

Governance and Audit Committee

Tuesday, 17 October 2023

Attendees: Councillor Dave Harris, Councillor Alison Jay, Councillor Sara Naylor, Councillor Chris Pearson, Councillor Paul Smith, Councillor Rhys Smithson, Councillor William Sunnucks

Also Attending: Councillor Mark Cory, Councillor David King , Councillor Martyn Warnes

Apologies:
Substitutes:

383 **Have Your Say! (Hybrid Council meetings)**

The Committee heard that although no members of the public were present at the meeting to address the Committee as part of the Council's Have Your Say! arrangements, a request had been received prior to the meeting from a member of the public who wished a statement to be read to the Committee, and this request had been declined by the Chair following consultation with Officers and examination of the Council's constitution. Although the Have Your Say! arrangements had been relaxed during recent periods of lockdown, the regulations which had allowed this had now lapsed.

384 **Amphora Future Strategy**

The Committee considered a report recommending that it consider the Proposed Future Strategy for Amphora which was set out in the Officer's report.

The Committee were advised that Chair of the Committee had decided to deal with items 9 and 10 on the agenda at the start of the meeting due to time pressures on the Officers involved in these items.

Richard Carr, Interim Managing Director Colchester Commercial (Holdings) Ltd (CCHL), attended the meeting to present the report and assist the Committee with its enquiries. He advised the Committee that for the purpose of clarity, he would refer to the Council's wholly owned commercial companies by the collective name of Amphora throughout the meeting. Although the changes which were being proposed to the Amphora Group of companies were significant in nature, these changes needed to be understood in the context of what the companies had achieved to date. The proposals were based on a recognition that the circumstances in which the Council, and therefore Amphora, was now operating were very different from those in which Amphora had been set up. It was therefore appropriate to review the strategy for CCHL, taking into account the circumstances that the Council was now facing and the Council's likely move towards a 'corporate landlord model' as part of its estate management function. The changes which were proposed by Amphora were in the context of the Council's Strategic Objectives and its current reduced appetite for risk.

It was suggested that the Council needed to be at the heart of decision making with regard to the Northern Gateway Project, although significant expertise was available

within Amphora to support this. There had been a particular impact on one of the Amphora companies caused by the delays to the Northern Gateway Project, which was that the energy company, Colchester Amphora Energy Limited (CAEL) was in a position where it could not recover income until developments had taken place on the site in the form of new homes. The timescales for delivery of these homes were out of the control of CAEL and therefore the specific proposition for CAEL was that it should be placed into hibernation.

The increasing pressures on the Council to provide affordable housing had also been considered, and in the current circumstances it was suggested that it was not advisable to proceed with the original business model for Colchester Amphora Homes (CAHL). The reality was that the establishment of local authority housing companies across the country had not seen a significant increase in the supply of affordable housing, and it was therefore proposed to hibernate the CAHL. It was considered that useful skills which were contained within the Amphora group should be deployed to help the Council in other ways.

The potential role of the Colchester Fibre element of CCHL had been noted, and it was proposed that a more detailed proposal for this aspect of the business was considered and presented to the Committee at a future date.

It was suggested that the 'corporate landlord model' which was a likely option for the Council in the future potentially represented a way to maintain the current arrangements by which some estate management functions were delivered within Amphora. Although this was perfectly reasonable option, on balance it was considered that there was probably greater value in bringing all these functions within the Council's direct control.

Amphora had been supporting the Council in the delivery of its Capital Programme. The current model involved CCHL being reimbursed for its support through the management fee, and also fees levied in relation to specific projects which had been worked on. In practice the team in Amphora had worked exclusively for the Council on its own projects, although they could in theory have worked for external parties too. It was considered necessary to encourage the use of the technical expertise which resided within CCHL for the delivery of the Capital Programme by removing the complicated charging arrangement which existed between CCHL and the Council.

The Committee heard that there was scope to move Amphora towards a much more simplified operation, focusing on those services and activities where it was genuinely trading – particularly around the events business, Helpline and CCTV activity, and this simplification was at the heart of what was being proposed. It would be wrong to consider the activities of CCHL purely in terms of the dividend it delivered, as the events company, for example, drew in large number of visitors to the area which carried a wider economic benefit to the city. More detailed proposals would be presented to the Committee in the future with regard to the proposal to hibernate CAHL and the potential development Colchester Fibre.

Councillor Warnes, Chair of CCHL, attended the meeting remotely and, at the invitation of the Chair, addressed the Committee. He offered his support to the Interim Managing Director and his team for the work which had gone into the proposals, and

agreed that the suggested changes had been driven by changes in external factor. He supported the suggestions which had been made with regard to hibernating some trading companies and simplifying the operation of CCHL.

The Chair of the Committee reminded members of the public who may be watching the meeting that although as a matter of general principle all Council business was conducted in public wherever possible, some matters were of too commercially sensitive a nature to be discussed in public. He offered his assurance that the private session of the Committee from which members of the public and the press were excluded would be kept as short as possible.

RESOLVED that: In accordance with Section 100A(4) of the Local Government Act 1972 the public, including the press, be excluded from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda could be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

The Committee returned to public session.

The Interim Director of CCHL responded to questions from the Committee and confirmed that a lot of work had been put into the implementation of the transition planning which was proposed, and if the Committee did approve the recommendations then they would move forward quickly. If the Committee was minded to approve the recommendation for CAEL, then this process was almost complete, and in practice there were very few assets under the Amphora umbrella and these consisted primarily of the boreholes created by the energy company and a single property that CAHL owned. There would be costs associated with continued work in relation to the proposals, but these would be a few thousand pounds as opposed to anything more significant. It was necessary to take into account the consequences of not hibernating the companies when considering any costs associated with placing them into hibernation. Allowing the companies to continue as they currently were would require the Council to continue to stand by the liabilities which had been created with no realistic prospect of generating a return for the time being, and this position was not sustainable.

At the request of a Committee member, the Chair explained for the benefit of any members of the public who were viewing the meeting that the Committee was considering CCHL which was a private, 'arms length' company which had been set up 6 years ago by the Council and which had 3 trading arms which were referred to as Amphora trading arms. One of these as a company working on sustainable energy provision (CAEL), another was provision of housing (CAHL), and the third dealt with events, Helpline and CCTV activity (CATL). The Interim Managing Director of CCHL explained that hibernation entailed that the companies would be placed into a dormant state where they would not be trading but would still exist. The reasoning behind this as opposed to winding up the companies altogether was that there may come a time in the future when the companies were able to trade successfully again, and the companies could simply be re-activated if circumstances changed.

In discussion, the Committee noted that risks associated with the operation of the companies would not be removed by the proposals, but would be transferred back to

the Council. The Interim Managing Director of CCHL confirmed that this was correct, but in practice this would not represent a substantial change in the position. In reality CAEL was not able to recover the costs it expended and the Council stood behind this position, meaning in practical terms the proposals did not represent a change in the Council's exposure to risk.

The Committee supported the proposals which had been made in relation to the hibernation of the companies, and considered that the future prospects of CAEL in particular were very encouraging, once the circumstances allowed it to trade successfully. It made financial sense to hibernate at this stage as had been suggested, rather than dissolve companies.

RECOMMENDED TO CABINET that:

- The Proposed Future Strategy for Amphora set out in the Officer's report at Appendix A, supported by the Board of Colchester Commercial (Holdings) Ltd, be approved.

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Hibernation of Colchester Amphora Energy Ltd (CAEL)

The Committee considered a report which invited it to consider the formal hibernation of Colchester Amphora Energy Ltd (CAEL) and the transfer of its assets to Colchester City Council.

Richard Carr, Interim Managing Director Colchester Commercial (Holdings) Limited attended the meeting to present the report and assist the Committee with its enquiries. The Committee heard that the proposal which was before represented the final permission to complete the proposed hibernation of Colchester Amphora Energy Limited (CAEL) which followed a process of due diligence which had been undertaken with legal advice. The proposal covered the treatment of all third party contracts that were currently in place with CAEL, some of which would be moved to the City Council, and some of which would be extinguished, as detailed in the Officer's report.

The Committee noted that it had discussed the proposal which was before it at length earlier in the meeting, in relation to the item on the agenda setting out the proposed future strategy for the Council's wholly owned commercial companies, the Amphora Group. Accordingly no additional comments or questions were raised at this time.

RECOMMENDED TO CABINET that:

1. Colchester Amphora Energy Limited (CAEL) is prepared for, placed into and maintained in a dormant state as set out in the Officer's report under section 2, Appendix 1 – 'Report to the Board of CAEL – Placing the Company into Dormancy'.
2. CAEL's contracts and agreements are transferred or otherwise dealt with in accordance with recommendations in the Officer's report detailed at section 8 of Appendix 1.
3. The employment of CAEL's staff is transferred in accordance with arrangements set out in the Officer's report under section 8 of Appendix 1.
4. The Shareholder resolutions set out in the Officer's report at Appendix 5 be approved.

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Local Government and Social Care Ombudsman – Annual Review Letter 2023

The Committee considered a report providing details of Colchester City Council's

Local Government & Social Care Ombudsman's Annual Review Letter, which concerned the number of complaints received regarding each local authority.

Andrew Weavers, Head of Governance and Monitoring Officer, attended the meeting to present the report and assist the Committee with its enquiries. The Committee heard that there had been no findings of maladministration against the Council, however, there had been 2 complaints upheld which were set out in the Officers' report.

A Committee member considered that Colchester Borough Homes (CBH) was an extremely able organisation, and that their welfare facilities were excellent as a housing association. It was right and proper that the 2 complaints which had been received had been dealt with by the Ombudsman, although he considered that the pressure that the Council was under to provide suitable accommodation was a potential cause of the issues which had been experienced.

The Committee noted that although a low number of complaints had been referred to the Ombudsman, it was a point of concern that these had both been upheld. It was suggested that for a complaint to have reached this stage, it would have already been through the Council's own procedure which had reached an unsatisfactory conclusion.

The Head of Governance and Monitoring Officer confirmed that both complaints had gone through the complaints process of CBH, and the complainants both felt that their concerns had not been dealt with appropriately and so went to the Local Government Ombudsman. Following the resolution of the complaints, CBH had changed its processes as a result of the lessons which had been learned. It was suggested that as long as CBH used the findings as a learning method to improve their customer interaction, then this should be supported. It was noted by the Committee that the Ombudsman had been pleased to deliver additional training for staff at CBH.

In discussion, the Committee wondered whether it was possible to put a monitoring system in place to support the changes to CBH systems which had been made. It was important to acknowledge that anyone who pursued a complaint through these systems would have found the process very challenging, and it was possible that other complaints had been received which had not been taken so far. The Committee was reminded that it had been agreed that as part of its workload, CBH would be reviewed and overseen on an annual basis, and CBH also reported to Scrutiny Panel which would provide the opportunity to determine whether or not things were improving. In addition to this, the Head of Governance and Monitoring Officer offered assurance to the Committee that these complaints were also reported to the Board of CBH.

RESOLVED that: the contents of the Local Government & Social Care Ombudsman's Annual Review Letter for 2023 be noted.

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Health and Safety Report 2023

The Committee considered a report which provided it with an overview of the Council's Health and Safety activity during the year from 01 October 2022 to 30 September 2023.

Hayley McGrath, Corporate Governance Manager, and Lee Holden, Health and Safety Manager, attended the meeting to present the report and assist the Committee with its enquiries. The Health and Safety Manager had extensively reviewed the Council's Health and Safety Policies and practices since he had been appointed.

The Committee heard that there was no formal requirement for the Committee to consider the Health and Safety Overview Report and Policy which was placed before it on an annual basis, however, this was considered to be good practice. Health and safety formed part of the Council's Risk Management Framework, and one of the duties of the Committee was to overview risk and to ensure that items were managed appropriately.

A key element of work which had been undertaken during the year had been the implementation of a new health and safety management system. An Interim Health and Safety Manager employed by the Council had developed an award winning management system which had been implemented by the Council. The system was very detailed, and was being introduced across the organisation to give a clear overview of the management of risks. Significant work had been carried out in respect of fire assessments to ensure that all Council buildings were compliant, together with supporting the refurbishment and reopening of Rowan House.

The Committee heard that a new reporting system had been developed to make it easier for Officers to report incidents as they took place, both online and via a phone app. During the preceding year, just over 1,000 incident reports had been received, which included near misses. It was important to include near misses to identify problems as soon as possible, and to help to stop any significant incidents that may arise in the future. Leisure World had provided the highest number of reported incidents, which was to be expected, given the high number of users of the facilities who were playing sport. There had been 2 serious incidents in the previous year which related to sports injuries, however, neither of these had warranted any further action being taken by the Health and Safety Executive. No changes had been made to the processes used to manage health and safety, however, the Policy had been updated to reflect the Council's new management structure.

In response to a question from the Committee, it was confirmed that there had been an increase in the number of incidents which had been reported, however, it was considered that this was due to the improvements which had been made to the reporting system, as opposed to an increase in the actual number of incidents which had occurred.

The Committee heard that the new reporting system was being trialled in Leisure World and that staff had access to it via terminals located in key areas such as reception and the gym. Once the system had been tested it would be introduced into other service areas across the Council. A wide variety of staff had been invited to test the system to ensure that it could be effectively used by people with varying degrees of computer literacy, and feedback was being used to make improvements where necessary.

In discussion, the Committee noted the role of Cabinet in relation to health and safety and wondered whether any training was provided to support individual Cabinet

members in carrying out this function. The Corporate Governance Manager confirmed that all senior managers at the Council were trained in health and safety responsibilities, but there was currently no equivalent training for members of Cabinet. Advice would be sought from the Leader of the Council and the Chief Operating Officer as to the possibility of including Cabinet members in this training.

The Corporate Governance Manager confirmed that no breaches of the Council's Health and Safety Policy by members of staff had been recorded.

RESOLVED that:

- The Health and Safety work undertaken between October 2022 and September 2023 be noted;
- The Health and Safety Policy for 2023/24 be approved.

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Draft Statement of Accounts 2021/22

The Committee considered a report which presented the Council's draft Statement of Accounts for 2021/2022 to it. The Committee was invited to note the report.

Chris Hartgrove, Deputy S151 Officer, attended the meeting to present the report and assist the Committee with its enquiries. The draft Statement of Accounts for 2021/2022 had been published on 15 September 2023 following significant delays caused by nationwide external audit issues and a shortfall in staff resources. Questions had been submitted to the Deputy S151 Officer by members of the Committee before the meeting, and answers to some of these questions were provided to the Committee:

Question 1 - On Page 111 (of the Governance and Audit Committee agenda document) reference is made to the Collection Fund being in deficit. Is it possible to break the Collection Fund out into amounts collected on behalf of other preceptors (which I assume are payable to them immediately) and amounts belonging to Colchester City Council? I am seeking clarification of the overall collection fund deficit once monies belonging to other preceptors have been excluded.

Answer: The net Deficit on the Collection Fund as of 31 March 2022 is £10.680 million. This comprised a Surplus of £1.497 million on Council Tax, offset by a Deficit of £12.177 million on Business Rates. The Colchester City Council share of the overall Collection Fund Deficit of £10.680 million was £4.678 million (comprising a Surplus share of £192,480, offset by a Deficit share of £4,870,876). It was broadly correct that surpluses and deficits were payable immediately, however, the precise payments were based on estimates made in the January preceding the following financial year (thus allowing preceptors to set their budgets ahead of the financial year) i.e., in this instance, the estimates would have been made in January 2021. Consequently the (usually small) differences (plus or minus) were reflected in subsequent balances. It should be noted that (nationally, as well as Colchester), the large Deficit on Business Rates was a legacy of Covid and the Council received large compensating Section 31 payments from Central Government, which were temporarily held in the Business Rates Reserve (Note 11 in the Statement of Accounts with a Balance of £9.9 million), pending transfer to the Collection Fund to fund future deficits (i.e., the Council's share was met from this source in 2022/23).

Question 2 - Community Stadium Could Officers please confirm that the Community Stadium is included in the Property, Plant and Equipment figure and its current Net Book Value. Please also confirm the revenue that the stadium generated in 2021/2022.

Answer: The Community Stadium is included in Property, Plant and Equipment with a Net Book Value of £28.5 million as of 31st March 2022. The income from the Community Stadium was £176,524 in 2021/22.

Question 3a – Value Added Tax (VAT) Please confirm if the Council fell within the 5% insignificant test required for VAT recovery in 2021/22.

Question 3b - Has it continued to do so in 22/23?

Answer a: Yes. The Council's Partial Exemption (de minimis) position for 2021/22 was 1.86%.

Answer b: Yes. The Council's Partial Exemption (de minimis) position for 2022/23 was 1.63%.

Additional questions had been received from another Committee member concerning the Council's reserves, the comprehensive Income and Expenditure Statement, the Council's balance sheet, the Housing Revenue Account and some inter-authority comparisons. Staff commitments to the completion of the Council's Statement of Accounts 2022/2023 meant that answers to these detailed questions would be provided to the Committee after the meeting, however, some additional information was able to be provided at the meeting:

Reserves: there was a difference between the opening reserves position for this year and the previous year's closing reserves, which was £5.07m. This was correct and was disclosed as a prior period adjustment, and the difference was comprised of right to buy capital receipts. This represented a deliberate change in classification in the 2021/2022 accounts to correctly accord with proper accounting practice. The original misclassification had been in the draft 2020/2021 statement of accounts and this would be corrected before those accounts were signed off by the Council's auditors. Any significant accounting adjustments would be reported to this Committee in due course.

Comprehensive Income and Expenditure Statement: a reconciliation had been requested between the £1.653m deficit on the provision of reserves disclosed on the face of the Comprehensive Income and Expenditure Statement, and the Management Accounts. It was confirmed that this was presented in note 5 to the accounts, which referred to the summary of the Management Accounts.

Balance sheet: it was confirmed that the Council did benefit from fixed interest rates which were reflected in note 24 on financial instruments.

Housing Revenue Account (HRA): was the £35m Department of Work and Pensions benefit subsidy, which had been disclosed in note 9, included in HRA turnover? The Committee heard that the sum was not included in HRA turnover and was a general

fund item which was absorbed in the Comprehensive Income and Expenditure Account.

With regard to inter-authority comparisons, appropriate context was required in order to obtain a reasonable like for like comparison and there were several factors which would have a major bearing on the Council's financial figures and staffing levels. The different elements of the Council's operations, including Colchester Commercial (Holdings) Limited (CCHL), were required to prepare reports to different accounting standards than the Council itself which meant that different reporting styles would be evident.

The Committee heard that the date which had been proposed for the completion of some of the Council's audits in September or October 2023 had been delayed, however, all the information which had been requested by the auditors had been provided by the Council. Since this information had been provided, there had been no supplementary feedback from the auditors as may have been expected. A Committee member pointed out that the Council's accounts would be extremely difficult to audit, as the organisation carried out an extremely wide range of activities, and a case could be made for simplifying the presentation of the accounts.

Councillor Cory, Portfolio Holder for Resources, attended the meeting remotely and, with the permission of the Chair, addressed the Committee. He confirmed to the Committee that the delay in providing audited accounts was entirely down to the Council's auditors, and national difficulties had placed many other public sector organisations in a similar position. It was essential that the Council's audited accounts were prepared as soon as possible.

A Committee member sought clarification on how the Council's assets were valued, in particular the Community Stadium, noting that normally such high value assets would be generating income or providing demonstrable community value. Catherine Jobling, Interim Accountant, attended the meeting remotely and advised that details of how the Community Stadium had been valued could be provided to the Committee after the meeting. Investment properties were usually valued at market value, but the stadium was a regeneration asset which was subject to different accounting treatment. A Committee member sought clarification on the Council's financial parameters, noting that the Council was in a position to borrow significant sums of money, and wondering whether the limit to this borrowing was in practice set by the Council's reserves. What were the rules which covered the reserves, and how long could the Council continue spending in deficit before it entered financial difficulties? It was suggested that the Council's Management Account should be more aligned with its Statutory Accounts.

Deputy S151 Officer confirmed that the projected deficits in the draft Statement of Accounts were accurate, however, these did not take into account the significant savings that the Council was making each year which would serve to reduce the overall deficit. Additional details about the Turnstone development would be provided in the draft Statement of Accounts for 222/2023, which was expected to be published in the near future. It was acknowledged that the Management Accounts were very different to the Statutory Accounts, but the Management Account had been reconciled to the Statement of Accounts as referred to in note 5.

Councillor King, Lead of the Council, attended the meeting and at the invitation of the Chair addressed the Committee. He confirmed that it was the desire of the administration of the Council to make the Council's Statement of Accounts more easily accessible and understandable to the public, and the Committee noted that progress towards this goal had been made with the streamlining of the Quarter 1 financial report which had previously been presented to it.

In response to questions from the Committee, the Interim Accountant confirmed that she was not aware of any contingent liabilities the Council had as at 31 March 2023. The Council was in receipt of a significant amount of grant income, which was detailed in note 9 to the accounts. Grants for which it was not possible to say that the conditions of the grant had been met, or which were repayable sat in the Balance Sheet and were referred to as either Revenue Grants received in advance, or were noted in the creditors line.

There had been a significant increase in the Property Plant and Equipment valuation from 2020 to 2021, and the reason for this was explained to the Committee as being predominantly attributable to valuations of assets such Council dwellings and the Community Stadium. Property Plant and Equipment values were only increased in line with the opinion of the valuers, and a table of some of the most significant increases could be provided to the Committee.

A Committee member asked whether any assets within the Property Plant and Equipment figure could realistically be used to rise funds, and the Deputy S151 Officer would consider his response to this question outside the meeting.

RESOLVED that: the draft Statement of Accounts 2021/2022 prior to the completion of the audit process, be noted.

389 Work Programme 2023-2024

The Committee considered a report setting out its work programme for the current municipal year.

Matthew Evans, Democratic Services Officer, attended the meeting to present the report and assist the Committee with its enquiries. The attention of the Committee was drawn to the significant changes to the work programme which were detailed in the Officer's report.

The Committee requested that the report which had been proposed for its meeting in November on the Council's Housing Stock be moved to the December meeting of the Committee. It further requested that consideration be given to the most appropriate time to refer the draft statement of accounts for 2022/2023 to the Committee. The S151 Officer would be consulted in relation to this request.

RESOLVED that: the contents of the report be noted.

No. Amphora Future Strategy - Part B

The Committee resolved under Section 100A(4) of the Local Government Act 1972 that the public, including members of the press, be excluded from the meeting for the following item as it involved the disclosure of exempt information in Part B of this agenda (printed on yellow paper) as defined in paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.

This minute is not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (information relating to the financial or business affairs of a particular person, including the authority holding the information).