FINANCE AND GOVERNANCE PORTFOLIO HOLDER

26 FEBRUARY 2024

A.1 ANNUAL CAPITAL AND TREASURY STRATEGY FOR 2024/25 (INCLUDING PRUDENTIAL AND TREASURY INDICATORS)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT
To seek the agreement of the Portfolio Holder for Finance and Governance to the Annual Capital and Treasury Strategy for 2024/25 (including the Prudential and Treasury indicators) for consultation with the Resources and Services Overview and Scrutiny Committee.

EXECUTIVE SUMMARY

- The Local Government Act 2003 and supporting regulations require the Council to set out its treasury strategy for borrowing, and to prepare an Annual Investment Strategy (as required by Investment Guidance subsequent to the Act) that sets out the Council's policies for managing its investments and for giving priority to the security and liquidity of those investments, "having regard" to the Chartered Institute of Public Finance and Accountancy's (CIPFA) Prudential Code and the CIPFA Treasury Management Code of Practice. Revised editions of both documents were issued in December 2021, which come into force in 2023/24.

- The Capital Strategy continues to be combined with the Treasury Strategy into one document, which is required to be updated / approved annually.

- The proposed Annual Capital and Treasury Strategy for 2024/25 is set out in **Appendix A** and it continues to reflect the various changes set out in the latest Codes mentioned above.

- The Capital Strategy element of the combined document covers the various elements surrounding capital investment decisions and the key criteria that investment decisions should be considered against.

- The Treasury Strategy element of the combined document covers the various elements that satisfy the requirements of the various codes that govern the borrowing and investment activities of the Council and has been prepared in the light of advice received from the Council's Treasury advisors and reflects the latest codes and guidance**.**

- Prudential and Treasury indicators are included as an Annexe to the combined strategy and are therefore included within **Appendix A.**

- Under the Prudential Code the Council has freedom over capital expenditure as long as it is prudent, affordable and sustainable. The Prudential Indicators either measure the expected activity or introduce limits upon the activity and reflect the underlying capital appraisal systems and enable the Council to demonstrate that it is complying with the requirements of the Prudential Code.

- The Council's investments will be undertaken in accordance with its Treasury Management Practices. These include the use of non-specified investment in property to yield both rental income and capital gains. The new Codes require clear separation of commercial investments from treasury investments. As the Council only has one such investment, which will be clearly identified within the Strategy and the TMPs, a separate suite of Investment Management Practices is not proposed to be produced.

- As is always the case, other 'quality' investment opportunities will always be explored during the year in consultation with the Council's external advisors to maximise returns on investments within a continuing and overall risk-averse approach.

- It is worth highlighting the new requirements introduced by the Levelling Up and Regeneration Act 2023 that relate to 'trigger points' and risk thresholds, which if breached would see the Government provide risk mitigation directions to Local Authorities. Although further details are set out within the legal section later on in this report, at the present time the thresholds that would class as a breach against each of the newly introduced metrics have not been specified by the Government. Once received, future reports will look to set out the Council's position against each one. Although such 'trigger' events would be managed via the Council's existing financial governance and control arrangements, based on the Council's current position, there is effectively no risk of breaching any of the new metrics at the present time.

RECOMMENDATION(S)

That the Portfolio Holder for Finance and Governance approves the Annual Capital and Treasury Strategy for 2024/25 (including Prudential and Treasury Indicators) for consultation with the Resources and Services Overview and Scrutiny Committee.

REASON(S) FOR THE RECOMMENDATION(S)

To support the process of ensuring that a Capital and Treasury Strategy for 2024/25 is approved by Full Council before 1 April 2024.

ALTERNATIVE OPTIONS CONSIDERED

Not applicable given the requirements set out elsewhere in this report.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The adoption of the Capital and Annual Treasury Strategy for 2024/25 will ensure that the Council's Investment and Treasury Management activities are carried out and managed in accordance with best practice, thereby safeguarding money held by the Council and making an appropriate contribution to the Council's overall financial position.

OUTCOME OF CONSULTATION AND ENGAGEMENT

It is currently planned to consult the Resources and Services Overview and Scrutiny Committee at their meeting on 5 March 2024.

<table>
<tr><th colspan="4">LEGAL REQUIREMENTS (including legislation & constitutional powers)</th></tr>
<tr><td rowspan="2">Is the recommendation a Key Decision (see the criteria stated here)</td><td rowspan="2">Yes</td><td>If Yes, indicate which by which criteria it is a Key Decision</td><td>X Significant effect on two or more wards
X Involves £100,000 expenditure/income
☐ Is otherwise significant for the service budget</td></tr>
<tr><td>And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)</td><td>This item has been included within the Forward Plan for a period in excess of 28 days.</td></tr>
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The Local Authorities (Capital Financing and Accounting) (England) Regulations 2003 include the requirement for local authorities to have regard to CIPFA guidance. By adopting / approving an Annual Treasury Strategy and a Capital Strategy based on the requirements of the relevant and updated codes, the Council is complying with the regulations.

S78 of the Levelling Up and Regeneration Act 2023 inserted new sections 12A to 12D into the Local Government Act 2003, which came into force on 31st January 2024. These new sections cover capital finance risk management and include risk mitigation directions, risk thresholds, restrictions of power to give risk-mitigation directions and a duty to cooperate with independent expert. These changes essentially seek to respond to the financial crisis that some local Authorities have found themselves in over the last year or two, with a summary a brief summary of each section as follows:

Risk Mitigation Directions (Section 12A) - The Secretary of State may give one or more risk-mitigation directions to a local authority in England, for the purpose of reducing or mitigating the financial risk to the authority, if a trigger event has occurred in relation to the local authority, and the Secretary of State is satisfied that the direction is appropriate and proportionate to the level of that financial risk.

A "trigger event" occurs if a risk threshold is breached by the local authority, a report is made by the Chief Finance Officer of the local authority under section 114(3) of the Local Government Finance Act 1988, where the Secretary of State gives a direction in response to a request for expenditure to be, or not be, treated as capital by a local authority, or the Secretary of State makes a grant to the local authority under an enactment for the purpose of preventing circumstances arising that would require such a report to be made.

The following are "risk-mitigation directions:
(a) a direction that sets limits in relation to the borrowing of money by the local authority;
(b) a direction that requires the local authority to take action specified in the direction. This could include a requirement for a local authority to take action to divest itself of a specified asset.

The Secretary of State may not give a risk-mitigation direction unless they have given the local authority notice of the proposed direction, and of the right of the local authority to make written representations to the Secretary of State about it within the period specified in the notice, and has considered any representations made by the local authority to the Secretary of State within that period.

References to financial risk means the risk that the expenditure of the local authority (including expenditure it proposes to incur) in the current or any future financial year is likely to exceed, or further exceed, the resources (including sums borrowed) available to it to meet that expenditure.

Risk Thresholds (Section 12B) – A risk threshold is breached by a local authority in England if (and when) a capital risk metric for the local authority breaches the specified threshold for the following metrics:

- the total of a local authority's debt (including credit arrangements) as compared to the financial resources at the disposal of the authority;
- the proportion of the total of a local authority's capital assets which is investments made, or held, wholly or mainly in order to generate financial return;
- the proportion of the total of a local authority's debt (including credit arrangements) in relation to which the counter-party is not central government or a local authority;
- the amount of minimum revenue provision charged by a local authority to a revenue account for a financial year;
- any other metric specified by regulations made by the Secretary of State.

The Secretary of State may, by regulations, make further provision including specifying whether the specified threshold for a particular metric is breached by a failure to reach that threshold or by that threshold being exceeded and about how the metrics specified are to be calculated for the purpose of determining whether the specified threshold for that metric has been breached.

Before making such regulations the Secretary of State must consult all local authorities in England.

Restriction of power to give risk-mitigation directions (Section 12B) – The Secretary of State is required to give a cessation notice where at least 12 months have elapsed since the they last became aware of a trigger event having occurred in relation to the authority, any risk-mitigation direction given to the authority has been complied with or revoked, and the Secretary of State is satisfied no further risk-mitigation direction is likely to be required in the foreseeable future for the purpose of reducing or mitigating the financial risk to the authority,

Duty to cooperate with independent expert (Section 12D) – Where a trigger event has occurred and the Secretary of State has appointed an independent expert to review the level of the financial risk to the local authority, the local authority must, so far as reasonably practicable, co-operate with the independent expert in any way that the independent expert considers necessary or expedient for the purposes of the conduct of the review.

The above metrics may overlap with the work of the OFLOG who may introduce their own metrics, including those relating to the financial standing etc. At the present time it is understood that within the work of OFLOG, they do not want to replicate or cut across the metrics above, but they may wish to set out complimentary metrics in the future, which will be reviewed accordingly. It is also likely that the OFLOG will 'collect' the relevant data against each of the metrics set out above as part of their overall regulatory activities.

As set out in para 4.3 Part 3.37 of the Constitution, the Portfolio Holder for Finance and Governance has delegated authority to agree the Capital and Treasury Strategy for consultation

with the Resources and Services Overview and Scrutiny Committee.	
YES	**The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:**

Since last year's Capital and Treasury Strategy was agreed by Full Council in March 2023, the Best Value Inspection of Thurrock Council has been published, which included some significant learning points that are worth reviewing in light of this Council's own strategy and governance arrangements. Those significant points included the following:

- The positioning of their Investment Strategy at the heart of their strategy to tackle significant funding pressures - there was clearly some confusion within the Council as to the clarity and purpose of the strategy.
- A significant level of delegation was given to their Section 151 Officer to place investments in 'business' type investments such as solar farms etc. at a scale that the review described as 'extraordinary'. The delegation was also made without consideration of the experience and skills that would be needed - experience and skills that did not exist within their Council.
- Lack of managerial / political oversight and limited or no reporting of the performance of the investment programme to their Management Team or Cabinet.
- Internal checks were weak or wholly absent.
- The level of risk associated with their investment programme was never properly identified or made explicit within strategic risk reports and there was no focus from their internal audit function.
- Lack of transparency e.g. where members did request information it was denied internally and only minimal / high level information was provided within other reports etc. with no explanatory information. External challenge and criticism was readily dismissed and downplayed within the Council.
- The Council had not set a clear and consistent strategic direction. Their Cabinet avoided difficult choices on the prioritisation of resources. In years when budget savings had to be identified, Cabinet members rejected all savings options, leaving it to officers to develop plans to achieve a balanced budget.

The above places significant importance on the capital and treasury plans of local authorities which for Tendring District Council are encapsulated within the Annual Capital and Treasury Strategy and Treasury Management Practices. These two documents set out the governance framework in which capital spend, borrowing and investments are made. Clear roles and responsibilities are set out in the strategy and it is important to highlight that there is no delegation to any single Officer, such as the Section 151 Officer to undertake any investments outside of the more 'traditional' money market activities such as lending to other Local Authorities and depositing money in banks and building societies. In terms of these latter investments, the parameters in which the Section 151 Officer can make such investments are set out within the documents referred to above and include a number of criteria such as overall lending / borrowing limits and minimal credit ratings etc.

Treasury performance is reported during the year by way of an outturn report for the preceding year along with quarterly updates during the year, which includes a more detailed half yearly update in September / October.

Any decision to invest in 'non-traditional' money market activities or to undertake any borrowing activities would be subject to separate reports to Cabinet / Council as necessary, which would set out various issues such as risks and resource implications including the level of skill and expertise to manage any associated investments.

The Best Value Duty relates to the statutory requirement for local authorities and other public bodies defined as best value authorities in Part 1 of the Local Government Act 1999 to *"make arrangements to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness*". Best Value authorities must demonstrate good governance, including a positive organisational culture, across all their functions and effective risk management. Failure to deliver best value can occur within any aspect of governance, delivery of services or financial management. Unlawful or excessively risky borrowing and investment practices with no adequate risk management strategy in place for financial losses is an indicator of potential failure under the Use of Resources definition for a Best Value authority, within the Government's draft statutory guidance on Best Value Standards and Intervention, issued in 2023.

Members need to be satisfied with the governance arrangements set out within the strategy, which can be supported via training etc. as necessary.

The Council does employ external treasury management advice and to date they have not raised any concerns / issues with the Council's borrowing / investment activities. Early in 2024/25, the Council should be receiving the new External Auditor's Value for Money commentary which should also provide additional assurances to members. Access to both of these parties can be made directly and not via any one Officer such as the Section 151 Officer, which also supports the transparency / independent view of the various treasury activities undertaken by the Council.

FINANCE AND OTHER RESOURCE IMPLICATIONS

Treasury and Capital Management Strategies and procedures will ensure that the Council's investments and borrowing will be undertaken in such a way as to minimise the Council's exposure to risk. At the same time, they will seek to maximise income from investments and minimise the costs of borrowing within the Council's accepted level of risk.

YES	**The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:**

The S151 Officer is the co-author of this report.

USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	This is addressed in the body of the report and appendices where relevant.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	

MILESTONES AND DELIVERY

This has been highlighted elsewhere within this report.
ASSOCIATED RISKS AND MITIGATION
The placing of investments involves a number of risks. These risks and how the Council will manage them are set out in the Council's Treasury Management Practices. As highlighted elsewhere in this report, investments are undertaken within an overall risk-averse approach, which is reflected in Treasury Management Practices. With this in mind, a significant level of investment is undertaken with other Local Authorities and with the Government. As with recent examples, money lent to other Local Authorities is not at risk of not being repaid, as ultimately the Government would take the necessary steps to ensure liabilities are met as part of any intervention. The risk of lending money to another Local Authority is therefore not the same as lending money to a commercial / private organisation, which is one of the reasons why Councils lending to other Councils is common practice nationally. As part of the mid-year treasury management review that Cabinet considered in November 2023, an update on the money lent to Birmingham City Council was set out in the context of their S151 issuing a S114 report. At the time it was reported that the Council had lent them **£6.000m** in total, with **£4.000m** due to be repaid in February 2024 and the balance of **£2.000m** repayable in June 2024. In terms of providing a further update, the **£4.000m** due to repaid in February is due back on 29 of the month and there are no further changes that impact on the underlying low risk associated with the outstanding loan repayment. When undertaking lending to other Local Authorities, the Council continues to apply as much 'market intelligence' as possible, which would include any adverse reporting in the markets, the media, the risk of S114 reports being issued along with information from our own External Treasury Advisors. The new measures and metrics that have been introduced via the Levelling Up and Regeneration Act 2023 as set out earlier along with any potential indicators introduced by OFLOG will also likely be additional 'tools' that can be used to complement information already applied in managing the Council's day to day treasury management activities. This will be considered as part of developing the strategy in future years. As reported previously, the investment property in Clacton is performing satisfactorily against the financial target set out within the original decision to purchase the property, with budgeted investment income continuing to be achieved each year. It is important to highlight that the rental payments can be seen as paying back the original investment made in purchasing the property. The budget for 2024/25 that was agreed by Full Council on 13 February 2024 includes an adjustment to reflect the potential for rental income to reduce once the current lease held by the existing tenant expires. Within the above context, the overall performance of the investment therefore needs to take into account such considerations over the life of the Council's ownership of the property rather any shorter term position in isolation. It is also important to highlight that the latest valuation of the property set out in **Appendix A,** is an 'accounting' valuation and not a direct value that would be achieved on the market if it was sold. It is also worth highlighting that the Council's Commercial Property Investment Policy is underpinned by robust risk management actions, which will respond to any changes to the situation. With the latter point in mind and as set out within the Commercial Property Investment Policy, the Council's wider treasury management activities are designed to ensure that the

Council is not faced with a position of having to sell the property for cash flow purposes. This in turn ensures that the Council remains in control of when the property is ever exposed to the market rather than potentially having to sell the property during a period where there may be a downturn in commercial property prices.
EQUALITY IMPLICATIONS
There are no direct implications.
SOCIAL VALUE CONSIDERATIONS
There are no direct implications.
IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030
There are no direct implications.
OTHER RELEVANT CONSIDERATIONS OR 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	Please see comments above
Health Inequalities	
Area or Ward affected	

PART 3 – SUPPORTING INFORMATION

BACKGROUND AND CURRENT POSITION

The Annual Capital and Treasury Strategy for 2024/25 is set out in **Appendix A** and is based on the most up to date Treasury Management Code of Practice and the revised Prudential Code, both of which were published by CIPFA in December 2021.

Last year, the Annual Capital and Treasury Strategy was subject to a number of changes to reflect the latest codes mentioned above, with a summary of those changes as follows:

- Changes to the definition of investments, splitting them between treasury investments, commercial investments and service investments, with commercial and service investments arrangements being separated out in reporting and supported by investment management practices. Tendring currently has no service investments and just one commercial investment, the investment property in Clacton, so separate documentation has not been produced but instead the Strategy clearly reflects issues which relate to the investment property.
- Local authorities must not borrow to invest for the primary purpose of financial return.
- Local authorities must consider as part of the decision-making whether to divest any commercial investments before deciding to borrow.
- Introduction of a liability benchmark indicator which is in the form of a chart showing approved capital programmes and approved borrowing to maturity.
- A new affordability indicator showing the ratio of income from commercial and service investments as a proportion of the Council's net revenue stream.
- Requirement to include the Council's policy and practices relating to environmental, social and governance (ESG) investment considerations within TMP1 on risk management.
- Requirement to report treasury quarterly, which the Council already does via the

Corporate Budget Monitoring process.
- Various wording changes and amendments resulting from the new Codes on TMPs, which are reflected in the current TMPs.
- Amendments in areas such as the general economic outlook and interest rate forecasts.

It is important to highlight that the changes to the Codes highlighted above did not require the Council to take any direct action / remedial activities in terms of its investment / treasury processes.

In terms of 2024/25, there have been no major changes required, with only timely updates required along with the introduction of new technical accounting adjustments relating to assets that the Council leases in. The changes required are shaded in grey and are in italic font within **Appendix A**.

In terms of the technical accounting adjustments associated with leases referred to above, these will be treated as borrowing within the Council's accounts, although in reality it is does not change the Council's overall liabilities, with the 'borrowing' being 'repaid' each year to reflect the actual lease payments made.

By approving the Annual Capital and Treasury Strategy for 2024/25, the Council will be adopting the latest CIPFA Code of Practice for Treasury Management in the Public Services. (the '2021 code').

The need to borrow money may arise in future years to reflect the Council's current commitments, corporate priorities and strategies. If the need / option to borrow money was identified, then it would form part of associated and separate decision-making process and would be considered within the overall Treasury Strategy framework.

The Council maintains a very low risk appetite approach to its treasury activities. However, set against this context, officers will still continue to explore opportunities to maximise investment returns in 2024/25.

In terms of sources of funding, the Government introduced a significant new constraint in terms of borrowing from the Public Works Loan Board (PWLB) in 2020/21. If a local authority purchases assets or plans to purchase assets over a future three-year period to generate investment income, then they will no longer be able to borrow money from the PWLB. This applies to all such purchases regardless of how they are funded. Although no such purchases are currently planned, this constraint may need to be considered in the future, as the Council could lose access to the preferential rates available from the PWLB.

Draft Prudential Indicators are set out in **Annex 1 to Part 2** of the Capital and Treasury Strategy. **Annex 2 to Part 2** of the Treasury Strategy sets out the specified and Non-Specified investments the Council may use in 2024/25.

In accordance with the relevant codes, the Capital and Treasury Strategy is subject to consultation with the Resources and Services Overview and Scrutiny Committee before being recommended to Council for approval before the start of each financial year.

PREVIOUS RELEVANT DECISIONS

The previous Capital and Treasury Strategy for 2023/24 was agreed by Full Council at its

meeting on 2 March 2023. Treasury Management Performance 2022/23 was reported to Cabinet at its 21 July 2023 meeting. A mid-year Treasury Performance review was presented to Cabinet at its 10 November 2023 meeting.
BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL
None

APPENDICES
Appendix A - Annual Capital and Treasury Strategy 2024/25

REPORT CONTACT OFFICER(S)	
Name	**Richard Barrett**
Job Title	**Assistant Director Finance and IT**
Email/Telephone	**rbarrett@tendringdc.gov.uk** **686521**