



AUDIT COMMITTEE

DATE: Thursday, 25 February 2021
TIME: 10.30 am
VENUE: Meeting to be held pursuant to Statutory Instrument 2020/392. Link to live stream will be available via <https://www.tendringdc.gov.uk/livemeetings>

MEMBERSHIP:

Councillor Coley (Chairman)	Councillor Miles
Councillor Alexander (Vice-Chairman)	Councillor Placey
Councillor Fairley	Councillor Steady
Councillor King	

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Meeting papers can be provided, on request, in large print, in Braille, or on disc, tape, or in other languages.

For further details and general enquiries about this meeting, contact Ian Ford email: democraticservices@tendringdc.gov.uk or telephone on 01255 686584.

DATE OF PUBLICATION: Wednesday, 17 February 2021

AGENDA

1 Apologies for Absence and Substitutions

The Committee is asked to note any apologies for absence and substitutions received from Members.

2 Minutes of the Last Meeting (Pages 1 - 6)

To confirm and sign as a correct record, the minutes of the last meeting of the Committee, held on Monday 30 November 2020.

3 Declarations of Interest

Councillors are invited to declare any Disclosable Pecuniary Interests or Personal Interest, and the nature of it, in relation to any item on the agenda.

4 Questions on Notice pursuant to Council Procedure Rule 38

Subject to providing two working days' notice, a Member of the Committee may ask the Chairman of the Committee a question on any matter in relation to which the Council has powers or duties which affect the Tendring District **and** which falls within the terms of reference of the Committee.

5 Report of the Internal Audit Manager - A.1 - Report on Internal Audit: October 2020 - January 2021 (Pages 7 - 24)

To provide the Committee with a periodic report on the Internal Audit function for the period October 2020 – January 2021 as required by the professional standards.

6 Report of the Assistant Director (Governance) - A.2 - NEGC Ltd Joint Scrutiny Panel: Scrutiny of NEGC Ltd and the Governance of future Council controlled companies. (Pages 25 - 60)

To enable the Committee to consider its formal response to a recommendation made by the Resources and Services Overview & Scrutiny Committee following that Committee's consideration of the report submitted by the NEGC Ltd Joint Scrutiny Panel on completion of the Panel's scrutiny of NEGC Ltd and the governance of future Council controlled companies.

7 Report of Assistant Director (Finance & IT) - A.3 - External Auditor's Annual Audit Letter for the year ended 31 March 2020 (Pages 61 - 72)

To present to the Committee the External Auditor's Annual Audit Letter for the year ended 31 March 2020.

8 Report of Assistant Director (Finance & IT) - A.4 - Audit Committee: Table of Outstanding Issues (Pages 73 - 88)

To present to the Committee the progress on outstanding actions identified by the Committee along with general updates on other issues that fall within the responsibilities of the Committee.

Date of the Next Scheduled Meeting

The next scheduled meeting of the Audit Committee is to be held at 10.30 am on Thursday, 25 March 2021.

**MINUTES OF THE MEETING OF THE AUDIT COMMITTEE,
HELD ON MONDAY, 30TH NOVEMBER, 2020 AT 2.06 PM
THE MEETING WAS HELD IN ACCORDANCE WITH PROVISIONS OF SI 2020/392.**

Present:	Councillors Coley (Chairman), Alexander (Vice-Chairman), Fairley, King, Placey, Steady and M Stephenson
In Attendance:	Richard Barrett (Assistant Director (Finance and IT) & Section 151 Officer), Richard Bull (Corporate Finance Manager & Deputy Section 151 Officer), Ian Ford (Committee Services Manager), Debbie Bunce (Legal and Governance Administration Officer), Debbie West (Finance Assistant) and Matt Cattermole (Communications Assistant)
Also in Attendance:	Lisa Clampin (Engagement Lead – BDO LLP, the Council’s appointed External Auditor)

8. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were submitted on behalf of Councillor Miles (with Councillor M E Stephenson substituting).

Councillor Stephenson informed the Committee that he had not received recent training on audit matters as required under Council Procedure Rules 34.3 and 34.4. However, he had been advised by Officers that he could participate in the meeting and ask questions etc. but that he would not be allowed to take part in the voting on any report(s) before the Committee.

9. MINUTES OF THE LAST MEETING

The Minutes of the last meeting of the Committee held on 1 October 2020 were approved as a correct record.

10. DECLARATIONS OF INTEREST

There were no declarations of interest made on this occasion.

11. QUESTIONS ON NOTICE PURSUANT TO COUNCIL PROCEDURE RULE 38

There were no Questions on Notice on this occasion.

12. REPORT OF THE ASSISTANT DIRECTOR (FINANCE & IT) - A.1 - EXTERNAL AUDITOR'S AUDIT COMPLETION REPORT FOR THE YEAR ENDED 31 MARCH 2020

There was a report submitted by the Council’s Assistant Director (Finance & IT) (report A.1) which presented:-

- (i) the Annual Governance Statement 2019/20 for approval;
- (ii) the External Auditor’s Audit Completion Report for the year ended 31 March 2020 (which included the management representation letter, for consideration and

approval, in order to enable a final opinion on the accounts and value for money arrangements to be formally issued by the External Auditor; and

- (iii) the Statement of Accounts 2019/20 for consideration and approval for publication by the end of November 2020.

It was reported that the pre-audited Statement of Accounts for 2019/20 had been approved for publication by the Council's Section 151 Officer (the Assistant Director (Finance & IT)) at the end of August 2020.

Members were reminded that each year the Council's External Auditors were required to prepare an annual report setting out the outcomes from their review of the Statement of Accounts (including the Annual Governance Statement) and the Council's value for money arrangements. The Audit Committee was then required to consider the content of that annual report and approve for publication the final audited Statement of Accounts and Annual Governance Statement.

The Committee was advised that a draft management representation letter which set out certain management representations was included within pages 48 to 50 of the External Auditor's Audit Completion Report. The Audit Committee were also required to separately approve this letter and to authorise the Assistant Director (Finance & IT) and the Chairman of the Committee to sign it before it was forwarded on to the External Auditor.

Once the above tasks had been completed the External Auditor would conclude the audit by finalising and formally issuing their audit opinion along with the certification of the accounts.

(1) STATEMENT OF ACCOUNTS 2019/2020 AND EXTERNAL AUDITOR'S AUDIT COMPLETION REPORT

The Committee was informed that, although the External Auditor had substantially completed their audit of the 2019/20 accounts a small number of activities remained outstanding (as set out on page 40 of the External Auditor's Audit Completion Report). However, it was the External Auditor's current intention to issue an unqualified audit opinion in respect of the Financial Statements and on the Council's arrangements to secure economy, efficiency and effectiveness in its use of resources.

However, a number of improvements/adjustments had been required (with further details set out on pages 20 and 23 of the Audit Completion Report). A number of those adjustments had related to the need to highlight the potential impact of COVID-19 on the Council's financial position and resilience. It was highlighted that the Annual Governance Statement had already reflected on this matter and as part of the associated actions, it would form an important element of the Internal Audit Plan in 2020/21 and 2021/22.

It was, however, noted that those adjusted items did not have a direct impact on the overall 2019/20 financial position of the Council.

The Committee was further informed that, in respect of other matters arising, the External Auditor had made three recommendations which were set out on pages 31 and 32 of their Audit Completion report. These had been agreed by Officers and updates on

the progress made on carrying out those recommendations would be provided as part of the usual Table of Outstanding Issues Reports that were presented to each ordinary meeting of the Committee.

Members were made aware that one of the three recommendations made related to financial reserves and budgets carried forward from prior years. Although a number of specific reserves had been highlighted within the Auditor's report, the underlying issue, as described by the Auditor, was about ensuring their on-going validity and that it could be demonstrated that they were held at a level that optimised service delivery without unacceptable risk exposure. Officers felt that this was a timely observation as similar discussions had already taken place within the Council over recent weeks and work was now underway to explore and identify the additional external resources required to take forward/deliver the Council's associated activities and priorities in 2021 and beyond.

Members were advised that, in order to conclude the Statement of Accounts process for 2019/20, the Committee was required to consider the Audit Completion Report for the year ending 31 March 2020, approve the management representation letter and approve the final Statement of Accounts for 2019/20, which included the adjustments mentioned above. Then, subject to the agreement of the aforementioned recommendations and the completion of the External Auditor's outstanding work final Statement of Accounts for 2019/20 would then be published by the end of November 2020 deadline.

(2) ANNUAL GOVERNANCE STATEMENT 2019/2020

The Committee was informed that the pre-audited Annual Governance Statement 2019/2020 had been approved for publication by the Council's Management Team at the end of July 2020. Since that time the statement had been subject to some minor amendments. Appendix A to the Officer's report therefore set out the revised Annual Governance Statement 2019/20.

As a consequence, the Annual Governance Statement was now submitted to the Committee for its consideration and approval which would include the necessary authorisation for the Chief Executive and the Leader of the Council to sign it on behalf of the Council.

Lisa Clampin, Engagement Lead, attended the meeting on behalf of the Council's External Auditor, BDO LLP, formally presented its Audit Completion Report to the Committee and, in addition, gave updates to Members where matters had moved on since the report had been submitted to the Council on 19 November 2020 and responded to the Committee's questions thereon. Matters touched on by Ms Clampin included:-

- a) Outstanding Matters;
- b) Anticipated 'Emphasis of Matters' regarding material valuation uncertainties in respect of 'Other Land and Buildings' within Property, Plant and Equipment and 'Property' assets within the Local Government Pension Scheme Assets due to the impact of Covid-19;
- c) An unadjusted audit difference of £805,000 (projected downward estimate) relating to HRA property valuations which was not material and which it was agreed would be recorded as an uncorrected difference;
- d) Audit Risks Overview;

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- e) Valuation of Non-Current assets;
 - f) Narrative Report – Identification of minor areas for follow up and potential amendment;
 - g) Whole of Government Accounts – submission of the relevant section of the assurance statement to the National Audit Office by 4 December 2020 deadline;
 - h) Sustainable Finances & Use of Resources – Potentially over-prudent approach of the Council not achieving the best use of the Council's resources for the benefit of the Council Tax payer given its history of large underspends and the significant amount of accumulated reserves; and
 - i) Follow up of prior year deficiencies.

The Committee was reminded that, as mentioned above, the work of the External Auditor remained in progress with a small number of actions outstanding. Further issues could therefore emerge and delegated authority was consequently sought for the Assistant Director (Finance & IT), in consultation with the Chairman of the Committee to enable these to be reflected in the final management representation letter and / or the Statement of Accounts before publishing.

Having considered and discussed all of the information submitted:-

It was moved by Councillor Alexander, seconded by Councillor Fairley and:-

RESOLVED that –

1. in respect of the External Auditor's Audit Completion Report for the year ended 31 March 2020, the Audit Committee:
 - (a) notes the contents of that report including the adjustments to the Statement of Accounts as set out on pages 20 and 23 of that report;
 - (b) approves the management representation letter, as set out on pages 48 to 50 of the External Auditor's Audit Completion Report;
 - (c) authorises the Assistant Director (Finance & IT) and the Chairman of the Committee to sign the management representation letter for forwarding to the External Auditor;
 - (d) approves for publication the audited Statement of Accounts for 2019/20, amended for the adjusted items identified; and
 - (e) authorises the Assistant Director (Finance & IT), in consultation with the Chairman of the Committee, to make amendments to the management representation letter for forwarding onto the External Auditor and / or Statement of Accounts 2019/20 before publication, if further changes are recommended by the External Auditor following the completion of the outstanding areas of their work.
2. in respect of the Council's Annual Governance Statement 2019/20, the Audit Committee:
 - (a) approves the revised Annual Governance Statement, as set out in Appendix A to item A.1 of the Report of the Assistant Director (Finance & IT); and

- (b) authorises the Chief Executive and the Leader of the Council to sign, on behalf of the Council, the approved Annual Governance Statement.

NOTE: In accordance with the provisions of Council Procedure Rule 19.5, Councillor M E Stephenson requested that he be recorded in the minutes as having abstained from the voting on Councillor Alexander's motion.

The meeting was declared closed at 2.47 pm

Chairman

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AUDIT COMMITTEE

25 FEBRUARY 2021

REPORT OF INTERNAL AUDIT MANAGER

A.1 REPORT ON INTERNAL AUDIT – OCTOBER 2020 - JANUARY 2021

(Report prepared by Craig Clawson)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To provide a periodic report on the Internal Audit function for the period October 2020 – January 2021 as required by the professional standards.

EXECUTIVE SUMMARY

- A total of 9 audits have been completed since the previous update in October 2020. Eight audits are in fieldwork phase, fieldwork is complete on a further three audits and a final four audits have been allocated.
- Internal Audit continue to have some involvement in the following consultative reviews; Digital Transformation Programme, Office Transformation Programme and Project Management
- One audit in the period received an overall audit opinion of 'Improvement Required'
- The Internal Audit Team continues to support the Silver Cell and Community Hub in the COVID-19 Emergency Planning response
- An update on progress on actions relating to the Quality Assurance Improvement Program (QAIP) is provided (Appendix B). Two outstanding actions are now compliant and one action has been delayed.

RECOMMENDATION(S)

- a) That the reports be considered and noted; and
- b) That the Quality Assurance Improvement Program (QAIP) be reviewed and noted.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Provision of adequate and effective internal audit helps demonstrate the Council's commitment to corporate governance matters.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The Internal Audit function is operating within the budget set.

Risk

Review of the functions of the Council by Internal Audit assists in identifying exposure to risk, and its mitigation.

LEGAL

The Council has a statutory responsibility to maintain adequate and effective internal audit.

The Accounts and Audit Regulations 2015 make it a statutory requirement that the Council must undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal audit standards and guidance.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

Internal Audit activity assists the Council in maintaining a control environment that mitigates the opportunity for crime.

During the course of internal audit work issues regarding equality and diversity, and health inequalities may be identified and included in internal audit reports.

There is no specific effect on any particular ward.

PART 3 – SUPPORTING INFORMATION**BACKGROUND**

The Public Sector Internal Audit Standards require the Acting Audit and Governance Manager to make arrangements for reporting to senior management (Management Board) and to the board (Audit Committee) during the course of the year, and for producing an annual Internal Audit opinion and report that can be used to inform the Annual Governance Statement.

INTERNAL AUDIT PLAN PROGRESS 2020/21

A total of nine audits have been completed since the previous update to the Audit Committee in October 2020. Fieldwork has been completed on a further three audits with the draft report yet to be negotiated. Fieldwork is ongoing on another eight audits with a final four audits allocated.

Eight of the nine audits complete received a satisfactory level of assurance. One audit (Princes Theatre) received an overall opinion of 'Improvement Required'.

Fieldwork has been completed on three audits; GDPR – Data Sharing Agreements, Fleet Management and Impact on Governance – COVID-19.

Consultancy and advice continues to be provided on Digital Transformation, Office Transformation and Project Management where required. There are no significant issues to report in this period.

The final four audits have started in February 2021. Three of which relate to the revenues and benefits service which have purposely been left as late in the year as possible due to the impact that issuing business grants has taken on the service.

Quality Assurance – The Internal Audit function issues satisfaction surveys for each audit completed. In the period under review 100% of the responses received indicated that the auditee was satisfied with the audit work undertaken.

Resourcing

Internal Audit is currently working with an establishment of 3 fte with access to a third party provider of Internal Audit Services for specialist audit days as and when required.

The Internal Audit Team did recruit an apprentice in October 2020; however, due to the impact of COVID-19 on workloads and the changes in processes across all service areas there has not been enough administrative work to keep them busy full time and there has also not been enough time to adequately manage and monitor the apprentice's progress. Therefore, the apprenticeship has been put on hold and will be reassessed later in the year.

The Internal Audit Team continues to support the Emergency Planning function as required.

At the last update in October 2020 it was expected that the Internal Audit Plan would be on track to be complete earlier than anticipated. However, since the end of the third quarter and the start of the latest lockdown, it has been a challenge for some services to provide enough resource to support the audit.

Because of this we have been risk assessing each audit to determine the level of work needed and negotiating with service managers on resource requirements to ensure that we can complete enough work to still be able to provide an overall opinion. Limitations to the scope are then reported in the Draft and Final Audit Reports.

Outcomes of Internal Audit Work

The standards require the Acting Audit and Governance Manager to report to the Audit Committee on significant risk exposures and control issues. Since the last report nine audits have been completed and the final report issued. The Public Sector Internal Audit Standards require the reporting of significant risk exposures and control issues.

Assurance	Colour	Number this Period	Total for 2020/21 Plan	
Substantial		3	5	
Adequate		4	5	
Improvement Required		1	1	
Significant Improvement Required		0	0	
No Opinion Required		1	3	Three consultative reviews to date

For the purpose of the colour coding approach, both the substantial and adequate opinions are shown in green as both are within acceptable tolerances.

Issues arising from audits completed in the period under review receiving an 'Improvement Required' opinion and requiring reporting to Committee are: -

Princes Theatre

Management Examination of Reconciliations

Reconciliations between systems are required and undertaken to ensure all payments have been received correctly and allocated to correct accounting codes.

At present these are carried out by the Operational Services support team and discrepancies are not viewed and approved by Theatre Management

Agreed action;

Reconciliations are viewed by a member of theatre management to evidence reconciliations have been completed accurately and promptly. There should also be evidence of this check being carried out.

Inadequate Till System

The Essex Hall bar uses tills to record bar sales when it is used for events and hire.

The tills are standalone and do not offer the analytics available to most till systems used in the industry. Because of IT issues connecting the tills to the council's network, the full functionality and office based reporting are not available.

Agreed Action;

Replacement till system to be installed, tested and working in liaison with IT in time for theatre re-opening. Till system to have full stock tracking functionality, back office interrogation and analysis and other suitable features as required for robust modern financial and stock processes.

Lack of Stock Takes

No formal stocktaking is undertaken so it is problematic to ascertain if, or how much, shortfall of stock there is.

This could be caused by wastage, fraud/theft, leakages or stock incorrectly logged.

Agreed action;

Once the new till system is installed, regular stocktakes and line checks to be undertaken to ensure stock management is carried out in a consistent and robust manner. Audit and accountancy to advise and assist as required.

Periodic stock takes will be undertaken manually in the short term until the new till system is implemented.

Management Response to Internal Audit Findings – There are processes in place to track the action taken regarding findings raised in Internal Audit reports and to seek assurance that appropriate corrective action has been taken. Where appropriate follow up audits have been arranged to revisit significant issues identified after an appropriate time.

The number of high severity issues outstanding was as follows: -

Status	Number	Comments
Overdue more than 3 months	0	
Overdue less than 3 months	2	The two outstanding issues relate to Housing Allocations and Planning Enforcement with further updates reported below
Not yet due	3	

Update on previous significant issues reported

Housing Allocations

The outstanding action for Housing Allocations relates to the implementation of a new Housing Allocations system. The latest update from the service is that the system is at its final stages of testing. Internal Audit has used the days available in the follow-up review to support the service in implementing the new system and ensuring that as many different scenarios are tested as possible before going live. The system is expected to go live on 1st March.

Planning Enforcement

The Planning Enforcement Follow-Up audit is now in progress. The Auditor is currently reviewing whether all previous issues have now been addressed and will gather evidence to support the actions implemented.

There is currently one major action outstanding regarding the update of the Planning Enforcement Policy. There is a draft policy which is currently being reviewed by our legal team. The policy will then go to the Planning Committee to be approved and adopted.

Impact on Governance – COVID 19

It was reported at the October 2020 Audit Committee that Internal Audit would undertake a review on the impact of governance within TDC due to COVID-19. An external consultant was commissioned to undertake the work due to the Internal Audit Managers involvement with the emergency planning response, which would ensure that the review remained independent.

The work is close to completion and is currently being assessed prior to drafting a report. A more detailed update can be provided at the March 2021 Audit Committee where the outcomes of the review can be reported.

Quality Assurance Improvement Programme (QAIP)

The Internal Audit function are required to be assessed externally every five years on compliance with the Public Sector Internal Audit Standards (PSIAS). This was undertaken three years ago and actions from the assessment have been implemented as previously

reported to the Audit Committee. Within the five year assessment period, Internal Audit are required to undertake a periodic self-assessment against the PSIAS in order to develop a QAIP.

The QAIP has been reassessed and the agreed actions have been updated where the Internal Audit Team are now compliant where they previously were not. One area to highlight where we are partially compliant relates to risk appetite. Aligning the risk appetite of Internal Audit and Risk Management remains outstanding. An opportunity to liaise with Senior Management and the Fraud and Risk Manager to assess the complexities of risk management across all departments has not presented itself over the past year.

Please see Appendix B for the latest QAIP update.

BACKGROUND PAPERS FOR THE DECISION

Audit Reports

APPENDICES

Appendix A – 2020/21 Internal Audit Plan Progress Report
Appendix B – Quality Assurance Improvement Programme

Tendring District Council Internal Audit			
2020/21 Internal Audit Plan Progress Report			
Audit Title	Status February 2021	Audit Type	Audit Opinion
2019/20 Carry Forward			
Health and Safety	Fieldwork	Annual review of individual / multiple elements of HR & M	To Be Confirmed
Financial Resilience	Complete	Full review of Housing Allocations Service	Adequate Assurance
North Essex Garden Communities	Deferred (Agreed October 2020)	Identify the risks associated to the project and determine how TDC can manage, monitor and mitigate those risks	N/A
Key Systems / Key Financial Risk Areas			
Procurement	Fieldwork	To review the electronic changes to the internal control environment since COVID-19	To Be Confirmed
Page 13	Housing Benefits	Different Techniques involved. Self-assessment, Root-cause analysis / Data Analytics and Assurance Mapping exercises until Universal Credit is adopted.	To Be Confirmed
	Business Rates	Different Techniques involved. To include self-assessment, Root cause analysis / Data Analytics and Assurance Mapping exercises. Analysis of Legislation changes and pooling arrangements may also be required	To Be Confirmed
Investment Planning	Complete	To review the Councils investment planning processes, return on investments and assess how the benefits are realised and recorded	Adequate Assurance
Corporate Governance	Complete	Assurance Mapping and Self-Assessments to be used within this audit. Interviews with Senior Management required to ascertain the culture of the organisation	Adequate Assurance

Council Tax	Allocated	Different Techniques involved. To include self-assessment, Root cause analysis / Data Analytics and Assurance Mapping exercises.	To Be Confirmed
Payroll	Complete	Data Analytics is the main audit technique used within this audit	Substantial Assurance
Treasury Management	Complete	Assurance Mapping, Self-Assessments and Data Analytics are the main techniques used	Substantial Assurance
Housing Rents	Complete	Root cause analysis / Data Analytics	Substantial Assurance
Cash Receipting	Complete	Root cause analysis / Data Analytics	Substantial Assurance

Other Services / Systems			
Parking Income	Complete	Review the income management processes and controls in place for Parking Income	Adequate Assurance
Risk Management	Complete	Required annually under PSIAS and Cipfa guidance	Substantial Assurance
Princes Theatre	Complete	To review the processes and controls in place for the management of the Princes Theatre. This will include income management, insurance arrangements and procurement	Improvement Required
Corporate Enforcement	Fieldwork	Review of enforcement services across the Council to determine whether uniformity can be achieved within existing processes and controls and assess the efficiency of work programmes that may already be in place	To Be Confirmed
Asset Management	Complete	Audit scope to assess TDC assets and determine the effectiveness of income generation and maintenance schedules	Adequate Assurance
Transformation Programme	Allocated	Review of governance arrangements, decision making, cost / benefit analysis and benefit realisation	Consultancy

Fleet Management	Draft Report	To review the effectiveness of the Transport Management System and the processes and controls for managing and monitoring the Councils fleet of vehicles (owned and hired)	To Be Confirmed
Environmental Health	Fieldwork	Compliance with key legislation and effectiveness of processes and controls in place for managing environmental health issues	To Be Confirmed
Assurance Mapping	Complete	Identify all types of assurance required and achieved across the Council to develop an assurance map of public services provided by TDC.	Consultancy
Carbon Neutrality	Deferred (Agreed October 2020)	To assess the baseline data used by the Council for setting its Carbon Neutrality aims and objectives and review / assess the planning methodology and feasibility of achieving our aspirations	N/A
Computer Audit			
Digital Transformation Programme	Internal Audit Manager is part of the digital transformation delivery board	IT continues to be one of the biggest risk areas to all organisations. Governance arrangements and project delivery to be within scope	Consultancy
IT Governance	Allocated	PSIAS expectation that this will be covered each year.	To Be Confirmed
IT Change / Patch Management	Fieldwork	To assess the IT functions processes and controls for change / patch management on IT infrastructure and software.	To Be Confirmed
Follow-Up Audits			
Planning Enforcement – Follow Up	Fieldwork	Follow up of controls put in place from the 2019/20 Planning Enforcement Audit	To Be Confirmed
Northbourne Security Follow-Up	Fieldwork	Follow up of controls put in place from the 2019/20 Northbourne Security Review	To Be Confirmed

Housing Allocations Follow-Up	Fieldwork	To follow up on the agreed actions from the 2019/20 Internal Audit and assess the progress of implementation	To Be Confirmed
Further Audits Agreed by Audit Committee (October 2020)			
GDPR – Data Sharing Agreements	Draft Report	Due to the many different organisations now working together due to COVID-19 the audit is expected ensure that all new data shared has an adequate agreement in place	To Be Confirmed
Impact on Governance (COVID-19)	Draft Report	To review the impact that COVID-19 has had on the governance arrangements within the Council	To Be Confirmed

Status Key

Unallocated	Audit in Audit Plan, but no work undertaken yet
Allocated	Audit is being scoped / has been scoped and awaiting commencement
Fieldwork	Audit in progress
Draft Report	Audit fieldwork complete, but Final Report not yet issued
Complete	Final Report issued and audit results reported to Audit Committee
Deferred	Audit was in Audit Plan, but will now be undertaken in a later year. Deferred audits agreed by Audit Committee
Delayed	Valid request from function being audited for audit to be undertaken later than proposed

Public Sector Internal Audit Standards – Quality Assurance and Improvement Programme

Tendring District Council – Self Assessment – January 2021

PSIAS Ref (Checklist Ref)	Conformance with the Standard	Comment	Priority	Action Required / Responsible Officer / Date	Status
Core Principles					
Demonstrates Competence and Due Professional Care	Having regard to your review of conformance with the Code of Ethics (Competence, Confidentiality, Seven Principles of Public Life) and any other evidence from the review of conformance with Standards, do you consider that the internal audit activity fully conforms with the PSIAS and LGAN by demonstrating competence and due professional care?	The Internal Audit Team has been stable with three core members of the team for the past 12 months. One member of the team is progressing their Internal Audit knowledge through an apprenticeship with the Institute of Internal Auditors and another is improving their accounting knowledge with the Association of Accounting Technicians in their own time.	Medium	Continuous training and development of current employees within the team. Craig Clawson Ongoing	Compliant

PSIAS Ref (Checklist Ref)	Conformance with the Standard	Comment	Priority	Action Required / Responsible Officer / Date	Status
Is appropriately positioned and adequately resourced.	Does the QAIP include both internal and external assessments? Based on your review of conformance with standards, do you consider that the internal audit activity fully conforms with the PSIAS and LGAN by being appropriately positioned and adequately resourced?	An external assessment was completed three years ago with all agreed actions being implemented. The self-assessment review against the PSIAS has identified some areas where further development may be required particularly relating to being adequately resourced. There have been a number of resourcing issues within the Internal Audit Team over the past year; However steps have now been taken to resolve the issues.	Medium	Continuous training and development of current employees within the team. Use of third party assurance when required. Craig Clawson Ongoing	Compliant

A.1 APPENDIX B

PSIAS Ref (Checklist Ref)	Conformance with the Standard	Comment	Priority	Action Required / Responsible Officer / Date	Status
Provides Risk Based Assurance	Based on your review of conformance with standards, do you consider that the internal audit activity fully conforms with the PSIAS and LGAN by providing risk-based assurance, based on adequate risk assessments?	The Internal Audit Team undertakes audits based on the risk matrix set by Internal Audit and agreed by the Audit Committee. However, the risk matrices for Internal Audit and Risk Management are not fully aligned due to differences in operational and strategic risk assessments therefore there are some occasions where there may be a difference of opinion on risk assessments undertaken between departments and Internal Audit. COVID-19 has contributed to the delay in implementation and therefore the date for which action was required has had to be put back.	High	To work with the Risk Manager, Senior Management and the Audit Committee to get a better understanding of the Councils risk appetite and better align the risk matrices between Internal Audit and Risk Management Craig Clawson December 2021	Partially compliant

PSIAS Ref (Checklist Ref)	Conformance with the Standard	Comment	Priority	Action Required / Responsible Officer / Date	Status
Code of Ethics					
Competency	<p>Based on your review of conformance with other requirements of the PSIAS and LGAN, do you consider that internal auditors display competence by:</p> <ul style="list-style-type: none"> • Only carrying out services for which they have the necessary knowledge, skills and experience? • Performing services in accordance with the PSIAS? • Continually improving their proficiency and effectiveness and quality of their services, for example through CPD schemes? 	<p>The Internal Audit Team is made up of two experienced Senior Officers and one trainee Auditor therefore it is not always possible to ensure that all Audits are carried out by Officers with adequate skills, knowledge and experience. However, all audits will have been supervised by a senior officer and quality checked prior to completion. We try to ensure that all members of the team are given as much training as possible in the areas that it is felt most needed through our performance management process.</p>	Low	<p>Continuous training and development of current employees within the team.</p> <p>Craig Clawson</p> <p>Ongoing</p>	Partially compliant

PSIAS Ref (Checklist Ref)	Conformance with the Standard	Comment	Priority	Action Required / Responsible Officer / Date	Status
Attribute Standards					
Independence and Objectivity					
1130 Impairment of Independence or Objectivity	Is the risk of over-familiarity or complacency managed effectively: for example by rotating assignments for ongoing assurance engagements and other audit responsibilities periodically within the internal audit team?	As we are a small team we aren't always able to rotate Auditors as regularly as we would like and therefore the risk of familiarity is always a factor. However, there are enough independent assessments throughout the audit process to ensure that all Auditors have not been bias and have carried out their role as independently and objectively as possible.	Low	No action required. It is felt that enough mitigating controls are in place to reduce the risk.	Mitigated compliance
1130 Impairment of Independence or Objectivity	Where there have been significant additional consulting services agreed during the year that were not already included in the audit plan, was approval sought from the board before the engagement was accepted?	Where a material number of days are required for Internal Audit to provide consultancy services the Audit Committee are updated and a change to the Audit Plan is requested. If resource is required to support a service through consultancy which does not have a material effect on the Audit Plan then the Internal Audit Manager will approve the work to support the service using days already agreed within the Audit Plan.	Low	No action required. It is felt that enough mitigating controls are in place to reduce the risk.	Mitigated compliance

PSIAS Ref (Checklist Ref)	Conformance with the Standard	Comment	Priority	Action Required / Responsible Officer / Date	Status
Proficiency and Due Professional Care					
1210 Proficiency	Having regard to the answers to the other questions in this section and other matters, does the internal audit activity collectively possess or obtain the skills, knowledge and other competencies required to perform its responsibilities? Where the internal audit activity does not possess the skills, knowledge and other competencies required to perform its responsibilities, does the CAE obtain competent advice and assistance?	As stated above with such a small team resourcing can sometimes be difficult; however, there are many different avenues and techniques used to ensure that knowledge and experience is gained. Our Auditor is currently using the Apprenticeship Levy to increase her knowledge and understanding of Internal Audit Services. We have access to third party provision of skilled audit days when required. We work with services to get a better understanding of the risks, issues and hurdles they face in order to perform their role. We also have access to the Essex Audit Group where all Heads of Internal Audit share knowledge and experience of audit areas and arising risks.	Low	No action required. It is felt that enough mitigating controls are in place to reduce the risk.	Mitigated compliance
1210 Proficiency	Do internal auditors have sufficient knowledge to evaluate the risk of fraud and anti-fraud arrangements in the organisation?	We have one inexperienced Auditor within the team who is continually learning and supervised by senior officers.	Low	No action required. It is felt that enough mitigating controls are in place to reduce the risk.	Mitigated compliance

A.1 APPENDIX B

PSIAS Ref (Checklist Ref)	Conformance with the Standard	Comment	Priority	Action Required / Responsible Officer / Date	Status
1210 Proficiency	Do internal auditors have sufficient knowledge of key information technology risks and controls?	As above. We also have access to third party Internal Audit Services that can offer specific IT audits if required.	Low	No action required. It is felt that enough mitigating controls are in place to reduce the risk.	Mitigated compliance
1210 Proficiency	Do internal auditors have sufficient knowledge of the appropriate computer-assisted audit techniques that are available to them to perform their work, including data analysis techniques?	As above. We have also changed the way in which we work over the past couple of years to ensure that assisted audit techniques and data analysis become fundamental to audits we undertake.	Low	No action required. It is felt that enough mitigating controls are in place to reduce the risk.	Mitigated compliance
Managing the Internal Audit Activity					
Overall Opinion					
2660 Communicating the Acceptance of Risks	If the CAE has concluded that management has accepted a level of risk that may be unacceptable to the organisation, has he or she discussed the matter with senior management? If, after discussion with senior management, the CAE continues to conclude that the level of risk may be unacceptable to the organisation, has he or she communicated the situation to the board?	Although the acceptance of risk is discussed with the auditees during the audit, if a manager has decided to accept a risk instead of mitigate it, the issue is not reported to Senior Management or the Board unless it has a significant impact on the overall opinion of the audit area or operational processes.	Low	This practice was previously accepted by the Audit Committee in October 2020. Therefore no further action required and the action is moved to compliant.	Compliant

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AUDIT COMMITTEE

25 FEBRUARY 2021

REPORT OF ASSISTANT DIRECTOR (GOVERNANCE) & MONITORING OFFICER

A.2 NEGC LTD JOINT SCRUTINY PANEL - SCRUTINY OF NEGC LTD AND GOVERNANCE OF FUTURE COUNCIL CONTROLLED COMPANIES

(Report prepared by Ian Ford and Lisa Hastings)

PURPOSE OF THE REPORT

To enable the Committee to consider its formal response to a recommendation made by the Resources and Services Overview & Scrutiny Committee following that Committee's consideration of the report submitted by the NEGC Ltd Joint Scrutiny Panel on completion of the Panel's scrutiny of NEGC Ltd and the governance of future Council controlled companies.

BACKGROUND

Following respective meetings held on 29 July and 5 August 2019, the Resources and Services Overview and Scrutiny Committee and the Community Leadership Overview and Scrutiny Committee, had both approved that a joint scrutiny panel be established in order to scrutinise the work of the North Essex Garden Communities Limited (NEGC) and, in particular, its interim business plan and future business plans. The following Members were appointed to the Joint Scrutiny Panel:

Councillor M Stephenson (Chairman)
Councillor Bush
Councillor Griffiths
Councillor Steady
Councillor Turner

The Joint Scrutiny Panel met three times as follows:

16 October 2019
12 February 2020
17 September 2020

During those meetings the Panel considered the Governance of Council Interests in Companies - Code of Practice (cabinet and scrutiny example) issued by Lawyers in Local Government (LLG) to examine possible areas for the Panel to develop recommendations in respect of future arrangements. At the time the Panel was undertaking its review the future of NEGC Ltd was the main consideration and the setting up of an internal structure within the Council in the form of a Shareholder Group. The Guidance includes model terms of reference for such a Group and can be adopted for any local authority company. The LLG Code of Practice is attached to this report as Appendix A.

The final report of the Joint Scrutiny Panel was submitted to the Resources and Services Overview and Scrutiny Committee on 16 November 2020. The Shareholder Group Terms

of Reference recommended by the Resources and Services Overview and Scrutiny Committee is attached as Appendix B to this report.

DETAILED INFORMATION

At its meeting held on 16 November 2020 the Resources and Services Overview and Scrutiny Committee was informed that the Joint Scrutiny Panel had:-

- examined the various responsibilities of the Council as community leader, shareholder of NEGC Ltd and having a Director of the Board of that Company, including the inherent conflicts and the management of those conflict points;
- been made aware of the absolute importance of Part 1 of the Local Plan in the critical path for Garden Communities and NEGC Ltd (and any future delivery vehicle for the Communities). NEGC Ltd had been commissioned by the partner Councils (Braintree, Colchester, Essex and Tendring) to undertake work for those partner Councils to secure approval of Part 1 of their Local Plans;
- scrutinised the Interim Business Plans for NEGC Ltd for 2018/19 and 2019/20;
- reflected upon the governance arrangements surrounding the work of this Council's Monitoring Officer and Section 151 Officer with their colleagues in the other partner Councils in respect of protecting the interests of this Council in relation to NEGC Ltd;
- looked briefly at possible future delivery vehicles for the Garden Communities together with best practice models for the future development of governance arrangements for Council controlled companies such as NEGC Ltd;
- noted at its last meeting the decision of the North Essex Garden Communities Ltd Board on 6th July 2020 to take all the necessary steps to wind up its three Local Delivery Vehicles and that the three Councils concerned had also all approved that NEGC Ltd itself cease trading on 31 August 2020 and that the necessary winding up procedures for it be undertaken, subject to, in the case of this Council, the Leader of the Council, in consultation with the Section 151 Officer and the Monitoring Officer, being satisfied around the final accounting processes;
- been advised that NEGC Ltd had been solvent and that, after settling any outstanding liabilities, the remaining assets of the company would be apportioned to the shareholders entirely as it should have been; and
- had concluded its work based on the approved scope and terms of reference for the Panel on the basis that the NEGC Ltd was being wound up.

The Resources and Services Overview and Scrutiny Committee having considered the report of the Joint Scrutiny Panel had resolved:-

- (1) *notes that the winding up of NEGC Ltd means that the rationale for establishing the Joint Scrutiny Panel, and the approved scope of the Panel, has also ended and requests that Cabinet notes that this Committee and the Community Leadership Overview and Scrutiny Committee will formally note that the Panel is being dissolved.*
- (2) *that this Committee notes the following recommendations from the Joint Scrutiny Panel and formally submits (a), (b) and (d) below to the Cabinet for its consideration:*
 - (a) *To record and applaud the hard work of officers in respect of the development of the Tendring-Colchester Borders Garden Community that resulted in the proposals for the Garden Community being accepted by the Local Plan Inspector in his enquiry into the draft Local Plan;*

- (b) *To note that there is important work being undertaken on various work streams to secure an exemplar development through the Tendring Colchester Borders Garden Community;*
- (c) *To establish a further Joint Scrutiny Panel at an appropriate time in the future to monitor, examine and review arrangements for delivery of the Tendring-Colchester Borders Garden Community (and particularly the commitments and financial expose of the Council to any external body established by the Council to lead on the development of that Garden Community);*
- (d) *To endorse the principle that where the Council establishes a company limited by shares (on its own or with other bodies) that it also establishes a Shareholder Group (either solely or with the other public bodies where the company established jointly) and that, the terms of reference similar to those set out at Appendix A to this report should form the terms of reference for that Shareholder Group, adjusted as necessary to the particular circumstances, business of the Company and consideration of such matters as:***
- (i) *How any co-opted members are used and how they are defined in the terms of reference;*
 - (ii) ***The Chairman of the relevant overview and scrutiny committee and the Chairman of the Audit Committee being appointed to the Shareholder Group as non-voting members; and***
 - (iii) *Ensuring that any “invitations to attend” issued to councillors or officers etc. must be provided to such persons at least five working days in advance of the meeting.*

Consequently, the Audit Committee is now requested to give its particular consideration to the recommendation of the Resources and Services Overview and Scrutiny Committee highlighted in **bold** and especially where it pertains to the suggestion that the Chairman of the Audit Committee is appointed to the Shareholder Group as a non-voting member. The recommended Terms of Reference are attached as Appendix B to this report.

The Community Leadership and Partnerships Overview & Scrutiny Committee will also be considering the final report of the Joint Scrutiny Panel at its meeting due to be held on 1 March 2021.

The Cabinet will be considering in due course all of the above recommendations of the Resources and Services Overview and Scrutiny Committee and any comments or recommendations made by the Audit Committee at this meeting and by the Community Leadership and Partnerships Overview & Scrutiny Committee on 1 March 2021 will be submitted to the Cabinet, in order that Cabinet can take them into consideration in reaching its decision.

The Audit Committee may determine that the idea of a Shareholder Group could be extended to other outside bodies or partnerships such as Tendring Colchester Borders, or similar.

If Cabinet resolved to form a Shareholder Group, the Monitoring Officer recommends that this requirement is formally adopted within the Council's Constitution. Through the Gifted Unit Scheme the Council has been requested to become a shareholder for a number of management companies, although currently no decisions have been required as shareholders as the concept is fairly new.

RECOMMENDATION

That the Committee determines whether it has any comments or recommendations it wishes to put forward to the Cabinet.

APPENDICES

Appendix A – Lawyers in Local Government (LLG) - Governance of Council Interests in Companies - Code of Practice (cabinet and scrutiny example)

Appendix B - Shareholder Group Terms of Reference recommended by the Resources and Services Overview and Scrutiny Committee

**THE GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES
- CODE OF PRACTICE (cabinet and scrutiny example)**

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The Governance of Council Interests in Companies - Code of Practice

1. Introduction

- 1.1 The purpose of this Code of Practice is to provide a reference point to the Council [local authority] 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

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

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, 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 was 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

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

the various rules on procurement or providing state aid.

- 2.8 Other important legal, commercial and financial considerations for councils or 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 regulated company (or society) and any subsidiaries must adhere.
- 2.11 The reasons for these extra requirements 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 These requirements cover issues of audit, payments, delivery of information to the authority's members and identification. For example, a regulated company is required to mention that it is a company controlled, or as the case may be influenced, by a local authority, naming the relevant authority or authorities, on all relevant documents, which are defined by reference to the companies legislation and are the same documents on which a company is required to disclose its registered name⁵, such as business letters, its order forms and its websites.

(c) Other Local Authority Entities

⁴ *The Local Authorities (Companies) Order 1995*

⁵ "...being of any kind mentioned in paragraphs (a) to (d) of section 349(1) of the 1985 Act" - now Regulation 24 of the Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015 made under the replacement section 82 of the 2006 Act.

- 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 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 them⁶. 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.

Limited Liability Partnerships

- 2.16 Particular amongst these is the limited liability partnership (LLP), which are an increasingly common entity of which local authorities are a member. A limited liability partnership is a body corporate (with legal personality separate from that of its members) and is formed of 'two or more persons associated for carrying on a lawful business with a view to profit'⁷. An LLP will also file annual accounts and be registered with Companies House.
- 2.17 LLP's have a number of advantages for local authorities, including significant tax advantages and that it lies outside of the regulation applicable to local authority trading companies. Unlike a company, however, an LLP is not a vehicle by which the Council can undertake commercial activities via the general power of competence under the Localism Act 2011 or the charging and trading powers under the Local Government Act 2003, so a key disadvantage is that it must rely on specific local government powers and the vires of the functions included must be carefully considered. An LLP is also not suitable for later conversion to a company or to be formed as a charitable body. An LLP is, therefore, very well suited to forming joint ventures to deliver local government

⁶ Section 212 Local Government and Public Involvement in Health Act 2007

⁷ Limited Liability Partnership Act 2000

functions such as land and property development⁸.

- 2.18 The cross-application of this Code will therefore particularly apply to limited liability partnerships (LLP), where the management agreement will reflect many of the elements of the articles or shareholder agreement referred to below. This will include, for example, the same reserved decision making in respect of appointment of representatives to the partnership management board, receipt of financial and other information by the Council and that the venture is limited to only undertaking its business in accordance with the approved business plan.

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*”⁹ 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*¹⁰. 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*¹¹ and also the *Corporate Governance Handbook*¹² have additionally been utilised in the compiling of this Code of Practice.
- 3.5 The Council itself has adopted a NNN Council 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

⁸ “*Structures for Collaboration and Shared Services: Technical Notes*” (DCLG)

⁹ First published: 29 July 2004: UK Govt Archive

¹⁰ September 2014: Financial Reporting Council

¹¹ First edition: November 2010: Institute of Directors (IoD) and European Confederation of Directors’ Associations (ecoDa)

¹² Third edition 2013: Institute of Chartered Secretaries and Administrators (ICSA)

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 NNN 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 decisions to be taken by the Council as a member of the company (as shareholder) fall to be decided on by the elected Mayor/Leader. In the normal way, therefore, these functions may be delegated by the Mayor/Leader to the cabinet or 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; the 'comprehensive statement' referred to in 2009 Order. 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 Group or 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 Mayor/Leader, in turn, will seek to inform the executive decisions and to hold the company to account by utilising a reflection of the company board structure in the form of a Shareholder Group, 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 Mayor/Leader (or his or her appointee) remains the decision maker but the Group act as advisors in the making of those executive decisions.

6.3 Such a Shareholder Group 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 Mayor/Leader (or his/her appointee) will make most decisions concerning the executive's role in respect of company interests at meetings of the Shareholder Group (in a similar manner to the Mayor/Leader's executive decisions made at various partnership boards and the health and well-being 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 Group 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 Mayor/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 Mayor/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 Overview and Scrutiny Management Board (OSM) 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 Group. To retain the independence required of the OSM 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.*"¹³
- 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

¹³ Article 7, Local Authorities (Companies) Order 1995

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, either directly in the company or, more likely, via NNN Holding Limited, 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.

9. Companies Structure

- 9.1 The principal means by which the local authority will normally own and hold interests in its trading and other forms of company will be through a single company (the Company), acting as a holding company. Wherever practically feasible and advantageous to the authority, each of the individual company ventures will then be a subsidiary of the single company and they will operate together as part of the a group of companies.
- 9.2 The primary objective of a group structure is that the Company, as a holding company, is able to provide a single point of focus for leadership of the authority's commercial activity, communication with the authority, utilisation of shared resources and as a forum for strategic decision-making across the group. Its board of directors will set the overall strategy in relation to the

activities of its subsidiaries.

- 9.3 In doing so, the board of the Company will also sign off all business plans and hold its subsidiaries to account. The executive, supported by the Shareholder Group, will approve any decisions that would have an effect on the shareholder's rights and hold the group of companies to account as a whole.
- 9.4 The subsidiary companies will, therefore, be expected to adopt a common 'group' approach, with the managing director and the Company's board holding a clear leadership role on behalf of the authority. This will, for example, involve the group of companies:
- (a) using existing Council policies and strategies where appropriate and the company and its subsidiaries, wherever practicable;
 - (b) adopting a common approach across the group on branding and its finance, ethics and procurement policies and practices;
 - (c) being required by the authority to have the holding company approve the procurement and authorisation of spend levels set by each company for its directors and staff; and
 - (d) also having more detailed matters to be set as a common approach by the company for itself and its subsidiaries by the holding company, where it considers that that will increase effectiveness, efficiency and engender common understanding, which 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.
- 9.5 The Company will 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 holding company, 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).
- 9.6 The secondary purpose is financial, in that group companies can share VAT registration where appropriate and 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.
- 9.7 The executive will approve the appointment of auditors for the group and its accounts will 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.

10.3 Whilst it will therefore be the norm that officers, not members, will be appointed as directors, this should not prevent the Council from appointing Members as directors where that is considered to be in the best interests of the company and the Council. If Members of the Council are appointed as directors of a company, the following paragraphs should be borne in mind and, in particular, that the member notes that:

- Conflicts of interest may be waived by a company but, as a matter of public law, never in the decision making of the Council: the Council Member / company director will always have a conflict of interest when it comes to their role as a councillor that must be resolved and resolved in the favour of the company. A Member as director, therefore, must not be a party to making a decision of the Council affecting the company, but may proffer evidence or advice to the Council on the company's behalf when invited to do so.
- Liaison should be through the key Member and/or officer concerning the company and the Council's activities
- The Member's Code of Conduct applies to a Member's activity as a director, except only where it directly conflicts with the interests of the company and, where that may be the case, the potential conflict notified to the company secretary and to the Council's monitoring officer.
- The only monies or other remuneration to be received by the Member in connection with the directorship will be as a special responsibility allowance (SRA) given by the Council to the amount of the corresponding SRA in the Members' Allowances Scheme.

10.4 As the holding company for the group, the Company board of directors will be formed of:

- Executive directors, being:
 - the managing director;
 - with the option of the managing directors of the authority's principal trading companies where appropriate
- Non-executive directors, being:
 - a chief officer of the Council (Chair of the Board);

- independent person(s) appointed to bring oversight, experience and skills that would be advantageous and appropriate for the companies;
 - other senior officers of the Council as appropriate; and
 - Members of the Council if considered advantageous and appropriate.
- 10.5 The chair of the board of directors, as Council appointee, will have a deciding say to be exercised through means of a 'golden vote' procedure on the board. This approach is 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.
- 10.6 The Company will 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.
- 10.7 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.
- 10.8 Where an officer or Member 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.
- 10.9 Appointments of an officer as a 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, office holder or Member of the Council, as applicable, then they automatically also cease to be a director of the company.
- 10.10 The remuneration of officers of the 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.

- 10.11 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 offence¹⁴.
- 10.12 The law requires that, where a Member of the Council is a director of a regulated company, the Member may only receive payment for that directorship up to the amount payable for that role under the authority's Special Responsibility Allowance (SRA)¹⁵, set as a result of the recommendation of the Independent Remuneration Panel¹⁶. 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.
- 10.13 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 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'.

¹⁴ s117(2) of the Local Government Act 1972

¹⁵ Article 5 of the Local Authorities (Companies) Order 1995

¹⁶ Reg 21 of the Local Authorities (Members' Allowances) (England) Regulations 2003.

- 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 Group. 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. Equally, it may be that the main source of staffing for the company’s trading activities comes from Council staff seconded for that purpose, be that whole time or on a client by client, job by job basis. It is for the company and the executive to agree what level of authority led resource is appropriate, should or could 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 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 With the exception of those staff supplied by or seconded from the authority for trading purposes or for managed services as described above, it is expected that staff of the companies will be directly recruited and employed by the companies themselves. Where the business case includes that staff are transferred this will be subject to full reporting and then consultation and requirements under TUPE legislation and guidance.

Adopted in accordance with the Cabinet decision of DDD

[To be] Presented to the NNN Council Audit Committee of DDD.

NNN COUNCIL
SHAREHOLDER GROUP - TERMS OF REFERENCE

Overview

The purpose of the Shareholder Group is to advise the Mayor/Leader 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.

Decision making

The Mayor/Leader (or other Cabinet member appointed by the Mayor/Leader for this purpose) may make decisions concerning companies in which the Council is or is proposed to become a shareholder, either:

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

Membership and Arrangements

The Shareholder Group shall consist of the Mayor/Leader (or other Cabinet member appointed by the Mayor/Leader for this purpose) in the presence of:

- (a) Such Members of the Cabinet as are appointed by the Mayor/Leader (which shall be at least two);
- (b) Two co-opted members, 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); and
- (c) Relevant senior officers of the Council as are appointed by the head of paid service (or their deputies); together with
- (d) The Chair of Overview and Scrutiny Management Board, as a Member of the Council from outside of the Cabinet, to act in the capacity of Observer.

The Service Director for Finance (s151 officer) and the Service Director for Legal and Democratic Services (monitoring officer), or their deputies, will be advisors to the Group to provide open and strong advice.

Other members of the Cabinet (who are not directors of any of the companies concerned) may attend and vote as substitutes in the event that an appointed member of the Shareholder Group is unable to attend

Restrictions on Membership

As the Shareholder Group is to advise and discharge executive functions in relation to company matters and the role of the Shareholder Representative, only Cabinet members can be members of the Shareholder Group with voting rights, although other Cabinet members and non-Cabinet members can be invited to attend, without voting rights.

Meetings

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

The quorum shall be the Mayor/Leader (or other Cabinet member appointed by the Mayor/Leader for this purpose) in the presence of a minimum of:

- (a) one other Cabinet Member;
- (b) one independent co-optee; and
- (c) one senior officer appointed to the Group (or their appointed deputy).

An invitation to attend must have been provided to the Chair of Overview and Scrutiny Management Board/Committee (or their nominated deputy) 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 Management Board/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 Mayor/Leader (or appointee) will chair the Shareholder Group and a Vice Chair will be selected from the elected members of the Shareholder Group.

Sub Groups

To assist it in its functions the Shareholder Group:

1. may establish and consult standing sub-groups, such as might be required in respect of:
 - (a) Audit and Risk;
 - (b) Ethical practices; or
 - (c) Nominations and Remuneration
2. may establish and consult ad-hoc or task and finish sub-groups in respect of any matter; and
3. may establish and consult stakeholder groups on any particular aspect or the generality of the objects of the trading companies

A sub-group or stakeholder group may contain such co-opted members, advisors or observers as the Shareholder Group sees fit.

Functions

1. Monitor the performance of a company in relation to its Business Plan and, in particular, the company's performance:
 - (a) in financial matters
 - (b) against the social goals of the company as set out in the company's Objects, Business Case or Business Plan; and
 - (c) against the values of the Council.

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

3. Consider matters reserved to the Council for shareholder approval, such as:
 - (a) Varying Articles of Association
 - (b) Varying ownership and structure
 - (c) Variations to shares (number of, rights, etc.
 - (d) Entering contracts that:
 - (i) have a material effect on NNN Council business (including other companies within the group)
 - (ii) are outside of the business plan or do not relate to the business
 - (iii) significant in relation to the size of the business, the business plan, etc.
 - (e) Material legal proceedings outside of ordinary business
 - (f) Adopting and amending business plans each year and strategic plans (3 years)
 - (g) Appointment, removal and the remuneration of directors (members of the company board)
 - (h) Selection of the chair of the board
 - (i) Appointment of auditors
 - (j) Issue of dividendsas more particularly set out in a company's Articles of Association or Shareholder Agreement.

Relationship

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

1. report and make formal recommendations to the Mayor/Leader, directly or to

- the wider Cabinet;
2. make reports to and consult Overview and Scrutiny (including full Council) or
 3. 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 NNN Council Members and Officers when acting as
Directors of Council Companies

NEGC LTD JOINT SCRUTINY PANEL
12 FEBRUARY 2020

Note from the Head of Governance and Legal Services

Shareholder Group or Board

Extract from LLG Guidance Note

- 6.1 The structure described 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, in turn, will seek to inform the executive decisions and to hold the company to account by utilising a reflection of the company board structure in the form of a Shareholder Group, 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 his or her appointee) remains the decision maker but the Group act as advisors in the making of those executive decisions.
- 6.3 Such a Shareholder Group 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 Mayor/Leader (or his/her appointee) will make most decisions concerning the executive's role in respect of company interests at meetings of the Shareholder Group (in a similar manner to the Mayor/Leader's executive decisions made at various partnership boards and the health and well-being 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 Group are set out at Appendix 1 (below)

SHAREHOLDER GROUP - TERMS OF REFERENCE

Overview

The purpose of the Shareholder Group is to advise the Leader in the exercise of their responsibility for the Council's functions as corporate shareholder of a company, in their role to represent the interests of the Council as Shareholder Representative at meetings of a company.

Decision making

The Leader or other Cabinet member appointed by the Leader for this purpose (referred to "as the appointed Cabinet Member") may make decisions concerning companies in which the Council is or is proposed to become a shareholder (**consider major/minor shareholders**), either:

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

TDC Note: Make reference to recording decision

Membership and Arrangements

The Shareholder Group shall consist of the Leader (or the appointed Cabinet member) in the presence of:

- (a) Any additional Members of the Cabinet as are appointed by the Mayor/Leader (which shall be at least two);
- (b) Two co-opted members, 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); and

TDC Note: Consider use of co-opted members and phrase independent persons (maybe a different definition)

- (c) Relevant senior officers of the Council as are appointed by the Chief Executive; together with

- (d) The Chair of Overview and Scrutiny, as a Member of the Council from outside of the Cabinet, to act in the capacity of Observer.

TDC: consider Audit Committee Observer?

The Section 151 Officer and Monitoring Officer, will be advisors to the Group to provide open and strong advice.

Other members of the Cabinet (who are not directors of any of the companies concerned) may attend and vote as substitutes in the event that an appointed member of the Shareholder Group is unable to attend

Restrictions on Membership

As the Shareholder Group is to advise and discharge executive functions in relation to company matters and the role of the Shareholder Representative, only Cabinet members can be members of the Shareholder Group with voting rights, although other Cabinet members and non-Cabinet members can be invited to attend, without voting rights.

Meetings

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

The quorum shall be the Leader or other appointed Cabinet member in the presence of a minimum of:

- (a) one other Cabinet Member;
- (b) one independent co-optee; and
- (c) one senior officer appointed to the Group (or their appointed deputy).

An invitation to attend must have been provided to the Chair of Overview and Scrutiny Committee (or their nominated deputy) 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 Leader (or appointee) will chair the Shareholder Group and a Vice Chair will be selected from the elected members of the Shareholder Group.

Sub Groups

To assist it in its functions the Shareholder Group:

1. may establish and consult standing sub-groups, such as might be required in respect of:

- (a) Audit and Risk;
 - (b) Ethical practices; or
 - (c) Nominations and Remuneration
2. may establish and consult ad-hoc or task and finish sub-groups in respect of any matter; and
 3. may establish and consult stakeholder groups on any particular aspect or the generality of the objects of the trading companies

A sub-group or stakeholder group may contain such co-opted members, advisors or observers as the Shareholder Group sees fit.

Functions

1. Monitor the performance of a company in relation to its Business Plan and, in particular, the company's performance:
 - (a) in financial matters
 - (b) against the social goals of the company as set out in the company's Objects, Business Case or Business Plan; and
 - (c) against the values of the Council.
2. Evaluate and monitor:
 - (a) the financial and social returns on investment (be that shareholding, loans or direct investment); and
 - (b) risks and opportunities including those arising from joint ventures or new opportunities.
3. Consider matters reserved to the Council for shareholder approval, such as:
 - (a) Varying Articles of Association
 - (b) Varying ownership and structure
 - (c) Variations to shares (number of, rights, etc.
 - (d) Entering contracts that:
 - (i) have a material effect on Council business (including other companies within the group)
 - (ii) are outside of the business plan or do not relate to the business
 - (iii) significant in relation to the size of the business, the business plan, etc.
 - (e) Material legal proceedings outside of ordinary business
 - (f) Adopting and amending business plans each year and strategic plans (3 years)
 - (g) Appointment, removal and the remuneration of directors (members of the company board)
 - (h) Selection of the chair of the board
 - (i) Appointment of auditors

- (j) Issue of dividends
as more particularly set out in a company's Articles of Association or Shareholder Agreement.

Relationship

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

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

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AUDIT COMMITTEE

25 FEBRUARY 2021

REPORT OF ASSISTANT DIRECTOR (FINANCE & IT)

A.3 EXTERNAL AUDIT'S ANNUAL AUDIT LETTER FOR THE YEAR ENDED 31 MARCH 2020

(Report prepared by Richard Barrett)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To present to the Committee the External Auditor's Annual Audit Letter for the year ended 31 March 2020.

EXECUTIVE SUMMARY

The Annual Audit Letter for the year ended 31 March 2020 has recently been received from the Council's External Auditors, which primarily summarises the outcomes from various audit activities undertaken during the year.

RECOMMENDATIONS

That the Audit Committee considers and notes the contents of the Annual Audit Letter for the year ended 31 March 2020.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The aim of continuing to be financially stable and well managed and provide good value for money is directly supported through learning and improving through audit and inspection.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

There are no direct financial implications arising from this report with expected fees being accommodated within existing budgets.

Risk

Not responding practically and timely to outcomes from audit and inspection may have an impact on the delivery of the Council's priorities, reputation, governance arrangements and overall control environment.

LEGAL

The Accounts and Audit Regulations require that:

- (1) A committee must meet to consider the letter as soon as reasonably practicable;

(2) following consideration of the letter in accordance with paragraph (1) the authority must—(a) publish (which must include publication on the authority’s website) the audit letter; and (b) make copies available for purchase by any person on payment of such sum as the authority may reasonably require.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

This report does not have a direct impact although items could feature in the recommendations and subsequent action plans in future external audit reports. Any actions that may have an impact will be considered and appropriate steps taken to address any issues that may arise.

PART 3 – SUPPORTING INFORMATION

ANNUAL AUDIT LETTER FOR THE YEAR ENDED 31 MARCH 2020

There are a number of different strands of external audit work undertaken during the year but primarily they relate to the financial statements and value for money opinion. The outcomes from these activities are reported to the Council separately as they are completed during the year. The Annual Audit Letter is effectively an end of year report for the Council, which captures and summarises these outcomes in one document. It is primarily directed to Members but it must also be made available as a public document.

The **Annual Audit Letter** relating to 2019/20 is attached, with no significant concerns raised. Page 7 of the Auditor’s letter includes some observations in respect of a number of reserves the Council holds and its approach to managing its finances. The associated recommendations referred to were set out in the External Auditor’s Audit Completion Report that the Committee considered at its November meeting. These recommendations have now been included within the table of outstanding issues report elsewhere on the agenda to ensure that their progress can be effectively monitored by the Committee.

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

ATTACHED External Auditor’s Annual Audit Letter for the year ended 31 March 2020



TENDRING DISTRICT COUNCIL

Annual Audit Letter

Year ended 31 March 2020

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IDEAS | PEOPLE | TRUST



EXECUTIVE SUMMARY

Purpose of the Annual Audit Letter

This Annual Audit Letter summarises the key issues arising from the work that we carried out in respect of the year ended 31 March 2020.

It is addressed to the Council but is also intended to communicate the key findings we have identified to key external stakeholders and members of the public.

Responsibilities of auditors and the Council

It is the responsibility of the Council to ensure that proper arrangements are in place for the conduct of its business and that public money is safeguarded and properly accounted for.

Our responsibility is to plan and carry out an audit that meets the requirements of the National Audit Office's (NAO's) Code of Audit Practice (the Code). Under the Code, we are required to review and report on:

- Our opinion on the Council's financial statements; and
- Whether the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

BDO LLP

January 2021

Audit conclusions

Audit area	Conclusion
Financial statements	Unqualified opinion, with an emphasis of matter in respect of the valuation of land and buildings (including investment properties) and Pension Fund assets, due to a material uncertainty included in the final valuation reports. Issued on 1 December 2020.
Use of resources	Unmodified conclusion issued on 1 December 2020.

We recognise the value of your co-operation and support and would like to take this opportunity to express our appreciation for the assistance and co-operation provided during the audit.

FINANCIAL STATEMENTS

Audit conclusion

We issued our audit report on 1 December 2020.

We issued an unqualified audit opinion on the financial statements. This means that we consider that the financial statements:

- Give a true and fair view of the financial position and income and expenditure for the year
- Have been properly prepared in accordance with the CIPFA/LASAAC Code of Practice on Local Authority Accounting 2019/20.

Final materiality

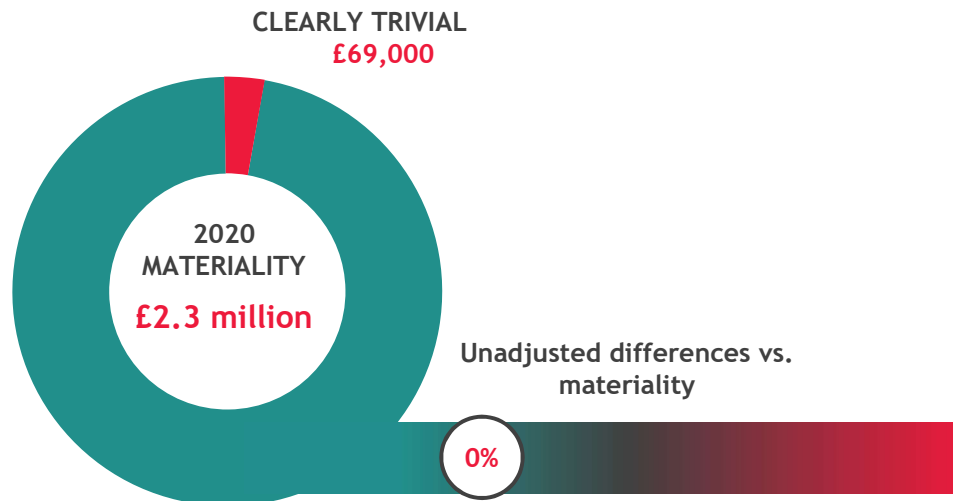
Materiality was calculated at £2.3 million based on a benchmark of 2% of gross expenditure.

Material misstatements

We did not identify any material misstatements.

Unadjusted audit differences

We did not identify any audit differences that have not been adjusted for.



FINANCIAL STATEMENTS

We set out below the risks that had the greatest effect on our audit strategy, the allocation of resources in the audit, and the direction of the efforts of the audit team.

Risk description	How the risk was addressed by our audit	Results
<p>Management override of controls</p> <p>Auditing standards presume that management is in a unique position to perpetrate fraud by overriding controls</p>	<p>We carried out the following planned audit procedures:</p> <ul style="list-style-type: none"> We reviewed and verified journal entries made in the year, agreeing the journals to supporting documentation. We determined key risk characteristics to filter the population of journals. We used our IT team to assist with the journal extraction; Reviewed estimates and judgements applied by management in the financial statements to assess their appropriateness and the existence of any systematic bias; Obtained an understanding of the business rationale for significant transactions that are outside the normal course of business for the entity or that otherwise appear to be unusual; and Reviewed unadjusted audit differences for indications of bias or deliberate misstatement. 	<p>We did not identify any evidence of systematic bias or management override in the processing of journals entries and other adjustments.</p> <p>Material accounting estimates with a higher degree of estimation uncertainty for the Council included valuation of properties and pension assets and liabilities. Our audit work on these accounting estimates is set out in the following pages. The audit work performed provided reasonable assurance that the accounting estimates are reasonable and free from management bias.</p> <p>We did not identify any unusual transactions or transactions that were outside the normal course of business for the Council.</p> <p>We did not identify any management bias or deliberate misstatements.</p>
<p>Expenditure Recognition</p> <p>For public sector bodies the risk of fraud related to expenditure is relevant.</p>	<p>We checked that expenditure had been recognised in the correct accounting period by substantively testing an increased sample of expenditure items around year-end.</p>	<p>Our testing on expenditure cut off did not identify any missing or incorrectly treated expenditure.</p>

FINANCIAL STATEMENTS

Risk description	How the risk was addressed by our audit	Results
<p>Valuation of non-current assets</p> <p>The valuation of non-current assets is a significant risk as it involves a high degree of estimation uncertainty.</p>	<p>We carried out the following planned audit procedures:</p> <ul style="list-style-type: none"> Reviewed the instructions provided to the valuer and the valuer’s skills and expertise in order to determine if we can rely on the management expert; Confirmed that the basis of valuation for assets valued in year is appropriate based on their usage; Reviewed the accuracy and completeness of information provided to the valuer, such as rental agreements and floor area sizes; Reviewed assumptions used by the valuer and movements against relevant indices for similar classes of assets; and Followed up on valuation movements that appeared unusual. 	<p>From our review of the instructions provided to the valuer and our assessment of the expertise of the valuer, we satisfied ourselves that we could rely on their work.</p> <p>Our review of the basis of the valuation for each asset and the input data that informed the valuation, did not identify any material errors.</p> <p>We were content with the assumptions used by the valuer and our review of relevant indices for similar asset classes did not identify any material inconsistencies.</p> <p>The valuer included a material uncertainty statement in their final valuation reports in respect of the year-end valuations, in light of circumstances surrounding coronavirus. We included an Emphasis of Matter in our audit report to highlight this uncertainty. This has also been referred to on page 6 below in relation to our work on the valuation of the Pension liability.</p>

FINANCIAL STATEMENTS

Risk description	How the risk was addressed by our audit	Results
<p>Valuation of Pension Liability</p> <p>The valuation of the pension liability is a significant risk as it involves a high degree of estimation uncertainty</p>	<p>We carried out the following planned audit procedures:</p> <ul style="list-style-type: none"> Reviewed the competence of the management expert (actuary); Reviewed the reasonableness of the assumptions used in the calculation against other local government actuaries and other observable data; Reviewed the controls in place for providing accurate membership data to the actuary; Contacted the pension fund auditor and requested confirmation of the controls in place for providing accurate membership data to the actuary and testing of that data, and obtained assurance from the auditor of the pension fund over the reasonableness of the valuation of pension fund assets at 31 March 2020, Checked that any significant changes in membership data have been communicated to the actuary; and Agreed the disclosures to the information provided by the pension fund actuary. 	<p>Our review of skills and expertise of the actuary, alongside the assurance from PwC consulting actuary, confirmed that we can rely on the management expert.</p> <p>We reviewed the assumptions used and considered them to be reasonable.</p> <p>The pension fund auditor, on our behalf, has reviewed controls and procedures at Essex Pension Fund and confirmed that their review did not identify any issues.</p> <p>We obtained a letter of assurance from the pension fund auditor which confirmed that the auditor has obtained the final data return submitted to the actuary in respect of the triennial valuation and agreed the number of members to the member administration system. This audit work has not identified any issues.</p> <p>In respect of the share of pension fund assets attributable to the Council, we obtained assurance from the pension fund auditor, who, on our behalf, has performed detailed testing over investment assets and confirmed that no material issues have been identified.</p> <p>The pension fund auditor has confirmed in their assurance letter that the valuation of property assets has been reported on the basis of ‘material valuation uncertainty’ due to Covid-19. We requested management include additional disclosures regarding this matter. We included an Emphasis of Matter paragraph within our audit opinion to refer to this.</p> <p>We have not identified any significant changes in membership data during the year.</p> <p>We agreed disclosures in Note 29 to the financial statements to the information provided by the actuary and have not identified any issues.</p>

USE OF RESOURCES

Audit conclusion

We issued an unmodified conclusion on the Council’s arrangements for securing economy, efficiency and effectiveness in its use of resources.

This means that we consider that in all significant respects, the Council had proper arrangements to ensure they took properly informed decisions and deployed resources to achieve planned and sustainable outcomes for taxpayers and local people.

We set out below the risks that had the greatest effect on our audit strategy.

Risk description	How the risk was addressed by our audit	Results
<p>Sustainable finances</p> <p>In light of the large underspends and significant amount of accumulated reserves, there is a risk that the budget setting and financial management process of the Council may not be designed to achieve the best use of the Council’s resources.</p>	<p>We carried out the following planned audit procedures:</p> <ul style="list-style-type: none"> Reviewed the adequacy of the budget setting and financial management processes of the Council; Assessed the effectiveness of the Council’s policies and procedures for periodically reviewing existing reserves to evaluate the appropriateness of the levels of individual reserves based on factors such as historic utilisation rates, associated risk / sensitivity analysis and their underlying purpose; Reviewed the financial outturn for 2019/20 and progress against the 2020/21 budget, for assessing the effectiveness of financial management arrangements, with the main focus being on any large underspends and carry forwards; and Reviewed the strategies to utilise budget surpluses after 2023/24 and assess how these are deployed for better delivery of Council services. 	<p>Our review of the Council’s budget setting and financial management process concluded that they are adequate.</p> <p>As per the General Fund revenue financial performance for 2019/20, there was a underspend of £10.770 million within the net cost of service budget of £26.348 million. This indicates potential issues with deliverability of planned projects such that a critical review of those projects should be undertaken to determine whether reserves will be utilised in the short term or should be released.</p> <p>The Council’s overall outturn position for 2019/20 was a surplus of £11,038k. This is because a number of projects planned for 2019/20, with a total value of £9,518k, were carried forward to future years.</p> <p>We are satisfied that the Council has adequate arrangements for setting and monitoring financial budgets and forecasts. While there is a recognised funding gap in the long term plan, we are satisfied that the Council is making appropriate arrangements to manage this in a way that will ensure it continues to remain financially sustainable. Conversely, our review identified areas where the Council may be taking an overly cautious approach to managing its finances, which may adversely impact council tax payers. In addition a number of planned projects, for which reserves are being held, have been deferred and their continued viability is being reviewed. We made recommendations in respect of these issues.</p>

REPORTS ISSUED AND FEES

Fees summary

	2019/20 Actual £	2019/20 Planned £	2018/19 Actual £
Audit fee			
• Code audit fee: financial statements and use of resources	⁽³⁾ TBC	45,205	45,205
Non-audit assurance services			
Fees for reporting on government grants:			
• Housing benefits subsidy claim	⁽²⁾ TBC	⁽¹⁾ 11,250	11,400
• Pooling of housing capital receipts return	⁽²⁾ TBC	2,650	2,500
Total fees	TBC	59,105	59,105

- (1) The certification fee for housing benefit subsidy is on the basis that the Council performs the initial testing and we will re-perform. This also assumes three or less 40+ detailed testing during the year. The prior year fee includes a fee variation in respect of additional five 40+ detailed testing workbooks.
- (2) Work on 2019/20 housing benefit subsidy claim and pooling of housing capital receipts return has not yet been completed.
- (3) An additional fee for 2019/20 will be agreed with management at a meeting later this year.

Communication	Date (to be) communicated	To whom
Audit Planning Report	26 March 2020	Audit Committee
Audit progress report	At Audit Committee meetings	Audit Committee
Audit completion report	30 November 2020	Audit Committee
Annual Audit Letter	28 January 2021	Audit Committee

FOR MORE INFORMATION:

Lisa Clampin

t: +44 (0)1473 320716

m: +44 (0)7791 397160

e: lisa.clampin@bdo.co.uk

The matters raised in our report prepared in connection with the audit are those we believe should be brought to your attention. They do not purport to be a complete record of all matters arising. This report is prepared solely for the use of the company and may not be quoted nor copied without our prior written consent. No responsibility to any third party is accepted.

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AUDIT COMMITTEE

25 FEBRUARY 2021

REPORT OF ASSISTANT DIRECTOR (FINANCE & IT)

A.4 AUDIT COMMITTEE – TABLE OF OUTSTANDING ISSUES

(Report prepared by Richard Barrett)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To present to the Committee the progress on outstanding actions identified by the Committee along with general updates on other issues that fall within the responsibilities of the Committee.

EXECUTIVE SUMMARY

- A Table of Outstanding Issues is maintained and reported to each meeting of the Committee. This approach enables the Committee to effectively monitor progress on issues and items that form part of its governance responsibilities.
- Updates are set out against general items, external audit recommendations and the Annual Governance statement within **Appendix A, B, and C** respectively.
- The Government's initial response to the recent Redmond Review is summarised within **Appendix D**. The Government plan on providing a full response in the spring.
- To date there are no significant issues arising from the above, with work remaining in progress or updates provided elsewhere on the agenda where appropriate.

RECOMMENDATION(S)

That the Committee considers and notes the progress against the actions set out in Appendices A to C along with the Government's initial response to the Redmond review set out in Appendix D.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The existence of sound governance, internal control and financial management practices and procedures are essential to the delivery of Corporate priorities supported by effective management and forward planning within this overall framework.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

There are no significant financial implications associated with monitoring of the agreed actions or responses. If additional resources are required then appropriate steps will be taken including any necessary reporting requirements.

Risk

The Table of Outstanding Issues is in itself a response to potential risk exposure with

further activity highlighted to address matters raised by the Audit Committee.

LEGAL

There are no direct legal implications associated with this report.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

This report does not have a direct impact although such issues could feature in future recommendations and actions. Any actions that may have an impact will be considered and appropriate steps taken to address any issues that may arise.

PART 3 – SUPPORTING INFORMATION

TABLE OF OUTSTANDING ISSUES

The Table of Outstanding Issues has been reviewed and updated since it was last considered by the Committee in October 2020.

There are currently 3 main elements to this report as follows:

- 1) **Appendix A** – Provides updates against general items raised by the Committee. Two items reported to the last meeting of the Committee have now been removed as they have been completed or are being monitored elsewhere. These relate to:
 - i) the evacuation procedures in the event of a major flooding incident where the system previously referred to has now gone 'live'; and
 - ii) the audit of the effectiveness of the Council's response to the Coronavirus public health emergency, which is now within the regular reports of the Internal Audit Manager.
- 2) **Appendix B**- Provides updates against recommendations made by the Council's External Auditor.
- 3) **Appendix C** – Provides updates against the 2020/21 Annual Governance Statement Action Plan.

In terms of items 1) and 2) above, there are no significant issues to raise, with actions remaining in progress. In terms of item 3), there has been a significant impact from COVID 19 in terms of progressing the actions as quickly as originally anticipated. However, activity remains in progress against all actions and work will continue into 2021/22 as required.

Other issues

Redmond Review

Sir Tony Redmond, a former council treasurer and local government ombudsman, was asked by the Government to look at the effectiveness of external audit.

A summary of recommendations emerging from Sir Tony's review were presented to the Audit Committee back in October 2020. At that time, the response from the Government was still awaited. The Government have now published their initial response.

Sir Tony made 23 recommendations relating to the quality, timeliness and sustainability of local audit, and the transparency of local authority accounts. The Government have

therefore grouped its response into the following 5 themes, which are summarised in **Appendix D**.

- **Action to support immediate market stability**
- **Consideration of system leadership options**
- **Enhancing the functioning of local audit, and the governance for responding to its findings**
- **Improving transparency of local authorities' accounts to the public**
- **Action to further consider the functioning of local audit for smaller bodies**

Many of the responses indicate that the Government will either be liaising with the relevant stakeholders or will be considering some recommendations further, with their full response expected in the Spring.

BACKGROUND PAPERS FOR THE DECISION

None

APPENDICES

Appendix A – Table of Outstanding Issues (February 2021) – General

Appendix B – Table of Outstanding Issues (February 2021) – External Audit Recommendations

Appendix C - Table of Outstanding Issues – (February 2021) - Update against 2020/21 Annual Governance Statement Actions

Appendix D – Summary of the Government's Initial Response to the Redmond Review

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AUDIT COMMITTEE - Table of Outstanding Issues (February 2021) - GENERAL

Governance Principle and Issue	Recommendation / Issue	Lead / Service	Progress /Comments	Status – Target Date
Developing the entity's capacity, including the capacity of its leadership and the individuals within it.	<p>Following the consideration of the Anti-Fraud and Corruption Strategy in last year, it was resolved that:</p> <p>The Head of Democratic Services & Elections be requested to consider including training for Members on anti-fraud and corruption measures as part of the Councillor Development Scheme.</p>	Assistance Director Governance	It is currently planned to include this item within the Member's Training plan that is currently being developed.	Review in July 2021

AUDIT COMMITTEE - Table of Outstanding Issues (February 2021) – EXTERNAL AUDIT RECOMMENDATIONS

Area	Recommendation and Agreed Action	Lead / Service	Progress /Comments	Status – Target Date
Logical access controls – number of super users Page 78	<p>The Council's IT systems identified that there are a large number of super users (users with privileged access rights) on a number of IT systems.</p> <p>There were 28 super users for the Capita system, 10 super users for the Northgate system and 6 super users for the Agresso system.</p> <p>It was considered that 2-3 super users per system would provide a robust level of IT security, and having a large number of super users could jeopardise system security.</p> <p>AGREED ACTION - Assess the number of super user access rights granted in each of the IT systems and take necessary actions to reduce the number of super users to an acceptable low level.</p>		<p>It is proposed to undertake a review and implement the necessary actions before the start of the new financial year.</p>	<p>End of March 2021</p>
Use of Resources	<p>As set out on page 28, we identified some significant amount of carry forward each year from the planned projects of revenue and capital items, which indicates an issue of deliverability of planned projects.</p> <p>As set out on page 28-29, there is a risk that reserves are not being held at the optimum level, given that number of them have not moved notably in recent years.</p>		<p>1. Work is underway to review a range of projects and initiatives along with implementing additional capacity to accelerate the delivery of projects going into 2021/22.</p>	<p>End of April 2021</p>

	<p>AGREED ACTION – 1. Assess the ongoing viability of planned projects and take actions such that they can be delivered within a reasonable time and minimise the carry forward.</p> <p>2. Assess, at least once every two years, the appropriateness of the levels of individual reserves and their continued validity based on factors such as historic utilisation rates, associated risk / sensitivity analysis and their underlying purpose and release any excess reserves.</p>		<p>2. This action will be incorporated into the budget setting cycle from 2022/23 onwards.</p>	<p>By November 2021</p>
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AUDIT COMMITTEE - Table of Outstanding Issues (February 2021) – ANNUAL GOVERNANCE STATEMENT ACTIONS 2020/21

Governance Principle & Issue	Required Action(s)	Update / Additional Comments
Carried Forward and Updated from 19/20		
<p>Implementing good practices in transparency, reporting, and audit to deliver effective accountability</p> <p>Ensuring compliance of the Council's governance arrangements through project board reviews.</p> <p>Utilising the Council's systems to implement best practice for drafting, reporting and decision making</p>	<ul style="list-style-type: none"> • Review of project outcomes being undertaken by the Project Board to support future decision making and delivery • Commence the roll out of the functionality of Modern.gov over a phased approach in 2020/21. 	<p>Both of these actions will be considered as part of the respective Service's key priorities and actions going into 2021/22.</p>
<p>Developing the entity's capacity, including the capacity of its leadership and the individuals within it.</p> <p>Ensuring the Council has the appropriate structures in place to support delivery of the Corporate Plan following the Senior Management restructure.</p>	<ul style="list-style-type: none"> • Finalise the operational capacity review and implement any recommended and approved staffing restructures. 	<p>This action is included as a standing agenda item on the regular Assistant Director meetings with actions underway in collaboration with HR, to deliver a prioritised / phased approach to this key activity going into 2021/22.</p>

New and Updated for 20/21		
<p>Determining the interventions necessary to optimise the achievement of the intended outcomes</p> <p>Managing risks and performance through robust internal control and strong public financial management</p> <p>By strengthening the linkages between the Corporate Plan priorities and the Council's investment plans along with review of the longer term impact of COVID-19</p>	<p>As part of the Back to Business and Recovery Plan:</p> <ul style="list-style-type: none"> • Undertake a corporate review of the Council's operational assets to prioritise spending from an associated reserve over the next few years; • to develop an investment plan during 2020/21 which will be directly linked to the Council's budget and evolving financial position and supported by the reprioritisation of budgets / existing funding and/or as part of the long term forecast; and • conduct an audit review in relation to the effectiveness of the Council's response to the COVID-19 including <i>a review of the lessons learnt from the Council's response and</i> longer term consequences. 	<p>The Back to Business action plan is due to be considered by Cabinet at its 19 February meeting. At the time of finalising this report, a review into existing projects and initiatives remains in progress along with exploring the implementation of additional capacity to support delivery. The outcome of this review is planned to be presented to the Committee in March.</p> <p>Updates against this action will be included in the regular reports of the Internal Audit Manager – please see separate item elsewhere on the agenda.</p>
<p>Defining outcomes in terms of sustainable economic, social and environmental benefits</p> <p>Determining the interventions necessary to optimise the achievement of the intended outcomes</p>	<ul style="list-style-type: none"> • Prepare an Action Plan for approval by both the Cabinet and Council to form part of the Council's Policy Framework 	<p>A Climate Change Action Plan was agreed by Full Council on 24 November 2020.</p>

<p>To set out the Council’s vision following the Council’s Climate Emergency declaration of the Council’s activities being ‘carbon neutral’ by 2030.</p>		
<p>Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law</p> <p>Ensure the Local Code of Corporate Governance and key policies and procedures are up to date.</p>	<ul style="list-style-type: none"> • Review of the Council’s Equality and Diversity strategy, policies and procedures 	<p>Both of these actions will be considered as part of the respective Service’s key priorities and actions going into 2021/22.</p>
<p>Ensuring openness and comprehensive stakeholder engagement</p> <p>Establishing a corporate framework to support community engagement</p>	<ul style="list-style-type: none"> • Developing the Council’s approach and adopting principles for community engagement. 	

Summary of MHCLG's response to the recommendations made by the Redmond Review

Action to support immediate market stability (recommendations 5, 6, 8, 10, 11)

Recommendation	MHCLG Response
5. All auditors engaged in local audit be provided with the requisite skills and training to audit a local authority irrespective of seniority.	Agree ; we will work with key stakeholders to deliver this recommendation
6. The current fee structure for local audit be revised to ensure that adequate resources are deployed to meet the full extent of local audit requirements.	Agree ; we will look to revise regulations to enable PSAA to set fees that better reflect the cost to audit firms of undertaking additional work
8. Statute be revised so that audit firms with the requisite capacity, skills and experience are not excluded from bidding for local audit work.	Part agree ; we will work with the FRC and ICAEW to deliver this recommendation, including whether changes to statute are required
10. The deadline for publishing audited local authority accounts be revisited with a view to extending it to 30 September from 31 July each year.	Part agree ; we will look to extend the deadline to 30 September for publishing audited local authority accounts for two years, and then review
11. The revised deadline for publication of audited local authority accounts be considered in consultation with NHSI(E) and DHSC, given that audit firms use the same auditors on both Local Government and Health final accounts work.	Agree

Consideration of system leadership options (recommendations 1, 2, 3, 7, 13, 17)

Recommendation	MHCLG response
<p>1. A new body, the Office of Local Audit and Regulation (OLAR), be created to manage, oversee and regulate local audit with the following key responsibilities:</p> <ul style="list-style-type: none"> - procurement of local audit contracts - producing annual reports summarising the state of local audit - management of local audit contracts - monitoring and review of local audit performance - determining the code of local audit practice - regulating the local audit sector 	<p>We are considering these recommendations further and will make a full response by spring 2021.</p>
<p>2. The current roles and responsibilities relating to local audit discharged by the:</p> <ul style="list-style-type: none"> - Public Sector Audit Appointments (PSAA) - Institute of Chartered Accountants in England and Wales (ICAEW) - FRC/ARGA - The Comptroller and Auditor General (C&AG) to be transferred to the OLAR 	<p>We are considering these recommendations further and will make a full response by spring 2021.</p>
<p>3. A Liaison Committee be established comprising key stakeholders and chaired by MHCLG, to receive reports from the new regulator on the development of local audit.</p>	<p>We are considering these recommendations further and will make a full response by spring 2021.</p>
<p>7. That quality be consistent with the highest standards of audit within the revised fee structure. In cases where there are serious or persistent breaches of expected quality standards, OLAR has the scope to apply proportionate sanctions.</p>	<p>We are considering these recommendations further and will make a full response by spring 2021.</p>
<p>13. The changes implemented in the 2020 Audit Code of Practice are endorsed; OLAR to undertake a post implementation review to assess whether these changes have led to more effective external audit consideration of financial resilience and value for money matters.</p>	<p>We are considering these recommendations further and will make a full response by spring 2021.</p>
<p>17. MHCLG reviews its current framework for seeking assurance that financial sustainability in each local authority in England is maintained.</p>	<p>We are considering these recommendations further and will make a full response by spring 2021.</p>

Enhancing the functioning of local audit, and the governance for responding to its findings (recommendations 4, 9, 12, 18)

Recommendation	MHCLG response
<p>4. The governance arrangements within local authorities be reviewed by local councils with the purpose of:</p> <ul style="list-style-type: none"> - an annual report being submitted to Full Council by the external auditor - consideration being given to the appointment of at least one independent member, suitably qualified, to the Audit Committee - formalising the facility for the CEO, Monitoring Officer - Chief Financial Officer (CFO) to meet with the Key Audit Partner at least annually. 	<p>Agree; we will work with the LGA, NAO and CIPFA to deliver this recommendation</p>
<p>9. External Audit recognises that Internal Audit work can be a key support in appropriate circumstances where consistent with the Code of Audit Practice.</p>	<p>Agree; we will work with the NAO and CIPFA to deliver this recommendation</p>
<p>12. The external auditor be required to present an Annual Audit Report to the first Full Council meeting after 30 September each year, irrespective of whether the accounts have been certified; OLAR to decide the framework for this report.</p>	<p>Agree; we will work with the LGA, NAO and CIPFA and other key stakeholders to deliver this recommendation, including whether changes to statute are required</p>
<p>18. Key concerns relating to service and financial viability be shared between local auditors and inspectorates including Ofsted, Care Quality Commission and HMICFRS prior to completion of the external auditor's annual report.</p>	<p>Agree; we will work with other departments and the NAO to deliver this recommendation</p>

Improving transparency of local authorities' accounts to the public (recommendations 19, 20, 21, 22)

Recommendation	MHCLG response
19. A standardised statement of service information and costs be prepared by each authority and be compared with the budget agreed to support the council tax/precept/levy and presented alongside the statutory accounts.	Agree; we will look to CIPFA to develop a product through consultation with local government. We will work with CIPFA to deliver this recommendation
20. The standardised statement should be subject to external audit.	Agree; we will work with CIPFA, the LGA and the NAO to deliver this recommendation
21. The optimum means of communicating such information to council taxpayers/service users be considered by each local authority to ensure access for all sections of the communities.	Agree; we will work with the LGA and CIPFA to deliver this recommendation
22. CIPFA/LASAAC be required to review the statutory accounts, in the light of the new requirement to prepare the standardised statement, to determine whether there is scope to simplify the presentation of local authority accounts by removing disclosures that may no longer be considered to be necessary.	Agree; we will look to CIPFA to deliver this recommendation

Action to further consider the functioning of local audit for smaller bodies (recommendations 14, 15, 16, 23)

Recommendation	MHCLG response
14. SAAA considers whether the current level of external audit work commissioned for Parish Councils, Parish Meetings and Internal Drainage Boards (IDBs) and Other Smaller Authorities is proportionate to the nature and size of such organisations.	Agree; we will look to SAAA to deliver this recommendation
15. SAAA and OLAR examine the current arrangements for increasing audit activities and fees if a body's turnover exceeds £6.5m.	We are considering this recommendation further and will make a full response by spring 2020
16. SAAA reviews the current arrangements, with auditors, for managing the resource implications for persistent and vexatious complaints against Parish Councils.	Agree; we will look to SAAA to deliver this recommendation
23. JPAG be required to review the Annual Governance and Accountability Return (AGAR) prepared by smaller authorities to see if it can be made more transparent to readers. In doing so the following principles should be considered:	Agree; we will work to JPAG to deliver this recommendation

Recommendation**MHCLG response**

- whether “Section 2 – the Accounting Statements” should be moved to the first page of the AGAR so that it is more prominent to readers
 - whether budgetary information along with the variance between outturn and budget should be included in the Accounting Statements
 - whether the explanation of variances provided by the authority to the auditor should be disclosed in the AGAR as part of the Accounting Statements.
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