

<b>Title of Report:</b>	<b>Use of Consultants – Guidance and Changes to the Constitution</b>	<b>Item 5</b>
<b>Report to be considered by:</b>	Council on 23 September 2008	
<b>Forward Plan Ref:</b>	C1672	

**Purpose of Report:** To propose amendment to Council's Constitution Part 12 Contract Rules of Procedure and produce up to date Guidance on the use of consultants.

**Recommended Action:** Council is requested to amend the Council's Constitution Part 12 Contract Rules of Procedure as recommended in the attached document (Appendix 3).

**Reason for decision to be taken:** To ensure that the Internal Audit recommendations are implemented and the Council's decision making processes are as efficient and effective as possible

**Key background documentation:** None

<b>Portfolio Member:</b>	Councillor Anthony Stansfeld
<b>Tel. No.:</b>	(01488) 658238
<b>E-mail Address:</b>	astansfeld@westberks.gov.uk
<b>Date Consulted:</b>	

#### Contact Officer Details

<b>Name:</b>	Shiraz Sheikh
<b>Job Title:</b>	Solicitor
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<b>E-mail Address:</b>	ssheikh@westberks.gov.uk

#### Implications

**Policy:** None

**Financial:** None

**Personnel:** None

**Legal:** Please refer to Appendix B

**Property:** None

**Risk Management:** None

**Equalities Impact Assessment:** None

## **Executive Summary**

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### **1. Introduction**

- 1.1 The Internal Audit have identified areas of improvement to the Constitution and Guidance on the use of consultants

### **2. Proposals**

- 2.1 To implement the changes proposed in the attached Appendices.

### **3. Conclusion**

- 3.1 The Governance and Audit Committee are asked to consider the proposed amendments to Part 12 of the Constitution and recommend them to Council for approval.

## Executive Report

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### 1. Introduction

- 1.1 To implement proposals and resolve the issues raised in the draft Internal Audit Report on the Use of Consultants (Appendix 2). This Report highlighted a number of inconsistencies between the Management Guidance on the Use of Consultants and the Contract Rules of Procedure.

### 2. Proposals

- 2.1 In order to consolidate the guidance covering the use of consultants, the attached Guidance on the Use of Consultants has been produced by the Corporate Contracts and Procurement Unit in conjunction with Legal and Electoral Services.
- 2.2 The attached changes to the Part 12 of the Constitution (Appendix 3) are needed to provide consistency and clarity to officers using consultants.

### 3. Conclusion

- 3.1 The Governance and Audit Committee are asked to consider the proposed amendments to Part 12 of the Constitution and recommend them to Council for approval.

## Appendices

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Appendix 1 - Guidance on the Use of Consultants  
Appendix 1a - Consultancy Needs Assessment Form  
Appendix 1b - Consultancy Post Commissioning Monitoring Form  
Appendix 2 - Draft Internal Audit Report  
Appendix 3 - Proposed Amendments to Part 12 of the Constitution

## Consultees

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**Local Stakeholders:** None  
**Officers Consulted:** T Herring, J Gillhespey and S Sheikh  
**Trade Union:** None

## West Berkshire Council's 'Guidance on the Use of Consultants'

*Consultancy is defined as the activity of giving advice on a particular subject, for example:*

- *To provide assistance or professional services on a project which may result in the production of advice which the Council may act upon, designs or the writing of a report but NOT providing a resource to fill a post on a temporary basis (guidance on the use of agency staff or temporary employees is available from HR).*
- *Assistance with the design of a training course, but NOT delivery of training (suppliers used as external trainers should be treated as a normal supplier of services. If the supplier is self-employed then the usual status checks must be undertaken).*

### **Overview**

The engagement of a consultant to perform a service for the Council should not be treated any differently to any other service that is procured. There is still the need to advertise and allow competition to prove 'best value'.

Consultants may only be used:

- Where specialist expertise is required which is not available within the Council or, where it is available within the Council, demand cannot be efficiently or effectively met.
- When the costs can be met from the allocated budget for the scheme, project or contract.
- When the Contract Rules and Procedures have been adhered to; this may involve a tender process in accordance with the Contract Rules of Procedure.
- Where the services involved are likely to cost more than £50k member involvement in the process and their approval is needed in accordance with the 'Protocol for Member Involvement in Procurements Over £50,000'
- After the Head of Service has approved the engagement of the consultant.
- After the consultant agrees in writing to the Council's standard terms and conditions or terms of engagement or another agreement approved by the Council's legal department. For details of this Council's clauses that **must** be included in any Terms and Conditions or Terms of Engagement see Section 12.9.6 of the Contract Rules of Procedure.
- After all approvals have been obtained a new supplier form should be raised and this should be sent to the Corporate Contract and Procurement Unit with any supporting documentation, followed by a requisition and authorised purchase order **before** any letter of engagement is issued, and before the consultant starts work.

A consultancy needs assessment form has been attached that will guide officers through this process.

## **Detailed guidance**

### **Detailed definition of a consultant**

The Contract Rules of Procedure 12.9.1 further defines consultants as providing the following services

- Advice on Best Value Reviews and evaluating tenders
- Policy and Strategy reviews
- Organisational and service reviews
- Job evaluation
- Financial planning or analysis
- Feasibility studies
- Marketing and business planning
- Public relations
- Computer and IT strategy
- Managing change
- Senior staff recruitment, selection and training
- Individual staff management e.g. community care
- Project Management
- Specialist advice relating to architectural, design projects
- Construction and regeneration projects

This list is not exhaustive. If Officers are unsure please contact the Corporate Contract and Procurement Unit for advice.

### **Selecting a consultant**

Before starting a procurement exercise to engage a consultant, officers must explore all other alternatives, secure a budget and get an initial go ahead from the relevant Head of Service. If the estimated cost of the consultant is over £5,000 the Portfolio Holder and Corporate Director should also be informed by the Head of Service.

A specification and the Council's standard terms and conditions must be used. Consideration should be made on how the competing consultants tenders will be compared and an evaluation criteria decided upon. This could include an evaluation of relevant experience, adequacy of resource, quality of work, reliability, references and usually involves the agreement of a cost/quality split. Advice on any of these procurement matters can be obtained from the Corporate Contract and Procurement Unit.

A procurement exercise must be initiated in accordance with the Council's Contract Rules of Procedure. A summary of the financial thresholds contained in the Contract Rules of Procedure are as follows :-

Financial threshold	Procurement path required
< £5,000	3 telephone quotations
£5,000 to £49,999	3 written quotations and inform Portfolio Holder and Corporate Director
£50,000 to £139,892	5 formal tenders and member approval
> £139,893	Full OJEU process and member approval

The estimated cost must be the total cost of the consultancy. If there is any possibility that the same consultancy may be employed to manage the substantive project once a feasibility study is completed, it is the cost of consultancy for the whole project, not the cost of the feasibility study alone, that should drive the procurement.

If a consultant is providing after sales support for a specialist product i.e. Software installation, the rates and terms and conditions of this consultancy service should be agreed when the product is purchased. If a piece of work is needed that was not foreseen at the time of tender for that specialist product or could possibly be undertaken by another consultant, this should be treated as a separate procurement under this guidance and the Contract Rules of Procedure.

Where the procedures cannot be followed, an exception must be applied for in accordance with Section 12.8 of the Contract Rules of Procedure.

No payment can be made and therefore no requisition or order should be placed until entitlement to consultant status has been established.

Consultants **must** not be engaged for indefinite or extensive periods of time, therefore a review date should be agreed. This is usually the expected completion date of the assignment; if this is more than six months then reviews should be set for every six months. This review should be recorded on the Consultancy Post Commissioning Monitoring Form; please see Appendix B.

### **Limited Liability Companies or Limited Liability Partnerships**

If the consultant chosen through the procurement exercise is a consultancy firm trading as a limited company or a Limited Liability Partnership the Council's standard Terms and Conditions of Contract must be used; if an alternative form of consultancy agreement is proposed, this must be approved by the Head of Legal & Electoral Services. For details of this Council's clauses that **must** be included in any Terms and Conditions or Terms of Engagement see Section 12.9.6 of the Contract Rules of Procedure.

### **Self employed consultants**

If the consultant chosen through the procurement exercise is not a consultancy firm trading as a limited company or a Limited Liability Partnership additional issues arise. These consultants can be treated in two ways; **either** the consultant will be a temporary employee and dealt with through those rules and procedures with payment made via the payroll, **or** they will be classed as a self employed consultant (individual supplier). The correct option is not a matter of choice for the Council or the individual concerned, it is dictated by the terms of the engagement. In the case of self employed consultants, the terms of engagement need to be agreed with the Head of Benefits & Exchequer **prior to appointment** so that the correct status can be established. The Council is legally required to ensure that payments to any individual for services provided

are made in the correct way and PAYE is applied if appropriate. In the event of the Council failing to maintain proper arrangements it will be liable for any tax or NI contributions that should have been deducted and face a potentially substantial fine.

### **Former employees of West Berkshire Council**

If the consultant is a former employee of this Council, care must be taken as this could be susceptible to misperception. Advice and approval should be sought from HR before any of the above procedures are undertaken.

### **Current employees of West Berkshire Council**

Consultancy contracts **must not** be given to current employees of the Council. It may be possible for current employees to undertake additional work over and above their contract of employment however this should be processed through HR as variation to their existing terms and conditions of employment and remuneration paid through payroll. Again advice should be sought from HR and Benefits & Exchequer.

### **Declarations of interest**

If officers or members of the Council involved in procuring a consultants have any personal or prejudicial interest in any of the individuals or companies involved, this interest must be registered with the Monitoring Officer/Head of Legal & Electoral Services of the Council in accordance with Section 12.4.2 of the Contract Rules of Procedure. Advice and guidance on the officer's or member's further involvement should be sought from the Monitoring Officer/Head of Legal & Electoral Services.

### **Insurance provision**

All consultants are required to have insurance; this is usually Professional Indemnity Insurance, Employers Liability and Public Liability Insurance. The consent of the Head of Finance is required to any level of insurance cover less than £5m. This requirement will not be waived but agreement can be reached on the basis of a risk assessment to bring the level of cover required below £5m. Professional bodies make access to PI insurance possible for their members and it is increasingly the case that those who wish to offer consultancy services cannot obtain public sector appointments unless they carry such insurance. The key issue for the risk assessment is, should the consultant's work prove faulty or negligent, what might the Council be sued for or wish to sue the consultant for. If the work has no value, why is it being undertaken? The fact that the consultant's work will be well supervised or that claims have not been made in the past are not good guides to the issues that need to be considered as part of the risk assessment. The budget holder must ensure that a copy of the relevant insurance certificates is retained and the date seen recorded on the New Supplier Request Form.

### **Needs Assessment Form**

In accordance with the Internal Audit Recommendations, a Consultancy Needs Assessment Form is set out in appendix A. On completion and approval of this form it should be attached to any new supplier form and a copy sent to the Corporate Contract and Procurement Unit.

### **Consultancy Post Commissioning Monitoring Form**

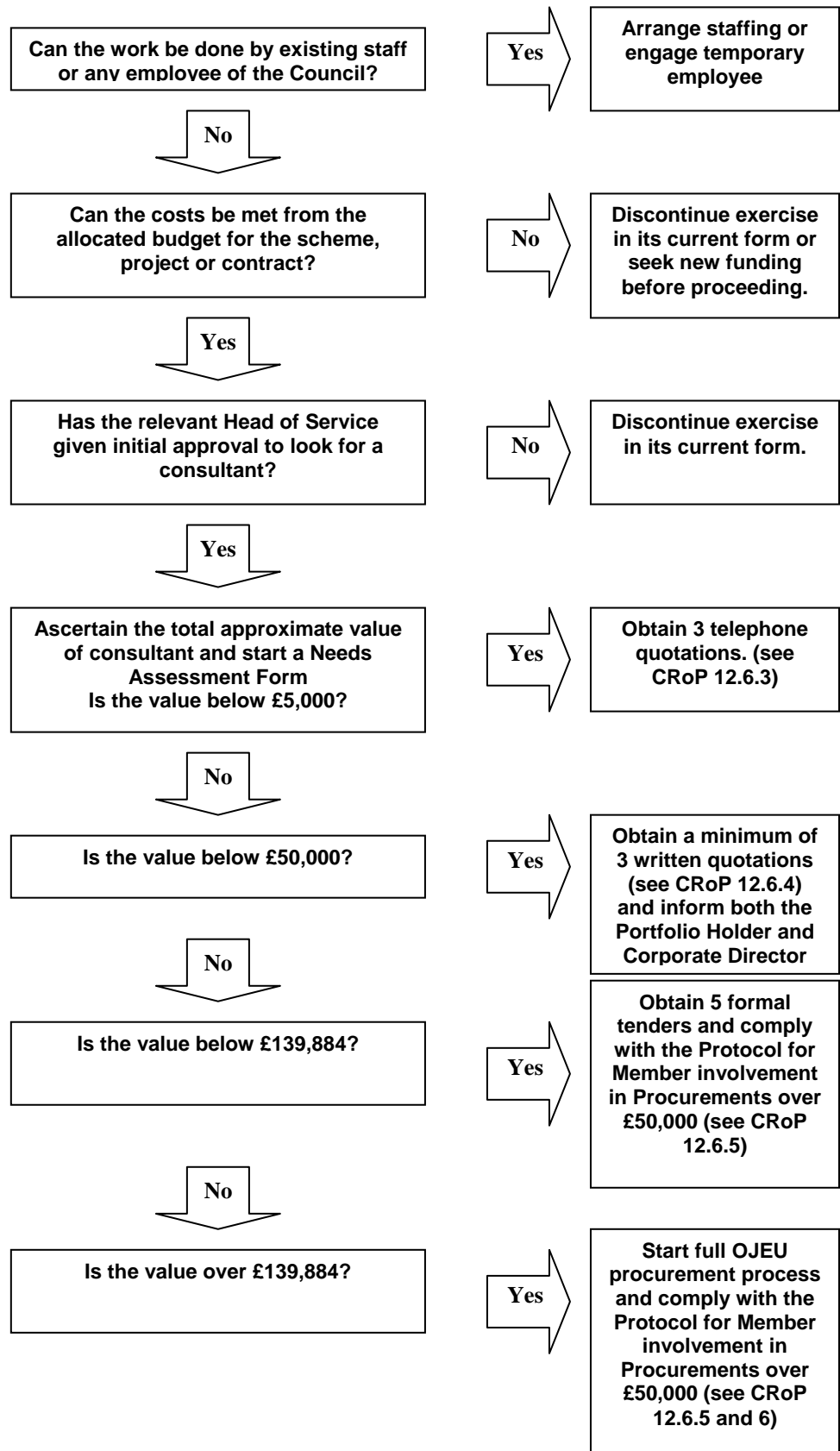
At the review date the Consultancy Post Commissioning Monitoring Form should be completed this is attached as Appendix B. A copy of this should be sent to the Corporate Contract and Procurement Unit. Any decision to extend the services of a consultant should be taken with great care and must consider the effect this may have on the original financial thresholds for the procurement, any breach of these thresholds could lead to legal challenge. If a service area is considering extending the services of a consultant, advice must be sought in the first instance from the Corporate Contracts and Procurement Unit.

Any new assignment for a consultant must go through a new procurement exercise and any evaluation should also take into account the consultants performance as indicated on the Consultancy Post Commissioning Monitoring Form.

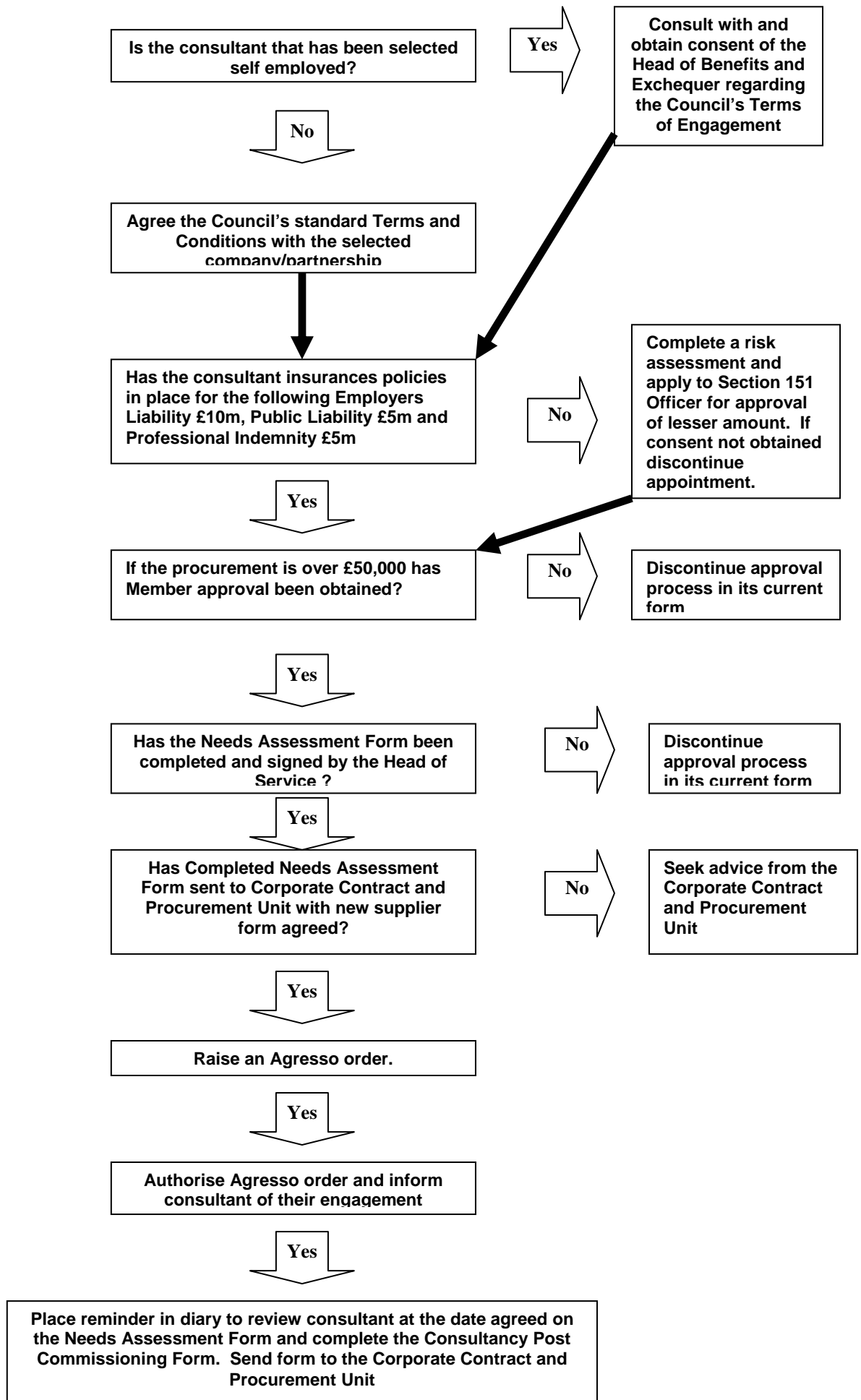
This Guidance will be reviewed and amended from time to time by Legal and Electoral Services and the Corporate Contract and Procurement Unit.



**Flow chart from inception to the selection of a preferred consultant**



**Flowchart from the selection of a preferred consultant to review**



## Appendix 1a

### Consultancy Needs Assessment Form

<b>Objectives of the assignment and reasons why this needs to be performed by a consultant and alternatives considered:</b>	
<b>Scope of assignment:</b>	
<b>Time scale of the assignment</b> <i>(include any interim reporting target dates):</i>	
<b>Confirmation of available budget:</b>	
<b>Estimated cost of consultant:</b>	
<b>Cost Centre:</b>	
<b>Account Code:</b>	
<b>WBC's Commissioning Manager the Consultant will report to during the assignment:</b>	
<b>Responsibilities of the parties</b> <i>(to include term and conditions where required):</i>	
<b>Stages of the assignment</b> <i>(interim reports and status updates):</i>	
<b>Documentation:</b>	
<b>Record of type of standard Terms and Conditions held by:</b>	
<b>Or if self-employed – Record of Terms of Engagement held:</b>	
<b>Date of agreement of Terms of Engagement with Head of Exchequer:</b>	
<b>Confirmation of the number and details of competitive quotations/tenders received:</b>	

<b>Company selected (or sole trader):</b>	
Name of Company:	
Address:	
Telephone:	
Fax:	
Email address:	

<b>Named of Consultant(s):</b>

<b>Confirmation that the consultant holds the necessary Insurance policies, including Professional Indemnity at £5m:</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO
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<b>Copy of Insurance certificate:</b>	
Seen by:	
On:	
Copy held by:	

<b>Agreed fee and method of payment (one off fee paid in stages over course of assignment or daily rate. Either can include element of part fee paid on assignment results):</b>

<b>Confirmation of WBC's 30 day standard terms of payment:</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO
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<b>Review date when Appendix B – Consultancy Post Commissioning Monitoring Form should be completed:</b>

<b>Head of Service</b>	Signed:
<b>Date:</b>	

<b>Copy sent to Corporate Contract and Procurement Unit on:</b>	
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<b>Actions taken by Corporate Contract and Procurement Unit:</b>	
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## Appendix 1b

## Consultancy Post Commissioning Monitoring Form

<b>Company (or sole trader):</b>	
Company name:	
Address:	
Telephone:	
Fax:	
Email address:	

<b>Named Consultant(s):</b>	
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<b>Objectives:</b>	
<b>What were the objectives?</b>	
<b>Were the objectives of the assignment met?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>If not, which objectives were covered?</b>	

<b>Scope</b>	
<b>What was the scope of the assignment?</b>	
<b>Was the scope of the assignment changed during the project?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>If so, why?</b>	

<b>Time:</b>	
<b>Time scale/stages of the assignment (include any interim reporting target dates):</b>	
<b>Were these dates complied with?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO

<b>Cost:</b>	
<b>Estimated Fees:</b>	
<b>Actual Fees:</b>	
<b>Justification for any difference</b> ( <i>where applicable</i> ):	

<b>Key Learning:</b>	
<b>Any knowledge gained from the project?</b> ( <i>e.g. any advice you think may be useful to other WBC staff / any knowledge gained outside the objectives</i> )	
<b>Would you recommend WBC use this Consultant again, if appropriate?</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO

<b>Head of Service</b>	Signed:
<b>Date:</b>	

Copy sent to Corporate Contract and Procurement Unit on:	
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Actions taken by Corporate Contract and Procurement Unit:	
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## Internal Audit

**Action Plan**  
**Use of Consultants -Follow up Audit**

## Appendix 2

## 1. Recommendations discussed with – Tom Herring – Corporate Contracts &amp; Procurement Manager

Date – 08/05/08

Action to Date is highlighted in bold

<u>Recommendation</u>	<u>Weakness/ Significance</u>	<u>Agreed/ Not Agreed</u>	<u>Client Comments/ Progress to date (highlighted in bold)</u>	<u>Responsible Officer/ Timescale for Implementation</u>
01. We recommend that it should be ensured that the standard 'Needs Assessment' form should be completed for each consultancy appointment.	Significant/ Necessary	Agreed	<b>The Corporate Contracts &amp; Procurement Manager informed us that he issued an e-mail to all Corporate Directors and Heads of Service at the beginning of April 2008.</b>  <b>The e-mail emphasised the importance of completing the standard 'Needs Assessment' template together with obtaining the necessary approval when considering engaging a consultant. The template together with the authorisation form was attached to the e-mail.</b>  <b>Implemented</b>	<b>Corporate Board – Delegated to:-</b>  <b>Tom Herring</b> – Corporate Contracts and Procurement Manager assisted by <b>Shiraz Sheikh</b> - Solicitor  Within 6 months
02. We recommend that managers/Heads of Service are reminded that the Needs Assessment/Work Specification should be formally approved by the Corporate Director prior to a consultant being appointed.	Significant/ Necessary	Agreed	<b>As per recommendation 1</b>  <b>Implemented</b>	<b>Corporate Board – Delegated to:-</b>  <b>Tom Herring</b> – Corporate Contracts and Procurement Manager assisted by <b>Shiraz Sheikh</b> - Solicitor  Within 6 months
03. We recommend that the following points are included in the guidance for the use of consultants:-  a) For long term appointments – evidence of cost benefit analysis of using a consultant rather than having a fixed term contract of employment;	Moderate/ Necessary	Agreed	<b>The Corporate Contract and Procurement Manager advised us that it is his intention to revise the guidance notes together with the 'needs assessment/approval form' to make them more user friendly/comprehensive. It is anticipated that the amended forms will be submitted for Corporate Board approval during the 2<sup>nd</sup> quarter of this financial year.</b>  <b>a) as part of the above exercise the Corporate Contracts and Procurement Manager intends to expand the 'Needs</b>	<b>Corporate Board – Delegated to:-</b>  <b>Tom Herring</b> – Corporate Contracts and Procurement Manager assisted by <b>Shiraz Sheikh</b> - Solicitor  Within 6 months

## Internal Audit

**Action Plan**  
**Use of Consultants -Follow up Audit**

<u>Recommendation</u>	<u>Weakness/ Significance</u>	<u>Agreed/ Not Agreed</u>	<u>Client Comments/ Progress to date (highlighted in bold)</u>	<u>Responsible Officer/ Timescale for Implementation</u>
b) How to deal with any exceptions to the Rules/Guidance (approval required.)			<p><b>Assessment' template covering the alternative options/cost implications to ensure that there is evidence available that this has been carried out.</b></p> <p><b>b) The Corporate Contracts &amp; Procurement Manager informed us that he would prefer Officers to contact his Section for advice, rather than specifying in the guidance the process to follow to obtain approval for an exception.</b></p> <p><b>We are comfortable with this alternative approach to dealing with exceptions. However the need to consult with the Corporate Contracts and Procurement Unit would need to be specified in the revised guidance, and a record maintained of the outcome of any consultation.</b></p> <p><b>Not implemented</b></p>	
04. We recommend that the consideration is given to amalgamating all of the Guidance covering the use of Consultants, at a minimum all documents should be clearly cross-referenced.	Moderate/ Advisory	Agreed	<p><b>The amalgamation of the guidance covering the use of Consultants have not been undertaken.</b></p> <p><b>As per the response to recommendation 3) - a review of guidance is to be carried out.</b></p> <p><b>This review will incorporate an assessment of the adequacy of the guidance already available/any improvements required (Contract Rules of Procedure/Management Guidance notes/Needs Assessment template).</b></p> <p><b>This information will then be presented to Corporate Board for their approval. Once the guidance has been approved the Contract Rules of Procedure will be amended accordingly.</b></p> <p><b>Not Implemented</b></p>	<p><b>Corporate Board – Delegated to:-</b></p> <p><b>Tom Herring – Corporate Contracts and Procurement Manager assisted by Shiraz Sheikh - Solicitor</b></p> <p>Within 6 months</p>



## Internal Audit

**Action Plan**  
**Use of Consultants -Follow up Audit**

<u>Recommendation</u>	<u>Weakness/ Significance</u>	<u>Agreed/ Not Agreed</u>	<u>Client Comments/ Progress to date (highlighted in bold)</u>	<u>Responsible Officer/ Timescale for Implementation</u>
<p>05. We also recommend that :-</p> <p>a) a more pro-active approach is adopted to highlighting the procedures and guidance relating to the appointment of consultants.</p> <p>b) a specific member of staff/service area is allocated this responsibility for maintenance of/publication of guidance relating to the use of consultants.</p>	Moderate/ Advisory	Agreed	<p>a) <b>We note that a ‘pdf’ version of the ‘Needs Assessment’ template is available on the intranet, however, this fact has not been publicised. The Corporate Contracts &amp; Procurement Manager informed us that he will notify Senior Officers how to locate this information. He also informed us that he intends to issue updates to Senior Officers on an adhoc basis, as and when amendments are made to the guidance notes.</b></p> <p><b>In addition, he will shortly be meeting with Shiraz Sheikh – Solicitor, to discuss the setting up a training programme for senior Officers to cover the ‘Contract Rules of Procedure’. The subject matter - Appointment of Consultants will be covered as part of this training. It is anticipated that the training will commence in the 3<sup>rd</sup> / 4<sup>th</sup> quarter of the current financial year.</b></p> <p>b) <b>The Corporate Contracts and Procurement Manager is responsible for updating any guidance covering procurement rules which include the use of consultants.</b></p> <p><b>Work in progress</b></p>	<p><b>Corporate Board – Delegated to:-</b></p> <p><b>Tom Herring</b> – Corporate Contracts and Procurement Manager assisted by <b>Shiraz Sheikh</b> - Solicitor</p> <p>Within 6 months</p>
<p>06. We recommend that Corporate Directors and Heads of Service should be reminded that <u>prior to a consultant being appointed</u>, the Head of Benefits and Exchequer should be consulted. He should be provided with a copy of the proposed terms of engagement, so that he can check that the proposed working arrangements meet the requirements for self employed</p>	Significant/ Necessary	Agreed	<p><b>As per recommendation 1.</b></p> <p><b>Implemented</b></p>	<p><b>Corporate Board – Delegated to:-</b></p> <p><b>Tom Herring</b> – Corporate Contracts and Procurement Manager assisted by <b>Shiraz Sheikh</b> - Solicitor</p> <p>Within 6 months</p>

## Internal Audit

**Action Plan**  
**Use of Consultants -Follow up Audit**

<u>Recommendation</u>	<u>Weakness/ Significance</u>	<u>Agreed/ Not Agreed</u>	<u>Client Comments/ Progress to date (highlighted in bold)</u>	<u>Responsible Officer/ Timescale for Implementation</u>
status. His approval should be obtained in writing.				
07. We recommend that it should be ensured that costs incurred for Consultancy work are coded to the correct account code.	Minor/ Necessary	Agreed	<b>We were advised that Services have been reminded of the importance of correctly coding consultancy costs to E060W. This requirement was included in the e-mail issued on 03/04/08.</b>  <b>Implemented</b>	<b>Corporate Board – Delegated to:-</b>  <b>Tom Herring</b> – Corporate Contracts and Procurement Manager  Within 6 months
08. We recommend that where it can be predicted in advance that service/work is required for a prolonged period of time, an analysis should be made of consultancy costs in comparison to the cost of employing a member of staff on a fixed term contract.	Significant/ Necessary	Agreed	<b>As per recommendation 1.</b>  <b>The ‘Needs Assessment’ template includes details of costing analysis undertaken (part 1 of the template), managers have been reminded that they must complete the template.</b>  <b>Implemented</b>	<b>Corporate Board – Delegated to:-</b>  <b>Tom Herring</b> – Corporate Contracts and Procurement Manager  Within 6 months
09. We recommend that Managers should be reminded of the need to award consultancy work in accordance with the contract value thresholds in the Contract Rules of Procedure or follow the appropriate process for obtaining an exemption if appropriate.	Significant/ Necessary	Agreed	<b>As per recommendation 1.</b>  <b>Implemented</b>	<b>Corporate Board – Delegated to:-</b>  <b>Tom Herring</b> – Corporate Contracts and Procurement Manager assisted by <b>Shiraz Sheikh</b> - Solicitor  Within 6 months
10. We recommend that it should be ensured that the Letter of Engagement to consultants should include the standard clauses specified in the Council’s procedures.	Moderate/ Necessary	Agreed	<b>The current ‘Needs Assessment’ template/guidance does not make reference to the standard clauses required to be included in the ‘Letter of Engagement’ for consultants. The Contract Rules of Procedure/Management Guidance notes include the required clauses, but the need to use them/where they can be located has not been highlighted to managers.</b>	<b>Corporate Board – Delegated to:-</b>  <b>Tom Herring</b> – Corporate Contracts and Procurement Manager assisted by <b>Shiraz Sheikh</b> – Solicitor  Within 6 months

## Internal Audit

**Action Plan**  
**Use of Consultants -Follow up Audit**

<u>Recommendation</u>	<u>Weakness/ Significance</u>	<u>Agreed/ Not Agreed</u>	<u>Client Comments/ Progress to date (highlighted in bold)</u>	<u>Responsible Officer/ Timescale for Implementation</u>
			Not implemented	
<p>11. We recommend that Heads of Service/Managers are reminded of the need to obtain evidence of appropriate levels of insurance cover prior to appointing a consultant. It should be ensured that copies of the insurance certificates/all information validating the appropriateness of the person appointed are retained.</p>	Significant/ Necessary	Agreed	<p><b>We were advised that as part of the process of setting up new suppliers on Agresso, evidence of either the ‘consultants’ insurance cover or the 151 Officers approval for an exemption must be provided.</b></p> <p><b>As per recommendation 1, Service areas have been reminded of the required process.</b></p> <p><b>Implemented.</b></p>	<p><b>Corporate Board – Delegated to:-</b></p> <p><b>Tom Herring</b> – Corporate Contracts and Procurement Manager assisted by <b>Shiraz Sheikh</b> - Solicitor</p> <p>Within 6 months</p>
<p>12. We recommend that consideration is given to establishing a central control function to monitor the use of consultants, covering the following:-</p> <p>a) Overall costs being incurred for external professional fees/services; b) Sample compliance checks on individual consultants.</p>	Moderate/ Advisory	Agreed	<p><b>The Corporate Contract &amp; Procurement Manager informed us that the recommendation was agreed at a corporate level. The Head of Finance decided that it would be appropriate for this central monitoring function to be placed within the Corporate Contract &amp; Procurement Unit.</b></p> <p><b>No firm decision has been made as to how the compliance checks will be undertaken or on how/where to report the findings.</b></p> <p><b>However, it is anticipated that data will be downloaded from Agresso to identify trends, expenditure covering Consultants, high value purchase orders etc.</b></p> <p><b>Sample checks will also be undertaken to ensure that the correct processes have been followed prior to the appointment being made.</b></p> <p><b>Work in progress</b></p>	<p><b>Corporate Board – Delegated to:-</b></p> <p><b>Tom Herring</b> – Corporate Contracts and Procurement Manager</p> <p>Within 6 months</p>

**Internal Audit**

**Action Plan  
Use of Consultants -Follow up Audit**

<u>Recommendation</u>	<u>Weakness/ Significance</u>	<u>Agreed/ Not Agreed</u>	<u>Client Comments/ Progress to date (highlighted in bold)</u>	<u>Responsible Officer/ Timescale for Implementation</u>
13. We recommend that an order is raised on Agresso for the full estimated cost of the provision of the service from Consultants. Managers should maintain records of the work carried out for each invoice period, so that the proportion of work can be 'GRN'ed on Agresso prior to receipt of the invoice.	Significant/ Necessary	Agreed	<b>As per recommendation 1. Implemented</b>	<b>Corporate Board – Delegated to:-  Tom Herring – Corporate Contracts and Procurement Manager  Within 6 months</b>
14. We recommend that the procedures covering the approval of payments to consultants needs to be updated to reflect the use of Agresso, and the need to raise purchase orders on the system at the point that a consultant is appointed.	Moderate/ Advisory	Agreed	<b>As per recommendation 3.  Work in progress</b>	<b>Corporate Board – Delegated to:-  Tom Herring – Corporate Contracts and Procurement Manager assisted by Shiraz Sheikh - Solicitor  Within 6 months</b>

Category of weakness		Significance	
al	May result in a complete breakdown of the service d or fraud or other irregularity	Mandatory	For statutory, council regulations or servicenstructions fundamental control weaknesses
Significant	May result in a breakdown in the service and or fraud or other irregularity	Necessary	For Significant or moderate control weaknesses
Moderate	May result in some impact on the service	Advisory	For minor control weaknesses or efficiency improvements

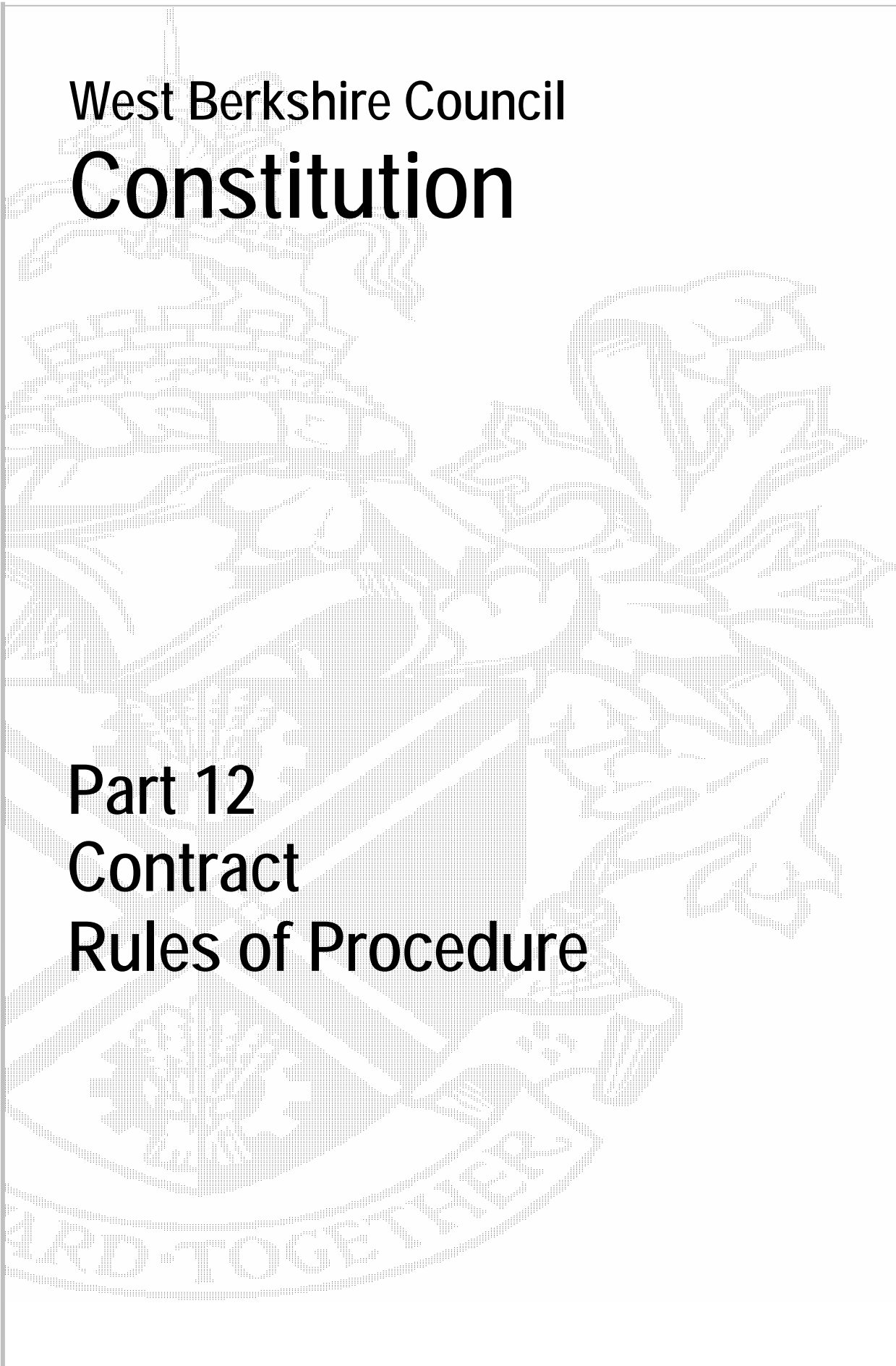
**Internal Audit**

**Action Plan**  
**Use of Consultants -Follow up Audit**

Minor	Limited impact on the service
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# West Berkshire Council **Constitution**

## Part 12 Contract Rules of Procedure



## Contents

### Part 12 – Contract Rules of Procedure

<b>12.1</b>	<b>Introduction .....</b>	<b>5</b>
12.1.1	Application of Rules of Procedure .....	5
12.1.2	Section 135 of the Local Government Act 1972 .....	5
12.1.3	Statutes .....	5
12.1.4	Amendments .....	5
12.1.5	Purpose of Rules .....	5
12.1.6	Protection of the Council's Legal Position .....	6
12.1.7	Seeking Advice .....	6
12.1.8	The Council .....	6
12.1.9	Sustainable Sources .....	6
12.1.10	Monitoring Officer .....	6
12.1.11	Large Contracts .....	6
12.1.12	Preparation of Contracts .....	6
12.1.13	Provision of Appropriate Expenditure .....	7
12.1.14	Failure to Comply with Rules .....	7
12.1.15	Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) .....	7
12.1.16	Claim Arising from a Contract .....	7
12.1.17	Potential for Loss .....	7
12.1.18	Project Appraisal .....	7
<b>12.2</b>	<b>Compliance with the Constitution .....</b>	<b>8</b>
12.2.1	Compliance with Rules .....	8
12.2.2	Legislation .....	8
12.2.3	Formal Exemption .....	8
12.2.4	Non-Disaggregation of Contracts .....	8
12.2.5	Maintenance of Records .....	8
<b>12.3</b>	<b>European Procurement Law .....</b>	<b>8</b>
12.3.1	Seeking Advice .....	8
12.3.2	Public Procurement Regulations .....	9
12.3.3	Public Procurement Regulations – Advertising of Procurements .....	9
12.3.4	Process Requirements .....	10
12.3.5	Procurement Regulations – General Provisions .....	11
12.3.6	Prior Information Notice (PIN) .....	12
12.3.7	Supplier Debriefing .....	12
<b>12.4</b>	<b>Prevention of Corruption .....</b>	<b>12</b>
12.4.1	General .....	12
12.4.2	Member or Officer Interests .....	12
12.4.3	Statutory Provisions .....	12

<b>12.5</b>	<b>Approved Supplier Database and Select Tender Lists .....</b>	<b>13</b>
12.5.1	Introduction.....	13
12.5.2	Maintenance.....	13
12.5.3	Security .....	14
12.5.4	Use of the Approved Supplier Database – Refers to Section 4a .....	14
12.5.5	Application Form for Inclusion on the Approved Supplier Database and Select List.....	14
12.5.6	Evaluation of the Application for inclusion on the Approved and Select List.....	14
12.5.7	References .....	15
12.5.8	Financial Appraisals .....	15
12.5.9	Select List Details .....	15
12.5.10	Amendment and Review .....	16
12.5.11	Monitoring .....	16
12.5.12	Use of Consortia.....	16
<b>12.6</b>	<b>Tendering - General Principles.....</b>	<b>16</b>
12.6.1	Preliminaries to the Execution of a Contract.....	16
12.6.2	Contract Thresholds .....	16
12.6.3	Threshold 1 - Contract Values.....	17
12.6.4	Threshold 2 - Contract Values.....	17
12.6.5	Threshold 3 - Contract Values.....	17
12.6.6	Threshold 4 – Contracts over EU Threshold .....	17
12.6.7	Invitation to Tender.....	17
<b>12.7</b>	<b>Tendering Procedures.....</b>	<b>17</b>
12.7.1	Introduction.....	17
12.7.2	Instructions to Tenderers.....	18
12.7.3	Receipt of Tenders .....	18
12.7.4	Opening of Tenders – Refers to Sections 2b, 5 and 8.....	18
12.7.5	Tender Opening - Confidentiality and Security .....	19
12.7.6	Tender Evaluation – Refers to Section 9.....	19
12.7.7	Alterations to Tenders .....	19
12.7.8	Tenders Submitted for the Execution of Work.....	19
12.7.9	Acceptance of Tenders .....	19
<b>12.8</b>	<b>Exceptions to Contract Rules of Procedure .....</b>	<b>20</b>
12.8.1	General .....	20
12.8.2	Exceptions.....	20
12.8.3	Exception Criteria .....	20
12.8.4	Record Retention – Refers to Section 1 .....	21
12.8.5	Contracts Register – Refers to Section 6 .....	21
12.8.6	Social Services - Residential/Nursing Care.....	21
12.8.7	Social Services - Social Care Services.....	22
12.8.8	Social Services - Children and Clients with Special Needs .....	22
12.8.9	Educational Establishments .....	22
12.8.10	Peacetime Emergency Plan .....	22



<b>12.9</b>	<b>Engagement of Consultants .....</b>	<b>22</b>
12.9.1	Definition .....	22
12.9.2	Guidance .....	23
12.9.3	Procurement Process .....	23
12.9.4	General .....	23
12.9.5	Counsel.....	24
12.9.6	Evaluation Against Predetermined Criteria .....	24
12.9.7	Appraisals of Work.....	24
12.9.8	Letter of Engagement/Contract.....	24
12.9.9	Clauses for Letter of Engagement/Contract .....	24
12.9.10	Commissioning Manager .....	25
12.9.11	Termination of Contract .....	25
12.9.12	Invoices.....	25
<b>12.10</b>	<b>Entering into a Contract .....</b>	<b>26</b>
12.10.1	Contract Form .....	26
12.10.2	Contract Presentation .....	27
12.10.3	Standard Clauses .....	28
12.10.4	Sub-letting.....	28
12.10.5	Provision for Liquidated Damages .....	28
<b>12.11</b>	<b>Legal Considerations .....</b>	<b>28</b>
12.11.1	Relaxation of Indemnities.....	28
12.11.2	Risk Assessments.....	28
12.11.3	Contractor's Indemnities and Tax .....	29
12.11.4	Need for Insurance .....	29
12.11.5	Sealing of Documents.....	29
12.11.6	Affixing of Seal .....	30
12.11.7	Signature of Documents .....	30
<b>12.12</b>	<b>Contract Administration.....</b>	<b>30</b>
12.12.1	Payment by Instalments.....	30
12.12.2	Variation to Contracts .....	30
12.12.3	Final Certificate and Statement of Account .....	31
12.12.4	Claims from Contractors .....	31
12.12.5	Reporting of Final Contract Costs .....	31

## 12.1 Introduction

### 12.1.1 Application of Rules of Procedure

Subject to any specific provisions to the contrary, these Rules apply in every case where the Council enters into an agreement with another person for the supply of goods, materials or services to, or the execution of work for, the Council. These regulations apply equally to tenders and quotations.

### 12.1.2 Section 135 of the Local Government Act 1972

These Contract Rules of Procedure are made under the provisions of Section 135 of the Local Government Act 1972 and govern the making of contracts for and on behalf of the Council. They include provision for competition, and regulate the manner in which tenders are invited.

### 12.1.3 Statutes

The statutes and statutory instruments that currently affect these Regulations are as follows:

- Local Government Act 1972;
- Local Government Act 1988;
- Education Reform Act 1988;
- Local Government and Housing Act 1989;
- Environmental Protection Act 1990;
- Local Government Act 1992;
- Local Government Act 1999;
- Local Government Act 2000;
- The Public Contracts Regulations 2006.

### 12.1.4 Amendments

Any amendments to the above or new legislation will be deemed to be included in these Rules without the need for a specific reference here.

### 12.1.5 Purpose of Rules

These Contract Rules of Procedure apply to all Officers and Teachers involved in the letting of orders or contracts for works, services and supplies for the Council, whether funded from Revenue or Capital Sources. They provide a basis for true and fair competition by providing a transparent and auditable procedure which, if followed, will give confidence that a fully accountable and unimpeachable contract regime exists within the Council.

These Contract Rules of Procedure have been designed to reduce the volume of work and the need to report to the Executive on contract matters. However, this only works if Members and the District Auditor can be confident that firm procedures and controls exist for the invitation, evaluation, acceptance, managing and monitoring of contracts throughout the Council.

### **12.1.6 Protection of the Council's Legal Position**

These Contract Rules of Procedure protect the legal position of the Council in respect of compliance with EU and UK law and in its contractual dealings with external suppliers and contractors. They protect the interests of Members, Officers and the Citizens of West Berkshire. The Head of Legal and Electoral Services shall have ultimate responsibility for ruling on and interpreting these Contract Rules of Procedure.

### **12.1.7 Seeking Advice**

Officers who may be letting a contract must seek appropriate advice at the earliest possible opportunity. The Head of Finance or nominated Officer shall make arrangements for the provision of this advice. The Head of Legal and Electoral Services, Head of Finance or nominated Officer, can also advise on contract matters.

### **12.1.8 The Council**

In these Contract Rules of Procedure the expression "the Council" shall be deemed to include reference to the Executive, Policy Development Commissions, Overview and Scrutiny Commission, Regulatory Committees or Area Forums or any person or persons acting in accordance with delegated authority on behalf of the Council. The expression "the appropriate Committee" shall mean the Executive, Policy Development Commissions, Overview and Scrutiny Commission, Regulatory Committees or Area Forums responsible for the contract concerned.

### **12.1.9 Sustainable Sources**

Goods or services which are known to be, or where there is strong evidence to believe they could be, harmful to the environment and where there are other adequate options, will not be used. Wherever practical, only materials from sustainable sources will be used.

### **12.1.10 Monitoring Officer**

The Council has designated that the Head of Legal and Electoral Services be the Monitoring Officer.

### **12.1.11 Large Contracts**

Where the Council is considering embarking upon a contract of substantial size, and is to do so by way of competitive dialogue (whether by way of competitive tender or subsequent to tendering), it shall be the duty of the responsible Head of Service to ensure that such negotiations are authorised by law and by these Contract Rules of Procedure and are from the outset conducted by a team of Officers possessing the professional skills appropriate to the proposed transaction

### **12.1.12 Preparation of Contracts**

The Head of Service letting the Contract shall ensure that the appropriate technical specification is prepared. This should clearly set out the works, services and supplies which are required by the Council and the manner in which they are to be provided.

The Head of Service must obtain and make full use of all the necessary professional and technical resources to ensure accurate and comprehensive documents are prepared.

### 12.1.13 Provision of Appropriate Expenditure

A tender must not be invited unless appropriate provision for the expenditure has been included in the Council's approved capital or revenue budget for the year in which the expenditure is to be incurred (or in budgets approved in draft for the next financial year by the Executive where the expenditure is to be incurred in that year) or unless the alternative financial provision is made by the Council under Financial Regulations. The budget must cover all preliminary and ancillary costs (which should include annual maintenance costs) and should be in the Budget and Policy Framework approved by Council and should be contained in the appropriate Forward Plan.

### 12.1.14 Failure to Comply with Rules

Failure to comply with these Contract Rules of Procedure by Officers will be viewed by the Council as a breach of the Officers Code of Conduct contained in Part 14 (Codes and Protocols) of this Constitution and may be considered a disciplinary matter.

### 12.1.15 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

All Heads of Service should consult with the Head of Legal and Electoral Services, the Head of Human Resources and the Head of Finance or nominated Officer before any contract is entered into which affects the employment of the Council's staff or the potential transfer of staff to the Council. Statutory periods of consultation (which must be complied with) apply to **all** contracts affected by TUPE.

### 12.1.16 Claim Arising from a Contract

Any claim arising from a contract, that is not clearly within the terms of the contract, must be referred to the Head of Legal and Electoral Services for consideration of the Council's legal liability and to the Head of Finance or nominated Officer for financial consideration before any settlement is reached. It is also a reportable event within the scope of the Financial Rules of Procedure and must be reported accordingly. "Claim" here does not mean a variation to the contract that is within budget.

### 12.1.17 Potential for Loss

Financial values are irrelevant when considering potential loss to the Council. Heads of Service need to look at potential for loss. The maximum foreseeable loss must be established by a Risk Assessment and an Indemnity must be sought for that (subject to a £5 million indemnity being the minimum acceptable).

### 12.1.18 Project Appraisal

In keeping with good procurement practice project options appraisals and business case shall be carried out as follows:

- Contract value less than £50,000 – optional.
- Contract value greater than £50,000 and less than EU threshold – recommended.
- Contracts value exceeding EU threshold – mandatory.

Project appraisals form part of the project strategy and gateway process. Further explanation on how this operates can be obtained from the Contracts & Procurement

Unit. (A fact sheet on how to carry out a project appraisal and what is expected is available from Finance).

## **12.2 Compliance with the Constitution**

### **12.2.1 Compliance with Rules**

These rules consolidate all matters relating to contracts. Every order or contract made on or on behalf of the Council by an Officer of the Council, relating to either income or expenditure, must comply with these Contract Rules of Procedure.

### **12.2.2 Legislation**

The Rules of Procedure shall be subject to Directives 2004/18EC and any other procedures which may apply by reason of the United Kingdom's membership of the European Union (EU). The extensive provisions of EU and UK legislation, especially the EU Public Procurement Directives, the Local Government Planning and Land Act 1980, the Local Government Act 1988 and associated Regulations, the Local Government Act 1999 and other relevant legislation e.g. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to many of the contracts placed by the Council and must be complied with. EU and UK legislation will always override the provisions of these rules.

### **12.2.3 Formal Exemption**

The Council can formally exempt itself from any of these rules (Rule 12.8 (Exceptions to Contract Rules of Procedure refers). However, it may not exempt itself from statutory requirements (for example the Public Contract Regulations referred to in Rule 12.1.3 (Statutes)).

### **12.2.4 Non-Disaggregation of Contracts**

Contracts must not be disaggregated in order to avoid these Contract Rules of Procedure or EU Directives. The contract value shall be the total cost of the supply, service or work to be procured over the contract term. If a contract has never been in place, then the aggregate value shall be calculated as the total estimated spend over a period of three years.

### **12.2.5 Maintenance of Records**

Adequate records must be maintained by all staff, consultants and agents to demonstrate that the provisions of these Contract Rules of Procedure and legislation have been complied with.

## **12.3 European Procurement Law**

### **12.3.1 Seeking Advice**

Advice must always be taken from Head of Finance or nominated Officer in respect of:

- applicability of the regulations to tendering;
- producing and advertising EU tender notices for publication in OJEU ("the Official Journal of the European Union");
- preparing tender documents;
- award criteria for tender selection;

- evaluation process and debriefing.

Advice from the Head of Legal and Electoral Services or Head of Finance may also be sought with regard to any of the above for which advice is not readily available.

### 12.3.2 Public Procurement Regulations

The procedures for the award of public works, public supply and public services contracts have been incorporated into The Public Contract Regulations 2006 and cover the following categories of procurement:

- Public Supply Contracts

The procurement of goods by purchase, lease, hire, or rental.

- Public Works Contracts

Contracts for the execution of works relating to building or civil engineering activities.

- Public Service Contracts

All contracts which are not covered by the Public Supply or Public Works Contracts or which are pure Service Contracts. Services under this regulation are classed as either Part A or Part B. The regulations apply in their entirety to Part A services, and only in part to Part B services. If a contract is for both supplies and for services it will be a Supply Contract if the value of supplies is greater than that for services, and a Service Contract if the consideration for the services is greater than the value of the supplies. Further clarification on this can be obtained from the Contracts & Procurement Unit.

The categories have a different threshold value above which the regulations apply. These thresholds are re-valued every two years and published in the Official Journal. The current value can be obtained from Head of Finance or nominated Officer or from the Office of Government and Commerce (OGC) website at [www.ogc.gov.uk](http://www.ogc.gov.uk). The threshold values for 2006 were £144,371 for supplies and services and £3,611,319 for works contracts.

### 12.3.3 Public Procurement Regulations – Advertising of Procurements

The Public Contracts Regulations 2006 require that all significant procurement is advertised in the European Journal regardless of whether the contract value exceeds or falls below financial threshold limits.

To ensure an adequate 'call for competition' all significant procurements shall be advertised on the Council's website. Consideration should also be given to placing adverts in other appropriate media e.g. trade publications and local press.

All adverts for the Council website shall be posted by the Contracts & Procurement Unit who will collate and feed back expressions of interest to the sponsoring service unit.

No advert may be placed in any advertising medium prior to the despatch of any advert to be placed in the European Journal (which will be placed electronically by the Contracts & Procurement Unit). All public notices and advertisements issued by the Council in respect of procurement shall be approved by the Contracts & Procurement Unit who will maintain a register of all advertisements placed.

Furthermore the advertisement to be placed in any UK trade magazine or journal may not contain more detail than the advertisement in the European Journal.

#### 12.3.4 Process Requirements

- (a) Estimates of contract value are net of VAT.
- (b) Aggregation rules apply so that a series of contracts for works of a similar character or services of the same type should be aggregated across the whole Council. If the value of a contract is unknown, the regulations have specific criteria for calculating the value which requires an assessment of either the aggregate value that the Council expects to pay if the term of the contract is less than 48 months or if the term is more than 48 months or over an indefinite period the estimated monthly figure must be multiplied by 48. (please contact Head of Finance or nominated Officer for advice).
- (c) Although there are a number of procedures available under the EU procurement regulations, in all circumstances the Restricted Procedure shall be used unless approval is obtained from the Head of Finance or nominated Officer and/or the Head of Legal and Electoral Services. The Restricted Procedure is effectively "selective" tendering as prospective tenderers who express an interest in tendering are "screened" before being invited to tender. The restricted procedure requires not less than five and not more than twenty tenderers be invited to tender (subject to exceptions where the market is too small because of the specialised nature of the work).
- (d) The regulations cover the financial, technical, and economic qualifications, which should be taken into account in selecting those tenderers who will be invited to tender. Officers must be very careful not to impose conditions which could be considered anti-competitive and that a European tenderer could not satisfy, for example, a condition that the tenderer must have a local office or prior inclusion on the Approved Supplier database.
- (e) Officers are reminded that, in tender documentation, wherever appropriate, a contract shall require a minimum standard compliance with British Standard Specification of British Standard Code of Practice issued by the British Standards Institution or Public Authority Standard. The European equivalent standard must also be quoted and if there is no equivalent European standard then the words must be added "or other equivalent European standard will be accepted" or International standard recognised in another Member State. All contracts, so far as is practicable, shall require that goods and materials used in their execution shall have been produced in the UK, British Commonwealth or the European Community or any other Country having reciprocal trading agreements with the European Community. The Council cannot reject an offer from a contractor on the basis that materials, goods or services offered do not comply with any standards set out in the tender documents if the contractor can prove to the Council that what they are proposing will satisfy the requirements of the technical specification in an equivalent manner.
- (f) The practice of nominating suppliers, sub-contractors or consultants in technical specifications must be justified by the subject of the contract and accompanied by the words "or equivalent". Approval for the use of this method must first be sought from the Head of Finance or nominated Officer and the Head of Legal and Electoral Services or nominated Officer.

- (g) The award criteria will be “the most economically advantageous tender”. The criteria must be set and sent out with the contract documentation together with the weighting of the criteria that will be used.
- (h) It is essential that Officers allow sufficient time for replies and vetting of tenders and evaluation of tenders. The procurement regulations provide minimum time periods which will also need to be built into the procurement programme. Timescales for the Restricted Procedure are the time between:
- (i) the advert in the European Journal and the return of expressions of interest (37 days); and
  - (ii) the sending out of the invitation to tender and its return (40 days).
- These timescales can be reduced if a PIN (Prior Information Notice has been issued (see 12.3.6), the OJEU is sent electronically, or the tender documents are available electronically. Different timescales apply to different procedures. The Contracts & Procurement Unit must be consulted if you wish to use alternative procedures.
- (i) When expressions of interest are returned the Officers involved in the tendering exercise will have to leave sufficient time to analyse replies with regard to financial requirements and other technical and economic qualifications for selection. It is also important to ensure that the Officers who need to be involved in analysing the tenders are made aware of the timetable for the letting of the contract as early in the process as possible.
- (j) Where a contract that has been advertised is then let, the Head of Service concerned must ensure that a “Contract Award Notice” is sent to the European Journal within 48 days of the date of award of the contract. The Contracts & Procurement Unit must be notified when a contract award has been made and will send a ‘Contract Award Notice’ to the OJEU electronically. Officers must follow the Contract Award Procedure issued by the Head of Finance and the Head of Legal and Electoral Services. This procedure is available from the Contracts & Procurement Unit and includes a 10 day cooling-off period between the time a decision is made on the winning tenderer and the award of contract. Unsuccessful tenderers must be notified of the tender results prior to contract award and given the opportunity for a debrief and to object to the Council’s decision prior to the award of contract. (see note on the Alcatel judgement at Appendix A).

### 12.3.5 Procurement Regulations – General Provisions

The Procurement Regulations provide for the following procurement techniques:

- Electronic Auctions – a repetitive process involving an electronic device for the presentation of new prices once tenders have been evaluated.
- Dynamic Purchasing Systems – an electronic framework agreement where indicative bids to enter into the framework can be made at any time and which call-off is subject to a competitive tender.
- Framework agreements – establish terms and conditions that will apply to subsequent contracts (call-offs) without creating rights and obligations.



- The Contracts & Procurement Unit will determine the use of these techniques in any procurement process. In all circumstances the Restricted Procedure shall be used unless approval is obtained from the Head of Finance or nominated Officer and/or Head of Legal and Electoral Services.

### 12.3.6 Prior Information Notice (PIN)

Prior to the commencement of each financial year, Heads of Service are required to examine projected expenditure for all new significant procurements (including any with an anticipated contract value more than £50,000) for the forthcoming year.

Heads of Service must provide a procurement programme (indicating contract values) to the Head of Finance or nominated Officer by the end of March. The Head of Finance or nominated Officer will then ensure that a "Prior Information Notice" (PIN) is published in the European Journal for the year ahead for the whole Council for all relevant categories which exceed the EU thresholds as per Rule 12.3.2.

### 12.3.7 Supplier Debriefing

Supplier Debriefing shall be offered to all unsuccessful bidders on all procurements more than £50,000. For procurements above EU thresholds this must be within the 10 day mandatory 'cooling off' period between the decision to award a contract and the actual award of a contract to a successful bidder.

The adoption of the OGC supplier debriefing guidance is recommended in order to achieve consistency. Further advice on this process is available from the Contract & Procurement Unit.

## 12.4 Prevention of Corruption

### 12.4.1 General

The public is entitled to demand of Local Government Officers conduct of the highest standard. Public confidence in their integrity would be undermined were the least suspicion, however ill-founded, to arise that they could in any way be influenced by improper motives.

### 12.4.2 Member or Officer Interests

Where a Member or Officer of the Council has a personal or prejudicial interest, financial or otherwise in a contract or proposed contract, and is also involved in the process of letting or managing of that contract, this interest must be registered with the Monitoring Officer. In the case of a Member the interest must also be declared at the meeting of any committee or sub - committee at which the Member is present and at which the contract or proposed contract is discussed. If the interest is prejudicial and the Member should leave the meeting and take no part in any discussions or seek to influence any decision.

In the case of ownership of shares Members should seek advice from the Head of Legal and Electoral Services as to the current level of share ownership accepted by the Standards Board as being *de minimus* for the purposes of declarations of interest.

### 12.4.3 Statutory Provisions

The following statutory provisions govern contracts and other matters:

- The obligations of elected Members to disclose interests in contracts and other matters and to refrain from speaking or voting thereon which are prescribed by Sections 94 to 98 and 105 of the Local Government Act 1972 and Section 19 of the **Local Government and Housing Act 1989**.
- The duty of Officers to disclose interests in contracts as required by Section 117 of the Local Government Act 1972.
- Section 117 also requires that “an Officer shall not, under cover of her/his office or employment, accept any fee or reward whatsoever other than her/his proper remuneration.”
- An Officer who contravenes the provisions of Section 117 shall be liable on summary conviction to a fine and additionally will be the subject of disciplinary proceedings by the Council.
- The duty of Members and Officers to adhere to the Codes of Conduct contained in Part 14 (Codes and Protocols) of this Constitution.

## 12.5 Approved Supplier Database and Select Tender Lists

### 12.5.1 Introduction

The ‘Approved Supplier Database is a database of suppliers who in response to a tender notice or advertisement have expressed an interest in supplying to the Authority. To be considered for ‘Approved’ status, a supplier must complete an application form as detailed in Rule 12.5.4 below. This is evaluated, references are obtained and a financial vetting process undertaken. If the evaluation meets or exceeds the Council minimum criteria, then “Approved” status is awarded.

The ‘Invitation to Tender List’ is the shortlist of Approved Contractors/Suppliers who may be invited to compete for a particular contract or provision.

Select Tender Lists are used when a Service lets a multitude of contracts and are valid for a specific period, which falls below the EU Thresholds, and the cost of advertising each one in accordance with Rule 12.6.6 would not provide best value, Select Tender Lists must always be compiled from expressions of interest resulting from a published contract notice.

### 12.5.2 Maintenance

The Approved Supplier Database shall be compiled and maintained by the Contracts & Procurement Unit, on behalf of the Head of Finance or nominated Officer, under delegated powers via the Council’s Scheme of Delegation to Officers.

Select Tender Lists will be compiled by the Contracts & Procurement Unit where expressions of interest have been made subject to a contract notice, or have been taken directly from the Approved List.

Managers in the relevant service areas will be consulted on the technical criteria and qualification required for inclusion on the Select Tender List.

The short list of tenderers shall be approved by the Head of Service concerned following consultation with the Contracts & Procurement Unit.

### 12.5.3 Security

The Approved Supplier Database and shall be maintained on a secure database by the Contracts & Procurement Unit on behalf of the Head of Finance or nominated Officer.

The Contracts & Procurement Unit shall retain all hard copy submissions from suppliers and evaluation details for a period of not less than three years.

Select Tender List details will be issued to the relevant Service.

The Approved Supplier Database and Select Tender Lists are confidential to the Council and they must not be released for use outside of the Council without the prior approval of the Head of Finance or nominated Officer.

### 12.5.4 Use of the Approved Supplier Database – Refers to Section 4a

Prior to a Tender being issued for a Contract of anticipated value of £50,000 or above, it is the responsibility of the appropriate Head of Service, or nominated Officer, to ensure that suppliers have achieved Approved Supplier Status, by the successful completion of a pre-qualification questionnaire. Such questionnaires will be issued and processed by Finance.

The pre-qualification of suppliers may also be extended to those for contracts of less than £50,000 in value by use of an abridged version of the standard pre-qualification questionnaire.

### 12.5.5 Application Form for Inclusion on the Approved Supplier Database and Select List

The application form for inclusion on an Approved and Select List is produced and updated by the Contracts & Procurement Unit on behalf of the Head of Finance. The application shall seek information on Contractors' economic, environmental and financial standing, technical ability and experience.

#### **Additional Technical Information**

If specific technical information is required prior to the tender stage, an additional questionnaire will be produced by the relevant Service and inserted as an appendix to the Application.

The Service will be responsible for the evaluation of the additional information.

The questions and evaluation criteria will be determined by the relevant Head of Service in consultation with the Contracts & Procurement Unit.

### 12.5.6 Evaluation of the Application for inclusion on the Approved and Select List

The evaluation of the Application shall be undertaken by the Contracts & Procurement Unit, on behalf of the Head of Finance or nominated Officer.

The evaluation shall be in accordance with the criteria agreed by the Head of Finance.

All evaluations will be consistent and all applicants treated fairly.

### 12.5.7 References

The Contracts & Procurement Unit, on behalf of the Head of Finance or nominated Officer, on receipt of the completed application form will obtain references and undertake personal enquiries by appropriate professional or technical Officers in order that an evaluation on each company's general suitability can be compiled and detailed on the Approved Supplier Database and/or a specific Select List.

At least two technical references will be required from every potential contractor. Technical competence is considered the key indicator of a contractor's suitability with any failure in this area warranting immediate exclusion from the Approved Supplier Database or a Select List.

The Contracts & Procurement Unit will retain all original references and evaluations on their file.

### 12.5.8 Financial Appraisals

The Contracts & Procurement Unit, on behalf of the Head of Finance or nominated Officer shall undertake financial vetting of all contractors prior to a contractor's inclusion on the Approved Supplier Database or Select List. The form of financial vetting shall be determined by the Head of Finance or nominated Officer who will decide the most appropriate option/s from:

- the submission by a potential contractor of the last two years audited accounts which must include the balance sheet and profit and loss statement, to be reviewed by Financial Services; or
- a request to an organisation specialising in financial vetting to supply a credit rating/contract banding for potential contractors; or
- the submission of a banker's reference.

The Contracts & Procurement Unit, on behalf of the Head of Finance or nominated Officer, may at any time during the "life" of a Select List undertake financial appraisals to confirm a contractor's continuing financial suitability to be included on a list. Following each appraisal the Contracts & Procurement Unit may make a recommendation to the Council's Head of Finance or nominated Officer in relation to a given contractor's suitability to remain on the list. Alternatively, the Head of Finance or nominated Officer may revise the financial limits of work for which the Contractor shall be considered.

### 12.5.9 Select List Details

Select Lists shall contain details of all Approved Suppliers who have expressed an interest, and include the following:

- contractor name, address and telephone numbers;
- scores awarded for evaluation of the Application and References;
- maximum level of annual spend which may be placed with the contractor;
- type (category) of work/service the contractor can perform;
- factors which must be taken into consideration prior to awarding a contract, e.g. requirement for stricter financial guarantees or increased levels of insurance;

### 12.5.10 Amendment and Review

Each record within the Approved List will be amended as required and reviewed at regular intervals not exceeding three years.

Select Lists must be reviewed at regular intervals, not exceeding three years.

The Contracts & Procurement Unit, on behalf of the Head of Finance will undertake the amendments and reviews to the Approved List.

The Head of Service concerned will be responsible for advising the Contracts & Procurement Unit of the need to re-advertise for expressions of interest for Select Lists.

### 12.5.11 Monitoring

The Contracts & Procurement Unit on behalf of the Head of Finance or nominated Officer will carry out monitoring of the use of Select Lists, the monitoring will cover the frequency of selection of contractors/consultants and the types of contracts.

### 12.5.12 Use of Consortia

When entering into a framework contract managed by a Consortium of which the Council is a member, the supplier vetting is undertaken by the Authority taking the lead in accordance with their own Standing Orders.

## 12.6 Tendering - General Principles

### 12.6.1 Preliminaries to the Execution of a Contract

A tender must not be invited unless appropriate provision for the expenditure has been included in the Council's approved capital or revenue budget for the year in which the expenditure is to be incurred (or in budgets approved in draft for the next financial year by the appropriate committee where the expenditure is to be incurred in that year) or unless the alternative financial provision is made by the Council under the Financial Rules of Procedure (Part 11). The budget must cover all preliminary and ancillary costs (which should include annual maintenance costs) and should be in the Budget and Policy Framework approved by the Council and should be contained in the appropriate Forward Plan.

### 12.6.2 Contract Thresholds

There are four thresholds to be followed when letting an order or a contract depending on the estimated contract value. Detailed procedure notes are available from Head of Finance or nominated Officer. Contracts must not be disaggregated in order to avoid thresholds. Contract thresholds shall be based on the **TOTAL** value of the contract. For example a three-year contract of £50,000 per year is valued at £150,000. In circumstances where the aggregation of annual values is not required to comply with EU or UK legislation the Head of Finance or nominated Officer can approve that the annual value shall apply for threshold classification. The thresholds do not apply to Term Contracts which allows the letting of small contracts under the umbrella of the main contract.

It is the responsibility of the Head of Service to ensure that the Council is receiving Best Value in accordance with the duty imposed under Section 3 of the Local Government Act 1999.

### 12.6.3 Threshold 1 - Contract Values

Less than £5,000 for single, non-repetitive orders ONLY – telephone quotes acceptable.

The Head of Service or their delegated Officers may place non-repetitive orders under the value of £5,000 for works, goods and services, without inviting written quotations. The Head of Service or their delegated Officers must maintain written records of telephone quotations.

### 12.6.4 Threshold 2 - Contract Values

Between £5,000 and £50,000 – written quotations required.

The Head of Service or their delegated Officers must obtain a minimum of three written quotations.

### 12.6.5 Threshold 3 - Contract Values

Between £50,000 and EU threshold.

These must be let as a competitive tender with Member involvement and advertised or taken from the appropriate Select List. A minimum of five tenders are to be invited.

The Head of Service or their delegated Officers are responsible for ensuring that the Tender Procedure is followed. Approval is required for Revenue and Capital projects in accordance with Rule 11.8 contained in the Financial Rules of Procedure.

[Additionally, Members of the Council involved in the competitive tender must follow the current protocol for member involvement in procurement in contracts valued over £50,000, available from the Contracts & Procurement Unit.]

### 12.6.6 Threshold 4 – Contracts over EU Threshold

These must be let as a competitive tender in accordance with EU Regulations. Please note statutory timetable and the need to consult with the Contracts & Procurement Unit who will ensure that tenders are invited in full compliance with Tender Procedures and EU Public Procurement Law and UK legislation.

The Head of Service or their delegated Officers must consult with the Head of Finance or nominated Officer.

[Additionally, Members of the Council involved in the competitive tender must follow the current protocol for member involvement in procurement in contracts valued over £50,000, available from the Contracts & Procurement Unit.]

### 12.6.7 Invitation to Tender

For contracts of £50,000 and over, tenderers must be selected from the approved and appropriate Select Tender Lists for the type and value of contract being let (where one exists) or in response to a public notice where there is no select list in place.

## 12.7 Tendering Procedures

### 12.7.1 Introduction

The rules set out here apply to all contracts with a value of more than £50,000 (Threshold 3 and above).

### 12.7.2 Instructions to Tenderers

The Head of Service must ensure that the tendering instructions specified in this regulation are issued to every person invited to tender, or who requests tender documents.

Every tender sum must be calculated by reference to the specification and any departure from the tender document or tender which is submitted subject to any unacceptable reservation, qualification or condition by the person submitting them may be treated as grounds for disregarding the tender.

The date, time and place for the receipt of tenders must be specified. State the day of the week as well as the date. This is a good check to ensure you are requesting the return of the tender on a day the Council offices are open.

Tenders must be submitted on a form of tender prepared and supplied by the Council.

Tenders received after the date and time specified for receipt will be disregarded.

Any other departure from these regulations may lead to the tender being disregarded.

The Council does not bind itself to accept the lowest or any tender, or to accept any tender in full.

Tenders must be submitted in a plain sealed envelope bearing details of the subject of the tender, and the date and time and place for its receipt, but no other name or mark which does or may identify the sender. It is essential that the correct Head of Service is named on the envelope so that tenders are forwarded to the correct destination on receipt.

### 12.7.3 Receipt of Tenders

All tenders for contracts must be addressed to the relevant Head of Service. It is the responsibility of the Head of Service to ensure all tenders for contracts are retained in a secure place.

All tenders received shall be stamped upon receipt with the date and time of receipt.

Tenders that are received late shall be marked "late" and shall be retained securely unopened by the relevant Head of Service after the valid tenders have been opened for a period of at least six weeks, upon which, they shall be destroyed.

Tender envelopes bearing marks identifying the sender shall also be retained securely unopened by the relevant Head of Service after the valid tenders have been opened for a period of at least six weeks, after which, they shall be destroyed.

### 12.7.4 Opening of Tenders – Refers to Sections 2b, 5 and 8

**Opening of tenders over £50,000** must be recorded on the standard form (Form F021). It is the responsibility of the Head of Service to ensure that a copy of the completed form is sent to Finance. The tender opening is arranged by the Head of Service. The opening is to be in the presence of the Head of Service. The opening is to be in the presence of the Head of Service or a nominated representative, an elected Member, and a representative of Finance. The Head of Service shall complete the tender opening form.

The standard form must be certified as correct by the elected Member present and witnessed by all other Officers present.

### **12.7.5 Tender Opening - Confidentiality and Security**

The information obtained at tender opening is confidential to those involved in the opening process, and those directly involved in the tender evaluation. This confidentiality must be maintained. If any questions arise as to a breach of confidentiality, the Monitoring Officer shall be consulted over the appropriate action. To assist with tender confidentiality opened tenders shall be kept securely in a locked cabinet/office until the contract has been awarded.

### **12.7.6 Tender Evaluation – Refers to Section 9**

The Contract Notice will state that tender award will be on the basis of either:

- a) lowest price; or
- b) the most economically advantageous tender based on criteria stated in the tender documents.

In most cases the latter will have been used and the tender documentation will clearly state the award criteria to be adopted.

### **12.7.7 Alterations to Tenders**

Alterations to a tender sum will not be permitted except as provided below.

### **12.7.8 Tenders Submitted for the Execution of Work**

In the case of tenders submitted for the execution of work and based on priced bills of quantities or schedules of approximate or provisional quantities or schedules of work which are submitted with the tender and form part of the tender documents the effect of errors in totalling, extensions or calculations or other errors or omissions discovered in the tenders will be ascertained and the details notified in writing to the tenderer who will be given the opportunity of:

- (a) confirming the offer at the original amount; or
- (b) withdrawing the offer; or
- (c) amending the offer to correct genuine errors or omissions; or
- (d) in the case of agency contracts amending his/her tender in a manner directed by the employing authority.

The tenderer will be required to confirm in writing either agreement to offer standing at the original amount or withdrawal of offer or agreement to the adjusted tender amount. This must be given in writing before the decision to award the contract is made.

Contractors failing to bid should be asked, when requested to return the tender documentation, why they decided not to bid. Their response should be recorded on the file and a copy forwarded to the Contracts & Procurement Unit for future reference.

### **12.7.9 Acceptance of Tenders**

If the tendered price cannot be met from the allocated budget or the scheme has materially altered then the Corporate Board must consider and approve a written report prior to acceptance of tender and that report should confirm that the tender offers Best Value to the Council.



The Head of Service concerned shall make suitable arrangements for recording any action taken by him/her to ensure there is an adequate audit trail explaining the reasons for decisions.

The appropriate Head of Service will be responsible for ensuring that:

- a) tenders are reviewed in a timely manner against the set criteria for accuracy and completeness;
- b) the examination is carried out by an employee independent of the tendering process;
- c) there is evidence of checks undertaken recorded on the tender documents.

## 12.8 Exceptions to Contract Rules of Procedure

### 12.8.1 General

The Head of Finance or nominated Officer shall have authority to approve partial or full exceptions to these Rules. Contact should be made with the Contracts & Procurement Unit who will liaise with the Head of Finance. The exceptions are listed in Rule 12.8.3 below. All exceptions are subject to the provisions in Rule 12.8.2 below.

### 12.8.2 Exceptions

**For contracts up to £50,000** the Head of Finance or nominated Officer must approve the exception.

**For contracts between £50,000 and £250,000** the Head of Finance or nominated Officer will consult with the Head of Legal and Electoral Services and the appropriate Corporate Director.

**For contracts between £250,000 and £500,000** the exception will be dealt with by way of recommendation to the Corporate Board after consultation with the Head of Finance or nominated Officer and with the Head of Legal and Electoral Services.

**For contracts over £500,000** the Head of Finance or nominated Officer in consultation with the Head of Legal and Electoral Services will make a recommendation to the Executive.

### 12.8.3 Exception Criteria

- (a) An unforeseen emergency arises and the work, service or supply is required urgently and would not therefore permit an invitation to tender or quote.
- (b) For technical reasons services, goods or proprietary items to be supplied can only be obtained from a limited number of sources in that a competitive tendering exercise cannot be undertaken.
- (c) Acquiring goods or services with different technical qualities would result in incompatibility or disproportionate technical difficulties.
- (d) The proposed contract is an extension of an existing contract where there is not an extension clause in the contract but subject to compliance with EU or UK legislation.
- (e) Government circular or legislation is in force which differs from these Contract Rules of Procedure.

- (f) Negotiated tender with existing contractor where it is desirable in the best interests of the Council that a tender shall be invited for the execution of works or the supply of goods and materials from a contractor already engaged by the Council for a particular reason(s).
- (g) Contracts with professional persons in which the personal skill of those persons is of primary importance, and there would be no genuine competition.
- (h) Contracts for the supply of goods or materials and services if:
  - (i) the goods or materials are sold at a fixed price and no reasonably satisfactory alternative is available;
  - (ii) the prices of the goods or materials are wholly controlled by trade organisations or government order, and no reasonably satisfactory alternative is available;
  - (iii) they are obtainable from only a limited number of Contractors, but in such case, a reasonable number of those Contractors shall be invited to submit tenders;
  - (iv) they are approved by a consortium of which the Council is a Member, except the Central Buying Consortium where the Council has adopted the Standing Orders of Hampshire County Council for the purposes of our membership and so purchases made through this route are exempt from these regulations;
  - (v) for other reasons there would be no genuine competition.
- (i) Where the work to be executed or the goods or materials to be supplied consists of repairs to, or the supply of parts for, existing proprietary machinery or plant.

#### **12.8.4 Record Retention – Refers to Section 1**

Unsuccessful Tenders will be held securely by the issuing Service Unit for a period of not less than two years. After the stated period the tenders may be destroyed.

Expired Contracts may be archived upon expiry and may be destroyed after 6 years or 12 years if the Contract is under seal.

#### **12.8.5 Contracts Register – Refers to Section 6**

The Responsible Head of Service must formally notify the Head of Finance of the award of all contracts above £50,000 in value. This data shall be used to compile a register of Council contracts.

The data shall be used in the completion of the annual return of EU Procurement statistics and in collaborative opportunities with neighbouring authorities including those who are part of the Thames Valley Procurement Forum and the South East Centre of Excellence.

#### **12.8.6 Social Services - Residential/Nursing Care**

The Corporate Director (Community Care and Housing) shall have authority to approve exceptions to these Contract Rules of Procedure where spot purchasing of residential/nursing care is restricted to providers who are included on the List of

Residential and Nursing Care Accredited Providers, the conditions of which include prices specified by the Executive. Orders can be placed with a single provider.

(The Contracts & Procurement Unit need a copy of the decision for the exceptions file.)

#### **12.8.7 Social Services - Social Care Services**

The Corporate Director (Community Care and Housing) shall have authority to approve exceptions to these Contract Rules of Procedure where spot purchases of domiciliary care, is restricted to providers who are included on the Accredited List of Domiciliary Care Providers and the purchase is for an individual's care package which is under £250 per week. Orders can be placed with a single provider.

(The Contracts & Procurement Unit need a copy of the decision for the exceptions file.)

Value for money aspects can be demonstrated in inviting single tenders from the voluntary sector, especially in the case of an organisation providing a specialist service.

The existing voluntary sector provider has entered into a long term lease or similar arrangement or has made substantial capital investment in a building for the express purpose of providing a service under contract to the Council.

#### **12.8.8 Social Services - Children and Clients with Special Needs**

The Corporate Director (Children and Young People) shall have authority to approve exceptions to these Contract Rules of Procedure for individual spot purchases for residential care for children or clients with special needs, where urgency and service need are integral to the provision.

#### **12.8.9 Educational Establishments**

Where a Governing Body of a school intends to enter into a contract for works, supply of goods or service over the value of £100,000, the Headteacher may follow the school's local Procurement Procedure but must seek advice from the Head of Finance or nominated Officer regarding the restrictions imposed by EU and UK legislation.

Where a Governing Body of a school intends to enter into a contract for works, supply of goods or services up to a value of £100,000, the Headteacher may follow the school's local Procurement Procedure, where one exists.

#### **12.8.10 Peacetime Emergency Plan**

Whenever appropriate the Chief Executive is authorised to operate the Major Incident Plan in an emergency and to incur any necessary expenditure. At times when the Major Incident Plan is brought into operation these Contract Rules of Procedure are suspended. A Corporate Director will act in the place of the Chief Executive if a Chief Executive is not in post or he/she is unwell or unobtainable.

### **12.9 Engagement of Consultants**

#### **12.9.1 Definition**

Consultants and advisors include any expertise, support, advice or formal consultancy that is obtained outside the Council for a fee or charge.

Consultants and advisors may be used in the following areas (and this list is not exhaustive):-

- Advice on Best Value Reviews and evaluating tenders
- Policy and Strategy reviews
- Organisational and service reviews
- Job evaluation
- Financial planning or analysis
- Feasibility studies
- Marketing and business planning
- Public relations
- Computer and IT strategy
- Managing change
- Senior staff recruitment, selection and training
- Individual staff management e.g. community care
- Project Management
- Specialist advice relating to architectural, design projects
- Construction and regeneration projects etc.

Temporary agency staff (for example, for social care work, to provide maternity cover, etc) are not consultants or advisors and should be procured using the corporate contract for agency staff.

### 12.9.2 Guidance

Corporate Procurement and Contracts Unit has produced Guidance on use of consultants and advisors. This can be obtained from that office. This incorporates a form which must be completed and signed by the relevant Head of Service.

### 12.9.3 Procurement Process

- All consultants and advisors must be procured under the applicable tendering Rules at 12.6 and 12.7.
- All consultants and advisors must enter into a written contract with the Council in a form to be approved by the Head of Legal and Electoral Services. Such contracts come under the contract for services under the Rules and appropriate procedures under 12.6 and 12.7 must be followed and recorded in writing.

### 12.9.4 General

A worker will always be employed on a contract of employment unless the circumstances of the engagement fully support an alternative arrangement. The Payroll Manager **must** be consulted because of the potential tax implications of these arrangements.

No consultants shall be engaged unless the costs can be met from the allocated budget for the scheme/project or contract. The costs do not need to be allocated

specifically for employing consultants in the budget, any part of the budget may be used to employ consultants provided the overall budget is not exceeded.

#### **12.9.5 Counsel**

Within budget, the Head of Legal and Electoral Services shall have discretion to select Counsel, obtain Counsel's opinion and brief Counsel whenever it is considered expedient in the Council's interest to do so.

#### **12.9.6 Evaluation against Predetermined Criteria**

Tender bids will be evaluated against predetermined criteria relevant to the particular circumstances e.g.:

- Relevant/recent experience;
- Adequacy of resource/materials available;
- Quality of work;
- Reliability/timeliness;
- Comparable cost.

#### **12.9.7 Appraisals of Work**

Tenderers may be asked to submit appraisals of their work from other clients to assist in the evaluation.

#### **12.9.8 Letter of Engagement/Contract**

The letter of engagement/contract for services sent to the approved Consultant must contain all of the following clauses (unless exceptions are agreed by the Corporate Director). The Head of Finance or nominated Officer and Head of Legal and Electoral Services or nominated Officer will provide advice on this issue.

#### **12.9.9 Clauses for Letter of Engagement/Contract**

- The Consultant must agree that all documents and materials produced as a result of their engagement under the contract are the property of the Council and that copyright in all documents and materials so produced vests with the Council.
- The Consultant will be responsible for the provision of all major items of equipment and materials necessary to complete the task.
- The Consultant will be free to engage others considered necessary to complete the task at his/her own expense – but such sub consultants must be approved by the Council and must have suitable professional indemnity insurance.
- The Consultant will be responsible for the correction of faulty or incomplete work at his/her own expense.
- The Consultant will be responsible for determining how the work will be done.
- The agreed fee will be paid upon satisfactory completion of the specified work (or in instalments upon complete stages as agreed).

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Part 12 Contract Rules of Procedure

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- The Consultant will have no right to terminate the engagement until all contracted work is completed satisfactorily provided that the Council is not at fault in causing the termination.
- The Consultant will be personally liable for all claims against him/her emanating from, or connected with this engagement.
- The Consultant will be personally responsible for all tax and National Insurance liabilities arising from the engagement.
- The Consultant must have professional indemnity insurance of a minimum of £5,000,000.
- The Consultant must comply with these Rules of Procedure (and for the purposes of the Code of Conduct referred to in the Council Rules of Procedure, they shall be deemed to be an "Officer") subject to the modifications that the procedure to be followed in inviting and opening tenders shall be approved in advance by the appropriate Head of Service and the Head of Finance or nominated Officer.
- The Consultant must at any time during the carrying out of the contract, produce to the appropriate Head of Service or a designated representative, on request, all the records maintained by them in relation to the contract.
- The Consultant must on completion of a contract, transmit all records (or copies) to the appropriate Head of Service.

### 12.9.10 Commissioning Manager

The manager responsible for the running of the contract in the service area ("the Commissioning Manager") will be responsible for monitoring progress of the contracted work.

The Commissioning Manager must report to his/her Head of Service if there are indicators that the work may not be completed within specified time limits or to quality standards.

### 12.9.11 Termination of Contract

Decisions to terminate a contract with a consultant before completion must only be taken in consultation the Contracts & Procurement Unit, Head of Legal and Electoral Services and the agreement of the Corporate Director. Similarly, a decision to withhold agreed payment on completion of contracted work, or at an agreed stage, can only be made by the Corporate Director in consultation with the Contracts & Procurement Unit and the Head of Legal and Electoral Services.

### 12.9.12 Invoices

Invoices from the Consultant must be verified by the Commissioning Manager as being within the agreed contract terms, and must be endorsed by the Head of Service or his/her delegated Officer before being submitted for payment.

## 12.10 Entering into a Contract

### 12.10.1 Contract Form

All contracts entered into by the Council must be in writing in a form approved by the Head of Legal and Electoral Services or his delegated Officer. Standard Forms of Contract must be used wherever possible.

Where a Standard Form of contract cannot be used, or a Standard Form is to be amended, the Form of Contract shall be prepared/amended by the Contracts & Procurement Unit in conjunction with the Head of Legal and Electoral Services. All Forms of Contract must specify inter alia:

- (a) the services, supplies, work, materials, matters or things to be provided, had, or done;
- (b) the price to be paid, with a statement of discounts or other deductions;
- (c) the time or times within which the contract is to be performed;
- (d) provision for the payment of liquidated damages, where the contractor fails to complete the contract or complete within the authorised timescales (where applicable);
- (e) a clause empowering the Council to cancel the contract in circumstances of corruption, and to recover any loss resulting from such cancellation;
- (f) a requirement for compliance with current legislation relating to health and safety at work, sex, race and disability discrimination and in general equalities legislation. Following is a non-exhaustive list of equalities legislation:
  - Equal Pay Act 1970 (Amended)
  - Sex Discrimination Act 1975;
  - Race Relations Act 1976;
  - Data Protection Act 1984;
  - Disability Discrimination Act 1995;
  - Human Rights Act 1998;
  - Freedom of Information Act 2000;
  - Race Relations (Amendment) Act 2000;
  - Employment Equality (Religion or Belief) Regulation 2003;
  - Employment Equality (Sexual Orientation) Regulation 2003;
  - Race Relations Act 1976 (Amendment) Regulation 2003;
  - Civil Partnerships Act 2004;
  - Environmental Information Regulations 2004;
  - Gender Recognition Act 2004;
  - Disability Discrimination Act 2005;
  - Disability Discrimination Amendment Act 2005;

- The Employment Equality (Sex Discrimination) Regulations 2005;
  - Employment Equality (Age) Regulations 2006;
  - Equality Act 2006;
  - Racial and Religious Hatred Act 2006;
- (g) a clause requiring full indemnity of the Council (usually provided by Public Liability Insurance);
- (h) a clause requiring a performance bond (where applicable);
- (i) a clause requiring contractors to warrant that performance and functionality will not be affected by date or other information technology functions;
- (j) a clause which reflects the Council's environmental and sustainability policies (where appropriate);
- (k) a clause permitting the use of information for preventing and detecting fraud (where appropriate).
- (l) a clause requiring the contractor to supply sufficient information in a timely manner to enable the Council fully and properly to comply with requests for information under the Data Protection Act 1998, Freedom of Information Act 2000 and the Environmental Information Regulations 2004;
- (m) a clause requiring the contractor to keep details of the contractual arrangements confidential and not to disclose the same without the consent of the Council;
- (n) a clause requiring contractors to co-operate with enquiries by overview and standards committees, Ombudsmen, the Standards Board for England, the Council's internal and external auditors, Government departments and the European Commission and other legally-empowered persons;
- (o) a clause detailing the liabilities and responsibilities relating to workforce matters where the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply; and
- (p) in the case of the engagement of professional advisers, a requirement that the adviser shall at all times be fully covered by professional indemnity insurance and that, in relation to that contract, he or she shall confirm to the requirements of these Contract Rules of Procedure, the Council's Financial Rules of Procedure and any direction from the Council, the Executive, a Committee or duly authorised officer.

#### 12.10.2 Contract Presentation

**Contracts under £5,000** shall be in writing on an official order signed by the designated purchasing Officer.

**Between £5,000 and £50,000** contracts and one-off purchases shall be in writing in the form of a contract approved by the Contracts & Procurement Unit unless it is a standard form of contract with a specification attached if necessary.

**All contracts over £50,000 to EU threshold** - the form of contract must be approved and signed by the Head of Legal and Electoral Services who shall retain all relevant



contract documents. The Head of Legal and Electoral Services must witness the affixing of the common seal of the Council to any such contract.

**EU and over** - the form of contract must be approved and signed by the Head of Legal and Electoral Services who shall retain all relevant contract documents. All contracts over the EU threshold will be sealed.

### **12.10.3 Standard Clauses**

Every contract shall include the standard clauses set out in Form F020A (available from the Contracts & Procurement Unit).

In every written contract for the execution of work or the supply of goods, materials or services, a clause shall be inserted to secure that the Contractor shall be prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever, any portion of this contract without the written permission of the Council.

### **12.10.4 Sub-letting**

Sub-letting of any parts of the contract except to the extent permitted in writing by the appropriate Head of Service shall be prohibited.

The contractor shall be responsible for the observance of this Regulation by sub contractors employed in the execution of the contract.

### **12.10.5 Provision for Liquidated Damages**

Every contract which is estimated to exceed £50,000 in value or amount, and is for the supply of services, execution of works (or for the supply of goods or materials by a particular date or series of dates) shall provide for liquidated damages unless the Head of Legal and Electoral Services and/or the Head of Finance or nominated Officer determines that such a provision is not required. The amount to be specified in each such contract shall be determined by the Head of Service concerned in consultation with the Head of Legal and Electoral Services and the Head of Finance or nominated Officer.

## **12.11 Legal Considerations**

### **12.11.1 Relaxation of Indemnities**

No relaxation of full indemnities releasing the Council from all liability whether provided by public liability insurance or other instrument should be allowed unless authorised in writing by the Head of Legal and Electoral Services or the Risk Manager, the Head of Finance or nominated Officer.

### **12.11.2 Risk Assessments**

Where a contract is estimated to exceed £50,000 in value or amount and is for the execution of works (or for the supply of goods or materials by a particular date or series of dates) the relevant Head of Service must undertake a risk assessment, in conjunction with the Head of Finance or nominated Officer to determine whether a Performance Bond or other suitable security should be required from the tenderers. This is to provide sufficient security for the due performance of the contract. A record of the risk assessment must be retained on the contract file for inspection.

Where it is felt necessary, such bonds required shall be for an amount equal to 10% of the value of the contract, and shall be taken up by the contractor with an insurance

company, bank or other recognised financial institution approved by the Council. The bond shall be released on practical completion of the work.

### 12.11.3 Contractor's Indemnities and Tax

It is a general principal that all contracts must "hold harmless" West Berkshire Council, its Members and Officers, against any loss or claim, however caused, arising from any contract and/or its execution, and that the Contractor will indemnify West Berkshire Council against all losses/demands/claims howsoever arising.

### 12.11.4 Need for Insurance

Every contract should be assessed for risk. If the risk assessment identifies the need for insurance the Head of Service must:

- (a) in consultation with the Head of Finance or nominated Officer set adequate levels of insurance cover. This includes employer's liability, public liability and any other as determined by the needs of the particular contract;
- (b) in consultation with the Head of Finance or nominated Officer ensure that the required insurances are in fact held by the contractor and that the policies concerned are renewed, if necessary, during the period required;
- (c) in consultation with the Head of Finance or nominated Officer who must ensure the contractor's status under the Inland Revenue Construction Industry Tax Deduction Scheme (for construction contracts);
- (d) in consultation with the Head of Finance set a consultants' professional indemnity insurance (for Consultancy agreements), minimum £5,000,000 cover unless the Risk Manager feels that a greater amount is required if so determined by the risk assessment process.

**[Note: If the Contractor has been through the vetting process and is on the Approved Supplier Database then some of these documents, renewable on an annual basis, may already be held by the Contracts & Procurement Unit]**

### 12.11.5 Sealing of Documents

The Common Seal shall be in the Custody of the Head of Legal and Electoral Services and kept in a safe place at his/her discretion.

The Common Seal of the Council may be affixed to any document that has been approved by a resolution of the Council; or of the appropriate Committee or an Officer to which the Council or the Executive has delegated its powers on its behalf, provided that a resolution of the Council or of the appropriate Committee or Officer where that appropriate Committee or Officer has the appropriate authority authorising the acceptance of any tender, the purchase, sale, letting or taking of any property, the issue of stock, the presentation of any petition, memorial or address, the making of any rate, contract or order, or any other matter or thing, shall be a sufficient authority for sealing any document necessary to give effect to the resolution.

Provided also that the Common Seal of the Council may be affixed to any:

- (a) Petition to be presented to Parliament against the promotion of any Bill or confirmation of any Provisional Order which the Council oppose.
- (b) Mortgage in respect of a loan arranged by the Head of Finance or nominated Officer under the powers of Heads of Service approved by the Council.

- (c) Incomplete form of transfer for the duly authorised sale of securities by the Council as necessary for the purposes of dealing with stocks and shares in accordance with the Stock Transfer Act 1963.

### 12.11.6 Affixing of Seal

The affixing of the seal shall be attested in writing by the Head of Legal and Electoral Services, or an Officer duly designated by him/her in accordance with the delegated powers conferred by the Council. An entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for the purpose and shall be signed by the person attesting the sealing.

### 12.11.7 Signature of Documents

Where any document will be a necessary step in legal proceedings on behalf of the Council it shall, unless any enactment otherwise requires or authorises or the Council shall have given the necessary authority to some other person for the purpose of such proceedings, be signed by the Head of Legal and Electoral Services.

Where it becomes necessary to execute any document on behalf of the Council not required by law to be under Seal, the Head of Legal and Electoral Services or an Officer designated by him/her in accordance with the delegated powers conferred by the Council shall be deemed to have authority to sign such a document accordingly. A register of such documents shall be kept by the Head of Legal and Electoral Services or Officer duly designated by him/her.

## 12.12 Contract Administration

### 12.12.1 Payment by Instalments

Payments to contractors on account of contracts shall be made on a certificate issued by the Head of Service (or private architect, engineer or consultant where engaged by the Council) as appropriate or by another Officer nominated by him/her in writing for the purpose. Each payment must be checked by a colleague and the check should be evidenced by initialling. Within each Service an **independent** sampled check should be done, on a rotation basis, of 5% of interim payments.

### 12.12.2 Variation to Contracts

Subject to the provisions of the contract in each case every variation shall be authorised in writing by the Head of Service (or private architect, engineer or consultant) and Head of Finance or by another Officer nominated by him/her in writing for the purpose.

Any such extra or variation shall include the estimated additional cost arising from the variation and the method of payment to be applied i.e. contractual rates, agreed rates or reimbursable/daywork (please note that payment on a reimbursable/daywork basis should only be used when an item cannot be physically measured/quantified). When calculating the cost of variations cross referencing to Bill of Quantities rates or daywork sheets etc must be completed so as to provide a clear audit trail. Where rates used depart from those in the contract or others previously agreed notes should be made for the reason for their use.

Where the extra or variation, or total of extras or variations to date, exceed 10% of the contract sum or £50,000 whichever is the greater the approval of the Head of Finance

or nominated Officer shall be required. Any variation with a financial implication should be discussed with the group accountant.

### **12.12.3 Final Certificate and Statement of Account**

As soon as possible after practical completion and before issuing the final certificate under a contract, the Head of Service or consultant concerned shall obtain from the Contractor a full and detailed final account contract statement in respect of the claim for the whole work, materials and things executed and delivered under the contract, with such receipted vouchers as may be necessary. Any adjustments made must be recorded and notes must be made of queries, discussions and actions taken during the process of calculating and agreeing the final account. The Head of Finance or nominated Officer shall be notified of the name of the account, the date the final sum is due, the final value of contract and the tender value.

The final certificate must be checked by the Head of Service or a person nominated by them and they should ensure that all defects have been actioned and documented.

The Head of Finance or nominated Officer may, to the extent he/she considers necessary, examine any final account contract statement and be entitled to make all such enquiries and receive such information and explanations as may be required in order to satisfy him/herself as to the accuracy of the account.

### **12.12.4 Claims from Contractors**

Claims from contractors in respect of matters not clearly within the terms of any existing contract shall be referred to the Head of Legal and Electoral Services and Corporate Contract and Procurement Manager for consideration of the authority's legal liability and, where necessary, to the Head of Finance or nominated Officer for financial consideration before a settlement is reached.

### **12.12.5 Reporting of Final Contract Costs**

A contract close-out report should be sent to the Corporate Contract and Procurement Manager detailing the contractors performance during the term of the contract.

The estimated final cost of a contract shall be reported to the Executive within four months of the issue of the practical completion certificate comparing the probable final and originally estimated costs, together with an explanation of any differences.

**[Note: The Contracts & Procurement Unit can be contacted on (01635) 519411 or email the Helpdesk.]**

### **12.12.6. Performance Manager**

Each Head of Service must ensure that consistent and robust monitoring takes place of all contracts in their Service and that this is fully recorded. Where possible a performance management clause must appear in all contracts at the time of procurement making performance management a contractual obligation.

**Appendix A (12.3.4 (l) refers)****ALCATEL JUDGEMENT – IMPLICATIONS FOR CONTRACT AWARD PROCEDURE**

The Government has announced that, with immediate effect, all procurements subject to the full EU procurement regime must be subject to a mandatory standstill period of at least 10 days between declining unsuccessful tenders and the actual award of contract. This standstill period is to allow unsuccessful tenderers the opportunity to challenge an award decision. Successful objections made during the standstill period could ultimately lead to award decisions being overturned.

The announcement follows the UK acceptance of a decision made by the European Court of Justice in the Alcatel case. The new procedure requires that as soon as the award decision has been made:

1. As soon as possible after a decision has been made, unsuccessful tenderers must be notified individually in writing, confirming:
  - (a) the award criteria,
  - (b) where appropriate the unsuccessful tenderers score against those criteria,
  - (c) where appropriate the winning score,
  - (d) and the name of the successful bidder.

The 10 day calendar day standstill period begins from the day after the notification is issued. It is recommended letters are always emailed or faxed to avoid disagreements about when they are actually received. If the last day of the standstill period falls on a non-working day the period must be extended to the next working day.

2. Tenderers may request in writing reasons as to why they were unsuccessful. If this request is made by midnight at the end of the 2nd working day of the standstill period this information must be dispatched at least 3 full working days before the end of the standstill period. This information must include the characteristics and relative advantages of the successful tenderer. If the information can not be provided within this timescale, the 10 day period will need to be extended.

NB Commercially sensitive details e.g. pricing must NOT be divulged during debriefing. Advice on debriefing is available from either the Contracts & Procurement Unit or Legal Services.

3. Where the request for information is not received by the end of the 2 working day period the information must be provided within 15 days. There is no requirement to extend the standstill period if a request is made after the 2 working day period.
4. A letter to the successful tenderer can also be sent at the same time as letters are sent to unsuccessful tenderers. The letter must be prepared in consultation with legal services and cannot indicate to the contractor that you will enter into a contract with them.
5. If no legal challenge has been launched by the end of Day 10, the contract award letter may be issued or contract signed and sent off to the successful tenderer.

Part 12 Contract Rules of Procedure

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6. If a legal challenge is threatened, you must consult the Head of Legal and Electoral Services and then await the outcome of the application to the court before concluding the contract.
7. A contractor who is unsuccessful at the initial stages of the tender (PQQ) can also make a request in writing for information. This information must be provided within 15 calendar days and will need to include the reason why the contractor was not successful and any reason for the Council's decision that the contractor did not meet technical specifications or performance by an equivalent means to that set out in the tender documents.
8. Please note that paragraphs 1, 2 and 3 do not apply to an award of a contract under a framework agreement (but will apply to the award of a framework agreement itself) or a dynamic purchasing system. There are slightly amended requirements if you use the open procedure and the Contracts & Procurement Unit or Legal should be consulted in this instance.

In the meantime or in any case of doubt consult the Head of Finance or Head of Legal and Electoral Services.

Andy Walker  
Head of Finance

David Holling  
Head of Legal & Electoral Services

<b>Title of Report:</b>	<b>Delegation of Authority to accept Government grant terms and conditions on the Council's behalf.</b>	<b>Item 6</b>
<b>Report to be considered by:</b>	Governance and Audit Committee on 9 September 2008 Council on 23 September 2008	

**Purpose of Report:** To recommend a delegation of authority to the Head of Finance (s151 Officer) to accept Government grant terms and conditions on the Council's behalf.

**Recommended Action:** Government and Audit Committee to agree to the delegation of authority and pass to Full Council for ratification.

**Reason for decision to be taken:** To avoid excessive bureaucracy.

**Key background documentation:** None

The proposals contained in this report will help to achieve the following Council Plan Theme:

**CPO13 - Value for Money**

The proposals contained in this report will help to achieve the above Council Plan Themes and Outcomes by:

Reducing the bureaucracy and delays in processing grant applications.

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<b>Address:</b>	

**Contact Officer Details**

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<b>E-mail</b>	awalker@westberks.gov.uk
<b>Address:</b>	

**Implications**

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<b>Policy:</b>	n/a
<b>Financial:</b>	n/a
<b>Personnel:</b>	n/a
<b>Legal:</b>	Proposed change to Constitution
<b>Property:</b>	n/a
<b>Risk Management:</b>	n/a



## Executive Report

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### 1. Introduction

- 1.1 The Constitution already delegates an extensive range of authorities to the Council's Head of Finance (s151 Officer) as detailed at section 3.5 of the Constitution. However, there is no existing provision to allow the Head of Finance to accept terms and conditions attached to a Government grant (eg Section 31 Grant for Major Schemes) on behalf of the Council and this report recommends that the Constitution is amended to allow this.

### 2. Recommendations

- 2.1 That the authority to accept terms and conditions attached to any Government grants (eg s31 grant for Major Schemes) is delegated to the Head of Finance and is included in the list of delegations at section 3.5.3 of the Constitution.
- 2.2 The exercise of the delegated authority by the Head of Finance will be undertaken after consultation with the Head of Legal and Electoral (Monitoring Officer).

### 3. Conclusion

- 3.1 Governance and Audit Committee are asked to support the recommendations and invite Full Council to ratify the recommendations.

## Appendices

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None

## Consultees

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**Local Stakeholders:** N/A

**Officers Consulted:** Corporate Board

**Trade Union:** N/A



<b>Title of Report:</b>	<b>Change to the Constitution</b>	<b>Item 7a</b>
<b>Report to be considered by:</b>	Governance and Audit on 09 September 2008 Council on 23 September 2008	
<b>Forward Plan Ref:</b>	C1671	

**Purpose of Report:** To introduce a new rule governing the management of amendments at Council that have financial implications.

**Recommended Action:** To introduce a new rule in relation to Part 4 of the Council's constitution in relation to the management of amendments which have financial implications.

**Reason for decision to be taken:** To ensure that any amendments which have financial implications are first cleared by the section 151 Officer in advance of the meeting.

**Key background documentation:** Council's Constitution

***(Please delete this text and the themes/outcomes that are not relevant)***

The proposals contained in this report will help to achieve the following Council Plan Theme(s):

**CPO16 - Excellent Performance Management**

The proposals contained in this report will help to achieve the above Council Plan Themes and Outcomes by ensuring that the Council's Procedure Rules continue to be effective and efficient in managing the Council's business.

<b>Portfolio Member:</b>	Councillor Jeff Beck
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<b>E-mail Address:</b>	J Beck@westberks.gov.uk
<b>Date Consulted:</b>	Please include date Portfolio Holder has agreed this report.

<b>Contact Officer Details</b>	
<b>Name:</b>	Andy Day
<b>Job Title:</b>	Head of Policy and Communication
<b>Tel. No.:</b>	01635 519459
<b>E-mail Address:</b>	aday@westberks.gov.uk

## Implications

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**Policy:** The report accords with the Council's policy of regularly updating the Council's Constitution to ensure that it supports the most effective and efficient decision making.

**Legal:** The recommendation in this report is in accordance with the Local Government Act 2000 and associated regulations.

***Please delete the call-in box below if your report will not progress beyond Corporate or Management Board.***

***To put a cross in a box - double-click on the box and select 'checked'***

Is this item subject to call-in?		No:
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		√
Delays in implementation could have serious financial implications for the Council		<input type="checkbox"/>
Delays in implementation could compromise the Council's position		<input type="checkbox"/>
Considered or reviewed by OSC or associated Task Groups within preceding six months		<input type="checkbox"/>
Item is Urgent Key Decision		<input type="checkbox"/>

## Executive Summary and Report

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### 1. Introduction

- 1.1 Part 4 of the Council's constitution covers the Procedure Rules relation to meetings of full Council. Section 4.11 of Part 4 deals with the Rules of Debate.
- 1.2 At the present time the Constitution permits Members to raise an amendment on an item at Council on the night of the meeting. Whilst this is acceptable in the majority of cases amendments which have financial implications should have the approval of the Council's Section 151 Officer to ensure that the amendment does not compromise the Council's financial position.
- 1.3 In relation to the Budget meeting of Council (March meeting) a process is already in place in managing alternative budget proposals.

### 2. Proposals

- 2.1 It is suggested that the under-mentioned Procedure Rule is introduced to Paragraph 4.11.7 as follows:

"That amendments relating to in year reports or motions at Council which have financial implications should be the subject of discussion with and receive the approval of the Council's Section 151 Officer in advance of the meeting to ensure that the amendment does not compromise the Council's financial position".

### 3. Conclusion

- 3.1 That a new Procedure Rule be introduced into Part 4 of the Council's Constitution as set out above.

### Consultees

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None

### Consultees

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**Local Stakeholders:** N/A

**Officers Consulted:** David Holling, Nick Carter, Andy Walker

**Trade Union:** N/A



<b>Title of Report:</b>	<b>Constitutional Amendments</b>	<b>Item 7b</b>
<b>Report to be considered by:</b>	Council on 23 September 2008	
<b>Forward Plan Ref:</b>	C1671	

**Purpose of Report:** To seek the Committee's approval to revise the Council's Constitution in respect of speaking rights at Full Council meetings and Overview and Scrutiny Commission meetings.

**Recommended Action:** It is recommended to Council that:  
The Constitution is amended to protect speaking rights of Members who have reserved their right to speak at Full Council meetings in relation to closure motions.  
The Constitution is amended to allow Members of Council to speak on called-in items at meetings of the Overview & Scrutiny Commission with the consent of the Chairman of the Commission.

**Reason for decision to be taken:** To ensure that debates at Full Council are properly balanced and democratic in nature.  
To allow all Members of Council to engage in the Scrutiny process and to enable the Overview and Scrutiny Commission to obtain the benefit of all Members' expertise in the call in cycle.

**Key background documentation:** West Berkshire Council's Constitution,;  
Section 4.11 (Council Rules of Procedure – Rules of Debate)  
Section 6.4 (Overview & Scrutiny Commission Rules of Procedure – Call In)

The proposals will help achieve the following Council Plan Outcomes:

- CPO12 - Including Everyone**
- CPO13 - Value for Money**
- CPO14 - Effective People**
- CPO15 - Putting Customers First**
- CPO16 - Excellent Performance Management**

The proposals contained in this report will help to achieve the above Council Plan Themes and Outcomes by engaging all Members of Council in the policy making and scrutiny processes of the Council, improving the quality of these processes and through this making the Council more effective in its service delivery.

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<b>Portfolio Member:</b>	Councillor Graham Jones
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## Implications

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<b>Policy:</b>	Implications for the Council's Constitution.
<b>Financial:</b>	None.
<b>Personnel:</b>	None.
<b>Legal:</b>	Legal implications for the Council's Constitution.
<b>Property:</b>	None.
<b>Risk Management:</b>	None.
<b>Equalities Impact Assessment:</b>	Increasing equality between Members' speaking rights.

<b>Is this item subject to call-in?</b>	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box (double-click on the box & click next to 'checked'):		
The item is due to be referred to Council for final approval	<input checked="" type="checkbox"/>	
Delays in implementation could have serious financial implications for the Council	<input type="checkbox"/>	
Delays in implementation could compromise the Council's position	<input type="checkbox"/>	
Considered or reviewed by OSC or associated Task Groups within preceding 6 months	<input type="checkbox"/>	
Item is Urgent Key Decision	<input type="checkbox"/>	



## Executive Report

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### 1. Introduction

- 1.1 The report proposes two changes to the Council's Constitution in order to improve speaking rights of Members of the Council in two forums; namely Full Council and the Overview & Scrutiny Commission.

### 2. Proposals

- 2.1 To amend Sections 4.11.12 'Closure Motions' and 4.11.13 'Seconding of Closure Motion' which currently read:

#### 4.11.12 Closure Motions

*At the conclusion of a speech of another Member, a Member may move without comment that:*

- (a) The debate be adjourned;*
- (b) The meeting be adjourned;*
- (c) The Council proceed to the next business; or*
- (d) The question be put*

#### 4.11.13 Seconding of Closure Motions

*Should the Closure Motion be seconded, the Chairman of Council shall proceed as follows if in his/her opinion the question before the meeting has been sufficiently discussed:*

- in the case of a Motion under (a) to (c) in 4.11.12 above, invite the mover of the original Motion to reply and then put the Closure Motion to the vote; or*
- in the case of a Motion under (d) in 4.11.12 above, put the Closure Motion to the vote.*

To read instead (changes are underlined):

#### 4.11.12 Closure Motions

*At the conclusion of a speech of another Member, a Member may move without comment that:*

- (a) The debate be adjourned;*
- (b) The meeting be adjourned;*
- (c) The Council proceed to the next business; or*
- (d) The question be put*

#### 4.11.13 Seconding of Closure Motions

*Should the Closure Motion be seconded, the Chairman of Council shall proceed as follows if in his/her opinion the question before the meeting has been sufficiently discussed:*

- *In the case of a Motion under (a) to (c) in 4.11.12 above, if the seconder of the original Motion has reserved his/her right to speak invite he/she to exercise this right, and then invite the mover of the original Motion to reply and then put the Closure Motion to the vote; or*
- *In the case of a Motion under (d) in 4.11.12 above, if the seconder of the original Motion has reserved his/her right to speak invite he/she to exercise this right, and then put the Closure Motion to the vote.*

2.2 To amend Section 6.4.6 'Review of Decision' which currently reads:

*Any Member of Council who has signed a call-in request may attend the meeting of the Commission when the decision is reviewed and may speak to that item of business. The Commission cannot overturn the decision which it is reviewing but may either concur with the decision (in which case it will take immediate effect) or refer it back to the Executive for further consideration. If the Commission is of the opinion, having taken advice from the Council's Section 151 Officer that a decision is outside the Budget and Policy Framework approved by the Council, the Commission may refer the decision to the Council. The Council may concur with the decision (in which case it will take immediate effect) or refer it back to the Executive for further consideration.*

To read instead (changes are underlined):

*Any Member of Council who has signed a call-in request may attend the meeting of the Commission when the decision is reviewed and may speak to that item of business. If a Member of Council wishes to speak to a called-in item, but has not signed the call-in request, he can request the permission of the Chair of the Commission to speak to the item, giving 24 hours notice in advance of the meeting in question. The Commission cannot overturn the decision which it is reviewing but may either concur with the decision (in which case it will take immediate effect) or refer it back to the Executive for further consideration. If the Commission is of the opinion, having taken advice from the Council's Section 151 Officer that a decision is outside the Budget and Policy Framework approved by the Council, the Commission may refer the decision to the Council. The Council may concur with the decision (in which case it will take immediate effect) or refer it back to the Executive for further consideration.*

### **3. Conclusion**

- 3.1 Members' contributions at Full Council and Overview and Scrutiny Commission are a valuable part of both the policy making and scrutiny cycles which help keep West Berkshire Council effective, democratic and accountable to local residents.
- 3.2 As such, the Constitution governing the rules of procedure of both of these bodies can and should be simply amended in the manner outlined in section 2 of this report. These amendments will better facilitate balanced debate and recognise that Members' own expertise outside of their role as a Councillor has a part to play in making the Council as effective as it can be.

**Appendices**

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None.

**Consultees**

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**Local Stakeholders:** Members of Council.

**Officers Consulted:** Katharine Sheehan, Moira Fraser, David Holling, Andy Day.

**Trade Union:** N/A.



<b>Title of Report:</b>	<b>Review of Area Forums</b>	<b>Item 8</b>
<b>Report to be considered by:</b>	Council	
<b>Date of Meeting:</b>	23 September 2008	
<b>Forward Plan Ref:</b>	C1642	

**Purpose of Report:**

To provide feedback on the consultation into the review of Area Forums and to update Corporate Board on the recommendations of the Area Forum Task Group.

**Recommended Action:**

Corporate Board to note the recommendations of the Task Group prior to consideration at Governance and Audit and Full Council.

The Task Group recommended that:

- (a) District Parish Conferences to be enhanced and three or four meetings to be held per annum at different localities across the District and where appropriate arrangements be made for localised discussions to take place.
- (b) A new Public Engagement Model based on Senior Members (both parties) and Officers attending and having a high profile presence at five events / locations a year to be introduced.
- (c) Individual Town and Parish Councils or groups be requested to consider whether they would wish to enhance their own public engagement model should they consider this to be relevant or appropriate.
- (d) In relation to participatory budgeting, further work be undertaken into the feasibility of introducing a locality based service delivery model to those areas in most need across the District.
- (e) Subject to the results of (d), the Executive be asked to review the existing Capital Grant system to enable resources to be directed in those areas in most need.
- (f) Further work be undertaken in relation to establishing Virtual Forums.

- (g) **Any new engagement model introduced be subject to a review in eighteen months time.**
- (h) **That Policy and Communication staff introduce appropriate measures to manage outstanding Area Forum actions and that Area Forums, in their current format, be discontinued forthwith.**
- (i) **The Overview and Scrutiny Commission be asked to monitor and review the outstanding Area Forum action plans to ensure completion.**

**Reason for decision to be taken:**

To ensure that the most appropriate public engagement model is in place which affords a larger number of residents to engage with the Council.

**Key background documentation:**

- Minutes of the Area Forum Review Task Group 04 June 2008.
- Minutes from the Area Forum Review Task Group on 17 July 2008
- Minutes of the Area Forum Review Task Group 26 August 2008
- Correspondence from Parish Councils and residents
- Developing the Kennet and Pang Area Forum to increase the involvement of the public and partner organisations. Evaluation of the pilot on Thursday 16<sup>th</sup> February 2006. (report to Corporate Board)

The proposals will also help achieve the following Council Plan Outcome(s):

**CPO12 - Including Everyone**

**CPO13 - Value for Money**

**CPO15 - Putting Customers First**

The proposals contained in this report will help to achieve the above Council Plan Themes and Outcomes by:

Agreeing innovative ways for the Council to engage Parish and Town Councils and local residents in the democratic process

Portfolio Member Details	
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<b>Date Portfolio Member agreed report:</b>	

Contact Officer Details	
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### Implications

<b>Policy:</b>	No policy implications but the relevant sections of the Constitution will need to be amended.
<b>Financial:</b>	There will not be any additional financial implications for the Council. The cost of the new engagement model and additional District parish Conferences will be met from within existing Area Forum budgets. Should members be minded to adopt Ward Based or Locality Budgets these will be incorporated into the 2009/10 budget setting process.
<b>Personnel:</b>	No additional staff will be required.
<b>Legal:</b>	None
<b>Property:</b>	None
<b>Risk Management:</b>	None
<b>Equalities Impact Assessment:</b>	None

**NOTE: The section below does not need to be completed if your report will not progress beyond Corporate or Management Board.**

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		<input checked="" type="checkbox"/>
Delays in implementation could have serious financial implications for the Council		<input type="checkbox"/>
Delays in implementation could compromise the Council's position		<input type="checkbox"/>
Considered or reviewed by Overview and Scrutiny Commission or associated Task Groups within preceding six months		<input type="checkbox"/>
Item is Urgent Key Decision		<input type="checkbox"/>

## Executive Summary

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### 1. Introduction

- 1.1 At Annual Council on the 08<sup>th</sup> May 2008 a Motion was proposed and adopted requesting that a review of how effectively the Council was engaging and consulting residents takes place. A Task Group, comprising seven Members, was set up to review the effectiveness of the current Area Forum format.
- 1.2 The Democratic Services Manager wrote to all Parish and Town Council Clerks and asked them to comment on the effectiveness of Area Forums and any comments they would like to make. In addition comments were sought from residents via the individual forums and on the Council's website.
- 1.3 Despite attempts to engage all parishes in reviewing the effectiveness of Area Forums, only 14 of the 62 Parishes responded. Although some of the feedback supported the retention of Area Forums, other Parishes recognised the need to change the current model if greater public involvement was to be achieved.

### 2. Proposals

- 2.1 The Task Group, at its third and final meeting, concluded that as there is no statutory duty to hold Area Forum meetings an alternative model for engaging more broadly with the community should be adopted.
- 2.2 The proposals are:
- To enhance the District Parish Conference and increase the frequency of these meetings;
  - To adopt a New Public Engagement Model based on Members and Officers attending and having a high profile presence at a range of events and locations;
  - Town and Parish Councils enhancing their own public engagement models where they consider this to be appropriate;
  - Further research take place into introducing a locality based delivery model;
  - Further work be undertaken in relation to establishing Virtual Forums;
  - Officers continue to manage outstanding actions that have arisen at previous Forum meetings; and
  - The Overview and Scrutiny Commission review the outstanding Area Forum Action List in twelve months time.

### 3. Conclusion

- 3.1 The Task Group agreed that Area Forums, in their current format, should be discontinued forthwith and that the effectiveness of the new model should be reviewed eighteen months after its inception.



## Executive Report

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### 1. Introduction

- 1.1 The Council agreed to establish four Area Forums in July 2000 based on the existing Area Planning Sub-Committee boundaries (an additional forum meeting was established in 2004).
- 1.2 An Area Forum Task Group was set up in June 2003 to review if the Area Forums had accomplished what they had set out to achieve and to propose amendments to the Area Forum's Terms of Reference. The Task Group identified three critical success factors for Area Forums namely:
- (a) Increasing the level of attendance and interest from members of the public;
  - (b) Improving interest from local councils;
  - (c) Positively encouraging attendance.
- 1.3 At Annual Council on the 08th May 2008 the following Motion was proposed and adopted: "The Council wishes to consider the most beneficial ways of engaging and consulting with residents, and therefore intends to review the effectiveness of the current processes including the Area Forums. It is therefore proposed that the Area Forum meetings already publicised in May and June should continue as planned within the existing structures, pending the outcome of the proposed review which will be presented to full Council in September."
- 1.4 Following the Council meeting a Task Group, comprising 7 Members (5 Conservative and 2 Liberal Democrat) was set up with the following terms of reference:
- Ascertain the extent to which the functions of the forums as set out in the Constitution are being met;
  - Ascertain the effectiveness of the current working arrangements of Area Forums;
  - Establish the level of engagement from partner organisations;
  - To establish whether Area Forums provide Good Value for Money (Council Plan Outcome);
  - Consider other vehicles which engage residents and Parish/ Town Councils
- 1.5 In considering the critical success factors identified by the 2003 Task Group the following conclusions were reached:
- (a) Public attendance is variable from a handful to up to on occasions 60 people but that attendance across the five forums is generally low.
  - (b) With the exception of Thatcham Area Forum the majority of attendees at meetings are from Parish Councils. It should however be noted that the District Parish Conference which is currently held twice a year attracts 80 to 90 attendees.

- (c) Despite a range of attempts to increase attendance at meetings, within a limited budget, the level of attendance at meetings has remained fairly low.

1.6 Part 2 Article 9 (Paragraph 2.9.4 of the WBC Constitution) sets out the role of the Area Forum as follows:

- To be responsible for the preparation of an Area Action Plan in consultation with local people. This Action Plan to be incorporated as part of the development of the community planning process.
- To consider, monitor, scrutinise and make recommendations to the Executive or Policy Development Commissions and Overview and Scrutiny Commission, as appropriate, with respect to service delivery / performance of local services and facilities.
- To receive regular monitoring reports on service delivery in the area.
- To be consulted by the Council on major policy issues or changes to existing policies which have a significant impact on the area.
- To provide the opportunity for public participation and engagement by acting as a forum for discussion on matters of local interest and, in particular, to elicit/hear the views of local bodies, organisations.
- To foster, in relation to the area and its people, a close working relationship with Town and Parish Councils and other relevant agencies and bodies.
- To determine small grants to voluntary bodies operating primarily in the area and within the budget delegated to the Area Forum.
- To consider local minor highways issues falling within the Council's existing policy and within the Transport Management Works budget delegated to the Area Forum. (The budget for 2008/09 set by the Council on 4th March 2008 does not include any provision to allow Area Forums to implement schemes previously listed on the Traffic Management Works Programme.)
- To appoint to governing bodies of schools within the area of the Forum.
- To appoint representatives to outside bodies operating primarily within the area of the Forum.
- To promote liaison with local youth and community management committees in conjunction with local Area Youth Teams.
- To receive summary OfSTED reports for local schools.
- To consider proposals relating to the operation of local recreation facilities.
- To consider local community safety issues.
- To consider public questions and receive petitions about issues local to the Area.

1.7 In relation to the above roles and responsibilities, the Task Group will know that over time Area Forums are either no longer responsible for or other governance structures have been introduced for the following areas:

- (i) Safer Communities – The introduction of NAGs has seen many issues of Speeding traffic and Anti Social Behaviour being picked up by these community based groups.
- (ii) The determination of small grants to voluntary organisations is now undertaken by the Strategic Funding Group.

- (iii) The Transport Management Works Budget is no longer aligned with Area Forums.
- (iv) The appointment of School Governors is able to be determined by virtue of the Council's Individual Decision Making Scheme.
- (v) OfSTED reports are no longer considered by Area Forums.
- (vi) In relation to the preparation of area Action Plans this has now been integrated into the Parish Plan process and the Area Forums only role is to adopt them.

- 1.8 At its first meeting on the 04 June 2008 the Task Group reviewed the effectiveness of Area Forums and considered that a new model for public engagement was necessary in order to ensure that as many West Berkshire residents had the chance to ask questions or be appraised of particular issues within their locality.
- 1.9 Officers were also asked to provide feedback from the consultation, options for consideration in respect of the locations for the 'roadshows' and also to consider introducing a process for managing the continuity of outstanding actions.

## **2. Feedback from Consultation**

- 2.1 All Parish and Town Councils and Meetings were asked to provide feedback on the effectiveness of Area Forums and any comments they would like to make. The closing date for comments was the 31 July 2008 and responses were received from 14 of the 62 Parishes. A table setting out these comments is attached at Appendix A.
- 2.2 The responding Parishes stated, in the main, that the Area Forums provided a useful opportunity for communities and Councils to interact but acknowledged that attendance at meetings was low. It was noted that local government meetings did not generally attract residents though. Some of the Parishes suggested that perhaps the function of forums had not been clearly articulated to residents and many residents therefore viewed their Parish Council as the first point of contact and did not realise they had a similar vehicle at District level.
- 2.3 A number of Parishes suggested that specialist subject meetings might prove more popular. Comments also suggested that the formality and length of meetings might deter residents from attending.
- 2.4 Furthermore it was felt that the current area forum boundaries did not promote communities of interest which might impact negatively on attendance.
- 2.5 Parishes felt that wider publicity was needed to boost attendance at meetings. It should however be noted that posters advertising the forums are sent to all clerks to place on their noticeboards, meeting dates regularly published in the West Berkshire News (now 'A Great Place to Live'), press releases sent to the local newspaper and meetings, which are set annually, advertised on the Council's website. In addition agendas are sent to all attendees that sign in at meetings and indicate that they wish to receive them.

- 2.6 In October 2005 a pilot meeting of the Kennet and Pang Valley Area Forum was held in an attempt to increase attendance at the meetings. The purpose of the pilot was to consider the impact of a revised format and additional advertising on attendance. The meeting included an open session or “surgery” section where the public had the opportunity of having their issues dealt with face to face by representatives from the Council, Thames Valley Police and Voluntary and Community based groups. Despite vast numbers of leaflets being dropped through local residents’ post boxes only 35 residents attended this meeting. It was therefore concluded that the amount of public who attended did not warrant the amount of staff resource and cost expended. Information received from the feedback forms returned did however suggest that the respondents judged the surgery style event to be either good or very good in terms of usefulness in accessing information
- 2.7 In addition comments from residents have been requested via the individual forums and on the Council’s website. The Democratic Services Manager received 2 letters and a series of email from a resident addressed to the Leader of the Council. A summary of their comments is set Appendix B.
- 2.8 It should also be noted that at the Thatcham Area Forum meeting held on the 22 May 2008 “Members of the public voiced their strong disapproval and disappointment at the immediate suspension of the Forum. When asked if they opposed the suspension of the Forum it appeared that there was a consensus in favour of their continuation. Sue Everett proposed a petition and circulated it around the Forum; the petition would be placed at Thatcham Town Council if anybody else wished to sign it.” (see Draft minutes from the meeting). This petition has not been submitted to West Berkshire Council for consideration.
- 2.9 It can be seen that despite attempts to engage all parishes in reviewing the effectiveness of Area Forums, only 14 of the 62 Parishes responded. Although some of the feedback supported the retention of Area Forums, other Parishes recognise the need to change the current model if greater public involvement was to be achieved.

### **3. The Way Forward**

- 3.1 A number of proposals for the future of Area Forums were discussed at meetings of the Review Task Group. It has been accepted that Area Forums should not continue in their present format as they have failed to capture the imagination of the vast majority of West Berkshire residents. Although the cost of running Area Forums is relatively low they do require significant human resources. The Task Group has concluded that, as there is no statutory duty to hold these meetings the Council needed to seek an alternative model for engaging more broadly with the community.

The proposals are set out below.

(1) District Parish Conference

The reintroduction of District Parish Conferences has greatly enhanced the relationship between the Council and the Parishes and regularly attracts 80/90 people for each meeting. Inadvertently the success of the conferences may have resulted in a slight decline in Parish Councillor attendance at Area Forums. The Task Group noted a request from Parishes that they would like

to 'retain the element where Parishes in small groupings could interact with Members and Officers' and will therefore put arrangements in place to hold localised discussions in smaller groups at the Conferences where this is deemed appropriate.

**Recommendation (a):**

**Parishes Conferences to be enhanced and three or four meetings to be held per annum at different localities across the District and where appropriate arrangements be made for localised discussions to take place.**

(2) New Public Engagement Model

Attendance at forum meetings remains relatively low. It is felt that the formality of the meetings and the location and accessibility issues could be a contributory factor. The Council having a local presence at a range of events and locations across the District may address this issue. Based on existing resources Officers have suggested limiting this to five key events per annum.

Suggested events include:

- the Crafty Raft Race in Newbury
- Royal County of Berkshire Show in Newbury
- Good Friday Open Day in Lambourn
- Holybrook Festival
- Hungerford and District Community Arts Festival

Suggested locations could also include:

- Kennet Centre in Newbury
- Kingsland Centre in Thatcham
- Markets (such as Farmers Market in Hungerford)
- Sainsbury's, Calcot

Members will consider the above list, make any further suggestions and then prioritise the events and locations that they would like Officers to explore further. A maximum of five events is recommended.

**Recommendation (b):**

**A new Public Engagement Model based on Senior Members (both parties) and Officers attending and having a high profile presence five events / locations a year to be introduced.**

(3) Town and Parish Council Hosted Forums

One of the issues raised by Parishes in respect of Area Forums is that the boundaries do not always reflect the communities served. In addition residents tended to refer matters directly to their Parish Councils that provided them with an immediate local connection. It was therefore suggested that Parish and Town Councils could continue to run their own

forums possibly held at the start of formal meetings which would provide public interface sessions if they so wished. Relevant Officers could attend when invited to do so.

**Recommendation (c):**

**Individual Town and Parish Councils or groups be requested to consider whether they would wish to enhance their own public engagement model should they consider this to be relevant or appropriate.**

(4) Ward Based Budgeting

The Task Group agreed that Ward Based Budgeting should be considered as a possible option for the Council. Further research is needed to examine such an option. Models, governance and financial implications would need to be considered outside of the Task Group. Any proposals relating to finance would have to be considered as part of the 2009/10 budget and approved by Council.

**Recommendation (d):**

**In relation to participatory budgeting, further work be undertaken into the feasibility of introducing a locality based service delivery model to those areas on most need across the District.**

**Recommendation(e):**

**Subject to the results of (d), the Executive be asked to review the existing Capital Grant system to enable more resources to be diverted in those areas in most need.**

(5) Virtual Forum

In an effort to reach residents that do not currently attend forums and that may not want to or have the opportunity to interact face to face with Members and Officers the possibility of hosting online forums on the Council's website to be investigated.

**Recommendation (f):**

**That further work be undertaken in relation to establishing Virtual Forums.**

(6) Review of Effectiveness of New Model

The Task Group has agreed that the effectiveness of any new proposals should be reviewed in eighteen months of their inception.

**Recommendation (g):**

**That any new engagement model introduced be subject to a review in eighteen months time.**

(7) Providing Continuity

The Task Group has agreed that Policy and Communications staff would manage outstanding Area Forum actions through to the end to ensure they were satisfactorily concluded. Some actions were long-term, others could be dealt with quite quickly. A database would be put onto the website, and would be managed by Policy and Communication.

**Recommendation (h):**

**That Policy and Communication staff introduce appropriate measures to manage outstanding Area Forum actions and that Area Forums, in their current format, be discontinued forthwith.**

**Recommendation (i):**

**The Overview and Scrutiny Commission to monitor and review the outstanding Area Forum action plans to ensure completion.**

## **Appendices**

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Appendix A - Summary of Parish Council Comments

Appendix B - Summary of Residents' Comments

## **Consultees**

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**Local Stakeholders:** All Parish/ Town Councils, Area Forum Attendees

**Officers Consulted:** Moira Fraser

**Trade Union:** Not consulted

**PARISH COUNCIL COMMENTS ON AREA FORUMS**

<b>Name</b>	<b>Parish Council</b>	<b>Comments</b>
Bill Scott Clerk	Aldermaston Parish Council	The issue was discussed at its meeting on the 10 June and Councillors agreed not to make any comment.
Jackie Boxall Chairman	Brightwalton Parish Council	<p>I have only been chairman of Brightwalton for a year, so have only attended two forums.</p> <p>I found their use to me to be very limited. Understandably, there is so much that is not relevant to a small parish. As most people on the PC work, it is a big commitment to spend the whole evening for only one or two items of interest.</p> <p>Therefore, I suggest that it be made more flexible - easier to arrive and leave for just one or two agenda items. At the moment it is very formal - refreshments, formal presentations with slides etc. which makes it hard to dip in and out.</p> <p>Also, the presentations are poor - you can't read the slides and presenters just read the script off the slide - all very old fashioned and boring. You don't get away with that in business!</p> <p>So, less formal, able to come and go for items of interest, more discussion and fewer slides.</p>
Sandi Ackrill Clerk	Chaddleworth Parish Council	The PC is concerned about the possibility of the demise of Area Forums, they find them to be informative and a great source of communication,
John Perou Member of Parish Council	Chaddleworth Parish Council	I would only add that for me the Forums really are the way for communities and councils to connect, raise, discuss and resolve issues to the collective benefit. So much better and effective for all parties, rather than being bombarded and overpowered with one way communication of endless reports, surveys.
Denise Hudspith Clerk	Cold Ash	Further to your letter sent to all Parish and Town Councils on 2 June, Cold Ash PC regularly attends the Area Forums and feels strongly that these should continue. We do believe, however, that the forums are under-utilised as a vehicle for the public to air its views and feel this is due in part to poor publicity. Parish Councils encourage parishioners to attend their Council meetings to put their points of view across or raise a matter of concern, but we believe not many members of the public realise they have a similar vehicle at District level. Perhaps they could be better advertised in the local newspaper or by leaflets in the same



Name	Parish Council	Comments
		way as the services of Streetcare are promoted? Cold Ash PC does post the notices on its notice boards but we would guess that many more people read newspapers than our notices! We hope you find this comment useful and look forward to hearing the outcome of the review.
Rachel Sinton Clerk	Compton Parish Council	The parish Council supports Area Forums as they believe them to be positive for the community
Anne Ray Clerk	Lambourn Parish Council	Thank you for updating Council about the review of Area Forums in West Berkshire. Lambourn Parish Council discussed the review at its meeting last week. It deplored the potential loss of Forums as they are a useful way to put parishioner's views direct to the District Council. It is recognised that there are problems with the current running of the Forums and Council proposed that officials should not overload the agenda with long reports, thus shortening the meetings and is leaving enough time for questions from attendees. I hope that these comments are of use to you.
Angela Sutton Parish Plan Co-ordinator and Parish Clerk	Leckhampstead Parish Council	In response to your letter of 2 June, it seems likely that our Parish Councillors will be responding individually. From my perspective, they would appear to have been useful in getting action taken on a number of issues. It is very difficult to get ordinary members of the public involved and, in any case, if there are issues then the correct place to go is first to your Parish Council and then to your district councillor. If this procedure is not adhered to then there is the distinct risk of actions being agreed without the Parish Council being notified which surely cannot be correct. Is there an element of trying to find things for the Area Forums to take on? Do we need another layer of authority? Probably not! Liaison and accessibility with West Berkshire Council has improved a lot over the last four or five years and particularly as a result of the involvement by WBC with the Parish Plan process and the surgeries which have been held. Hope these comments are useful.
Graham Hunt Chief Executive Officer	Newbury Town Council	<p>At its Council meetings last night, Newbury Town Council made the following suggestions with regard to the future of Area Forums. It was a long discussion and I've tried to pick out the key suggestions (recorded in no particular order) to help move the debate forward.</p> <ul style="list-style-type: none"> <li>(a) A forum of some sort is required to enable members of the public to have their say (or ask questions) on any topic.</li> <li>(b) A forum is a useful way of the Council getting feedback.</li> <li>(c) The boundaries should reflect the communities served.</li> <li>(d) Each forum should have a theme – but not be constrained by it.</li> <li>(e) Forums could be created on demand around topical issues (i.e. not a rigid timetable)</li> </ul>

Name	Parish Council	Comments
		<p>(f) Some kind of appropriate budget to support the work of the forum is required – to encourage action.</p> <p>(g) It would be useful if more meetings could be out and about in the community – closer to the public.</p> <p>(h) It should reflect and cater for the other meetings that take place – in some cases with similar purposes.</p> <p>(i) Their needs to be even greater/wider publicity to encourage greater attendance.</p> <p>(j) Ward Councillor attendance should be required, not optional.</p> <p>(k) Like the presence of senior officers.</p> <p>(l) Can the Town help in any way – we are keen to help – and work in partnership.</p> <p>(m) More open petition processing.</p> <p>(n) Two part format does not engage well with the public.</p> <p>(o) Reduce the formality – make it easier for the public to express themselves.</p> <p>(p) Be open to ideas.</p> <p>(q) There is no harm in trying things again – even if they haven't worked before.</p> <p>Newbury Town Council would like to be consulted on any final options proposed before implementation.</p>
Rick Jones, Chairman	Purley on Thames Parish Council	<p>Felt that the purpose of area forums was twofold namely to bring the District to the people and to focus on local needs and priorities.</p> <p>Accepted that attendance at meetings was low</p> <p>Urged the Council not to lose local focus when attempting to engage the public. Noted that local government meetings did not attract residents unless there was something controversial on the agenda</p> <p>Felt that the forums were not as well recognised as a place for the public voice as the District of Parish Council.</p> <p>Felt that NAGs had taken over the Community Safety role locally very well</p> <p>Would like to retain the element where parishes in a small grouping could interact with Members and Officers to enable local issues to be addressed</p> <p>To enhance public engagement they suggested specialist subject meetings and dissemination of information and consultation by post</p>
Mrs Jayne Kirk Clerk	Stratfield Mortimer Parish Councillor	<p>Stratfield Mortimer Parish Council have asked me to write to you in reply to your letter of 2 June regarding the review of Area Forums. The Council would like the Area Forums to continue as they feel they are a good conduit between the electorate and the District</p>

Name	Parish Council	Comments
Angela Bates Community/ Civic Manager	Thatcham Town Council	<p>Council.</p> <p>The issue was discussed at an extraordinary meeting held on the 23 June 2008 The Town Council resolved that Thatcham Town Council registers its strong disapproval of the decision by West Berkshire Council to suspend the Area Forums before the Review Group has been able to see the Forums in action and urges West Berkshire Council to reinstate the cycle of Forum meetings until the Review Group presents its report. And RESOLVED that Thatcham Town Council demands that the Thatcham Area Forum itself should not be discontinued until a major public consultation exercise has been undertaken.</p>
Richard Crumly District and Town Councillor for Thatcham Central	Thatcham Town Council	<p>Believes Area Forums should be discontinued. Two incidents immediately spring to mind. In Harts Hill Road there was a petition presented to the Area Forum for a build out at the entrance to Bradley Moore Square, passed by vote and then put into effect. There appears to be no other democratic process. It was certainly at no time ever presented to Thatcham Town Council. The first we knew about it was when the blooming thing was erected. Area Forums therefore seem to bypass established democratic institutions. As far as I know, the matter was not further considered by West Berks Council.</p> <p>There was a petition presented to Thatcham Area Forum on or about 22nd May for another crossing and another build out is proposed further down Harts Hill Road at the junction with Vincent Road. Once again, it went before the Area Forum and was passed and the presumption then was that it would be put into effect. It did come before Thatcham Town Council Planning for comment and observation and collectively we were against a build out and we are currently in correspondence with the officer over a counter proposal.</p> <p>In my view, any proposals such as this should originate with the Town Council and be considered by the District Council and officers and signed off by the appropriate portfolio holder. Therefore, I am of the view that Area Forums should be stripped of both their powers and their budgets.</p>
Miss M.J. Rueth Clerk	Theale Parish Council	<p>Felt that forum meetings which addressed subjects that engaged the attention of local residents were well attended but accepted that some forums did not have a larger attendance Felt that wider publicity was needed in order to boost attendance rather than eliminate</p>

Name	Parish Council	Comments
		forums. Felt that forums were one of the few events where the public had the opportunity to address Councillors, Council Officers and Police Officers
Liz Best Clerk of the Council	Tilehurst Parish Council	My members made the following comments at this week's full Council Meeting:- The cost of running the forums appeared relatively low. Is a means of providing localised funding for small projects although it is recognised that some of this is now dealt with by Neighbourhood Action Groups. Would be useful for an advance schedule of meeting dates and venues.
David Hunt, Chairman	Welford Parish Council	Feel that Area Forums serve a useful purpose, Feel it is valuable to meet Parish and District Councillors from a similar rural area Improvements could be made by a clearer idea of the function of forums, better advertising and larger venues if you want to attract public, clearer picture of requests that go through forums and those that should go directly to the District Council, purpose of forums having their own monies needs to be explained There is real difficulty in engaging people in local issues, the PC provides an immediate local connection with local residents and they would therefore not expect the forums to attract many residents Welcome initiatives to maximise their efficiency.

## Residents Comments:

<b>Resident</b>	<b>Summary of Comments</b>
Mr Dunn	<ul style="list-style-type: none"> <li>• The main objective of the existence of Area Forums is as venue for public input.</li> <li>• Request that Area Forums are reconvened.</li> </ul>
Mr Knight	<ul style="list-style-type: none"> <li>• Need to substantially increase and protect the position of the Ward Councillors as the prime focus for community contact.</li> <li>• Ward Members credibility and influence is substantially diminished by special or sectional interest groups who are able to avoid the normal democratic process by going directly to the Executive.</li> <li>• Case in point is the introduction of NAGs, these have laudable aims and can exert a positive influence, however membership appears to be restricted and their constitutions are created outside the usual democratic process and they can therefore not claim to be the voice of the people.</li> <li>• The power of the Ward Member should not be eroded.</li> </ul>
Mr Bovington	<ul style="list-style-type: none"> <li>• Viewed them as a vital mechanism for members of the public to find out about local issues, be able to ask questions of their councillors, to also be able to question council officers and to be able to influence local issues. Without these forums I am not sure how members of the public will be able to do this. Surely the council should be encouraging more interaction with the public rather than trying to remove it.</li> <li>• At the forum last night we were able to hear from the council officers who are planning and co-ordinating flood alleviation works and also question officials from Thames Water who are also undertaking works. As such I was able to find out a great deal more of what is being done and passed on this information to a number of my neighbours who couldn't make the meeting. Surely this is how local democracy should work.</li> <li>• Have no issues with a review taking place, though I believe such forums or similar mechanisms are necessary.</li> </ul>