

## RECORD OF EXECUTIVE DECISION (THE DECISIONS LIST)

Date:	Decision Maker:	Subject to Call-in*
23 May 2025	Cabinet	Yes

### SUBJECT OF DECISION:

Cabinet Members' Items - Report of the Economic Growth, Regeneration & Tourism Portfolio Holder - A.1 - Rural England Prosperity Fund (REPF) transition year 2025/26

### Decision:

**RESOLVED** that Cabinet –

- a) formally accepts £197,761.00 from the Rural England Prosperity Fund for 2025 to 2026;
- b) approves the allocation of £120,000.00 for the Rural England Prosperity Fund Business Grants Scheme and further approves the allocation of £77,761.00 for the Rural England Prosperity Fund Community Grants Scheme;
- c) approves the criteria for the assessment of grants for both Schemes under the Rural England Prosperity Fund, as set out in Appendix A to the Portfolio Holder's report (A.1);
- d) authorises the Portfolio Holder for Economic Growth, Regeneration and Tourism and the Portfolio Holder for Arts, Culture and Heritage to approve the award of grants to organisations under the Rural England Prosperity Fund in line with its sister fund's (the UK Shared Prosperity Fund) criteria; and
- e) acknowledges that the documentation to accept the grant funding from Government will require signing by the Council's Section 151 Officer, and which will be undertaken following that Officer's consultation with the Portfolio Holder for Economic Growth and Tourism.

### Reasons for Decision:

The REPF 25/26 funding is allocated to TDC and will therefore definitely be paid to the Council this financial year. By recommending these grants for external projects, Officers are able to prepare in advance of payment and maximise the time available for grants to be delivered in full by the deadline of 31<sup>st</sup> March 2026.

Following the successful delivery of the REPF over the last 2 years, and the provisions that have been put in place throughout this time, ensures that the grants will continue to give maximum impact for both businesses and residents in the designated REPF area.

By implementing the recommendations, we will create a valuable opportunity to address the unmet demand from the previous funding round. This approach not only ensures that the needs of those who were previously underserved are met but also enhances the overall

effectiveness and reach of our funding initiatives. By strategically targeting these areas of demand, we can maximise the impact of our resources, fostering greater inclusivity and support for all stakeholders involved. This proactive step will pave the way for more comprehensive and equitable distribution of funds, ultimately contributing to the sustained growth and development of our community.

Without approval at this stage, this preparation time will be lost, reducing time available for any grant recipients to deliver.

**Alternative Options Considered:**

Do not accept/allocate the funding and return it to Central Government.

Not to relaunch the existing successful grants schemes and look at other projects, this reduced time would have an impact on the time available for tangible delivery. Any underspend money cannot be carried forward but rather paid back to Government if unspent by 31<sup>st</sup> March 2026.

The projects recommended above have been selected from the REPF 2023-2025 based on the success of their work, their impact, and the enthusiasm with which they have been taken up by the community.

**Conflicts of Interest Declared  
(and Dispensations Granted by the Monitoring Officer)**

N/A

**Consultation with Ward Member:**

N/A

**Contact Officer:**

Lee Heley, Corporate Director (Place and Wellbeing) & Deputy Chief Executive

Date:	Decision Maker:	Subject to Call-in*
23 May 2025	Cabinet	No

**SUBJECT OF DECISION:**

Management Team Items - Report of the Monitoring Officer - A.3 - Local Government & Social Care Ombudsman Finding

**Decision:**

**RESOLVED** that Cabinet formally receives and notes the Monitoring Officer's report (A.3) and, in particular, the findings/orders/recommendations from the Local Government & Social Care Ombudsman in the case covered by that report, the compliance with those matters by the Council and the wider learning points set out therein.

**Reasons for Decision:**

The Constitution requires that maladministration findings are reported to Cabinet for executive functions. In receiving the report, the particulars of the case are relevant, as is the Council's compliance with the decision of this Ombudsman and wider learning points.

**Alternative Options Considered:**

To not submit a report on the case concerned would have been contrary to the provisions of the Constitution (and section 5A of Local Government and Housing Act 1989). As such, not reporting these matters was discounted.

**Conflicts of Interest Declared  
(and Dispensations Granted by the Monitoring Officer)**

N/A

**Consultation with Ward Member:**

N/A

**Contact Officer:**

Keith Simmons, Assistant Director (Corporate Policy & Support) & Deputy Monitoring Officer

Date:	Decision Maker:	Subject to Call-in*
23 May 2025	Cabinet	Yes

**SUBJECT OF DECISION:**

Cabinet Members' Items - Report of the Environment & ICT Portfolio Holder - B.1 - Update on the Waste And Recycling Collection and Street Sweeping Contract Procurement

**Decision:**

**RESOLVED** that Cabinet -

- (a) notes the indicative annual costs emerging at this stage in the procurement process, as set out in the Portfolio Holder's report (B.1);
- (b) notes the financial position that the Council finds itself in and associated risk, uncertainty and associated value for money matters;
- (c) acknowledges that, as a direct implication of the Local Government Reorganisation programme for Greater Essex, the Council should no longer be pursuing a contract term for eight years plus and that a shorter term is necessary;
- (d) notes that through any proposed Local Government Reorganisation, a Shadow Authority for the Unitary Authority could be in place by April 2027, and be able to consider major contracts and liabilities together with the Sovereign Council, but that

there is still significant uncertainty around any proposals and timetables;

- (e) notes the contents of the Legal Advice received by the Council's external solicitors, Sharpe Pritchard, as set out in full in Appendix A to report B.1;
- (f) undertakes an assessment of the risks identified together with the required mitigation measures, as set out in the aforementioned Appendix A and the body of the report (B.1);
- (g) subject to the above, determines whether to recommend proceeding with consideration of Option 1 (being confirmed in Part A following further information being taken into account through the content of that report (A.2)); and
- (h) authorises the Corporate Director (Operations and Delivery), in consultation with the Leader of the Council, the Portfolio Holders for Environment & ICT and Assets & Community Safety, and the Section 151 and Monitoring Officers to exercise a degree of flexibility with regards to the contract term following the dialogue sessions, to ensure the Council can deliver a statutory service from April 2026, to be included within the Invitation to Submit Final Tenders (which includes the detailed specification), without the need to revert to Cabinet.

### **Reasons for Decision:**

The recommendations seek to highlight to Cabinet information relating to the financial and business implications of the current position in the procurement process for the Waste and Recycling Collection and Street Cleaning Contract. Associated external Legal Advice has been commissioned setting out the risks associated with the options (Appendix A).

The Legal Advice provides a summary of the legal risks. On a purely legal analysis the risk of challenge is similar for both options. However, if the mitigations listed in the detailed section 3 are adhered to, Option 1 appears marginally lower. Under Option 1, there is a medium to low likelihood of successful challenge from the current bidders which increases the shorter the contract period and if a Bidder is seen to be treated unequally (paragraphs 3.9, 3.17 and 4.8 address the potential impacts of challenge).

The potential risk of challenges with Option 1 can be broken down into three categories:

- risk of challenge from potential bidders who did not take part in the procurement or were rejected at the Selection Questionnaire stage;
- risk of challenge from the current Bidders (including the incumbent); and
- risk of challenge from the current Bidders (excluding the incumbent) on the basis of perceived incumbent advantage.

Under each category, information is provided on *Potential Challengers and Challenges, the Grade of Risk, Grounds of Challenge and Remedies, Mitigations and Other risks.*

It is therefore important that the Council undertakes an analysis of mitigations for the risk of challenge from potential bidders and from the current bidders.

*Potential Bidders:* Based on the advice provided it is considered that the changes proposed, both the reduction in contract length and the service specification, would not have altered the identity of the bidders now involved in the process. The reduced contract length is less attractive to bidders and officers are certain that no additional operators would have been attracted to the opportunity had a shorter contract length been specified at the outset. The changes to the service specification would not have made the opportunity either significantly more or less attractive. It is possible that the removal of the requirement to provide a customer contact center and the reduction in KPIs might be slightly more attractive.

Overall, it is considered that the risk of challenge from potential bidders is low. The chances of any such challenge being successful is also considered to be low.

*Current Bidders:* DMR Risk Share – The Council's preference is that there is 100% contractor risk on this and as was set out at ISDS stage, this has always been the Council's preferred option. Market engagement provided strong indication that the industry has moved away from this approach and that bidders preferred a shared risk option. However, the Council would like to address risk and uncertainty for the reasons set out in Part A and therefore the approach proposed confirms the preferred option that has been consistently maintained throughout the procurement process to date. Care should be taken when reaching any decision on the risk share that the decision is made in such a way as not to favour one bidder over the other and that bidders are treated fairly and equally. The Council is not altering its preference on this approach and the risk of challenge is therefore considered to be low. The likelihood of success is also considered to be low. It is acknowledged that one bidder has indicated they may withdraw from the process if the Council pursues its preferred approach.

Vehicle funding – the Council set out at ISDS stage that it would decide before final tender stage whether it wanted to fund the purchase of vehicles up front or pay for them as part of the monthly contract payments. The recommended option is not to pay for them up front for the reasons set out in Part A. It is difficult to foresee any challenge over the choice being made.

**Risk of challenge on the basis of perceived incumbent advantage - This applies to Options 1 and 2 equally:**

As a result of the reduction in the contract period and the scope of the contract there is a risk that other bidders may argue the incumbent contractor has an advantage over other Bidders. Although this is a risk, and is often one raised through procurement processes, due to the knowledge and experience an incumbent will have, it is one the Council has to manage and mitigate, where possible due to the position the Council finds itself in.

The Council has to be able to deliver a compliant waste and recycling collection service under its statutory duties, but this is also balanced against the Best Value duties and the obligations this brings, together with the LGR risks and uncertainty. In conclusion, it is considered that the Council has done all that it possibly can to mitigate this risk, treated everyone equally and fairly and acted reasonably in its approach.

*Analysis of mitigations:* Vehicle fleet age – the Council did not at ISDS stage specify that new vehicles needed to be provided at the commencement of the contract. It was left for bidders to propose the fleet they would deploy. It has been raised by one of the bidders that the incumbent has an advantage in that they already have a mixed age fleet, some of which can be rolled into delivering the services under the new contract. It could be reasonably argued that any contractor who access to a mixed age fleet would potentially have an advantage rather than it being an incumbent specific issue. Requiring both bidders to provide a new vehicle fleet at commencement is a way to fully neutralise any incumbent advantage but is neither necessary nor economically acceptable as it does not align with the issues set out in Part A. Requiring new vehicles for a 3 year contract would almost certainly make the annual contract fee more expensive when compared to a mixed age fleet. The solution to neutralising the incumbent's advantage as far as it is technically easy to effect and is economically acceptable is to allow the use of a mixed age fleet, but require all fleet being brought onto the contract be priced at their net book value from the start of the contract. There would, however, still be a slight advantage in that the net book value would be lower due to the age of the incumbent's vehicles. It is important to highlight that mixed aged fleet was always possible within the specification with no requirement for the provision

of new vehicles, and the contractor may be at an advantage through residual values if they arose during any contract term.

Overall, it is considered that the risk of challenge is medium to low and can be revisited through dialogue with the bidders as necessary.

**Alternative Options Considered:**

The table below provides clarity for readers on the different options discussed in the report.

<b>Procurement process i.e. the options that are being considering now</b>	
Option 1	Amend the procurement – reduced specification and contract length.
Option 2 (a) and (b)	Abandon the procurement and launch a new procurement under the Procurement Act 2023 for a short-term contract based on the specification and contract length as proposed for Option 1.
For options 1 and 2 above a decision is required in relation to the purchase of the vehicles and the risk share for dry mixed recycling (see Cabinet Paper July 2024 for initial considerations)	
<b>Funding of Vehicles</b>	
Vehicle Funding Option A (VFOA)	Council funds vehicle purchase up front
Vehicle Funding Option B (VFOB)	Contractor funds vehicles
<b>Dry recycling value risk share</b>	
Service Delivery Option A (SDOA)	100% risk to the contractor
Service Delivery Option B (SDOB)	50/50% split on risk
Service Delivery Option C (SDOC)	Bidders proposed % split

Independent external Legal advice has been sought in relation to the recommended Option 1 plus the alternative Option 2 of abandoning the current procurement procedure and then commencing a new procurement program for a short contract period, which would then be under the new Procurement Act 2023.

The detailed analysis of these Options and the risks associated with those together with the mitigation factors are set out in Appendix A, being the external legal advice, which Cabinet must consider prior to making its decision.

**Option 1 - Continuing the existing procurement but with amendments to the contract length and the specification**

This is the recommended option and sees the Council reducing the service specification and reducing the contract length to 3 years with a 2 year extension option, which combined aim to reduce risk and uncertainty whilst increasing the affordability of the contract. Compared with Option 2, this option should take the shortest length of time to award a contract and has the greatest potential for the Council to have a contractor in place and ready to provide the statutorily required service from April 2026.

Whilst this option is favourable from a time perspective it does come with the risk of challenge from companies that chose not to bid and from the current bidders. This risk of challenge is due to the changes that would be made to the service specification and contract length.

These risks are analysed in the Legal section of this report.

**Option 2: Abandon the procurement and re-procure**

For risk analysis purposes this option has been split into two parts:

**Option 2a: Abandon** (subject to the mitigations set out below):

The Council would end the current procurement. There are risks associated with this option, and these are set out in the Legal Section of this report.

**Option 2b: Procure a new contract under the Procurement Act**

Having ended the current procurement the Council would commence a completely new process that would be undertaken under the Procurement Act 2023 that has come into force since the current procurement process started. This new procurement would include the service specification and contract duration proposed as part of Option 1 but would require a fresh procurement and therefore will take longer than Option 1 to implement creating a greater risk that the Council would not have the required statutory service in place for April 2026.

As with Option 1, there are risks associated with this option. The External Legal Advice received by the Council indicates that there is a marginally lower level of risk associated with Option 1 than there is with Option 2, so long as the Council has fully documented the reasons for its decision and adhered to the mitigations set out in that advice.

**Conflicts of Interest Declared  
(and Dispensations Granted by the Monitoring Officer)**

N/A

**Consultation with Ward Member:**

N/A

**Contact Officer:**

Tim Clarke, Assistant Director (Housing and Environment)

Date:	Decision Maker:	Subject to Call-in*
23 May 2025	Cabinet	Yes

**SUBJECT OF DECISION:**

Cabinet Members' Items - Report of the Environment & ICT Portfolio Holder - A.2 - Update on the Waste and Recycling Collection and Street Sweeping Contract Procurement

**Decision:**

**RESOLVED** that, following consideration of the legal advice and options available (in report B.1) and following its assessment and analysis of the risks and their mitigations, and the

contents of that report (B.1), Cabinet formally -

- (a) notes the extensive work undertaken on the procurement process so far, both by Officers and external consultants following the Core Principles adopted in July 2024 and subsequent decisions;
- (b) acknowledges the impact of Greater Essex being part of the Government's Priority Programme and responding to Local Government Reorganisation, the Council must reassess its position with regards to the duration of the contract term;
- (c) acknowledges that, in addition to (b) above, the information received through the current procurement exercise to date would place the Council in the position of not being able to reasonably afford the cost should it decide to continue with the service as currently specified;
- (d) agrees that, in addition to (b) and (c) above, to balance associated risks, uncertainty and value for money alongside affordability, the option to purchase the vehicle fleet and the risk sharing option in respect of DMR will no longer be considered;
- (e) commits to ensuring it continues to fulfil its statutory duties and to provide a Waste Collection service beyond the ending of the current contract in March 2026 and complying with the additional requirements of the Environment Act 2021 from April 2026;
- (f) subject to (b) to (e) above and having considered the legal advice and options available (in Part B) and following its assessment of the advice, analysis of the risks and their mitigations, and the contents of this report, agrees to continue with the existing procurement process but with amendments to the contract length and specification (Option 1) based on the following key principles:
  - (i) the contract term will be reduced to 3 years with an option for an extension period of 2 years based upon responding to the risk and uncertainties of LGR;
  - (ii) a reduction in the service specification to ensure affordability and comply with our statutory duty to provide a waste collection service and street cleaning service;
  - (iii) the Council will not take any financial risk on the value of DMR material collected (Service Delivery Option A); and
  - (iv) the Council will not fund the up-front purchase of any vehicle fleet (Vehicle Funding Option B).
- (g) in addition to (e) and (f) above, a revised set of Core Specification Principles, as set out in Table 3 of the Portfolio Holder's report (A.1), will form the basis of the revised detailed contract specification;
- (h) authorises the Corporate Director (Operations and Delivery), in consultation with the Leader of the Council, the Portfolio Holder for Environment & ICT, the Portfolio Holder for Assets and Community Safety, the Section 151 Officer and the Monitoring Officer, following the dialogue stage, to determine the detailed revised service specification for the Invitation to Submit Final Tenders stage, ensuring the principles set out in (f) above are adhered to;
- (i) approves that an additional budget of £100k be made available for consultancy support funded via the Corporate Investment Fund, taking the total budget to date to

£0.400m; and

- (j) acknowledges that a further report will be presented to Cabinet following the evaluation of final tenders, which will include proposed financial / budget adjustments as necessary.

### **Reasons for Decision:**

The Council's contracts with Veolia Environmental Services for household waste and recycling collection and street sweeping both expire on 1<sup>st</sup> April 2026. As such, a contractor needs to be found to deliver these services on expiry of the current arrangements.

The recommendations will ensure that the Council continues to progress the future of this important statutory service, meeting its affordability envelope whilst complying with the Environment Act 2021 requirements due to be introduced during 2026.

Under the Environmental Protection Act 1990 the Council is designated as a Waste Collection Authority (WCA) and as such has a statutory duty to collect household waste and recycling from homes in the district. From 2026, the Council will be required under provisions in the Environment Act 2021 to collect a wider range of recyclable material and as such any new service commencing in 2026 must be compliant with this requirement.

The procurement exercise for the new contract for 2026 and beyond commenced before the announcement of LGR. The Council is part of an early stage of the LGR process and is anticipated to be merging with other local authorities in Essex to form a new Unitary Authority (subject to Government's decision). The new Unitary Authority is expected to be vested in May 2028 and as such it is anticipated that when the new Unitary Authority is set up, it will seek to rationalise the contracts that will automatically novate (through the Structural Boundary Change Orders) across from their sovereign Councils. With neighbouring councils that the Council could be merged with (as a minimum Braintree and Colchester) both providing waste services through an "in house" service it has become prudent that the next contract procured for the district of Tendring should be of a suitable duration so that the Unitary Authority does not have to delay any ambitions to harmonise services across the new, larger council.

The Government has indicated in feedback on LGR Interim Plans that further detail would be helpful on potential service transformation opportunities and invest-to-save projects from unitarisation across a range of services e.g. for front line services, and whether different options provide different opportunities for back-office efficiency savings. It is clear from this statement that continuing with an eight year contract term would not align with Government's expectations.

At the ISDS stage of this procurement bidders were asked to price three options for the handling of dry mixed recycling and two options for vehicle purchasing with the view that the Council would select one of each option for final tender stage. The recommendations have reflected upon these previous options, which are now being amended due to the uncertainties and risks of responding to LGR and the affordability position.

### **Alternative Options Considered:**

The table below provides clarity for readers on the different options discussed in the report.

<b>Table 1 - Procurement process i.e. the options that are being considering now</b>	
Option 1	Amend the procurement – reduced specification and contract length.

Option 2	Abandon the procurement and launch a new procurement under the Procurement Act 2023 for a short term contract based on the specification and contract length as proposed for Option 1.
For options 1 and 2 above a decision is required in relation to the purchase of the vehicles and the risk share for dry mixed recycling (see Cabinet Paper July 2024 for initial considerations)	
<b>Funding of Vehicles</b>	
Vehicle Funding Option A (VFOA)	Council funds vehicle purchase up front
Vehicle Funding Option B (VFOB)	Contractor funds vehicles
<b>Dry recycling value risk share</b>	
Service Delivery Option A (SDOA)	100% risk to the contractor
Service Delivery Option B (SDOB)	50/50% split on risk
Service Delivery Option C (SDOC)	Bidders proposed % split

Wider considerations and options are set out elsewhere in this report.

Options associated with either ending or continuing with an amended procurement process are considered in detail in Part B.

**Conflicts of Interest Declared  
(and Dispensations Granted by the Monitoring Officer)**

N/A

**Consultation with Ward Member:**

N/A

**Contact Officer:**

Tim Clarke, Assistant Director (Housing and Environment)

\* The call-in procedure will not apply to a decision where the Chairman of the relevant overview and scrutiny committee's agreement has been obtained that any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interest, (Rule 16 (h) of the Overview and Scrutiny Procedure Rules) or any decision made where such decision is to be referred to the Council or one of the overview and scrutiny committees for their consideration.