money and having regulatory stewardship over a separate commercial entity and
- the proper internal governance that commercial, fast moving, 'for profit' trading company

leading to a potential list of conflict of interests, cultures and approach!



Internal Problems?

Clash of ignorance

Clash of culture

- Politics
- Information

Re-inventing the wheel



Answer

Was to develop a blueprint and guide

GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES CODE OF PRACTICE

Page 74





GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES

What's what: to explain the law and what things are:

- local authority trading
- the local authority company
- other local authority entities (including Limited Liability Partnerships)

What guidance is there out there for this:

- Generic plus old but still useful

Principles to be adopted and guide relationships:

- Like the Code of Corporate Governance generally - important

Likely structure:

- Suggestion here, but most adaptable for own purposes



CODE: Principles of Governance of Council Companies

I. Controls and freedoms

“It is recognised that, whilst appreciating this should not be unfettered, a trading company needs to be given commercial freedoms to enable it to succeed. / Accordingly

the company will be provided with sufficient freedoms to achieve its objectives; and

the Council will retain sufficient controls to ensure that its investment is protected, that appropriate social and financial returns on investment can be obtained and that the trading activities of the companies are conducted in accordance with the values of the Council.”



CODE: Principles of Governance of Council Companies

II. Relationship, integrity and accountability

“It is recognised that, whilst appreciating its procedures operate in a way that protects the company’s commercial interests, those procedures should ensure that the Council can carry out its functions as an investor, as a trustee of public funds and a local authority committed to both due responsibility for the exercise of its functions and for providing a vision for the [Council area].

“Accordingly ...



CODE: Principles of Governance of Council Companies

“... governance arrangements will seek to ensure that:
the executive can make investment decisions based upon complete and accurate consideration of business cases and business plans;
the executive can evaluate social and financial benefits and returns on investment; and
the Council’s overview and scrutiny committees are able to exercise their powers in relation to the executive’s decision making
in a manner that ensures the companies can provide full and frank financial and business reporting against their business plans and be open to an appropriate level of scrutiny without fear of commercial confidentiality being breached.



CODE: Principles of Governance of Council Companies

III. Understanding of roles

“It is recognised that, as company ventures have a separate legal personality to the local authority, the success and good governance of the company venture depends upon those involved understanding their role and responsibilities collectively and individually.

“Accordingly ...



CODE: Principles of Governance of Council Companies

... governance arrangements will seek to ensure that there is sufficient induction, training and other materials in place so that:

their legal duties;

stewardship of assets;

the provisions of the governing documents;

the external environment; and

the total structure of the organizations and the venture

are appropriately understood by Members of the Council in their role as part of the executive or of overview and scrutiny, by officers of the Council associated with these duties and by the directors of the companies.



Suggested Structure

Sections follow on the content, role and purpose of

5. Ownership and Control of the Company
6. Shareholder Group
7. Scrutiny
8. Investment and Finance
9. Companies Structure
10. The Company's Board
11. Conflicts of Interest
12. Managed Services, Support Arrangements and Employees
 - A1. Shareholder Group Terms of Reference
 - A2. Shareholder Agreement Outline
 - A3. Director's duties briefing note

LOCAL AUTHORITY

Holding Company

Trading Company

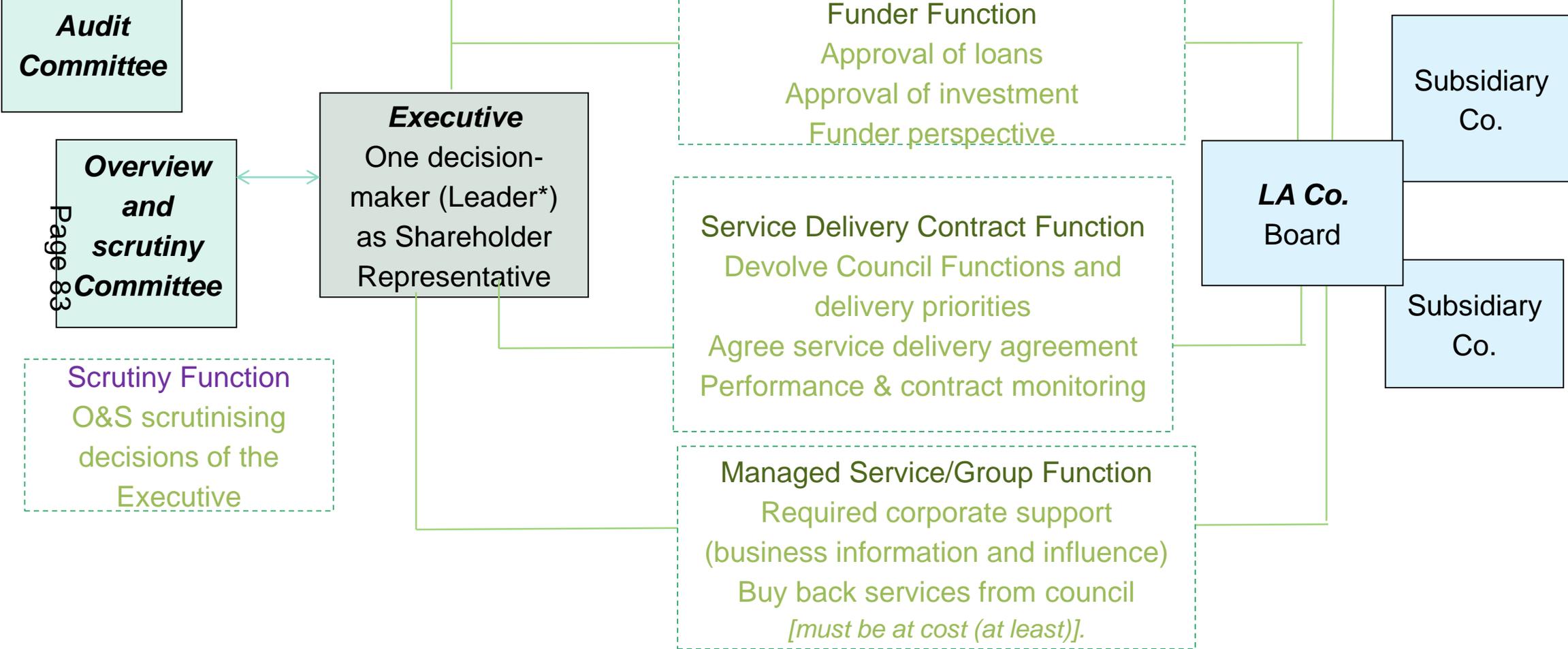
Teckal Company

Joint venture Teckal Company

Joint venture Trading Company

- Secondment per hour
- Pro-rata licence
 - Premises
 - Equipment
 - Services

Relationships

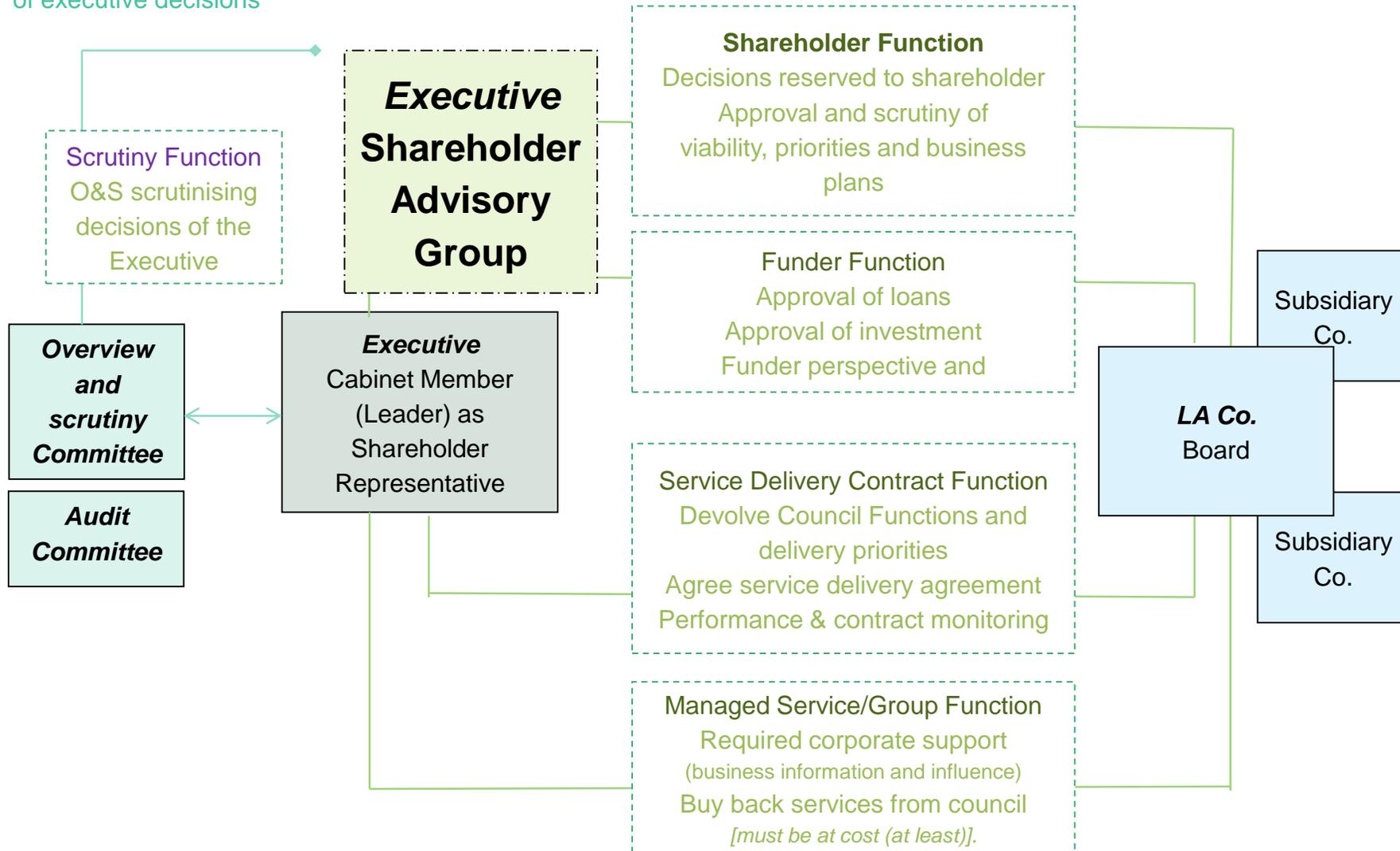


Conflicts

Act in the interests of Council in scrutiny and review of executive decisions

Act in the interests of Council as Executive in role in role as shareholder and scrutiny of companies.

Act in the interests of the company



Decision making

The Cabinet [Committee] meeting takes key decisions on companies

The Cabinet Member [Committee] holds company and trading companies to account and takes other decisions, which whilst private meeting must be in the presence of

- the Shareholder Group, which includes Cabinet Member [Committee], officers and independent advisors; and
- the Chair of Overview & Scrutiny Management Board as ‘informed observer’



Decision making

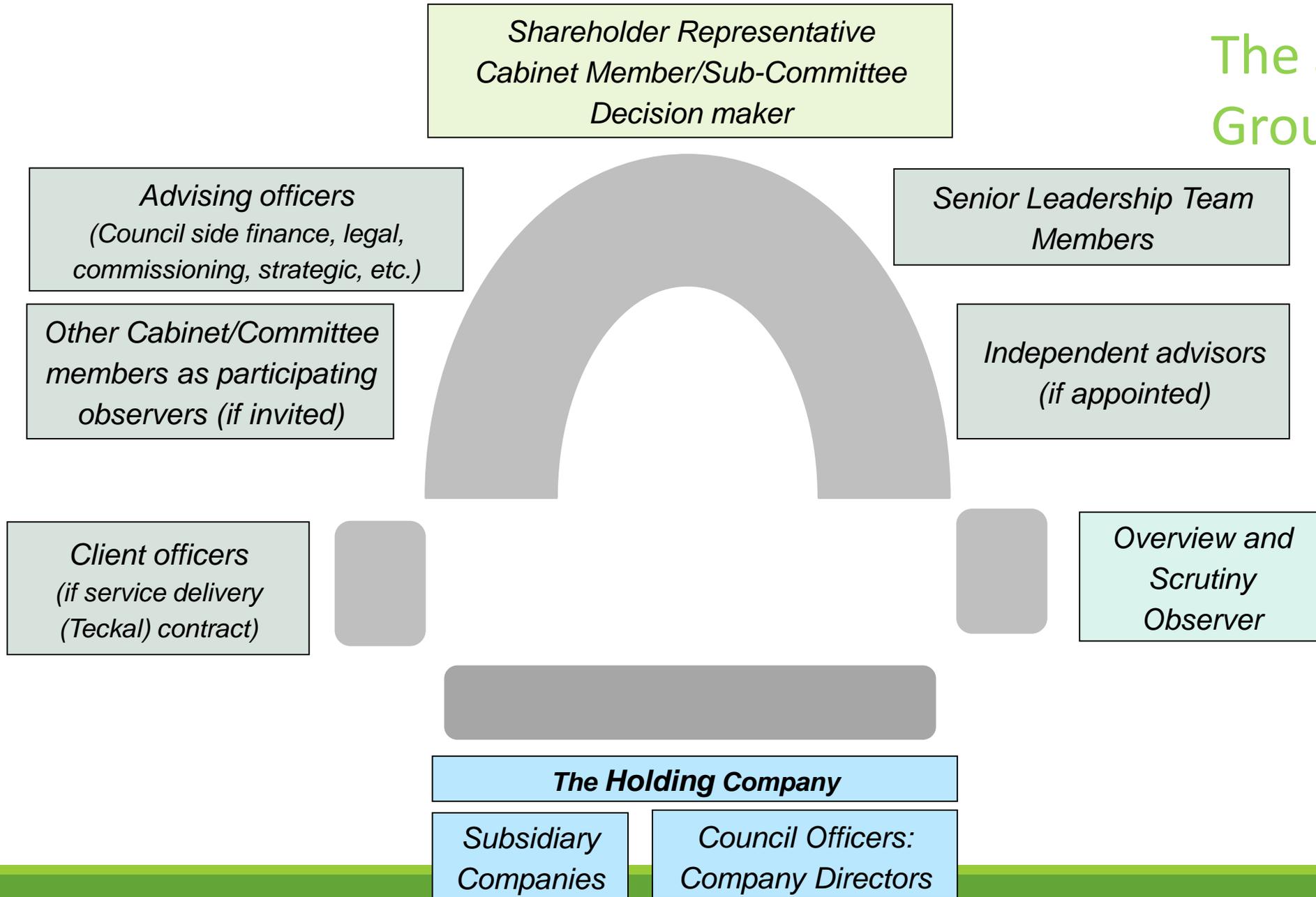
The Cabinet [Committee*] meeting takes key decisions on companies

The Cabinet Member [Officer*] with portfolio holds company and trading companies to account and takes other decisions, which whilst a private meeting must be in the presence of

- the Shareholder Board/Group, which includes the Cabinet Member [officer*], other Members (as invited & non-conflicted), advising officers and independent advisors; and
- the Chair of Overview & Scrutiny Management Board as ‘informed observer’

* *committee structure*

The Shareholder Group or Board



The Shareholder Group or Board

Shareholder Representative
Cabinet Member/Sub-Committee
Decision maker

Advising officers
(Council side finance, legal,
commissioning, strategic, etc.)

Senior Leadership Team
Members

Other Cabinet/Committee
members as participating
observers (if invited)

Independent advisors
(if appointed)

Business Plan
approvals ✓

Reserved
decisions ✓

Funding approvals ✓

Accountability & viability ✓

Client officers
(if service delivery
(Teckal) contract)

Overview and
Scrutiny
Observer

The Holding Company

Subsidiary
Companies

Council Officers:
Company Directors



Audit and Risk Management Committee Monday, 24 September 2018

REPORT TITLE:	Improvements to the Corporate Risk Management Framework
REPORT OF:	Chief Executive

REPORT SUMMARY

The Council is working to improve its arrangements for managing risk as part of a broader programme of enhancements to corporate governance. My report of 23 July 2018 set out a number of early actions aimed at supporting improvements. This report provides a progress update in relation to those actions and indicates others to be taken in the coming months.

RECOMMENDATION/S

1. Members consider the proposed actions.
2. Progress reports on improvement actions are brought to future meetings of the Committee.

SUPPORTING INFORMATION

1.0 REASONS FOR RECOMMENDATIONS

- 1.1 The committee needs to understand the authority's arrangements for managing risk in order to fulfil its role of providing independent assurance on the Council's governance regime.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 None. The need to deliver improvements to the Council's risk management arrangements has been recognised by both SLT and this Committee.

3.0 BACKGROUND INFORMATION

- 3.1 In my report to this committee on 12 March 2018 I indicated that changes to the Council's Risk Management Framework needed to be made.
- 3.2 My report of 23 July 2018 described actions that had subsequently been taken to understand and begin to implement changes which were needed. Those actions included an initial discussion by the Strategic Leadership Team facilitated by Zurich which was held on 19 June and which dealt with their goals in relation to risk management, the effectiveness of current arrangements and what changes might be needed to deliver improvement.

Further Developments

- 3.3 A second internally facilitated discussion with SLT took place on 14 August. This sought to draw out the Team's views on the current most critical risks facing the Council. The discussion and subsequent developments are covered in more detail in my report on the Corporate Risk Register.
- 3.4 To oversee and drive improvements to the Risk Management Framework, a Task and Finish Group has been established. The first meeting of this group was held on 22 August. This considered how issues raised in the SLT meeting on 19 June would be progressed and how the Group would itself seek to identify additional improvements to standards, processes and outputs.
- 3.5 To bring greater capacity and consistency to the management of risk across the organisation a group of risk management support officers has been established. The initial meeting of this group took place on 28 August. This addressed the officers' roles and responsibilities, arrangements for the production of the corporate risk report and training to be provided to assist them in their duties.
- 3.6 A further SLT discussion facilitated by Zurich has been arranged for 18 September 2018. Its aims are to explore in greater detail the Team's responsibilities, their requirements and expectations of the risk management

framework and to draw out their views as to actions that need to be taken to deliver this.

- 3.7 A training session for members of Overview and Scrutiny Committees on risk management principles and practices will take place on 2 October 2018.
- 3.8 Arrangements are being finalised for a workshop for a sub-group of this Committee to provide Members with an opportunity to contribute directly to improvements to the Council's standards and procedures for managing risk.
- 3.9 The risk management component of the Leadership Training Programme for senior officers is being developed with the support of the Organisational Development team. An initial discussion has taken place in connection with a risk management element of a wider training programme for managers in 2019.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no immediate financial implications arising directly from this report.

5.0 LEGAL IMPLICATIONS

- 5.1 The improvements will help to support compliance with the Council's obligations under Part 2 of the Accounts and Audit Regulations 2015.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

- 6.1 Risk management support officers have been identified from the Council's existing establishment.

7.0 RELEVANT RISKS

- 7.1 The discussion mentioned in paragraph 3.3 and subsequent work is leading to the creation of a revised corporate level risk register.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 No specific consultation has been undertaken with regard to this report.

9.0 EQUALITY IMPLICATIONS

- 9.1 There are none arising directly from this report.

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APPENDICES

None

REFERENCE MATERIAL

Correspondence with Zurich Municipal

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Audit & Risk Management Committee Improvements to the Corporate Risk Management Framework	23 July 2018

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**Audit and Risk Management Committee
Monday, 24 September 2018**

REPORT TITLE:	Development of the Revised Corporate Risk Register
REPORT OF:	Director of Finance and Investment

REPORT SUMMARY

An improved focus on its most critical risks is a key component of the enhancements to arrangements for managing risk which the Council is working to introduce. Ensuring that the leadership has a clear shared and current understanding of those risks is fundamental to that aim. My report of 23 July 2018 indicated that work was planned with the Strategic Leadership Team to draw out their view of the Council's most significant risks. This report provides a progress update in relation to that work.

RECOMMENDATION/S

1. Members consider the proposed actions.
2. Members make themselves available for the corporate risk register workshop.

SUPPORTING INFORMATION

1.0 REASONS FOR RECOMMENDATIONS

- 1.1 The committee needs to understand the authority's most significant risks in order to fulfil its role of providing independent assurance of the Council's Risk Management Framework.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 None.

3.0 BACKGROUND INFORMATION

- 3.1 My report of 23 July 2018 indicated that work would be undertaken in the following month to develop a revised Corporate Risk Register.
- 3.2 A facilitated discussion with SLT took place on 14 August 2018. This sought to draw out the Team's views on the current most critical risks facing the Council. A perspective on key risk areas had been prepared by the Director of Finance and Investment in order to initiate discussion. This is summarised in the table below.

Risk Area
1. Unsustainable future financial situation
2. Integrated Commissioning Hub unable to mitigate demand
3. Over-exposure to risk from regeneration projects
4. Insufficient public engagement in local decision making
5. Public Health outcomes do not improve resulting in increased reactive services
6. Staff engagement and fit with the new operating model
7. Failure to recognise the opportunities from working across the Liverpool City Region
8. Local Plan not published/implemented resulting in intervention
9. Failure to work more commercially and generate income to mitigate funding gaps
10. Ineffective Business Continuity arrangements
11. Safeguarding of vulnerable children and adults
12. Information Governance
13. Failure of digital infrastructure
14. Wirral Growth Company does not proceed / deliver anticipated benefits

- 3.3 The Team were asked to consider those risks, their criticality and potential impact on the Corporate Plan. Team members were also asked for their

individual views on additional risks of potential corporate significance. The impact of Brexit, failures in the management of health and safety and of assets, the effectiveness of preventative activity and the impact of market failures were amongst the additional areas proposed for consideration.

- 3.4 The discussion within the workshop was summarised in a report for SLT, from which a draft list of possible corporate risks was produced. This was subjected to further consideration and comment by the Team to refine the definitions and to begin populating a risk register template with the output from the work undertaken to date.

Further action planned

- 3.5 In September 2018 SLT will agree their view of the revised corporate risks, how they are to be defined and the criticality of each.
- 3.6 As proposed and agreed at the last meeting of this committee there will be a workshop for Members so that their views on the most significant risks facing the Council are taken into account in developing the revised baseline Corporate Risk Register. Arrangements for the workshop are currently being finalised.
- 3.7 The key controls for each risk and the responsibilities for these will be determined and documented.
- 3.8 An exercise will be undertaken to draw out the appetite of political and executive leaders for each of the revised corporate risks.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no immediate financial implications arising directly from this report.

5.0 LEGAL IMPLICATIONS

- 5.1 There are no immediate legal implications arising directly from this report.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

- 6.1 There are no immediate resource implications arising directly from this report.

7.0 RELEVANT RISKS

- 7.1 The work mentioned in section 3.0 is leading to the creation of a revised corporate level risk register.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 No specific consultation has been undertaken with regard to this report.

9.0 EQUALITY IMPLICATIONS

9.1 There are none arising directly from this report.

REPORT AUTHOR: *Mike Lane*
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APPENDICES

None

REFERENCE MATERIAL

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Audit & Risk Management Committee	12 March 2018
Corporate Risk Register	23 July 2018
Improvements to the Corporate Risk Management Framework	



**Audit and Risk Management Committee
Monday, 24 September 2018**

REPORT TITLE:	Management of Insurance and Corporate Risk
REPORT OF:	Director of Finance and Investment

REPORT SUMMARY

This report sets out progress made since my previous report in relation to key actions planned for 2018/19

RECOMMENDATION/S

1. The content of this report be noted.

SUPPORTING INFORMATION

1.0 REASON FOR RECOMMENDATION

- 1.1 Regular update reports are presented to this Committee on the work around risk management and insurance which seek to support the Risk Management Framework and maintain the successful management of the insurance programme.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Not applicable to this report

3.0 BACKGROUND INFORMATION

- 3.1 Risk and insurance management comprises two significant areas of activity:

- The provision of advice and support to Members and officers in developing the corporate Risk Management Framework and processes.
- Risk financing which incorporates insurance procurement, management of the Council's Insurance Fund and claims management.

- 3.2 In addition to day-to-day operations the service is responsible for major procurement exercises and improvement activities. This area of the report focuses on the latter. The key actions to be implemented during 2018/19 were included in the report to this Committee on 12 March 2018. Progress since my last report in respect of those actions is summarised in the paragraphs below.

3.2.1. Corporate Risk Register

This is the subject of a separate report to the committee.

3.2.2 Improvements to the Risk Management Framework

This is the subject of a separate report to this committee.

3.2.3 Traded Services for Schools and Academies

From 1 September 2018 the service's Academy school clients have taken out a package of cover from the commercial insurance market rather than the Department for Education's Risk Protection Arrangement as this provides comparable cover at a more competitive cost.

3.2.4 Procurement of Replacement Claims Management Information System

Changes in how insurance claims are managed including the extension of self-handling have highlighted the limitations of the current proprietary system used by the Risk and Insurance team. A proposal to find a replacement has been approved by the Council's Technical Design Authority group and a competitive procurement exercise is underway to identify the system that would be used from 2019/20 onwards. It is expected that the cost of the replacement system could be lower than at present.

3.2.5 Procurement of Motor Insurance and Engineering Inspection and Insurance Contracts

The existing Long Term Agreements for these contracts end on 31 March 2019 requiring a competitive procurement exercise to be undertaken. The Council's insurance brokers will be providing support to ensure the maximum competition from the insurance market. The Corporate Procurement team has also been engaged and planning for the exercise has begun.

3.2.6 Liability Claims Handling

A modest increase in new claims reported has been experienced in recent months. The increase has mostly been driven by the impact of last winter's more severe weather on the highway network.

3.2.7 Insurance Fund Budget

Work has begun on the production of the Insurance Fund Budget for 2019/20 which will be presented to the Committee in early 2019.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The procurement exercise mentioned in paragraph 3.2.5 creates uncertainty over the cost of these contracts from 2019/20 onwards.

5.0 LEGAL IMPLICATIONS

- 5.1 There are none arising directly from this report.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

- 6.1 As indicated in paragraph 7.2 the number of academies could grow to an extent that it affected the Council's future insurance costs.

7.0 RELEVANT RISKS

- 7.1 Changes to the Council's risk management framework indicated in paragraph 3.2.2 should help to improve the organisation's ability to handle risk.

7.2 If a large number of schools were to convert to academies the pool of contributors to the Insurance Fund would decrease. Over time this could reduce the Authority's buying power and the degree to which it could self-insure. This in turn could increase the cost of financing insurable risk. However my officers remain vigilant to potential conversions and will make changes to the authority's arrangements to ensure that potential negative impacts are gradual and limited wherever possible.

8.0 ENGAGEMENT/CONSULTATION

8.1 No specific consultation has been undertaken with regard to this report.

9.0 EQUALITY IMPLICATIONS

9.1 There are none arising directly from this report.

REPORT AUTHOR: *Mike Lane*
Senior Risk and Insurance Officer
telephone: (0151) 666 3413
email: mikelane@wirral.gov.uk

APPENDICES

None

REFERENCE MATERIAL

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Audit & Risk Management Committee Corporate Risk & Insurance Management	Routine report presented to all meetings of this Committee.

Annual Audit Letter

Year ending 31 March 2018

Wirral Council
28 August 2018

Page 103



Agenda Item 10

Contents



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Section

1. Executive summary
2. Audit of the accounts
3. Value for money conclusion

Page

- 3
5
13

Appendices

- A Reports issued and fees
- B Recommendations

Executive summary

Purpose

Our Annual Audit Letter (Letter) summarises the key findings arising from the work that we have carried out at Wirral Council (the Council) for the year ended 31 March 2018.

This Letter is intended to provide a commentary on the results of our work to the Council and external stakeholders, and to highlight issues that we wish to draw to the attention of the public. In preparing this Letter, we have followed the National Audit Office (NAO)'s Code of Audit Practice and Auditor Guidance Note (AGN) 07 – 'Auditor Reporting'. We reported the detailed findings from our audit work to the Council's Audit and Risk Management Committee as those charged with governance in our Audit Findings Report on 23 July 2018.

Respective responsibilities

We have carried out our audit in accordance with the NAO's Code of Audit Practice, which reflects the requirements of the Local Audit and Accountability Act 2014 (the Act). Our key responsibilities are to:

- give an opinion on the Council's financial statements (section two)
- assess the Council's arrangements for securing economy, efficiency and effectiveness in its use of resources (the value for money conclusion) (section three).

In our audit of the Council's financial statements, we comply with International Standards on Auditing (UK) (ISAs) and other guidance issued by the NAO.

Our work

Page 105

Materiality

We determined materiality for the audit of the Council's financial statements to be £13.026 million, which is 1.8% of the 2016/17 gross revenue expenditure. We determined materiality for the audit of the pension fund accounts administered by the Council to be £87.334 million which is 1% of the pension fund's net assets.

Financial Statements Opinion

We gave an unqualified opinion on the Council's financial statements on 31 July 2018 which is in line with the new earlier deadline. We also gave an unqualified opinion on the pension fund accounts of Merseyside Pension Fund on 31 July 2018.

Whole of Government Accounts (WGA)

We completed work on the Council's consolidation return following guidance issued by the NAO.

Use of Statutory Powers

We did not identify any matters which required us to exercise our additional statutory powers. We are currently in the process of undertaking work in relation to an objection that we received on the 2015/16 financial statements. As a result of this ongoing work, the audit opinion was issued for the 2017/18 audit, but the certificate of closure of the audit was not issued as the objection was outstanding. The certificate for the 2017/18 audit cannot be issued until the consideration of the objection is complete.

Executive summary

Value for money arrangements

We were satisfied that the Council put in place proper arrangements to ensure economy, efficiency and effectiveness in its use of resources during the year ended 31 March 2018, except for the deficiencies in Children's services identified by Ofsted. We therefore issued a qualified "except for" value for money conclusion in our audit report dated 31 July 2018.

The Council continues to face a challenging financial position. Whilst progress has been made in establishing a new Growth Company a significant proportion of the £62m budget gap in 2018/19 is being met through one-off use of reserves and expected asset sales.

Certification of grants

We also carry out work to certify the Council's Housing Benefit subsidy claim on behalf of the Department for Work and Pensions. Our work on this claim will be finalised by 30 November 2018. We will report the results of this work to the Audit and Risk Management Committee in our Annual Certification Letter.

Certificate

We are not yet able to certify that we have completed the audit of the Council as we are yet to complete our consideration of the objection in relation to the Lender Option Borrower Option borrowing from the prior year.

Working with the Council

During the year we have delivered a number of successful outcomes with you:

- an efficient audit – we delivered an efficient audit with you in July, delivering the accounts before the deadline
- understood your operational health and future challenges – through the value for money conclusion we provided you with assurance on your operational effectiveness
- sharing our insight – we provided regular audit committee updates covering best practice. We also shared our thought leadership reports.

We would like to record our appreciation for the assistance and co-operation provided to us during our audit by the Council's staff.

Grant Thornton UK LLP
August 2018

Audit of the accounts

Our audit approach

Materiality

In our audit of the Council's and group's financial statements, we use the concept of materiality to determine the nature, timing and extent of our work, and in evaluating the results of our work. We define materiality as the size of the misstatement in the financial statements that would lead a reasonably knowledgeable person to change or influence their economic decisions.

We determined materiality for the audit of the accounts to be £13.026 million, which is 1.8% of the Council's gross revenue expenditure. We used this benchmark as, in our view, users of the Council's financial statements are most interested in where the Council has spent its revenue in the year.

We also set a lower level of specific materiality for senior officer remuneration and termination benefits of £20,000 because stakeholders will be particularly interested in these items.

We set a lower threshold of £651,000, above which we reported errors to the Audit and Risk Management Committee in our Audit Findings Report.

Pension Fund materiality

For the audit of the Merseyside Pension Fund accounts, we determined materiality to be £87.334 million, which is 1% of the Fund's net assets. We used this benchmark, as in our view, users of the Pension Fund accounts are most interested in the value of assets available to fund pension benefits.

We set a threshold of £4.4 million above which we reported errors to the Pensions Committee and the Audit and Risk Management Committee.

The scope of our audit

Our audit involves obtaining sufficient evidence about the amounts and disclosures in the financial statements to give reasonable assurance that they are free from material misstatement, whether caused by fraud or error. This includes assessing whether:

- the accounting policies are appropriate, have been consistently applied and adequately disclosed;
- the significant accounting estimates made by management are reasonable; and
- the overall presentation of the financial statements gives a true and fair view.

We also read the remainder of the Statement of Accounts and the narrative report and annual governance statement published alongside the Statement of Accounts to check they are consistent with our understanding of the Council and with the financial statements included in the Statement of Accounts on which we gave our opinion.

We carry out our audit in accordance with ISAs (UK) and the NAO Code of Audit Practice. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Our audit approach is based on a thorough understanding of the Council's and group's business and is risk based.

We identified key risks and set out overleaf the work we performed in response to these risks and the results of this work.

Audit of the accounts

Significant audit risks

These are the significant risks which had the greatest impact on our overall strategy and where we focused more of our work.

Risks identified in our Audit Plan	How we responded to the risk	Findings and conclusions
<p>Improper Revenue Recognition</p> <p>Under ISA 240 (UK) there is a presumed risk that revenue may be misstated due to the improper recognition of revenue. This presumption can be rebutted if the auditor concludes that there is no risk of material misstatement due to fraud relating to revenue recognition.</p>	<p>We considered the risk factors set out in ISA240 and the nature of the revenue streams at the Authority, we determined that the risk of fraud arising from revenue recognition can be rebutted, because:</p> <ul style="list-style-type: none"> • There is little incentive to manipulate revenue recognition • Opportunities to manipulate revenue recognition are very limited • The culture and ethical frameworks of local authorities, including Wirral Council, mean that all forms of fraud are seen as unacceptable. 	<p>We did not consider this to be a significant risk for Wirral Council.</p>
<p>Management override of controls</p> <p>Under ISA (UK) 240 there is a non-rebuttable presumed risk that the risk of management over-ride of controls is present in all entities. We identified management override of controls as a risk requiring special audit consideration.</p>	<p>As part of our audit work we have:</p> <ul style="list-style-type: none"> • Reviewed accounting estimates, judgements and decisions made by management • Tested of journal entries • Reviewed unusual significant transactions • Reviewed significant related party transactions outside the normal course of business. 	<p>Our audit work did not identify any issues in respect of management override of controls.</p>

Page 108

Audit of the accounts

Significant audit risks

These are the significant risks which had the greatest impact on our overall strategy and where we focused more of our work.

Risks identified in our Audit Plan	How we responded to the risk	Findings and conclusions
<p>Valuation of property, plant and equipment</p> <p>The Council revalues its land and buildings on an quinquennial basis to ensure that carrying value is not materially different from current value. This represents a significant estimate by management in the financial statements.</p> <p>We identified the valuation of land and buildings revaluations and impairments as a risk requiring special audit consideration.</p>	<p>As part of our audit work we have:</p> <ul style="list-style-type: none"> • Reviewed management's processes and assumptions for the calculation of the estimate • Reviewed the competence, expertise and objectivity of any management experts used • Reviewed the instructions issued to valuation experts and the scope of their work • Discussed with the Council's valuer the basis on which the valuation was carried out, challenging the key assumptions • Reviewed and challenged the information used by the valuer to ensure it was robust and consistent with our understanding • Tested revaluations made during the year to ensure they were input correctly into the Council's asset register • Evaluated the assumptions made by management for those assets not revalued during the year and how management satisfied themselves that these were not materially different to current value. 	<p>The Council's property, plant and equipment assets are valued by the Council's in-house valuation team. Our work has assessed them as having appropriate knowledge of the Council's portfolio and they have used information from the Asset Register and other systems in carrying out their valuation of Council assets. The assumptions used are reasonable and we are satisfied that the valuer had full access to appropriate levels of information to complete reliable valuations.</p> <p>For the assets not re-valued in year, officers undertake an annual assessment of the carrying value of these assets to be able to satisfy themselves that the carrying value is not materially different to the fair value at the 31 March 2018. This involves a review of the potential impact of indices on the asset valuation, together with consideration of a range of other factors.</p> <p>The assessment of Council officers is that the carrying value of assets in the Council's financial statements is not materially different to the fair value at the 31 March 2018. We reviewed and challenged the Council's methodology and assumptions used and found them to be reasonable.</p> <p>We identified a number of assets where capital expenditure, which had been incurred in previous years, was written off during the year. We have performed further investigation of the assets impacted by this assessment and concluded that the total value of £3.8m is below our materiality threshold and does not impact upon our assessment that asset valuations are not materially misstated.</p> <p>Our audit work has not identified any further significant issues in relation to the risk identified.</p>

Audit of the accounts

Significant audit risks

These are the significant risks which had the greatest impact on our overall strategy and where we focused more of our work.

Risks identified in our Audit Plan	How we responded to the risk	Findings and conclusions
<p>Valuation of pension fund net liability</p> <p>The Council's pension fund asset and liability as reflected in its balance sheet represent a significant estimate in the financial statements.</p> <p>We identified the valuation of the pension fund net liability as a risk requiring special audit consideration.</p>	<p>As part of our audit work we have:</p> <ul style="list-style-type: none"> identified the controls put in place by management to ensure that the pension fund net liability is not materially misstated and assessed whether those controls were implemented as expected and whether they were sufficient to mitigate the risk of material misstatement review of the competence, expertise and objectivity of the actuary who carried out the Council's pension fund valuation gaining an understanding of the basis on which the IAS 19 valuation was carried out, undertaking procedures to confirm the reasonableness of the actuarial assumptions made review of the consistency of the pension fund net liability disclosures in notes to the financial statements with the actuarial report from your actuary. 	<p>For the valuation of Wirral's pension fund net liability we undertook a review of the actuary's (Mercer) work to satisfy ourselves that the pension liabilities are fairly stated in the financial statements. In doing so we assess the methodology and assumptions used by the scheme's actuary.</p> <p>We confirmed with the LGPS auditor that the controls over membership data were operating as intended.</p> <p>Our audit work has not identified any significant issues in relation to the risk identified.</p>

Audit of the accounts

Pension Fund significant audit risks

These are the risks which had the greatest impact on our overall strategy and where we focused more of our work on the pension fund.

Risks identified in our Audit Plan	How we responded to the risk	Findings and conclusions
<p>Improper revenue recognition</p> <p>Under ISA 240 (UK) there is a presumed risk that revenue may be misstated due to the improper recognition of revenue. This presumption can be rebutted if the auditor concludes that there is no risk of material misstatement due to fraud relating to revenue recognition.</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 111</p>	<p>We considered the risk factors set out in ISA240 and the nature of the revenue streams at the Pension Fund, we determined that the risk of fraud arising from revenue recognition can be rebutted, because:</p> <ul style="list-style-type: none"> • there is little incentive to manipulate revenue recognition • opportunities to manipulate revenue recognition are very limited • the culture and ethical frameworks of local authorities, including Merseyside Pension Fund, mean that all forms of fraud are seen as unacceptable. 	<p>We did not consider this to be a significant risk for Merseyside Pension Fund.</p>
<p>Management override of controls</p> <p>Under ISA (UK) 240 there is a non-rebuttable presumed risk that the risk of management over-ride of controls is present in all entities.</p> <p>We identified management override of controls as a risk requiring special audit consideration.</p>	<p>As part of our audit work we have:</p> <ul style="list-style-type: none"> • reviewed accounting estimates, judgements and decisions made by management • tested of journal entries • reviewed unusual significant transactions. 	<p>Our audit work did not identify any issues in respect of management override of controls.</p>

Audit of the accounts

Pension Fund significant audit risks

These are the risks which had the greatest impact on our overall strategy and where we focused more of our work on the pension fund.

Risks identified in our Audit Plan	How we responded to the risk	Findings and conclusions
<p>Valuation of level 3 investments</p> <p>Under ISA 315 significant risks often relate to significant non-routine transactions and judgemental matters. Level 3 investments by their very nature require a significant degree of judgement to reach an appropriate valuation at year end.</p> <p>We identified the valuation of level 3 investments as a risk requiring special audit consideration.</p>	<p>As part of our audit work we have:</p> <ul style="list-style-type: none"> • updated our understanding of the Fund's process for valuing level 3 investments and evaluated the design of the associated controls • reviewed the nature and basis of estimated values, considered what assurance management had over year end valuations for these types of investment • considered the competence, expertise and objectivity of management experts used • tested a sample of investment valuations reflected in financial reporting of the Fund by obtaining the latest available audited accounts of the investee, comparing these to the fund manager reports, and reconciling to known movements between the investee's and the Pension Fund year end dates. 	<p>The estimation process was considered appropriate and our testing did not identify any errors.</p>

Audit of the accounts

Audit opinion

We gave an unqualified opinion on the Council and group's financial statements on 31 July 2018, in advance of the national deadline.

Preparation of the accounts

The Council presented us with draft accounts in accordance with the national deadline, and provided a comprehensive set of working papers to support them. The finance team responded promptly and efficiently to our queries during the course of the audit.

Issues arising from the audit of the accounts

We reported the key issues from our audit to the Council's Audit and Risk Management Committee on 23 July 2018.

In addition to the key audit risks reported above, our audit identified a small number of matters that management agreed to amend to improve presentation and clarity.

We noted that the Council followed different approaches for depreciating leased and purchased assets. The approach for purchased assets was inconsistent with the requirements of the CIPFA Code; it was unlikely to result in a material error but could result in repeated errors that were above the clearly trivial threshold. Management has accepted our recommendation to review its practice in this area.

Annual Governance Statement and Narrative Report

We are required to review the Council's Annual Governance Statement and Narrative Report. It published them on its website in the Statement of Accounts in line with the national deadlines.

The draft financial statements published on the Council website did not include an Annual Governance Statement as is required under the Regulations. A draft was made available on 11 June however it is important the Council accelerates the process for preparing the draft Annual Governance Statement going forward.

The documents were prepared in line with the CIPFA Code and relevant supporting guidance. We confirmed that both documents were consistent with the financial statements and with our knowledge of the Council.

Whole of Government Accounts (WGA)

We carried out work on the Council's Data Collection Tool in line with instructions provided by the NAO . We issued an assurance statement which did not identify any issues for the group auditor to consider on 28 August 2018.

Pension Fund accounts

We gave an unqualified opinion on the pension fund accounts of the Merseyside Pension fund on 31 July 2018. We also reported the key issues from our audit of the pension fund accounts to the Council's Audit and Risk Management Committee on 23 July 2018.

In addition to the key audit risks reported above, our review of the draft financial statements identified a small number of minor presentational and classification errors that management agreed to correct.

Audit of the accounts

Other statutory powers

We also have additional powers and duties under the Act, including powers to issue a public interest report, make written recommendations, apply to the Court for a declaration that an item of account is contrary to law, and to give electors the opportunity to raise questions about the Council's accounts and to raise objections received in relation to the accounts.

On 11 August 2016 we received an objection to the accounts under sections 26 and 27 of the Local Audit and Accountability Act 2014.

The objector requested that we prepare a public interest report and apply to the courts for a declaration that Wirral Council's Lender Option, Borrower Option loan borrowing as referenced in the 2015-2016 accounts is unlawful. In keeping with objections received by several authorities the objector raises concerns in respect of the:

- rationality of the decision to borrow on LOBO terms;
- adequacy of the information on which the Council based their decisions to enter into LOBO arrangements;
- scale of borrowing on LOBO terms and associated exposure to interest rate increases;
- alleged improper speculation on future interest rate changes; and
- use of advisers with alleged undisclosed financial incentives to promote LOBOs.

Our work in relation to the objection is on-going and we have received prompt and full co-operation from the Council in both provision of relevant information and responses to our queries. Whilst it is impossible to put a definite timeframe on it, we plan to conclude our consideration of the objection as soon as possible.

Certificate of closure of the audit

We are not yet able to certify that we have completed the audit of the accounts of the Council as we are yet to complete our consideration of the objection in relation to the Lender Option Borrower Option loan borrowing from the prior year.

Value for money conclusion

Background

We carried out our review in accordance with the NAO Code of Audit Practice, following the guidance issued by the NAO in November 2017 which specified the criterion for auditors to evaluate:

In all significant respects, the audited body takes properly informed decisions and deploys resources to achieve planned and sustainable outcomes for taxpayers and local people.

Key findings

Our first step in carrying out our work was to perform a risk assessment and identify the key risks where we concentrated our work.

The key risks we identified and the work we performed are set out overleaf.

Overall Value for money conclusion

The Council continues to face a challenging financial position. Whilst progress has been made in establishing a new Growth Company a significant proportion of the £62m budget gap in 2018/19 is being met through one-off use of reserves and expected asset sales. This approach cannot continue and more needs to be done to put the Council on a firm financial footing going forward.

Steps are continuing to address the issues highlighted by OFSTED in their inspection of Children's services and improvements have been achieved. However at this stage the Council remains assessed as 'inadequate' and we reflected this in our Value for money conclusion judgement as in previous years.

We were satisfied that the Council put in place proper arrangements to ensure economy, efficiency and effectiveness in its use of resources during the year ended 31 March 2018, except for the deficiencies in Children's services identified by Ofsted. We therefore issued a qualified "except for" value for money conclusion in our audit report on 31 July 2018.

Value for money conclusion

Key Value for money Risks

Risks identified in our Audit Plan	How we responded to the risk	Findings and conclusions
<p>Financial sustainability</p> <p>The Council continues to face an increasingly difficult financial position. The Medium Term Financial Strategy 2017/18 – 2020/21 set out a £132m budget gap and plans are in place to achieve savings of £45m in 2017/18 and £61m in 2018/19.</p> <p>The Council recognise that the balanced position in 2017/18 and 2018/19 has been achieved, in part, through the use of “one –off” options including the use of balances and reserves and the generation of capital receipts through the proposed sale of Council assets.</p> <p>Plans are in place to secure both service transformation and increased income generation as part of the Council strategy to secure its longer term financial stability. With a key component of this strategy being the establishment of the Wirral Growth Company.</p> <p>The delivery of the required savings in 2017/18 and the plans for further service transformation represent a significant challenge to the Council.</p>	<p>As part of our work we have:</p> <ul style="list-style-type: none"> we will review arrangements for identifying and updating savings plans alongside arrangements for monitoring and delivery of budget and medium term financial plan we will review assessments of the adequacy of reserves and balances and consider the Council’s plans to secure long term financial sustainability. 	<ul style="list-style-type: none"> during the year the Council updated the Medium Term Financial Strategy and developed the 2018/19 budget proposals following agreement to make an additional £25m investment in Children’s services. The Revenue budget 2018/19 reported to Cabinet in February 2018 confirmed an updated position that set out the basis of the £61m saving requirement. We note that the basis of the savings proposals were £22m savings proposals identified as at February 2017, further proposals for savings identified between Dec 2017 and February 2018 of £13m, required generation of Capital receipts of £10m and planned use of balances and reserves of £16m we acknowledge that the Council recognise that the planned balanced position in 2017/18 and 2018/19 has been achieved, in part, through the use of “one –off” options including the use of balances and reserves and the proposed sale of Council assets. However, we note that of the £61m budget gap “identified” above some £26m is predicated on the realisation of £10m in capital receipts and £16m is based on the use of balances and reserves and this represents 42.5% of the budget savings requirement during the year the Council approved the establishment of a new Joint Venture – Wirral Growth Company – with the aim of leading regeneration plans across the borough. It is anticipated the creation of the Company will result in the creation of jobs, attract investment and boost housing and development. Consequently, this should help alleviate some of the financial pressures in the longer term the Council faces a £76m funding gap between 2019/20-2021/22 and the majority of reserves established to support the budget have now been utilised. The Council has plans to update and revise the basis of the MTFS 2019/20 - 2022/23 with the aim of establishing a sustainable and robust financial basis on which the Council can operate over the longer term. This is an absolute priority for the Council the Council recognise the financial challenges and pressures it faces over both the immediate and longer term. It is now critical that action is taken to deliver a sustainable and robust financial plan on which the Council can operate over the longer term. It is important that officers and members work together effectively to make this happen. <p><i>Our work on financial sustainability concluded that the Council has sound financial arrangements, despite continuing to operate in a very challenging financial environment. On that basis we concluded that the risk was sufficiently mitigated and the Council has proper arrangements in place.</i></p>

Value for money conclusion continued

Key Value for money Risks

Risks identified in our audit plan	How we responded to the risk	Findings and conclusions
<p>OFSTED inspection of Children's Services</p> <p>Ofsted issued a report on the Council's children's services in September 2016 which rated the service as 'inadequate'. Subsequently, the Council have undertaken a range of actions and significantly increased funding to the service and worked toward securing the required service improvement. Ofsted have completed regular follow up reviews and the December 2017 review concluded that "some progress" has been achieved and the "direction of travel is now more promising" however "there is still a great deal of work to be done".</p> <p>Until such time as Ofsted has confirmed that adequate arrangements are in place this remains a significant risk to the Council's arrangements.</p>	<p>We reviewed:</p> <ul style="list-style-type: none"> • update reports from Ofsted; and • progress made by the Council in the delivery of required improvement areas 	<ul style="list-style-type: none"> • Ofsted have completed four monitoring visits to the Council during 2017/18 following the September 2016 inspection that concluded that children's services were <i>inadequate</i> with the latest visit taking place in May 2018. We note that the report following on from the May 2018 inspection concluded that "the local authority is making progress in improving services for its children and young people who need to be looked after". The report goes on to say that "more work is needed to improve social work proactive to ensure that all children looked after receive a good service that improves their experiences" • members are provided with regular updates on the Council's Improvement Plan and the key actions that have been implemented over the period. The Improvement Plan sets out five key performance areas with a clear focus on "getting the basics right". During 2017/18 numerous improvement actions have been implemented including improved levels of recruitment with appointments to more senior roles that have helped contribute to reductions in caseload and restructuring of working practices • the Council recognise that there is more to be achieved to deliver the further service improvements required. Until such time that Ofsted confirm that adequate arrangements are in place this remains a significant risk to the Council's arrangements. <p><i>It is clear that further action is still required to deliver the necessary improvements to the service and there remains evidence of weaknesses in proper arrangements for understanding and using appropriate and reliable financial and performance information to support informed decision making and performance management, and for planning, organising and developing the workforce effectively to deliver strategic priorities.</i></p>

A. Reports issued and fees

We confirm below our final reports issued and fees charged for the audit and provision of non-audit services.

Reports issued

Report	Date issued
Audit Plan	March 2018
Audit Findings Report	July 2018
Annual Audit Letter	September 2018

Fees for non-audit services

Service	Fees £
Audit related services	
Certification of Teachers Pension Return (TBC)	TBC
CFO Insights	£12,500
IAS 19 Assurance to other Auditors	TBC
Total fees	TBC

Page 118
Fees

	Planned £	Actual fees £	2016/17 fees £
Statutory audit of Council financial statement	159,863	159,863	159,863
Audit of Pension Fund	36,882	36,882	26,882
Audit of entity significantly influenced by the Council –Essential	18,500	TBC	18,500
Housing Benefit Grant Certification	23,800	TBC	23,800
Total fees	£239,045	TBC	£239,045

Non - audit services

- We have considered whether non-audit services might be perceived as a threat to our independence as the Council's auditor and have ensured that appropriate safeguards are put in place.

The above non-audit services are consistent with the Council's policy on the allotment of non-audit work to your auditor.

The planned fees for the year were in line with the scale fee set by Public Sector Audit Appointments Ltd (PSAA).

B. Recommendations

We have identified two recommendations for the Council as a result of issues identified during the course of our audit. We have agreed our recommendations with management and we will report on progress on these recommendations during the course of the 2018/19 audit.

Assessment	Issue and risk	Recommendations
<p>1</p> 	<p>The Council continues to face a challenging financial position. Whilst progress has been made in establishing a new Growth Company a significant proportion of the £61m budget gap in 2018/19 is being met through one-off use of reserves and expected asset sales. This approach cannot continue and more needs to be done to put the Council on a firm financial footing going forward. . It is now critical that action is taken to deliver a sustainable and robust financial plan on which the Council can operate over the longer term. It is important that officers and members work together effectively to make this happen.</p>	<p>Develop and implement a sustainable plan to place the Council on firm financial footing.</p> <p>Management response</p> <p>Work has commenced and will continue through 2018/19 on improving the Councils financial sustainability. The first part of this has been the consideration by Cabinet on 16 July of a refreshed Medium Term Financial Strategy for the period 2019 to 2023. This sets out the Council’s approach to addressing the financial and sustainability challenges it will face in future years. It also contains details of a programme to improve financial resilience through improvements in areas such as financial management and culture. The second part of our planned improvements is the annual budget setting process. Activities commenced earlier than in previous years as part of a continuous process to set the budget for 2019/20. Further work will be undertaken in the remaining part of the financial year including Member agreement of financial proposals to remove “one – off” funding.</p>
<p>2</p> 	<p>The Council’s draft financial statements published on its website at the end of May 2018 did not include a draft Annual Governance Statement as is required under the Regulations. It is important that the Council accelerates its process for preparing the Annual Governance Statement going forward to ensure a draft is available to be published by the end of May.</p>	<p>Accelerate the process for the preparing the Annual Governance Statement to ensure that the required deadlines are met.</p> <p>Management response</p> <p>The Council during 2018/19 will undertake forward planning and self-assessments to ensure that the AGS is published in May 2019. A draft of the Annual Governance Statement will be submitted to the Corporate Governance Group and Senior Leadership Team in April 2019 prior to its inclusion in the Councils Statement of Accounts later in the year.</p>

Controls

-  High – Significant effect on control system
-  Medium – Effect on control system
-  Low – Best practice



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AUDIT AND RISK MANAGEMENT COMMITTEE

24 SEPTEMBER 2018

REPORT TITLE	<i>REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)</i>
REPORT OF	<i>DIRECTOR: GOVERNANCE AND ASSURANCE</i>

REPORT SUMMARY

This report summarises the use of covert surveillance by the Council between 1 January 2018 and 31 August 2018.

This report was requested in the work plan for the Committee.

It affects all Wards within the Borough.

The decision is not a key decision.

RECOMMENDATIONS

The Committee notes the report.

SUPPORTING INFORMATION

1.0 REASONS FOR THE RECOMMENDATIONS.

The Committee receives regular reports on the Council's use of covert surveillance.

2.0 OTHER OPTIONS

None

3.0 BACKGROUND INFORMATION

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) governs how public bodies use surveillance methods. The Council may use covert surveillance for the purpose of preventing or detecting crime.
- 3.2 The origin of RIPA lies in the Human Rights Act 1998 which places restrictions on the extent to which public bodies may interfere with a person's right to respect for his or her home and private life and correspondence during the course of an investigation into suspected criminal activities. The provisions of RIPA ensure (in summary) that any such interferences are in accordance with the law and are necessary and proportionate (i.e. the seriousness of the suspected crime must outweigh any possible interferences with the personal privacy of the persons being investigated and of persons who associate with them).
- 3.3 The Council's Constitution authorises Directors to designate Heads of Service and Service Managers to authorise the use of covert surveillance in accordance with the procedures prescribed by RIPA. Since 1 November 2012 such authorisations require the further approval of a magistrate where the legislation applies.
- 3.4 The Office of Surveillance Commissioners (OSC) was responsible for overseeing the operation of RIPA. The OSC inspected the Council on 13 May 2015. The outcome of that inspection was reported to the Committee on 22 September 2015. The Committee approved amendments to the Council's Policy and Guidance Document made in response to the Report.
- 3.5 The OSC has now been replaced by the Investigatory Powers Commissioner.
- 3.6 Further amendments to the Policy and Guidance Document were approved by the Committee at its meeting on 22 November 2016

4.0 THE USE OF RIPA BY THE COUNCIL

- 4.1 No authorisations have been granted by Authorising Officers for the use of covert surveillance by the Council between 1 January 2018 and 31 August 2018.

5.0 ANNUAL TRAINING

- 5.1 Annual training for Applying and Authorising Officers will be delivered on 19 October 2018 by "Act Now" a well recognised provider of training on RIPA.

5.2 Each officer must attend suitable training on RIPA at intervals of not less than two years.

6.0 CHANGES IN LEGISLATION

6.1 The Protection of Freedoms Act 2012 came into force on 1 November 2012 and made the following changes to the law;

- A magistrate's approval is required for a local authority's use of RIPA. It is in addition to the authorisation needed from a senior officer and the more general oversight by elected councillors.
- Use of RIPA to authorise directed surveillance is confined to cases where the offence under investigation carries a custodial sentence of six months imprisonment or more except in relation to underage sales of alcohol and tobacco, where this sentencing threshold will not apply.

7.0 PROSECUTIONS ARISING FROM AUTHORISED COVERT SURVEILLANCE

7.1 ON 25 July 2018 a local man pleaded guilty to the illegal dumping of waste on 23 October 2017 in the turning head area of Naylor Road, Birkenhead. The waste included a car tyre, a tree stump, a refrigerator, two wheel barrows, an animal cage, and a wheelie bin full of waste.

7.2 Wirral Magistrates Court sentenced him to a 12 month community service order including 50 hours of unpaid work, ordered him to pay the Council £500 as a contribution to its costs, and imposed a victim surcharge of £85.

8.0 FINANCIAL IMPLICATIONS

None.

9.0 LEGAL IMPLICATIONS

9.1 The Protection of Freedoms Act 2012, which requires local authorities(where RIPA applies) to obtain the approval of a magistrate for the use of covert surveillance, came into force on 1 November 2012.

9.2 In suitable cases where the RIPA legislation does not apply, covert surveillance could be authorised under the Data Protection Act 1998 and Article 8 of the European Convention on Human Rights(which balance the value of the surveillance against intrusions into people's private lives).This is explained in the previous report to the Committee on 22 November 2016.

10.0 RESOURCE IMPLICATIONS: ICT,STAFFING AND ASSETS

10.1. There are none at present.

11.0 INSPECTION BY THE INVESTIGATORY POWERS COMMISSIONER

11.1 The Investigatory Powers Commissioner has informed the Chief Executive that one of his inspectors will be visiting the Council on 17 December 2018 in order to carry out an inspection of the Council's use of covert surveillance.

12.0 RELEVANT RISKS

12.1 These have been discussed in previous reports.

12.2 There is a risk that some investigations of anti-social behaviour will not be able to use covert surveillance because the suspected criminal behaviour does not carry a custodial sentence of 6 months or more.

12.3 The Anti-Social Behaviour Team are however intent on applying to the Court for approval of covert surveillance in suitable cases of suspected harassment of individuals which would amount to an offence under the Protection from Harassment Act 1997 (which can attract a sentence of 6 months or more imprisonment).

12.4 Where RIPA does not apply but covert surveillance would be legitimate necessary and proportionate then it would have to be authorised by the Authorising Officers in accordance with the Data Protection Act 2018 eg to supply evidence in disciplinary or care proceedings as explained in paragraph 10 of the amended Policy and Procedures Guidance Document and the report to the Committee on 22 November 2016.

13.0 ENGAGEMENT/CONSULTATION

13.1 Not applicable.

14.0 EQUALITY IMPLICATIONS

14.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No because there is no proposal which is relevant to equality.

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REFERENCE MATERIAL

Authorisations for directed surveillance - exempt from publication because they relate to individuals and may be the subject of continuing investigations into alleged criminal behaviour.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Reports to the Audit & Risk Management Committee	8 June 2015 22 September 2015 17 February 2016 22 November 2016 14 March 2017 12 June 2017 25 September 2017 12 February 2018

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