

# CABINET

## 26 MAY 2010

*Present :-* Councillor Martin Hunt (the Deputy Leader) (Chairman)  
Councillors Nick Barlow, Lyn Barton, Tina Dopson,  
Beverley Oxford, Paul Smith and Tim Young

*Also in Attendance :-* Councillor Christopher Arnold  
Councillor Kevin Bentley  
Councillor Mark Cory  
Councillor Wyn Foster  
Councillor Mike Hardy  
Councillor Pauline Hazell  
Councillor Jon Manning  
Councillor Terry Sutton  
Councillor Colin Sykes  
Councillor Laura Sykes  
Councillor Dennis Willetts

### **2. Minutes**

The minutes of the meeting held on 17 March 2010 were confirmed as a correct record.

### **3. Have Your Say!**

Paula Whitney addressed the Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(2). She expressed concern that she had witnessed black bag waste being put in with recyclable plastic material when her waste and recyclable materials were collected. This was a practical example of the need to have the right vehicles in order to maximise recycling rates. She hoped the administration would invest in the correct vehicles and would seek to persuade Essex County Council that its approach to waste management and disposal was misguided. The correct approach was to promote recycling and composting and send the small remainder to landfill.

Councillor Hunt, Portfolio Holder for Street and Waste Services, indicated that as part of the Fundamental Service Review of Street Services the type of vehicles for collection of waste and recyclable materials would be looked at.

### **4. External Overview Contract**

The Head of Strategic Policy and Regeneration submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix A to these minutes in the Minute Book.

Councillor Willetts attended and addressed the Cabinet to express concern that none of the nine companies who were shortlisted and invited to tender for the contract were

based in the borough. He believed that the Pre-Qualifying Questionnaire was biased against local companies and he requested an explanation of how this had happened. He suggested that procedures for letting contracts needed to be amended so that at least one local firm was short-listed and invited to submit a tender.

Councillor T. Young, Portfolio Holder for Housing and Community Safety, refuted the claim that the process was biased. One of the firms shortlisted to tender was a well known local firm based in Ardleigh, whilst two others were from Essex and one from Suffolk. The process had been fair and Colchester Borough Homes were providing feedback to unsuccessful local firms.

Councillor B. Oxford, Portfolio Holder for Customers, indicated that the strengths of the successful bid included the emphasis on keeping local residents involved, the use of local sub-contractors and suppliers and the recycling of paints and brushes.

Adrian Pritchard, the Chief Executive, emphasised that legislation governed the letting of contracts by public bodies. A policy to include one local firm in all shortlists was unlikely to withstand legal challenge.

Councillor Smith, Portfolio Holder for Resources and Diversity, stressed that Colchester Borough Homes had a good record in supporting local companies.

*RESOLVED* that:-

- (a) Axis Europe Plc be appointed to deliver the External Overview Contract.
- (b) The Council enter into a 4 + 2 year JCT Standard Form of Measured Term Contract 2006 Edition incorporating Revision 2 (2009) with Axis Europe plc, further amended as set out in the Tender Document.

## *REASONS*

- (a) Housing property related services are currently being provided through a signed Deed of Variation with Colchester Borough Homes (CBH). The signing took place on Thursday 9 October 2008 and varies the Management Agreement between Colchester Borough Council (CBC) and CBH. The first period of the agreement came to an end on 31 March 2009 and the second 9 month period commenced on 1st April 2009.
- (b) During the interim period and to comply with Cabinet decisions on 21 May 2008 and 28 January 2009 it was intended to prepare for and let a fully compliant OJEU contract or set of contracts for the remaining Capital and Revenue work packages. The work packages were designed to cover
  - Responsive repairs, voids and adaptations
  - Gas Servicing
  - External overview – planned programmes such as external painting etc

The original decision taken by Cabinet above was reviewed and this formed part of a separate report which was taken to Cabinet on Wednesday 9th September 2009. As a result of the Cabinet decision, the first package 'Responsive repairs, voids and

adaptations' will continue to be delivered by CBH and a robust benchmarking exercise was to be conducted to ensure the Council complies with its best value obligations. A new Deed of Variation has been prepared to recognise the new arrangements and the parties have agreed to the necessary amendments. The new Deed was signed and dated 10th December 2009. The new Deed is essentially designed to align with the completion date for the Management Agreement and recognise the period January 2010 to March 2010 as an extension to the current Deed which ended in December 2009, periods thereafter will be annual from 1st April.

(c) As Cabinet originally instructed, work proceeded to expose Gas Servicing and the External Overview contracts to competitive tender. This report is concerned with the External Overview contract which is designed to include external redecorations, internal decorations to communal areas and private areas under the Special Internal Decorations Scheme, external building fabric repairs and renewal of soffits, fascias, gutters and downpipes.

(d) The External Overview contract was advertised using the local newspaper series together with the trade journal "Building". Expressions of interest were sought through a Pre Qualification Questionnaire (PQQ) process from which prospective contractors were selected. The results of this exercise conducted by Ridge and Partners were shared with Tenants, Leaseholders, Members and Staff from both CBH and CBC.

(e) Out of this exercise nine contractors were selected to be invited to tender for the works. Tenders were returned and opened by officers on Tuesday 30th March 2010 and following a further analysis exercise three contractors were interviewed and out of this a final recommendation was concluded.

(f) The procurement approach was consistent with that agreed by Cabinet on 28 January 2009 with the Council acting as the awarding body for any contracts placed and CBH acting as the employer's agent (Contract Administrator).

#### *ALTERNATIVE OPTIONS*

There are few alternative options as this programme forms part of the continued programme to maintain the housing asset. The programme has slipped over the last few years and this contract revives an essential piece of work for both tenants and leaseholders alike.

## **5. Colchester Borough Council Safeguarding Adults Policy**

The Head of Life Opportunities submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix B to these minutes in the Minute Book.

*RESOLVED* that the Safeguarding Adults Policy at Appendix 1 of the Head of Life Opportunities report be approved.

*RECOMMENDED* to Council that the Safeguarding Adults Policy be adopted and be included in the Council's Policy Framework.

## *REASONS*

(a) The Safeguarding Adults Policy sets out the roles and responsibilities of Colchester Borough Council in working together with other professionals and agencies to promote vulnerable adults' welfare and safeguard them from abuse and neglect.

(b) "No secrets: guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse" was published by the Department of Health in 2000 to give guidance to local agencies who have a responsibility to investigate and take action when a vulnerable adult is believed to be suffering abuse. It offers a structure and content for the development of local inter-agency policies, procedures and joint protocols which will draw on good practice nationally and locally.

(c) Social Services local authorities are already required to ensure that there is an Adult Safeguarding Board covering their area, which brings together representatives of each of the main agencies and professionals responsible for helping to protect vulnerable adults from abuse and neglect. In the Colchester context, the relevant body is the Essex Safeguarding Adults Board (ESAB). The Council already participates actively in the Essex Safeguarding Adults Board and its North East Essex Locality Board.

(d) By adopting this policy, Colchester Borough Council is signing up to the following principles laid down within the Essex Safeguarding Adults Board Guidelines:-

- To take action to identify and prevent abuse from happening.
- Respond appropriately when abuse has or is suspected to have occurred.
- Ensure that the agreed safeguarding adults' procedures are followed at all times.
- Provide support, advice and resources to staff in responding to safeguarding adult issues.
- Inform staff of any local or national issues relating to safeguarding adults.
- Ensure staff are aware of their responsibilities to attend training and to support staff in accessing these events.
- Ensuring that the organisation has a dedicated staff member with an expertise in safeguarding adults.
- Ensuring staff have access to appropriate consultation and supervision regarding safeguarding adults.
- Understand how diversity, beliefs and values of people who use services may influence the identification, prevention and response to safeguarding concerns.

## *ALTERNATIVE OPTIONS*

(a) To not approve the Policy. This would prevent the Council from having up to date and compliant policy and procedures and put at risk the authority's ability to work effectively to safeguard the welfare of vulnerable adults in the community and to respond to scrutiny from the ESAB.

(b) To request amendments to the Policy. The Policy is derived directly from a "model"

policy developed and approved by the ESAB for adoption by partner agencies such as the Council.

## **6. Procurement Exception (Visual Arts Facility)**

The Executive Director submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix C to these minutes in the Minute Book.

*RESOLVED* that Cabinet note the exception agreed by the Executive Director in consultation with the Portfolio Holder for Resources, Diversity, Culture and the Arts in accordance with Contract Procedure Rule 2(2) from the need to place a ten day public notice for the drylining and ceiling packages as required by Contract Procedure Rule 6 (2) for the reasons set out in the Executive Director's s report.

### *REASONS*

(a) Under Contract Procedure Rule 6(2) there is a requirement to place a ten day public notice in relation to all contracts where the estimated value is likely to exceed £250K. Both the drylining and the ceiling packages for the Visual Arts Facility (VAF) are likely to exceed £500k.

(b) The normal process following the expiry of a ten day public notice is to carry out a technical and financial assessment of the interested parties based on their responses to a pre qualifying questionnaire (PQQ) in order to obtain a short list of the parties who would be invited to tender. Thereafter, there would be an assessment of the tenders received in order to determine which tender offered the Council best value.

(c) Mace Limited being the Council's appointed Project Manager (PM) for the VAF has advised the Council that it should not comply with Contract Procedure Rule 6(2) for the drylining and ceiling packages because to advertise and go through a PQQ selection process would extend the procurement duration by five weeks and this would increase the overall costs for the VAF.

(e) The PM has recommended that the Council use its trade contractors for the above work packages who have already been pre-qualified and who have been successfully used by Mace Limited in relation to other projects. Those shortlisted contractors would be invited to tender for the work and an assessment of the tenders received would be carried out in order to determine which tender offered the Council best value.

(f) The PM further advises that the dryling and ceiling packages are on the critical path and there is no float in the programme, and without an exemption from the need to issue a ten day public notice the completion date would be delayed by five weeks because of the need to wait for the expiry of the ten day period and to carry out a proper assessment of the PQQ's in order to obtain a list of interested parties who would be invited to tender. It was the PM's professional view that obtaining an exception from the need to advertise the above contracts would be in the best interest

of the Council for the reasons set out in this report.

(g) Under Contract Procedure Rule 2(2) exception from any of the provisions of the Contract Procedure Rules can be made by direction of the Cabinet or, where it is in the Council's interests to take immediate action, by an Executive Director, after appropriate consultation with the relevant Portfolio Holder.

(h) The Executive Director in consultation with the relevant Portfolio Holder (the Portfolio Holder for Resources, Diversity, Culture and the Arts) agreed that that it was in the Council's interest to take immediate action in order to maintain the agreed programme and to contain costs. It was also agreed, based on the advice of the PM, that the exception was appropriate. Accordingly, an exception was granted from the obligation contained in Contract Procedure Rule 6(2) in relation to the above works packages.

(i) Under Contract Procedure Rule 2(3) every exception to the provisions of the Contract Procedure Rules made by an Executive Director and the circumstances whereby it is in the Council's interests to take immediate action by which the exception shall have been justified, shall be reported to either the Portfolio Holder or the next meeting of the Cabinet (as appropriate). It is appropriate to report this matter to Cabinet because the estimated value of both the above works packages will be above £500,000.

(i) It should also be noted that the July 2009 Cabinet granted a specific delegation to the Executive Director responsible for the VAF in consultation with the relevant Portfolio Holder to enter into all necessary and appropriate contracts with relevant third parties provided that the costs fall within the overall agreed capital budget and/or any approved revenue budget (as appropriate) for the project. This was subject to any contracts being awarded in compliance with the Council's Contract Procedure Rules

### *ALTERNATIVE OPTIONS*

No alternatives are proposed given that the decision has already been implemented in accordance with Contract Procedure Rule 2(2).

## **7. Investment in Colchester's Art and Culture**

The Cabinet considered minute 55 of the Strategic Overview and Scrutiny Panel's meeting of 2 March 2010 a copy of which had been circulated to each Member and a copy of which appears as Appendix D to these minutes in the Minute Book.

Councillor Arnold, Chairman of the Strategic Overview and Scrutiny Panel, addressed the Cabinet. He considered that this had been one of the best pieces of scrutiny undertaken at Colchester. He explained the reasoning and provided further context to the Panel's proposals. In respect of recommendation (b), there was a multiple party Service Level Agreement (SLA) in place with the Mercury Theatre and SLAs in place with the Arts Centre and firstsite. These were signed by the Portfolio Holder but were not the subject of formal portfolio decisions, even though they involved substantial

sums of public money. The Panel had considered that it would be better for the SLAs to be formal Portfolio Holder decisions. This would give councillors an opportunity to be notified of their contents and provide the opportunity for scrutiny.

In respect of recommendation (c), this was seeking to recognise the contribution made by the arts providers to the wider Colchester economy. Recommendation (d) was seeking to give an indication of likely funding for future years to the arts providers. This would help with their business planning as they often planned events and booked artists years in advance. An indication of likely future income would provide some stability and reassurance.

The multi-party SLA with the Mercury Theatre was widely well regarded and recommendation 11(e) sought to make this the model for the other major arts providers. A multi-party SLA gave greater confidence both to the organisation itself and the other funders. Recommendation (f) sought to split the responsibility for setting targets for arts providers and responsibility for meeting the targets between different portfolio holders.

Councillor Barlow, Portfolio Holder for Economic Development, Culture and Tourism, thanked Councillor Arnold and the Strategic Overview and Scrutiny Panel. However, he did not consider that the Cabinet should accept all the recommendations. In respect of recommendation (b) there were many SLAs in place across the Council. The Cabinet could not accept the principle that all of these should be subject to the formal decision making process. This would be an unnecessary constraint on the freedom of action of Portfolio Holders. Recommendation (d) also could not be accepted. In view of the current economic and political climate, the Council's own funding was not secure. It would not be prudent to give an indication of likely future funding to the arts providers as this could be perceived as binding and could raise hopes unnecessarily. The remaining recommendations could be accepted, subject to some relatively minor amendments.

Councillor Smith, Portfolio Holder for Resources and Diversity, considered that that scrutiny had lacked focus and that as a consequence some of the recommendations were contradictory. The recommendation that SLAs be subject to the formal decision process was incompatible with the recommendation that the Council move to multi-party SLAs.

*RESOLVED* that:-

(a) Recommendations (b) and (d) of minute 55 of the Strategic Overview and Scrutiny Panel meeting of 2 March 2010 be rejected;

(b) The remaining recommendations of minute 55 of the Strategic Overview and Scrutiny Panel meeting of 2 March 2010 be accepted as amended below:-

a) in recognition of the significant benefits they bring to the Borough, the Council should continue to consider giving annual grants to arts providers;

b) [rejected];

c) the direct contribution made by the arts providers towards making Colchester a place that people from outside the Borough want to visit and the positive impact of these visits on Colchester's economy should be recognised when their performance is assessed;

d) [rejected];

e) the multi party Service Level Agreement for the Mercury Theatre should become the model for the agreements between the Council and firstsite and the Council and the Arts Centre and in particular the other funding partners should be party to those agreements;

f) the relevant Portfolio Holders should regularly hold structured meetings with the arts providers to ensure all are aware of ongoing and planned borough community development projects and initiatives, addressing areas of duplication or gaps. The aim should be to ensure the funding provided makes the greatest possible impact on Life Opportunity targets as set out in LAA2 and on the Council's strategic aims.

### *REASONS*

The Cabinet could not accept the principle that all SLAs should be subject to the formal decision making process. This would be an unnecessary constraint on the freedom of action of Portfolio Holders. In view of the current economic and political climate, the Council's own funding was not secure. It would not be prudent to give an indication of likely future funding as this could be perceived as binding and could raise hopes unnecessarily.

### *ALTERNATIVE OPTIONS*

Cabinet could have accepted or rejected the recommendation made by the Strategic Overview and Scrutiny Panel in their entirety, or made other amendments to the recommendations.

## **8. Appointments to External Organisations and Council Groups**

The Head of Corporate management submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix E to these minutes in the Minute Book.

*RESOLVED* that:-

(a) The representatives for the Municipal Year 2010/2011 to the various external organisations and Council groups listed in Appendix A of the Head of Corporate Management's report be agreed, such appointments to cease if the representatives cease to be members of the Council during the year, subject to the following amendments:-

- Local Government Association, Urban Commission: Cllr Barlow appointed in place



- of Cllr Offen;
- Local Government Association, Coastal Issues Special Interest Group: Councillor Barton appointed in place of Councillor T. Young;
  - Colchester Institute: Councillor Manning nominated as the Council's representative from 1 August 2010, in place of Councilor Davies;
  - Local Highway Panel: the nomination of Councillor Cope was withdrawn and a further Liberal Democrat appointment would be made;
  - Equality and Diversity Group: Councillor Smith would attend ex officio all meetings of the Group.

(b) Those Councillors who are not members of the Council groups for the Municipal Year 2010/2011 be confirmed as a pool of members able to act as substitute members on Council groups, in accordance with the normal requirements relating to substitute members set out in the Council's Constitution.

(c) The Leader of the Council be authorised to make a determination where a nomination is deemed to be in dispute.

(d) To note the appointment of the following Champions:

- Culture Champion: Councillor Cope
- Cycling Champions: Councillors P. Higgins and T. Higgins
- Design Champion: Councillor Gamble
- Diversity Champion: Councillor T. Higgins
- Heritage Champion: Councillor Spyvee

## *REASONS*

(a) It is important for the Council to continue to make formal appointments to certain organisations and council groups such as those with statutory functions, our key strategic and community partners and groups with joint working arrangements. These groups have been identified in Appendix A of the Head of Corporate Management's report.

(b) At Appendix B of the Head of Corporate Management's report are those appointments which will cease. The East of England Regional Assembly was dissolved on 31 March 2010. The East of England Local Government Association will take forward some aspects of EERA's work. The East Essex Waste Joint Committee is also being dissolved so no appointment needs to be made. The appointment to the Sixth Form College was a four year appointment that expired in November 2009. A replacement appointment was put forward to the College, but the Chairs and Search Committee of the College decided not to recommend the appointment of a local authority nominee to the governing body at this time.

## *ALTERNATIVE OPTIONS*

No alternative options are proposed other than to authorise the Leader of the Council to make a determination where a nomination is deemed to be in dispute.

## 9. Progress of Responses to the Public

The Head of Corporate Management submitted a progress sheet a copy of which had been circulated to each Member and a copy of which appears as Appendix F to these minutes in the Minute Book.

*RESOLVED* that the contents of the Progress Sheet be noted.

### *REASONS*

The progress sheet was a mechanism by which the Cabinet could ensure that public statements and questions were responded to appropriately and promptly.

### *ALTERNATIVE OPTIONS*

No alternative options were presented to the Cabinet.

## 10. Exclusion of the Public

**The Cabinet resolved under Section 100A(4) of the Local Government Act 1972 and the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public from the meeting for the following item as it involved the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.**

## 11. Design and Print Contract Award

The Head of Corporate Management submitted a report a copy of which had been circulated to each Member and a copy of which appears as Appendix F to these minutes in the Minute Book.

*RESOLVED* that the contract for Colchester Borough Council's design and print requirements be awarded to Alphaprint.

### *REASONS*

The reasons for the decision were as set out in the Head of Corporate Management's report.

### *ALTERNATIVE OPTIONS*

The alternative options were set out in the Head of Corporate Management's report.