

# The Council Meeting

Council Chamber, Town Hall  
20 July 2011 at 6.00pm

# Information for Members of the Public

## Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at [www.colchester.gov.uk](http://www.colchester.gov.uk) or from Democratic Services.

## Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to meetings, with the exception of Standards Committee meetings. If you wish to speak at a meeting or wish to find out more, please pick up the leaflet called "Have Your Say" at Council offices and at [www.colchester.gov.uk](http://www.colchester.gov.uk)

## Private Sessions

Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

## Mobile phones, pagers, cameras, audio recorders

Please ensure that all mobile phones and pagers are turned off before the meeting begins and note that photography or audio recording is not permitted.

## Access

There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to Angel Court Council offices, High Street, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call and we will try to provide a reading service, translation or other formats you may need.

## Facilities

Toilets with lift access, if required, are located on each floor of the Town Hall. A vending machine selling hot and cold drinks is located on the first floor and ground floor.

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# COLCHESTER BOROUGH COUNCIL

**TO ALL MEMBERS OF THE COUNCIL**

18 July 2011

You are hereby summoned to attend a meeting of the Council to be held at the Council Chamber, Town Hall on **20 July 2011 at 6:00pm** for the transaction of the business stated below.



**Chief Executive**

## AGENDA

### **Pages**

#### **1. Welcome and Announcements**

(a) The Mayor to welcome members of the public and Councillors and to invite the Chaplain to address the meeting. The Mayor to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Mayor's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to off or to silent;
- location of toilets;
- introduction of members of the meeting.

#### **2. Have Your Say!**

(a) The Mayor to ask members of the public to indicate if they wish to ask a question, make a statement or present a petition on any matter relating to the business of the Council – either on an item on the agenda for this meeting or on a general matter not on this agenda (Council Procedure Rule 6(2)).

(b) The Mayor to invite contributions from members of the public who wish to address the Council on a general matter not on this agenda.

(Note: A period of up to 15 minutes is available for general statements and questions under 'Have Your Say!').

### **3. Minutes**

**1 - 31**

A... Motion that the minutes of the meeting held on 18 May 2011 be confirmed as a correct record.

### **4. Mayor's Announcements**

Mayor's Announcements (if any) and matters arising pursuant to Council Procedure Rule 8(3).

### **5. Personal Interests of Members**

Disclosures by Members under Council Procedure Rule 9(3) to 9(9) (if any).

### **6. Prejudicial Interests of Members**

Disclosures by Members under Council Procedure Rules 9(10) and 9(11) (if any).

(Note: Members should only declare personal and/or prejudicial interests on items that are to be considered at the meeting).

### **7. Items (if any) referred under the Call-in Procedure**

To consider any items referred by the Strategic Overview and Scrutiny Panel or the Finance and Audit Scrutiny Panel under the Call-In Procedure because they are considered to be contrary to the policy framework of the Council or contrary to, or not wholly in accordance with the budget.

### **8. Recommendations of the Cabinet, Panels and Committees**

- i. 2012/13 Budget Strategy, Medium Term Financial Forecast and Budget Timetable **32 - 33**

B... Motion that the recommendation contained in minute 14 of the Cabinet meeting of 13 July be approved and adopted.

- ii. Capital Programme Projects **34 - 35**

C... Motion that the recommendations contained in minute 15 of the Cabinet meeting of 13 July 2011 be approved and adopted.

iii. firstsite - Construction Related Legal Proceedings

**36 - 37**

D... Motion that the recommendation contained in the minute 13 of the Cabinet meeting of 13 July 2011 be approved and adopted.

iv. Licensing Policy for Sex Establishments

**38 - 39**

E... Motion that the recommendation contained in minute 4 of the Licensing Committee meeting of 1 June 2011 be approved and adopted.

**9. Notices of Motion pursuant to Council Procedure Rule 11**

None received at the time of the publication of the Summons.

**10. Questions to Cabinet Members and Chairmen pursuant to Council Procedure Rule 10**

To receive and answer pre-notified questions in accordance with Council Procedure Rule 10(1) followed by any oral questions (ie not submitted in advance) in accordance with Council Procedure Rule 10 (3).

(Note: A period of up to 60 minutes is available for pre-notified questions and oral questions by Members of the Council to Cabinet Members and Chairmen (or in their absence, Deputy Chairmen)).

The following pre-notified question has been received:-

**Questioner: Councillor Bouckley**

**To the Leader of the Council and Portfolio Holder for Strategy and Performance**

Whilst appreciating the help you gave in the past to the idea of a dedicated Colchester to Mersea off-road cycle route, would the Leader not agree that the huge backing to this idea in the Green Infrastructure Strategy must surely ensure it has a high priority requiring the nomination of a senior officer who would be accountable for future progress?

**11. Annual Scrutiny Report**

**40 - 46**

F... Motion that the Annual Scrutiny Report be noted.

## **12. Schedules of Decisions taken by Portfolio Holders**

**47 - 55**

To note schedules covering the periods 10 March 2011 - 17 May 2011 and 18 May 2011 - 1 July 2011.

## **13. Reports Referred to in Recommendations**

**56 - 132**

The reports specified below are submitted for information and are referred to in the recommendations specified in item 8 on the agenda:

Report to Cabinet 13 July 2011: 2012/13 Budget Strategy, Medium Term Financial Forecast and Budget Timetable

Report to Cabinet 13 July 2011: Capital Programme Projects

Report to Cabinet 13 July 2011: firstsite Construction Related Legal Proceedings

Report to Licensing Committee 1 June 2011: Licensing Policy for Sex Establishments

## **14. Urgent items**

To consider any business not specified in this summons which by reason of special circumstances the Mayor determines should be considered at the meeting as a matter of urgency.

## **15. Exclusion of the Public**

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

# COUNCIL MEETING

## 18 MAY 2011

*Present:-*

**The Mayor (Councillor Lewis)  
The Deputy Mayor (Councillor Chuah)  
Councillors Arnold, Barlow, Barton, Bentley,  
Blandon, Bouckley, Chapman, Chillingworth,  
Cook, Cope, Cory, Davies, Dopson, Elliott, Ellis,  
Fairley-Crowe, Feltham, Frame Gamble,  
Greenhill, Hardy, Harrington, Harris, Hazell, P.  
Higgins, T. Higgins, Hogg, Jowers, Kimberley,  
Knight, Lilley, Lissimore, Maclean, Manning,  
Martin, Mudie, Offen, B. Oxford, G. Oxford, P.  
Oxford, Quince, Scott-Boutell, Smith, Spyvee,  
Sutton, C. Sykes, L. Sykes, Turrell, Willetts, J.  
Young and T. Young.**

The meeting was opened with prayers by the Mayor's Chaplain, the Reverend Richard Allen.

### **1. Election of Mayor**

It was PROPOSED by Councillor Gamble, SECONDED by Councillor Sutton and SUPPORTED by Councillors J. Young and G. Oxford and –

*RESOLVED UNANIMOUSLY* that Councillor Helen Chuah be elected Mayor of this Borough for the ensuing Municipal Year.

Councillor Chuah took the customary oath and made and subscribed the declaration of acceptance of office.

The Mayor then took the Chair and returned thanks for her election.

### **2. Minutes**

The minutes of the meetings held on 23 March 2011 were confirmed as a correct record.

### **3. Election of Deputy Mayor**

It was PROPOSED by Councillor Chapman, SECONDED and SUPPORTED by Councillors Turrell, T. Young and G. Oxford and –

*RESOLVED UNANIMOUSLY* that Councillor Christopher Arnold be elected Deputy Mayor of this Borough for the ensuing Municipal Year.

Councillor Arnold then made and subscribed the declaration of acceptance of office and returned thanks for his election as Deputy Mayor.

#### **4. Vote of Thanks to Retiring Mayor**

It was PROPOSED by Councillor Kimberley, SECONDED and SUPPORTED by Councillors Turrell, T. Young and G. Oxford and –

*RESOLVED UNANIMOUSLY* that the best thanks of the Council are due and are hereby accorded to Councillor Sonia Lewis for the admirable manner in which she had discharged the responsible duties of the Mayoralty during the past year and that a transcript of this resolution under the Common Seal be furnished to Councillor Sonia Lewis.

#### **5. Mayor's Chaplain and Announcements**

The Mayor intimated that she had appointed the Reverend Mark Thompson to be her Chaplain for the ensuing Municipal Year.

The Civic Service would take place on Sunday, 5 June 2011 at St Peter's Church. The "Mayor's Escort at Home" would take place on 28 May 2011.

The Mayor also indicated that she would be supporting the following charities:-

- Army Benevolent Fund;
- Colchester Carers Centre
- Colchester Samaritans
- Phoenix Homes, Colchester
- Colchester Scouts Band
- Essex Foundation Trust
- Hospice and Children's Home in Penang

#### **6. Adjournment**

*RESOLVED* that the meeting stand adjourned until 11.30 and be resumed in the Council Chamber.



# **COUNCIL MEETING 18 MAY 2011 (RECONVENED)**

*Present:-*            **The Mayor (Councillor Chuah)  
The Deputy Mayor (Councillor Arnold)  
Councillors Barlow, Barton, Bentley, Blandon,  
Bouckley, Chapman, Chillingworth, Cook, Cope,  
Cory, Davies, Dopson, Elliott, Ellis, Fairley-  
Crowe, Feltham, Frame Gamble, Greenhill, Hardy,  
Harrington, Harris, Hazell, P. Higgins, T. Higgins,  
Hogg, Hunt, Jowers, Kimberley, Knight, Lewis,  
Lilley, Lissimore, Maclean, Manning, Martin,  
Mudie, Offen, B. Oxford, G. Oxford, P. Oxford,  
Quince, Scott-Boutell, Smith, Spyvee, Sutton, C.  
Sykes, L. Sykes, Turrell, Willetts, J. Young and T.  
Young.**

## **7. Appointment of Leader of the Council**

*RESOLVED* that Councillor Turrell be appointed Leader of the Council for the duration of her period of office.

## **8. Delegations Made by the Leader of the Council**

*RESOLVED* that the appointment of the Deputy Leader of the Council, the appointment of Cabinet members, the allocation of responsibility for Portfolios and the Scheme of Delegation to Cabinet members, as circulated at the meeting and appended to these minutes, be noted.

## **9. Appointment of Panels, Committee and Sub-Committees**

*RESOLVED* that:-

- (i) in accordance with the provisions of Section 15 of the Local Government and Housing Act 1989 the number of seats, Group Representation and membership of the Accounts and Regulatory Committee, Crime and Disorder Committee, Finance and Audit Scrutiny Panel, Licensing Committee, Local Development Framework Committee, Planning Committee, Policy Review and Development Panel and the Strategic Overview and Scrutiny Panel for the ensuing municipal year be as circulated at the meeting and as appended to these minutes.
- (ii) in accordance with the provisions of Section 17 of the Local Government and Housing Act 1989, the appointments of the Standards Committee and the Task and Finish Groups shall not be on a Group basis and membership shall be as circulated at the meeting and as appended to these minutes.

- (iii) authority to approve the membership of the Council's Independent Remuneration Panel be delegated to the Group Leaders.

## **10. Motion of Thanks**

*RESOLVED* that the Council record its grateful thanks to former Councillors Fisher, Foster and Tod for the public service rendered by them to this Borough during their period of office as Councillors and that a transcript of this resolution be furnished to each of them on parchment under the Common Seal of the Borough as a permanent record of the appreciation of the Council.

## **11. Section 151 Officer**

*RESOLVED* that Sean Plummer be designated as the Council's Section 151 Officer with effect from Monday 6 June 2011.

## **12. City Status**

Wendy Bailey, Vice Chair of Destination Colchester, addressed the Council pursuant to the provisions of Council Procedure Rule 6(2). She thanked Council for the support it had shown the bid at the meeting on 23 March. There would be some minor drafting amendments and additions to the bid before it was submitted. She believed that this was a big opportunity for Colchester and the bid made a compelling case for city status. It was primarily a community led bid with considerable support from the residents of the borough and the costs involved would be minimal.

*RESOLVED* that the bid by Destination Colchester for City Status be endorsed subject to any minor drafting amendments which may prove necessary and that the final bid be submitted by the Council to the Deputy Prime Minister (MAJORITY voted FOR).

# Membership of Cabinet, Panels and Committees

## Municipal Year 2011/12

Deputy Leader of the Council – Councillor Hunt

<b>Cabinet (8 seats)</b>	
Councillors:- Barlow, Barton, Dopson, Hunt, B. Oxford, Smith, Turrell and T. Young	
Group representation – Lib Dem 5, Labour 2, Highwoods Independent 1	
<b>Members:</b>	
Councillor Barlow	- Commerce and Sustainability Portfolio Holder
Councillor Barton	- Renaissance Portfolio Holder
Councillor Dopson	- Communities and Diversity Portfolio Holder
Councillor Hunt	- Street and Waste Portfolio Holder
Councillor B. Oxford	- Customers Portfolio Holder
Councillor Smith	- Resources and ICT Portfolio Holder
Councillor Turrell	- Strategy and Performance Portfolio Holder
Councillor T. Young	- Housing and Community Safety Portfolio Holder

## Municipal Year 2011/12

Accounts and Regulatory Committee (10 seats)			Finance and Audit Scrutiny Panel (10 seats)			Licensing Committee (12 seats)		
Group Representation			Group Representation			Group Representation		
Con	3		Con	3		Con	5	
Lib Dem	5		Lib Dem	5		Lib Dem	5	
Lab	1		Lab	1		Lab	2	
H/wood	1		H/wood	1		H/wood	-	
<b>Members:</b>			<b>Members:</b>			<b>Members:</b>		
Councillor Cory Councillor Feltham Councillor Greenhill Councillor Hazell Councillor Knight Councillor Lilley Councillor Lissimore Councillor Manning Councillor G. Oxford Councillor Quince			Councillor Cory Councillor Feltham Councillor Greenhill Councillor Hazell Councillor Knight Councillor Lilley Councillor Lissimore Councillor Manning Councillor G. Oxford Councillor Quince			Councillor Bouckley Councillor Blandon Councillor Cook Councillor Cope Councillor Garnett Councillor Harris Councillor Hazell Councillor Hogg Councillor Kimberley Councillor Lilley Councillor Mudie Councillor Quarrie		

Local Development Framework Committee (9 seats)			Planning Committee (12 seats)			Policy Review and Development Panel (7 seats)		
Group Representation			Group Representation			Group Representation		
Con	4		Con	5		Con	3	
Lib Dem	4		Lib Dem	5		Lib Dem	3	
Lab	1		Lab	1		Lab	1	
H/wood	-		H/wood	1		H/wood	-	
<b>Members:</b>			<b>Members:</b>			<b>Members:</b>		
Councillor Blundell Councillor Cory Councillor Davies Councillor Ellis Councillor Goss Councillor Jowers Councillor Naish Councillor Spyvee Councillor C. Sykes			Councillor Arnold Councillor Chillingworth Councillor Elliott Councillor Ford Councillor Gamble Councillor P. Higgins Councillor T. Higgins Councillor Lewis Councillor Maclean Councillor Manning Councillor P. Oxford Councillor L. Sykes			Councillor Chapman Councillor Cory Councillor Fairley-Crowe Councillor Harrington Councillor Offen Councillor Scott-Boutell Councillor J. Young		

<b>Strategic Overview and Scrutiny Panel (10 seats)</b>			<b>Crime and Disorder Committee (10 seats)</b>		
<b>Group Representation</b>			<b>Group Representation</b>		
Con	4		Con	4	
Lib Dem	4		Lib Dem	4	
Lab	1		Lab	1	
H/woods	1		H/woods	1	
<b>Members:</b>  Councillor Cope Councillor Chapman Councillor Ellis Councillor Frame Councillor T. Higgins Councillor Naish Councillor G. Oxford Councillor Quince Councillor C. Sykes Councillor Willetts			<b>Members:</b>  Councillor Cope Councillor Chapman Councillor Ellis Councillor Frame Councillor T. Higgins Councillor Naish Councillor G. Oxford Councillor Quince Councillor C. Sykes Councillor Willetts		

## Municipal Year 2011/12

In accordance with the provisions of Section 17 of the Local Government and Housing Act 1989, it will be proposed that appointments to the undermentioned Committees/Groups shall not be on a Group basis and membership shall be as follows for the ensuing Municipal Year:-

<b>Standards Committee (4 seats)</b>	<b>Task and Finish Groups</b>
<p><b>Members:</b></p> <p>Councillor Arnold Councillor Chapman Councillor Gamble Councillor Spyvee</p> <p><b>Independent members:</b></p> <p>Ian Andrews Derek Coe Sven Farmer Peter Fitton Steven Roberts-Mee</p> <p><b>Parish members:</b></p> <p>Parish Councillor Terence Abnett Parish Councillor Malcolm Bartier Plus one further Parish Council representative to be nominated by the Colchester Association of Local Councils</p>	<p><b>20 mph speed limit</b></p> <p>Councillor Ford Parish Councillor Gili-Ross Councillor Hardy Councillor Offen Councillor G. Oxford</p> <p><b>Waste Prevention and Recycling Options Appraisal</b></p> <p>Councillor Cope Councillor Ellis Councillor P. Oxford Councillor Offen Councillor J. Young Councillor Willetts</p> <p><b>Older Persons Accommodation</b></p> <p>Councillor Kimberley Councillor Lewis Councillor Lilley Councillor Mudie Councillor B. Oxford Councillor L. Sykes</p>

# Colchester Borough Council

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## **SCHEME OF DELEGATION BY THE LEADER OF THE COUNCIL TO CABINET MEMBERS May 2011**

The Leader of the Council in conjunction with the Cabinet leads the implementation of policy within the Council's Budget and Policy Framework. In doing this the Leader of the Council in conjunction with the Cabinet carries out all of the Council's functions which are not the responsibility of any other part of the Council, whether by law or under this Constitution.

**By this Scheme of Delegation the Leader of the Council has delegated to individual members of the Cabinet most of the Leader's executive powers within the confines of the Council's Budget and Policy Framework.**

The Cabinet has also approved a Scheme of Delegation to Officers which is contained in Part 3 of the Constitution.

The following conditions apply to this Scheme of Delegation to Cabinet Members and shall be complied with at all times:-

1. Every delegated power shall be exercised in the name of the Council;
2. The exercise of delegated powers shall be subject to the decision not being contrary to Cabinet functions and the Council's Budget and Policy Framework as embodied in a formal resolution and recorded in the minutes of the Council.
3. All decisions taken under this scheme are subject to the Call-In Procedure with the exception of those taken under the urgency provision.
4. A Cabinet Member exercising delegated powers shall do so in a manner consistent with the policy of the Council current at the time. The Proper Officer shall be the final arbiter of the interpretation of policy in relation to any matter.
5. In exercising delegated powers, a Cabinet Member may incur expenditure only if appropriate provision has been made in the approved annual estimates and/or capital programme except as otherwise provided for in Financial Regulations.
6. No action may be taken which is contrary to the Council's Constitution.
7. Where powers to acquire or dispose of property or land are being exercised, the delegation is subject to such acquisition or disposal being in accordance with terms approved by the District Valuer or other professional adviser.
8. Delegated powers to acquire property shall not include power to acquire property compulsorily and any proposal to make a Compulsory Purchase Order shall be submitted to the full Council as a recommendation.



9. A Cabinet Member exercising delegated powers shall record the decision and the reasons for it on the Decision Notice and shall deliver it to the Proper Officer who shall publish the Decision Notice in accordance with the Constitution.
10. No Cabinet Member shall exercise any delegated power that comprises a Key Decision unless that decision is contained within the Council's Forward Plan and complies with the Forward Plan process.
11. Nothing in this scheme of delegation shall be construed in such a way as to remove the requirement that any proposal involving the granting of planning permission shall be submitted to the Planning Committee.

## **C O N T E N T S**

<b><u>Portfolio Holder</u></b>	<b><u>Page</u></b>
All Cabinet Members	
Strategy and Performance – Councillor Turrell (Leader of the Council)	
Commerce and Sustainability – Councillor Barlow	
Communities and Diversity – Councillor Dopson	
Customers – Councillor B. Oxford	
Housing and Community Safety – Councillor T. Young	
Renaissance – Councillor Barton	
Resources and ICT– Councillor Smith	
Street and Waste Services – Councillor Hunt (Deputy Leader of the Council)	

## **Scheme of Delegation to Cabinet Members**

<b>Delegation to all Cabinet Members</b>
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1. To comment on any consultative document.
  2. Grant applications.
  3. The award of the lowest tenders under £500,000 and for which there is financial provision.
  4. To fix fees and charges.
  5. To authorise the write-off of individual bad debts over £5,000 on the recommendation of the Head of Resource Management and appropriate Head of Service.
  6. To approve minutes of any Cabinet Committee, Panel or Group in respect of which they have responsibility.
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## **Scheme of Delegation to Cabinet Members**

<h3><b>Functions retained by the Leader of the Council and Portfolio Holder for Strategy and Performance</b></h3>
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1. The promotion of the Council on regional and sub-regional bodies in relation to developing regional partnerships.
2. Relations with the general public, local authorities, the media and all other external agencies including the Local Strategic Partnership (Colchester 2020).
3. Matters relating to financial strategy, the budget and resource allocation.
4. All strategic matters relating to major strategic partnerships e.g. ALMO & Waste
5. Following consultation with Group Leaders, to make appointments during the municipal year to Council Groups and Outside Bodies.

### **PUBLIC RELATIONS**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. The understanding of the Council's vision, actions and objectives throughout the Borough of Colchester and beyond.

### **HEALTH & SAFETY**

1. To be responsible for the management and monitoring of health and safety provision across the whole of the Councils' undertakings.  
(NB. Cabinet are jointly and severally the primary duty holders for health and safety across the Councils' undertakings.)

### **PERFORMANCE**

1. **Monitoring of the Council's performance in relation to national performance indicators and any other Government performance scheme.**
2. **Monitoring of the Council's performance dashboard.**

### **COMMUNICATIONS**

To procure and or encourage the procurement of the specified service in the provision, implementation, maintenance and management of:-

1. External communications with the media and partners.

## **Scheme of Delegation to Cabinet Members**

<b>Functions retained by the Leader of the Council and Portfolio Holder for Strategy and Performance (continued)</b>
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<b>Portfolio Responsibilities</b>
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To oversee the development and ongoing review of the Council's Strategic Plan.

To monitor the implementation of the Council's Strategic Plan, including ensuring Council resources are deployed to support strategic priorities.

To promote the Council's Strategic Plan to Councillors, partners and the community as a whole.

To develop and promote community leadership in the Borough.

To oversee and monitor the Council's financial strategy, budget and resource allocation.

To review the opportunities to work with other partners, both within the public and private sectors, to assist in developing 'joined-up' government.

7. To determine a communications strategy that will support and deliver the Council's vision and policy priorities.

Major Project(s) in Portfolio:

Haven Gateway Partnership, Regional Cities East Partnership, Colchester 2020, Waste Strategy, Strategy for the ALMO and Fundamental Service Reviews

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<p style="text-align: center;"><b>Delegation to the Portfolio Holder for Commerce and Sustainability</b></p>
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**BUSINESS DEVELOPMENT**

To procure and or encourage the procurement of the specified service in the provision, implementation, maintenance and management of:-

1. Economic development issues affecting Colchester.
2. The preparation and publication of an annual economic prosperity strategy delivery plan.
3. Partnerships that improve and encourage business opportunities within the Borough.
4. Appropriate exhibitions, seminars etc for local businesses and economic development at local, national and international events.
5. Promotion, influence and improvement of the skills base of the Borough.

**TOURISM**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. The Visitor Information Centre and the promotion of the Borough for tourism purposes.
2. Liaison with other tourism agencies for the development of tourism in the Borough.

**CULTURE AND THE ARTS**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. The Council's involvement in the Mercury Theatre, Colchester Arts Centre, Firstsite and similar organisations.
2. The Council's art collection and artefacts.
3. Events of cultural and artistic merit.
4. To exercise the functions delegated to the Colchester and Ipswich Joint Museums Committee on behalf of the Cabinet.
5. Archaeological sites and monuments.
6. Approval of expenditure under the Heritage Fund.

**Scheme of Delegation to Cabinet Members**

<p style="text-align: center;"><b>Delegation to the Portfolio Holder for Commerce and Sustainability (continued)</b></p>
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**DEVELOPMENT CONTROL**

To procure the specified service in the provision, implementation, maintenance and management of:

1. Functions as Local Planning Authority.
2. Building Regulations and allied legislation relating to dangerous buildings and safety at sports grounds.

**LOCAL DEVELOPMENT FRAMEWORK**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. The preparation of Supplementary Planning Documents and the issue of draft Supplementary Planning Documents for consultation.
2. To agree the Statement of Community Involvement and the Annual Monitoring Report.

**SUSTAINABILITY**

1. To develop policies in relation to sustainability and to oversee and promote the implementation of the Nottingham Declaration objectives.

**ENVIRONMENT**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. Sea defence and coast protection matters.

## Scheme of Delegation to Cabinet Members

### Delegation to the Portfolio Holder for Commerce and Sustainability (continued)

#### Portfolio Responsibilities

1. To encourage a buoyant and diverse local economy, which encourages full employment and works towards the creation of more high-value local jobs.
2. To champion the Borough of Colchester as a centre of business excellence, and to help local companies grow and flourish.
3. To help sustain a thriving town centre which satisfies the needs of all sectors of the community.
4. To encourage lifelong learning and skills development for the whole community to maximise job opportunities.
5. To promote Colchester as a key destination for visitors.
6. To oversee the implementation and monitoring of the Council's policies and services relating to heritage and culture.

To oversee the implementation and monitoring of the Council's policies and services relating to all planning activities including conservation and building control.

To monitor the implementation of the Local Plan.

9. To oversee the implementation and monitoring of the Borough Council's services and policies relating to environmental initiatives.

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Major Project(s) in Portfolio:

"Cycle Colchester"

## **Scheme of Delegation to Cabinet Members**

<b>Delegation to the Portfolio Holder for Communities and Diversity</b>
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### **RECREATION**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. Sports and leisure facilities, parks and gardens, allotments, playing fields, beach facilities, public open spaces, amenity areas and country parks.
2. Liaison with voluntary organisations and clubs in the development and use of sporting and recreational facilities.
3. The promotion and encouragement of recreational events.
4. Colchester Leisure World.

### **COMMUNITY SERVICES**

To procure and or encourage the procurement of the specified service in the provision, implementation, maintenance and management of:-

1. The promotion of public health matters so as to increase public awareness.
2. Services for the elderly.
3. Community projects supporting the Council's work on life opportunities.
4. Welfare rights.
5. Matters relating to young people.
6. Grants to the voluntary and community sector and village and community halls.
7. The Council's work with partners aimed at improving the life opportunities of residents.



## **Scheme of Delegation to Cabinet Members**

Delegation to the Portfolio Holder for  
Communities and Diversity (continued)

### **Portfolio Responsibilities**

1. To determine investment in “third sector” organisations which deliver services to help the Council to meet its corporate objectives.
  2. To ensure that the Council is working with partners to meet partnership targets.
  3. To support initiatives which tackle deprivation throughout the Borough, but with specific reference to the Council’s work on Life Opportunities.
  4. To engender partnership working between the Council and Town and Parish Councils within the Borough of Colchester.
  5. To explore the significance of rural issues in the Borough and determine what programmes and actions may be needed to address these.
  6. To authorise any grants to Town or Parish Councils.
  7. To oversee the implementation and monitoring of the Council’s policies and services relating to sport, recreation, leisure and the Olympics.
  8. To monitor the implementation of the Council’s Single Equality Scheme and Diversity Policy.
-

## **Scheme of Delegation to Cabinet Members**

### **Delegation to the Portfolio Holder for Customers**

#### **CUSTOMERS**

To procure and or encourage the procurement of the specified service in the provision, implementation, maintenance and management of:-

1. Customer Service across the Council as a whole.
2. Performance of the Customer Service Centre.
3. Co-ordination of Infopoint@Colchester.
4. Way We Work Programme.
5. Development of Customer Connected Initiative.

#### **GENERAL**

1. Freedom of Information and Environmental Information Regulations.
2. Cemeteries, crematorium and allied services.

### **Portfolio Responsibilities**

To monitor, fund and arrange for the continuing delivery of the Council's t-government agenda.

2. To examine and review the Council's customer service culture, processes and performance and to champion the customer point of view.
3. To review, monitor and improve consultation and communication between the Council and its customers.
4. To monitor customer compliments and complaints and referrals to the Local Government Ombudsman.

5. To improve communications and access to Council services by urban and rural communities within the Borough.
6. To examine and review the development of all forms of communication and community engagement.

Major Project(s) in Portfolio:

Customer Service Centre, Customer Connect and Infopoint@Colchester

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## **Scheme of Delegation to Cabinet Members**

<b>Delegation to the Portfolio Holder for Housing and Community Safety</b>
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### **PUBLIC SECTOR HOUSING**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. Public sector dwellings, management of Council owned dwellings and other properties and their environs including the setting of rents in accordance with the Management Agreement dated 11 August 2003 between the Council and Colchester Borough Homes Limited as varied by Deeds of Variation dated 9 October 2008 and 10 December 2009 and any subsequent agreement or arrangement entered into between the parties.
2. Management of the Housing Revenue Account. (NB. All decisions relating to the financial management of the HRA are reserved to Cabinet).
3. Tenant selection/nomination criteria and conditions of tenancy.
4. The Council's statutory responsibilities to homeless persons.
5. The Council's relationship with Registered Social Landlords.
6. The Right to Buy Scheme.

### **PRIVATE SECTOR HOUSING**

To procure the specified service in the provision, implementation, maintenance and

management of:-

1. Non-statutory housing functions such as housing advice, etc.
2. The Council's statutory responsibilities in respect of housing standards.
3. Support schemes to Building Societies and Banks and the making of mortgage advances by the Council for house purchase and improvement.
4. Housing standards and the protection of persons from unlawful eviction or harassment.
5. Private sector housing grants.

### **GENERAL HOUSING MATTERS**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. The promotion of the Council on regional and sub-regional bodies in relation to housing completions, housing developments.

### **Scheme of Delegation to Cabinet Members**

<p style="text-align: center;"><b>Delegation to the Portfolio Holder for Housing and Community Safety (continued)</b></p>
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2. To procure the specified service for the dissemination of information regarding all housing matters.
3. Home loss, disturbance and similar payments.

### **COMMUNITY SERVICES**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. Community safety.
2. Crime Prevention including CCTV.
3. Street Wardens

### **LAND RESOURCES**

In respect of all land and buildings owned by the Council in its capacity as Housing

Authority, to procure the specified service in the provision, implementation, maintenance and management of :-

1. Acquisitions and disposals including terms for acquisitions or disposals.
2. Commercial lettings.

### **Portfolio Responsibilities**

To promote the Council's Housing Strategy and to monitor its implementation.

To examine and review the operation of Colchester Borough Homes.

3. To agree the Crime and Disorder Reduction Strategy and ensure that the Council is working with partners to meet the key targets identified within the strategy.
- 

## **Scheme of Delegation to Cabinet Members**

### **Delegation to the Portfolio Holder for Renaissance**

1. The delivery of the Council's renewal agenda including sustainable housing, infrastructure, employment and leisure facilities.
2. To assist the Leader of the Council in the promotion of the Council on regional and sub-regional bodies in relation to developing regional partnerships.

### **Portfolio Responsibilities**

1. To oversee major regeneration projects which impact upon the Council's landholdings.

2. To support local and regional partnerships which can lever in new investment into the Borough's four regeneration areas.
3. To oversee the development and implementation of the Council's renewal agenda including the following projects:
  - (a) Town Centre
  - (b) Cultural Quarter
  - (c) Vineyard Gate
  - (d) North Colchester
  - (e) East Colchester

Major Project(s) in Portfolio: Renewal of Colchester's built environment

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## **Scheme of Delegation to Cabinet Members**

<b>Delegation to the Portfolio Holder for Resources and ICT</b>
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**FINANCIAL RESOURCES**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. The functions of the Council as the Billing Authority (except the power to levy the amount of the Council Tax for each category of dwelling).
2. The operation of Council Tax and residual Community Charge legislation, Council Tax Benefits Scheme legislation, Housing Benefit Scheme legislation and the National Non-Domestic Rate (NNDR) legislation.
3. Collection, enforcement and matters of security in relation to the General Fund monies payable to the Council.
4. Determination of interest paid to investors and arrangements to meet the Council's borrowing requirements.
5. Matters relating to financial management, corporate governance, audit, risk management and business continuity.
6. Determination of the Council's financial provisions.
7. Appointment of the Council's bankers.
8. Financial resources in relation to ICT

### **LAND RESOURCES**

In respect of all land and buildings owned by the Council (except in its capacity as Housing Authority), to procure the specified service in the provision, implementation, maintenance and management of :-

1. Acquisitions and disposals including terms for acquisitions or disposals.
2. Industrial estates and commercial lettings.

## **Scheme of Delegation to Cabinet Members**

<p style="text-align: center;"><b>Delegation to the Portfolio Holder for Resources and ICT (continued)</b></p>
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## **GENERAL**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. Approval and maintenance of Standing Approved Lists of Contractors.
2. Matters relating to the management of the Council's assets.
3. Matters relating to procurement.

## **HUMAN RESOURCES**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. The employment of staff, the terms and conditions of service of all Council employees and industrial relations.
2. Corporate in-service training arrangements.
3. Schemes operated by the Council under Government Training Programmes.
4. Negotiations on corporate terms and conditions of service with Bodies recognised for the purposes.
5. Councillor Development.

## **GENERAL**

1. Legal Services.

## **ICT**

To procure and or encourage the procurement of the specified service in the provision, implementation, maintenance and management of:-

1. Information Communication Technology.



<b>Delegation to the Portfolio Holder for Resources and ICT (continued)</b>
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**CIVIC**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. All civic matters including civic aspects of town twinning.

**TOWN TWINNING**

To procure the specified service in the provision, implementation, maintenance and management of the Council's role in town twinning and encourage exchange visits between local groups and similar groups in twinned towns.

<b>Portfolio Responsibilities</b>
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1. To monitor the operation of Council Tax, Business Rates and the Housing and Council Tax Benefit Schemes.
2. To produce and implement the Council's financial strategy, budget and resource allocation.
3. To monitor progress of obtaining disability access within Council buildings.
4. To monitor the management of repairs and maintenance and planned maintenance programmes for Council buildings (excluding property managed by Colchester Borough Homes).
5. To review sales, purchases and overall management of the Council's property portfolio.
6. To monitor the development of the Asset Management Plan.
7. To monitor the maintenance of the Council's asbestos register.
8. To examine and review the Council's Information Communication Technology Strategy.
9. To oversee all tender and contract processes in accordance with Contract Procedure Rules.

Major Project(s) in Portfolio:

Visual Arts Facility, renewal of ICT contract, photovoltaic contract.

# **Scheme of Delegation to Cabinet Members**

<p style="text-align: center;"><b>Delegation to the Portfolio Holder for Street and Waste Services and Deputy Leader of the Council</b></p>
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## **WASTE**

1. To develop and promote policies in relation to waste reduction, re-use and recycling.

To procure the specified service in the provision, implementation, maintenance and management of:-

1. Refuse collection.
2. Street cleansing.
3. Litter collection and removal.
4. Recycling/Composting.
5. Workshops/Fleet and Toilets.

## **HIGHWAYS**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. Maintenance of Borough Council owned highways, except for regulatory matters within the remit of the Cabinet.
2. All Borough Council (district) highway functions.
3. Local Highway Panels

## **CAR PARKS**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. Operational Car parking.
2. To exercise the functions delegated to the North Essex Parking Partnership Joint Committee on behalf of the Cabinet.

## **Scheme of Delegation to Cabinet Members**

<p style="text-align: center;"><b>Delegation to the Portfolio Holder for Street and Waste Services and Deputy Leader of the Council_(continued)</b></p>
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### **TRANSPORTATION**

To procure and or encourage the procurement of the specified service in the provision, implementation, maintenance and management of:-

1. Traffic management schemes funded by the Borough Council.
2. Public transport infrastructure.
3. Concessionary Fares.

### **PUBLIC PROTECTION**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. Public conveniences and baths.
2. Licensing matters.
3. Premises and/or vehicles used for the preparation, storage, sale, slaughter and/or consumption of food and the enforcement of standards for food, health and safety at work, hygiene, quality and allied matters.
4. Infectious diseases, disinfestations and the prevention of the spread of disease by or to animals.
5. Pollution and nuisances.
6. Matters relating to the control of dogs.
7. The control of rodents/pests.
8. Premises used for the provision of services to the public and/or the keeping of animals.

9. Water supplies.
10. Port Health matters.
11. Monitoring of travellers sites.
12. Matters relating to the removal of persons residing unlawfully in vehicles on land in the Borough.

## **Scheme of Delegation to Cabinet Members**

### **Delegation to the Portfolio Holder for Street and Waste Services and Deputy Leader of the Council (continued)**

#### **GENERAL**

To procure the specified service in the provision, implementation, maintenance and management of:-

1. Street Naming and Numbering.
2. Caravans and Caravan Sites.
3. Street trading.
4. Markets within the Borough.

#### **Portfolio Responsibilities**

1. To oversee the implementation and monitoring of the Borough Council's services and policies in relation to waste collection, litter enforcement and cleansing operations.
2. To encourage operational activities which support the corporate priority to be the cleanest and greenest Borough in the Country.
3. To encourage strategic activities which support the corporate priority to be cleaner and greener.
4. **To monitor the implementation of the Council's Waste Strategy.**
5. To oversee and monitor the Council's engineering services.
6. To oversee the implementation and monitoring of the Council's policies and services relating to all licensing activities.

7. To oversee the implementation and monitoring of the Council's policies and services in respect of car parking.
  8. To promote and procure the implementation of the Borough Council's Transport Strategy in partnership with Essex County Council, the responsible Transport Authority and other partners to improve infrastructure.
  9. To promote partnership working with Essex County Council, the responsible Transport Authority.
  10. To oversee the implementation and monitoring of the Council's services relating to markets.
-

**Extract from the minutes of the Cabinet meeting on 13 July 2011**

**14. 2012/13 Budget Strategy, Medium Term Financial Forecast and Budget Timetable**

The Head of Resource Management submitted a report a copy of which had been circulated to each Member.

Councillor Smith, Portfolio Holder for Resources and ICT, highlighted the proposed funding towards food waste trials, which was identified as a priority in the public consultation on budget options, and the investment in the castle walls, which demonstrated the administration's commitment to safeguarding Colchester's heritage. The risks set out in the Head of Resource Management's report were also emphasised.

*RESOLVED* that:-

- (a) The pre-audit outturn position for the financial year 2010/11 be noted.
- (b) *RECOMMENDED to COUNCIL* that £500,000 be released from balances in 2011/12 for Firstsite legal fees as set out in minute 13.
- (c) The following releases be agreed:-
  - £30,000 to support the Tour Series cycling event.
  - £40,000 for customer service review
  - £100,000 for planning appeals
  - £200,000 in respect of a food waste trial
- (d) £324,000 from the New Homes Bonus grant be added to balances with the remaining £400,000 held pending progress with delivery of in year budget savings.
- (e) The budget forecast, approach and timetable for the preparation of the 2012/13 budget and updated position in respect of balances be noted.
- (f) The updated Medium Term Financial Forecast for the period to 31 March 2014 as set out at Appendix A of the Head of Resource Management's report be noted.
- (g) The latest position in respect of the Capital Programme be noted and *RECOMMENDED to COUNCIL* the inclusion in the Capital Programme of £200,000 in respect of Castle Walls
- (h) The changes to the capital programme arising from the 2010/11 outturn reported to FASP resulting in a net saving be agreed and capital funding be released for the following schemes:-

- £200,000 in respect of Castle Walls (subject to approval by Council as shown at (g) above.)
- £157,000 in respect of Street Services Fundamental Service Review.

#### *REASONS*

(a) The Council is required to approve a financial strategy and timetable in respect of the financial year 2012/13 and a Medium Term Financial Forecast (MTFF) for the two subsequent financial years.

(b) The use of balances for legal fees requires approval of Full Council.

#### *ALTERNATIVE OPTIONS*

No alternative options were presented to the Cabinet.

**Extract from the minutes of the Cabinet meeting on 13 July 2011**

**Capital Programme Projects**

The Head of Resource Management submitted a report a copy of which had been circulated to each Member.

Councillor Willets attended and addressed the Cabinet to stress the importance of ensuring that if the Moot Hall organ were to be restored, that consideration was given to how its use would fit in with the Town Hall Business plan. For example, consideration should be given to ensuring the organ could be used by music students at the Institute and account needed to be taken of the impact of the organ being played on other uses. These issues needed to be resolved now to ensure that the organ could be used if restored.

Councillor Hunt, Deputy Leader of the Council and Portfolio Holder for Street and Waste Services, and Councillor Dopson, Portfolio Holder for Communities and Diversity, supported Councillor Willets comments. In making the bid to the Heritage Lottery Fund, the Friends of the Moot Hall organ would have to address the issue of usage and Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy and Performance, indicated she would ensure that the Friends of the Moot Hall Organ met the facilities team at the Town Hall to ensure these issues were resolved.

*RECOMMENDED to COUNCIL that:-*

- (a) A bid be submitted to the Heritage Lottery Fund (HLF) in respect of the Moot Hall organ on behalf of the Friends of the Moot Hall Organ on the condition that the Council does not allocate funding for this project.
- (b) The planned roof repairs to the Mercury Theatre be progressed and that this be included in the Capital Programme and funded from a combination of the funds held by the Trust and in the Mercury Reserve as part of the 2012/13 budget report to Cabinet.

*REASONS*

- (a) The decision in respect of the Moot Hall organ concerns the proposal for the Council to submit a bid to the Heritage Lottery Fund (HLF) for funding on behalf of the Friends of the Moot Hall Organ.
- (b) The decision in respect of the Mercury Theatre roof is to progress this scheme to determine the final scope of the project and procure a contractor. Sufficient funding for this scheme has been identified and final proposals for the use of the different sources will be reported to Cabinet as part of capital programme proposals for 2012/13.

*ALTERNATIVE OPTIONS*



(a) The Council could decide not to make the bid to the HLF, however, this is likely to reduce the prospect of securing external funding to support the Moot Hall organ scheme.

(b) The Council, as corporate trustee, of the New Theatre Trust has responsibilities to repair and keep the Mercury Theatre premises in good condition (i.e. the fabric of the building). Survey reports conclude that roof coverings are now in generally poor condition and that it has now exceeded its serviceable life.

**Extract from the minutes of the Cabinet meeting on 13 July 2011**

**13. firstsite - Construction Related Legal Proceedings**

The Executive Director submitted a report a copy of which had been circulated to each Member.

Councillor Bentley attended and addressed the Cabinet to indicate his support for the proposals in the Executive Director's report. firstsite would bring business and investment into Colchester and its opening should be welcomed.

Councillor Smith, Portfolio Holder for Resources and ICT, and Councillor T. Young, Portfolio Holder for Housing and Community Safety, expressed their support for the proposals, which were aimed at recovering public funding

*RECOMMENDED to COUNCIL* that five hundred thousand pounds of additional revenue funding be released towards the legal costs of resolving legal disputes in relation to the construction of firstsite for the reasons set out in the Executive Director's report.

*REASONS*

(a) In July 2009 the Cabinet agreed that proceedings could be issued against Banner Holdings Ltd (BHL) and Turner and Townsend (T&T) and that actions be considered against other professional advisors. Since that time additional sums have been sought to defend the Council's position and seek redress for the Council and the other funders loses. In total the Cabinet has authorised £1,465,000 which was also supplemented by a further £150,000 recovered from a construction performance Bond.

(b) In order to continue legal actions, with a view of recovering public funds, the legal advice is that a further £500,000 is now required.

*ALTERNATIVE OPTIONS*

(a) Given that the Council has already commenced legal proceedings and the legal advice is that there remain good prospects of recovering significant sums there is a clear case for the Council to continue to fund the litigation.

(b) In order for the Council to reach a decision not to proceed the Council would have to consider its public law duties relative to the risks associated with legal proceedings and the budgetary implications. The judgement would have to be weighed against (i) potential recovery for the Council of what could be significant sums, (ii) other potential risks associated with not progressing the claims in circumstances where the external advice is that there are good prospects for the recovery of significant sums and other funders have

expended costs (iii) the prospect of losing such action and awards for costs being made against the Council.

**Extract from the minutes of the Licensing Committee meeting of 1 June 2011**

**4. Licensing Policy for Sex Establishments//Consultation responses**

The Committee considered a report by the Head of Environmental and Protective Services on the final draft Statement of Licensing Policy for Sex Establishments following the public consultation period. The Policy had been scrutinised by leading licensing Counsel, Mr P Kolvin and his suggestions included in the final draft Policy.

The Policy, which was appended to the report, set out the Council's proposed approach to regulating sex establishments and the procedures it would adopt in relation to applications for sex establishment licences. Mr Daines, Protective Services Manager, outlined the changes that had been made, the most significant of which was the removal of the statement that the Council would restrict the number of establishments in the borough to zero. Counsel had advised that setting such a limit would be unlawful and instead the Council should consider each application on its own merit. Limits, including setting a zero limit, could be considered for specific areas of the Borough but could not be used for the entire Borough. There was concern at the possible proliferation of sex establishments in the Queen Street/ St Botolph's Street Area and discussion concerning the role of the stress area in controlling the number of premises.

A number of minor revisions had been made to the policy to tidy it up and remove duplications. In considering the suggested revisions, members raised concerns regarding the notification of applications to potential interested parties. The legislation required that the Police to be notified and in addition the Policy stated that Ward Councillors would be notified however, other local groups/organisations in the vicinity, namely schools, would not be automatically be notified. The Committee's attention was drawn to sections 4 and 5 of the final draft policy which recommended that any applications made in the vicinity of establishments such as schools be refused. There was some debate on how to determine the suitability of applicants under the criteria given in Section 6 of the final draft Policy. Mr Daines responded that the Council would work in partnership with the Police and other local authorities in the event that they were operating premises elsewhere to judge the suitability of the applicant. It was also noted that the final draft policy also now mentions that the Policy will be updated as and when appropriate.

The Committee was notified that only one response had been received in relation to the public consultation and that this had simply thanked the Council for consulting with it.

*RECOMMENDED TO COUNCIL* that the final draft Statement of Licensing

Policy for Sex Establishments be approved and that the Policy comes into force on 21 July 2011.



## Council

20 July 2011

Item  
**11**

<b>Report of</b>	<b>The Strategic Overview and Scrutiny Panel</b>	<b>Author</b>	<b>Robert Judd</b>
<b>Title</b>	<b>Annual Scrutiny Report</b>		<b>Tel. 282274</b>
<b>Wards affected</b>	None		

**This is a report setting out the work of the Council's Scrutiny Panels during 2010-11.**

### **1. Decision required**

- 1.1 To note and consider/comment on the draft Annual Scrutiny Report, a report that forms the basis for debating the subject of scrutiny at Colchester.

### **2. Reason for the decision**

- 2.1 The Constitution states the Strategic Overview and Scrutiny Panel shall report annually to the full Council on its workings and make recommendations for future work programmes and amended working methods if appropriate.

### **3. Purpose and Content of the Report**

- 3.1 The purpose of the report is to inform the Council of the work undertaken by the scrutiny panels, and for the Council to form an opinion of the effectiveness of the scrutiny function.
- 3.2 This Scrutiny Report is a descriptive record of the work undertaken by both scrutiny panels during 2010-11.

### **4. Scrutinising the Performance of Portfolio Holders**

- 4.1 Under the Terms of Reference for the Strategic Overview and Scrutiny Panel, the Panel is expected to scrutinise the performance of Portfolio Holders. Since 2003-04 this has been in the form of an individual review of the work of the Portfolio Holder in the form of a question and answer discussion between the Portfolio Holder and Panel Members.
- 4.2 Following consultation between the Group Leaders, Chairman of the scrutiny panels and Executive Management Team, it has been agreed that from 2011-12 this arrangement will be changed, refreshed, whereby, the appropriate Portfolio Holder(s) will take a lead at mayor reviews, for example, Fundamental Service Reviews and Partnership Reviews, and where the spending and policy priorities are considered in relationship with the Strategic Plan's Implementation Plan.
- 4.3 These 'Topic' based reviews, with the Portfolio Holder's presence, will enable Members to consider the role and work of the Portfolio Holder.

## **5. Standard and Strategic Plan References**

- 5.1 The Council's governance arrangements forms parts of the Council's commitment to customer excellence which underpins the Council's Strategic Plan vision.
- 5.2 There is no publicity, equality and diversity, human rights, community safety, health and safety, risk management or financial implications in this matter.
- 5.3 Scrutiny is a key function to ensure decisions have been subject to full appraisal and that they are in line with the aims of the strategic plan. The role of scrutiny is also an important part of the Council's risk management process, helping to check that risks are identified and challenged.

# Colchester Borough Council

## Finance and Audit Scrutiny Panel

### Strategic Overview and Scrutiny Panel

## Scrutiny Report 2010-11

### **Introduction**

All local authorities face a challenging future of providing services in difficult economic times. Limited resources mean that Councils are increasingly looking at how services are provided and commissioned. Collaboration and partnership working have the potential to provide efficient cost effective services.

This Annual Report demonstrates the contribution made by the scrutiny function in Colchester towards helping the Council address these issues during 2010/11, offering an opportunity to the Strategic Overview and Scrutiny Panel to look at policies and strategies from a borough-wide perspective, ensuring performance improvements actually make a positive difference and ensuring the actions of the Cabinet accord with the policies and budget of the Council, and for the Finance and Audit Scrutiny Panel to undertake the core functions of an audit committee, monitor the financial performance of the Council and link spending proposals to the Council's policy priorities.

By doing this a culture of positive and meaningful challenge has been created. The level of call-ins, decisions taken as a matter of urgency and pre-scrutiny items confirms the thoughts of previous years that Councillors take a mature and responsible approach to Governance.

The report provides a descriptive analysis to demonstrate the work of each panel and confirms that during the period of this report, the scrutiny function at Colchester remains challenging and effective.



## **Overview and Scrutiny**

Both scrutiny panels continued to conduct one-off investigations / reviews on a variety of topics, and Cabinet Members continued to discuss with the Strategic Overview and Scrutiny Panel Members, the progress and performance of the work which fell within their portfolio.

Under the Terms of Reference for the Strategic Overview and Scrutiny Panel, the Panel is expected to scrutinise the performance of Portfolio Holders. Since 2003-04 this has been an individual review of the work of the Portfolio Holder in the form of a question and answer discussion between the Portfolio Holder and Panel Members.

The Strategic Overview and Scrutiny Panel should note that following consultation between the Group Leaders, Chairman of the scrutiny panels and the Executive Management Team, it has been agreed that from 2011-12 this arrangement will be changed, refreshed, whereby the appropriate Portfolio Holder(s) will take a lead at major reviews, for example, Fundamental Service Reviews and Partnership Reviews, and where the spending and policy priorities are considered in relationship with the Strategic Plan's Implementation Plan.

These 'Topic' based reviews, with the Portfolio Holder's presence, will enable Members to consider the role and work of the Portfolio Holder.

### **Decisions taken as a matter of urgency**

There was just one decision taken as a matter of urgency, The Purchase of the Old Police Station, Queen Street, Colchester PLA-005-10, jointly signed-off by the Chairman of the Overview and Scrutiny Panel and the Monitoring Officer. A decision taken as a matter of urgency waives the right of call-in because a delay in the decision is likely to prejudice the legal or financial position of the Council.

### **Pre Decision Scrutiny**

During 2010-11, like previous years, it proved profitable to pre-scrutinise decisions, allowing the panel(s) to examine an issue in depth, and make proposals to the Cabinet or portfolio holder in advance of that decision being taken. This is the case for the Strategic Plan Action Plan and Budget Strategy process. In addition to the regular pre-scrutiny items;

The Finance and Audit Scrutiny Panel pre-scrutinised the Portfolio Holder decision on the new policy for Highway Verge Maintenance. The Panel resolved that on the agreement that a classified list of sites was provided to Members prior to the implementation of the new policy, it agreed to the new policy on introducing a criterion based hierarchy for Highway Verge Maintenance.

The Strategic Overview and Scrutiny Panel completed the pre-Cabinet examination of the Fundamental Service Reviews undertaken in Street Services, Revenues and Benefits and Housing Services.

### **Critical Friend Challenge – Call-in**

This process relates to the right of Councillors to examine a Cabinet or Portfolio Holder decision that has been made but not yet implemented. During 2010-11 Colchester had three call-ins, all considered by the Finance and Audit Scrutiny Panel. The decisions examined were those of The Proposed Travellers Site at Severalls Lane and the 2010-11 Grants to Town and Parish Councils, in which the decisions were upheld. The decision on the Highwoods Country Park car park charging proposals was referred back to the Cabinet for further consideration. Cabinet deferred the decision to their next meeting to allow for further consideration of the information on which the decision was based and the appropriate and proportionate level of consultation. Councillor Dopson, Portfolio Holder for Communities, indicated that a consultation on the proposals with local residents was to begin shortly, would be available online, and would run until the end of February 2011.

### **Partnership arrangements**

The Council has a comprehensive partnership strategy and maintains a detailed register of the partnerships that it participates in. The Strategic Overview and Scrutiny Panel completed two partnership reviews, those of the North East Essex Local Children's Trust and the London2012 Partnership.

The Crime and Disorder Committee completed the annual review of the Safer Colchester Partnership and carried out an overview of what Colchester's public service response would be to a Town Centre Demonstration in light of the recent student demonstrations. This proved to be a useful and reassuring insight into the Town's response. Both reviews were attended by the Chief Superintendent.

The Strategic Overview and Scrutiny Committee met in private session on 12 October 2010 to consider the closure of the Greenways Care Home and the subsequent HX case Serious Case Review. In doing so, it was exercising the Council's well-being powers in respect of the needs of older residents of the Borough. The Deputy Executive Director, Adults, Health and Community Wellbeing, Essex County Council, who is also Chairman of the Safeguarding Adults Board (SAB) Management Committee attended the meeting. Having been resolved by the Panel, the Chairman of the Panel wrote to the Care Quality Commission (CQC) about the two linked matters that emerged as causes for concern, centring on the inability of the SAB inquiry to determine specific causes of the deterioration in standards which led to the closure of the home. Members felt that the causes could have included poor or negligent performance by particular members of staff at the home, and it was suggested that an effective method for identifying such members of staff would be to track them as they move from home to home within the care system through some form of registration. In the absence of such a regime, the Committee felt that it was quite possible that the individuals who should be held responsible for the closure of the HX Care Home could be working in the same field and causing the same problems undetected elsewhere.

### **Task and Finish Group**

The Finance and Audit Scrutiny Panel's Mayoralty Task and Finish Group carried out a review of the Mayoralty Budget, proposing to the Cabinet a number of suggestions that would provide a reduction of £10,615 in the revised level of expenditure. The Cabinet agreed to the recommendations of the Panel.

## Strategic Overview and Scrutiny Panel 2010-11

**Membership for 2010-11: Councillor Arnold (Chairman) and Councillors Chapman, Cory, Ellis, Frame, T. Higgins, Offen, G. Oxford, Willelts (Deputy Chairman) and J. Young.**

*The Overview and Scrutiny Panel has responsibility for reviewing corporate strategies within the Strategic Plan and Action Plan, the review of service areas, the Council's budgetary guidelines for the forthcoming year, the performance of Portfolio Holders, and reviews the Cabinet decisions referred to the Panel under the Call in procedure.*

### Work Programme 2010-11

<b>8 June 2010</b> 2009-10 Year-end Performance Report	<b>24 June 2010</b> HRA Reform (including pre-briefing)	<b>20 July 2010</b> Budget Strategy, Timetable and MTFF
<b>21 September 2010</b> Review of the Leader	<b>12 October 2010</b> HX Care Serious Case Review	<b>16 November 2010</b> Street Services Fundamental Service Review
<b>14 December 2010</b> Budget – Strategic Update	<b>11 January 2011</b> Review of the North East Essex Local Children's Trust Board	<b>8 February 2011</b> Revenues and Benefits Fundamental Service Review
	<b>15 February 2011</b> London2012 Partnership Board	<b>22 March 2011</b> Housing Services Fundamental Service Review

### Crime and Disorder Committee

<b>24 August 2010</b> Safer Colchester Partnership	<b>18 January 2011</b> Town Centre Demonstrations An overview of what Colchester's public service response would be to a Town Centre Demonstration in light of the recent student demonstrations.
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## Finance and Audit Scrutiny Panel 2010-11

**Membership for 2010-11:** Councillor Willetts (Chairman), and Councillors Arnold (Deputy Chairman) Cope, Greenhill, Lissimore, Manning, Mudie, Naish, G. Oxford and C. Sykes.

*The Finance and Audit Scrutiny Panel has responsibility for reviewing the financial performance of the Council, the Council's audit, risk management and business continuity arrangements including the Annual Audit Letter and audit plans, and reviews Portfolio Holder decisions referred to the Panel under the Call in procedure.*

**Work Programme 2010-11 (including Accounts and Regulatory AR), excluding the periodic reporting of the Financial Monitors, Capital Monitors, Internal Audit reports, Risk Management and Treasury Management reports.**

<b>29 June 2010</b>	2010-11 Audit and Inspection Letter (AR) Annual Governance Framework (AR) Draft Annual Statement of Accounts (AR)	<b>27 July 2010</b>	Community Governance, Wivenhoe (AR) Community Governance, Fordham (AR) 2009-10 Freedom of Information	<b>17 August 2010</b>	Capital Improvement Programme (DHP)
<b>31 August 2010</b>	Proposed Travellers Site (Call-in)	<b>7 September 2010</b>	Highwoods Country Park – car park Charging proposals (Call-in)	<b>28 September 2010</b>	Visual Arts Facility – Audit Commission Annual Statement of Accounts (AR) Revised Financial Regulations (AR)
<b>19 October 2010</b>	Publication of Audited Sofa (AR) Local Governance Review (AR) 2010-11 Business Continuity Colchester Credit Union update	<b>23 November 2010</b>	Capital Improvement Programme (DHP) Annual Governance Statement (AR) Annual Audit Letter – Audit Commission Benefits Service report – Audit Commission	<b>25 November 2010</b>	Grants to Town & Parish Councils (Call-in)
<b>15 December 2010</b>	Highway Verge Maintenance (pre-scrutiny) Mayoralty Budget – report of the TAFG	<b>25 January 2011</b>	2011-12 Budget Strategy Treasury Management Inv. Strategy	<b>22 February 2011</b>	Community Governance, Stanway (AR) Honorary Alderman (AR) Capital Improvement Programme (DHP)
<b>29 March 2011</b>	Annual Governance Statement briefing Audit Opinion Plan – Audit Commission Certificate of Claims and Returns – Audit Commission International Financial Reporting Standards				

## Record of Decisions taken under Scheme of Delegation to Cabinet Members 10 March – 17 May 2011

Portfolio – Communities						
Date	Number	Report Title	Author	Decision	Result	
4/3/11	COM-020-10	Allotment Strategy	Bob Penny	To adopt the Colchester Allotment Strategy	Agreed 22/3/11	
4/3/11	COM-021-10	Helpline Night Shift Service	Cassandra Clements	To accept the tender submitted by Nightowls LLP	Agreed 22/3/11	
14/3/11	COM-024-10	Allocation of investment in voluntary welfare organisations 2011-2012 and Section 106 Capital funding programme	Fay Mathers	To approve the Council's investment in "not-for-profit" voluntary and community organisations through the: Revenue, Project and Development and Section 106 Capital funding programmes for 2011-2012	Agreed 29/3/11	
14/3/11	COM-025-10	Consultation on the White Paper 'Healthy lives, healthy people: Transparency in Outcomes'	Alison Woolnough	To approve the Council response to the Department of Health's consultation on a new outcomes framework for public health	Agreed 29/3/11	
14/3/11	COM-026-10	Consultation on the White Paper 'Healthy lives, healthy people: The funding and commissioning routes for public health'	Alison Woolnough	To approve the Council response to the Department of Health's consultation on a new system for funding and commissioning public health	Agreed 29/3/11	
30/3/11	COM-027-10	Consultation Response – Library Service – Revised Service Arrangements	Leonie Rathbone	To approve the Council's response to Essex County Council's consultation for Library Services – Revised Service Arrangements	Agreed 8/4/11	
8/4/11	COM-028-10	Proposed designation of Mile End Recreation Ground, Ford Lane under The Queen Elizabeth II Fields Challenge	Bob Penny	To submit an application for a non charitable Deed of Protection to Fields in Trust (FIT) for Mile End Recreation Ground through The	Agreed 20/4/11	

**Record of Decisions taken under Scheme of Delegation to Cabinet Members  
10 March – 17 May 2011**

			Queen Elizabeth II Fields challenge	
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<b>Portfolio – Customers</b>					
<b>Date</b>	<b>Number</b>	<b>Report Title</b>	<b>Author</b>	<b>Decision</b>	<b>Result</b>

<b>Portfolio – Economic Development, Culture and Tourism</b>					
<b>Date</b>	<b>Number</b>	<b>Report Title</b>	<b>Author</b>	<b>Decision</b>	<b>Result</b>
10/3/11	ECO-005-10	Enterprise, Skills and Employment Grant Application	Jan Warren	To award Colchester Business Enterprise Agency (Colbea) £16,000 for the financial year 2011-2012. £5,000 to be awarded at the start of financial year and the remainder of £11,000 to be secured to a service level agreement (SLA)	Agreed 22/3/11
10/3/11	ECO-006-10	Enterprise, Skills and Employment Grant Application	Jan Warren	To award Signpost (Colchester) Ltd a grant of £21,000 for the financial year 2011-2012	Agreed 22/3/11
23/3/11	ECO-007-10	Enterprise, Skills and Employment Grant Application	Jan Warren	To award Signpost (Colchester) Ltd an additional grant of £500 in the 2010-2011 financial year	Agreed 6/4/11

## Record of Decisions taken under Scheme of Delegation to Cabinet Members 10 March – 17 May 2011

<b>Portfolio – Housing and Community Safety</b>					
<b>Date</b>	<b>Number</b>	<b>Report Title</b>	<b>Author</b>	<b>Decision</b>	<b>Result</b>
30/3/11	HOU-019-10	Update to our Allocations Policy for choice based letting	Diane Foley	To approve the revised Allocations Policy	Agreed 8/4/11
30/3/11	HOU-020-10	Prevention of homelessness grants to voluntary organisations	Matt Sterling	To award grants to 3 voluntary organisations from the Prevention of Homelessness budget	Agreed 8/4/11
6/4/11	HOU-021-10	Consultation on the Home Office proposal 'More Effective Responses to Anti-social Behaviour'	Samantha Riley	To approve the Council response to the Home Office consultation paper 'More Effective Responses to Anti-social Behaviour'	Agreed 20/4/11
10/5/11	HOU-022-10	Sewage treatment works – Disposal of Land	Jane Dabbs	Sewage treatment works – Disposal of Land	Agreed 27/5/11

<b>Portfolio – Planning and Sustainability</b>					
<b>Date</b>	<b>Number</b>	<b>Report Title</b>	<b>Author</b>	<b>Decision</b>	<b>Result</b>
21/3/11	PLA-014-10	Shopfront Design Guide Supplementary Planning Document	Laura Chase	To approve the draft Shopfront Design Guide Supplementary Planning Document (SPD) and a public consultation exercise	Agreed 30/3/11
13/4/11	PLA-015-10	Consultation Response - Primary School Places in Colchester: Proposals to increase provision from September 2012	Gareth Mitchell	To approve the Council's response to Essex County Council 's consultation for the proposals to increase provision from September 2012	Agreed 13/4/11
11/5/11	PLA-016-10	Stanway Railway Development Brief Sidings Development Brief	Shelley Blackaby	To approve the Stanway Railway Sidings Development Brief	Agreed 27/5/11

**Record of Decisions taken under Scheme of Delegation to Cabinet Members  
10 March – 17 May 2011**

<b>Portfolio – Resources and Diversity</b>						
<b>Date</b>	<b>Number</b>	<b>Report Title</b>	<b>Author</b>	<b>Decision</b>	<b>Result</b>	
18/2/11	RES-012-10	Irrecoverable Debts over £5,000	Peter Evans	To approve the writing off of debts totalling £262,253.90 which have proved irrecoverable	Decision called-in 02/03/11. Reviewed at Finance and Audit Scrutiny Panel 16 March 2011. Decision confirmed can be implemented	
4/4/11	RES-015-10	Colchester Community Stadium Car Park Refurbishment	Patrick O'Sullivan	Agree the funding strategy to facilitate the tarmacing of the main car park at Colchester Community Stadium	Agreed 20/4/11	
11/4/11	RES-016-10	Consultation Response – Access to Elected Office for Disabled People	Chris Reed/ Andrew Harley	To approve the Council's response to the Government Equalities Office consultation "Access to Elected Office for Disabled People"	Agreed 20/4/11	
10/5/11	RES-017-10	Transfer of land on the access road from East Hill/High Street to facilitate improvement works to a key gateway to St Botolphs Quarter	Howard Davies	The transfer of land adjacent to the old bus station entrance road from East Hill/High Street to Scott Properties	Agreed 18/5/11	



## Record of Decisions taken under Scheme of Delegation to Cabinet Members 10 March – 17 May 2011

Portfolio – Strategy and Performance					
Date	Number	Report Title	Author	Decision	Result
15/3/11	STR-006-10	Multi Function Device Contract Award	Gary Lebeau	To award a contract to Canon for provision of replacement multi functional devices (MFDs) for Rowan House, Angel Court and offsite locations.	Agreed 23/3/11
18/3/11	STR-007-10	Consultation Response – Primary School Places in Colchester: Proposals to increase provision from September 2012	Gareth Mitchell	To approve the Council's response to Essex County Council's consultation "Primary School Places in Colchester – proposals to increase provision from September 2012	Agreed 30/3/11
23/3/11	STR-008-10	On-Street (Resident) Parking Review – St Helena Road – Zone D	Christine Belgrove	To note the changes made as a result of consultation and make recommendations to County Council (as highway authority) for implementing the change	Agreed 31/3/11

Portfolio – Street and Waste Services					
Date	Number	Report Title	Author	Decision	Result
14/3/11	STS-006-10	Concessionary Travel Scheme	Peter Evans	To set fees and charges from 1 April 2011 and to confirm the arrangements for ceasing the Travel Tokens scheme	Agreed 23/3/11
15/3/11	STS-007-10	Supply of sacks for recycling and waste collection	Paul English	To award the tender submitted by Bpi for the supply of sacks for recycling	Agreed 25/3/11

**Record of Decisions taken under Scheme of Delegation to Cabinet Members  
10 March – 17 May 2011**

18/3/11	STS-008-10	Consultation on the Local Better Regulation Office's Priority Regulatory Outcomes: 'A New Approach to refreshing the National Enforcement Priorities for Local Authority Regulatory Services'	Karen Newman	and waste collection	To approve the Council response to the LBRO consultation paper 'Priority Regulatory Outcomes – A New Approach to Refreshing the National Enforcement Priorities for Local Authority Regulatory Services'	Agreed 31/3/10
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## Record of Decisions taken under Scheme of Delegation to Cabinet Members 18 May – 1 July 2011

Portfolio – Commerce and Sustainability					
Date	Number	Report Title	Author	Decision	Result
31/5/11	COS-001-11	Revision of Colchester's Statement of Community Involvement (SCI) - Adoption	James Firth	To approve that a revised version of Colchester's Statement of Community Involvement (SCI) be adopted	Agreed 20/6/11
20/6/11	COS-002-11	Colchester Borough Council's response to consultation on Planning Policy Statement for Traveller Sites	Shelley Blackaby	To agree the response to Department for Communities and Local Government (DCLG) consultation on Planning Policy Statement for Travellers Sites	Due 6/7/11

Portfolio – Communities and Diversity					
Date	Number	Report Title	Author	Decision	Result
22/2/11	COM-018-10	Policy for establishing a hierarchy for highway verge maintenance	Bob Penny	To approve the policy of a hierarchy of highway verge maintenance to deliver the maximum aesthetic impact with resources available	Agreed 7/6/11
8/6/11	COD-001-11	Allocation of grant to Age Concern 2011-12	Tamara Moreau	To approve a grant of £30,000 to Age Concern from the Welfare Rights Service budget for one year	Agreed 24/6/11

Portfolio – Customers					
Date	Number	Report Title	Author	Decision	Result

**Record of Decisions taken under Scheme of Delegation to Cabinet Members  
18 May – 1 July 2011**

<b>Portfolio – Housing and Community Safety</b>					
<b>Date</b>	<b>Number</b>	<b>Report Title</b>	<b>Author</b>	<b>Decision</b>	<b>Result</b>

<b>Portfolio – Renaissance</b>					
<b>Date</b>	<b>Number</b>	<b>Report Title</b>	<b>Author</b>	<b>Decision</b>	<b>Result</b>

<b>Portfolio – Resources and ICT</b>					
<b>Date</b>	<b>Number</b>	<b>Report Title</b>	<b>Author</b>	<b>Decision</b>	<b>Result</b>
25/5/11	RES-001-11	North Colchester Business Incubation Centre Funding	Patrick O'Sullivan	To confirm that the full proceeds of sale from the disposal of Plot 350 Colchester Business Park, should be devoted to the construction of the North Colchester Business Incubation Centre on the adjacent Plot 340	Agreed 7/6/11
15/6/11	RES-002-11	Colchester Town Centre Network	Jim Leask	To approve the use of the Town Centre CCTV network as infrastructure for a potential investor to provide higher speed Broadband	Agreed 30/6/11

**Record of Decisions taken under Scheme of Delegation to Cabinet Members  
18 May – 1 July 2011**

<b>Portfolio – Strategy and Performance</b>					
<b>Date</b>	<b>Number</b>	<b>Report Title</b>	<b>Author</b>	<b>Decision</b>	<b>Result</b>

<b>Portfolio – Street and Waste Services</b>					
<b>Date</b>	<b>Number</b>	<b>Report Title</b>	<b>Author</b>	<b>Decision</b>	<b>Result</b>



## Cabinet

13 July 2011

Item  
**8(i)**

<b>Report of</b>	<b>Head of Resource Management</b>	<b>Author</b>	<b>Sean Plummer</b> <b>☎ 282347</b>
<b>Title</b>	<b>2012/13 Budget Strategy, Medium Term Financial Forecast and Budget Timetable</b>		
<b>Wards affected</b>	Not applicable		

**This report asks Cabinet to:**

- **Note the current financial position for the financial years 2010/11 and 2011/12**
- **Recommend to Council release of funding in respect of Firstsite legal fees**
- **Agree further use of balances**
- **Note the budget forecast and timetable for the 2012/13 budget**
- **Note the updated Medium Term Financial Forecast for the period to 31 March 2014**
- **Note an update of the Revenue Balances**
- **Recommend to Council changes to the Capital Programme and releases.**

### **1. Decisions Required**

- 1.1. To note the pre-audit outturn position for the financial year 2010/11.
- 1.2. To recommend to Council the release from balances in 2011/12 of £500k for Firstsite legal fees as set out in a separate report on this agenda.
- 1.3. To agree to release:-
  - £30k to support the Tour Series cycling event.
  - £40k for customer service review
  - £100k for planning appeals
  - £200k in respect of a food waste trial
- 1.4. To agree to add £324k from the New Homes Bonus grant to balances with the remaining £400k held pending progress with delivery of in year budget savings.
- 1.5. To note the budget forecast, approach and timetable for the preparation of the 2012/13 budget and updated position in respect of balances.
- 1.6. To note the updated Medium Term Financial Forecast for the period to 31 March 2014 as set out at Appendix A.
- 1.7. To note the latest position in respect of the Capital Programme and agree to recommend to Council the inclusion in the Capital Programme of £200k in respect of Castle Walls

- 1.8. To agree to changes to the capital programme arising from the 2010/11 outturn reported to FASP resulting in a net saving and to release capital funding for the following schemes:-
- £200k in respect of Castle Walls (subject to approval by Council as shown at 1.7.)
  - £157k in respect of Street Services FSR

## **2. Reasons for Decisions**

- 2.1. The Council is required to approve a financial strategy and timetable in respect of the financial year 2012/13 and a Medium Term Financial Forecast (MTFF) for the two subsequent financial years.
- 2.2. The use of balances for legal fees requires approval of Full Council.

## **3. Financial Overview 2010/11 and 2011/12**

### *Financial Year 2010/11*

- 3.1. The Pre-Audit Outturn report for the year to 31 March 2011 was presented to the Finance and Audit Scrutiny Panel (FASP) on 28 June 2011.
- 3.2. The position shows a net underspend on budgets of £25k (0.1% of the net revenue budget for the year) after allowing for a number of agreed carry forward items.
- 3.3. In addition, a refund of £672k in respect of VAT which has been achieved through challenging VAT liability for areas of sport and leisure and cultural services which includes claims relating to a period from the late 1970's.
- 3.4. When the budget for 11/12 was agreed it was done so on the basis that there would be a net overspend of £150k in 10/11. The overall surplus has therefore been added to balances.

### *Financial Year 2011/12*

At this stage in the financial year it is difficult to assess potential variances (both positive and negative). However, the following areas that have been identified are:-

- Firstsite legal fees
- Tour Series cycling event
- Customer service review
- Planning appeals
- Food Waste trial
- New Homes Bonus
- General budget risk

### *Firstsite Legal Fees*

- 3.6. The provision for estimated costs in respect of the Firstsite legal expenses of £0.5m is set out in a separate report on this agenda.

### *Tour Series Event*

- 3.7. The Tour Series event took place in Colchester on 2<sup>nd</sup> June. Costs and funding for the event are being finalised including confirmation of external contributions. It is proposed that £30k be allocated to meet the Council's contribution.

#### *Customer Service Review*

- 3.8. The next phase of Fundamental Service Reviews (FSRs) includes a review of frontline customer contact. This FSR is a cross organisational review of customer contact. It is not intended to be solely a review of first point of contact, i.e. Customer Service Centre but to pick up all points of contact a customer would experience. This is inclusive of all channels such as face to face, telephone, post and digital but importantly the scope expands into all service areas where officers are in contact with customers. This review will also pick up our customer communication as part of the scope. The scope of this review is such that it is proposed to allocate £40k to ensure that sufficient resources are available to support this work.

#### *Planning Appeals*

- 3.9. An annual provision for costs related to planning appeals is made within the budget for 11/12 to cover the general costs incurred during the year. However, recent decisions by the Planning Committee mean that it is highly likely that an appeal will be received in respect of a large and complex application. The cost of defending this appeal is not yet known and at this stage it is proposed that a provision of £100k is made.

#### *Food Waste Trial*

- 3.10. It is recognised that to make the next substantial improvement in recycling performance it is necessary to establish a scheme that removes from the residual waste the last major material that can be diverted from landfill which is food waste. This service has been set up by a number of authorities across the country over the last five years and there was a big emphasis on this through the Waste Strategy Inter-Authority Agreements recently commenced in Essex.
- 3.11. It is estimated that the tonnage collected by the implementation of a food waste trial over a 12 month period would increase the Boroughs overall recycling rate by approximately 0.8%. Looking forward a Borough-wide implementation would increase it by 7.6% with a weekly residual collection and by 8.8% with a fortnightly residual collection. The budget allocated for the trial will enable the funding of the operating costs which includes the staffing and vehicles and the container costs and represent the bare minimum required by the service to establish the necessary equipment and manpower to commence the service and promote it within the trial areas.
- 3.12. A detailed report will be presented to the Portfolio Holder for Street and Waste on establishing the trial scheme that will describe the role of the Policy Review and Development Panel's Task & Finish Group in monitoring the implementation, progress and results of the trial.

#### *New Homes Bonus*

- 3.13. The final scheme design of the New Homes Bonus (NHB) was announced by Government on 17 February 2011. Following a period during which authorities had the opportunity to make representations final allocations for 2011/12 were confirmed on 4 April. For Colchester this means a grant this year of £724k. Appendix A sets out an outline of the grant methodology.
- 3.14. The 11/12 budget included comments relating to the NHB, however, given the uncertainty over the final scheme no income was assumed. The £724k is therefore additional money for this year.



### *General Budget Risk*

- 3.15. The 11/12 budget includes £3.6m of savings or additional income and whilst we are confident of delivering a large proportion of these in year there is an acknowledged risk of a potential pressure in year. It has been agreed that Finance and Audit Scrutiny Panel (FASP) will receive regular reports on progress with delivering the 11/12 budget savings. An initial exercise has been carried out by Senior Management Team to review all savings and other possible in year budget risks. Based on his exercise it is proposed that £0.4m be held back from a combination of NHB and general balances against these budget risks.
- 3.16. Based on the above proposals balances would remain above our recommended level and it is proposed this should not be allocated at this stage.

## **4. Budget Forecast for 2012/13**

- 4.1. Appendix B sets out a budget forecast for 2012/13 and a Medium Term Financial Forecast (MTFF) for the subsequent two years including the key assumptions. The current forecast budget gap for 2012/13 is £305k, summarised below:-

	<b>2012/13 £'000</b>	<b>Comment</b>
<b>Base Budget</b>	20,255	
Cost Pressures	277	Inflationary provision, Minimum Revenue Provision & pensions
Savings - Agreed	(353)	Mainly additional FSR savings for Street Services and Revenues and Benefits.
<b>Forecast Base Budget</b>	<b>20,179</b>	
Government Grant	(8,404)	Based on provisional figures provided
Council Tax	(11,003)	Based on 2.5% increase and 0.5% increase in taxbase.
Use of Reserves	(467)	Ongoing use to fund community stadium, S106 and pensions increase
<b>Total Funding</b>	<b>(19,874)</b>	
<b>Budget gap</b>	<b>305</b>	

- 4.2 The key assumptions in respect of the 2012/13 forecast are:

### *Government Grants*

- 4.3. An assumption is made of a reduction in core Government Grant (Formula Grant) of £897k (9.6% cash reduction). This assumption is based on provisional figures issued by the Government when the 11/12 grants was announced. Whilst changes may be made to this figure at this stage we do not expect any significant alterations. However, there does remain a risk relating to any impact arising from NHB allocations.

### *Pay, Inflation and costs*

- 4.4. The 2011/12 budget includes a nil pay award which has been agreed. For 2012/13 this assumption has also been shown with a provision for an increase of 2% pa thereafter. A range of 1% to 1.5% has been used for the inflation on most other general items with some higher provisions for items such as energy. It will be necessary to review forecasts

for specific areas including energy costs in due course and this is therefore shown as a risk area.

#### *Income budgets*

- 4.5. It is evident that there has been a reduction in the recent years in some income budgets such as car parking, planning and net interest earnings. The 11/12 budget included some allowance for reductions in some income levels, however this is likely to remain a risk to the 12/13 budget forecast and the MTFF.

#### *Savings*

- 4.6. At this stage the savings shown include the estimated second year savings in respect of the FSRs of Street Services and Revenues and Benefits. Further savings will be identified as part of the ongoing budget process.

#### *Council Tax*

- 4.7. The budget forecast and MTFF continues to be based on the planning assumption of a 2.5% pa increase for 2012/13 and beyond.
- 4.8. The grant equivalent to 2.5% of Council Tax revenue paid this year to authorities who did not increase the Council Tax rate in 2011/12 will continue in 2012/13. It should be noted that there is no requirement to freeze Council Tax in 12/13 to receive the same grant of £267k again in 12/13. The Government has stated that it intends to provide this funding for this grant during the period of the Comprehensive Spending Review. There is no guarantee that funding will continue beyond this point and this is considered within the MTFF.
- 4.9. An annual increase of 0.5% in the 'taxbase' (the number equivalent Band D properties) has been assumed.

#### *New Homes Bonus*

- 4.10. The budget position shown does not include any assumed income from the New Homes Bonus. As reported earlier Colchester has received £724k in 11/12 and under the methodology of the scheme this grant will be received for the next 6 years. In 12/13 we will also receive an amount of grant in respect of any increases in housing numbers during the period October 2010 – September 2011 and the element in respect of affordable homes delivery. The NHB for 12/13 will be announced alongside our main formula grant in November / December 2011.
- 4.11. The Government has stated that there is £200m for the NHB scheme in 11/12 and £250m for each of following three years giving a total of £950m. The total grants paid out in 2011/12 has been reported as being "almost £200m", so assuming a similar level of growth in each of the next few years it is evident that there is likely to be a shortfall in "new money" as soon as 2012/13. Indeed, the provisional total grant Settlement figures for 12/13 includes an adjustment of £176m for the NHB.
- 4.12. Given the link with our formula grant and that the NHB should be known at the same time as our main grant it will be possible to consider how the NHB might be used to support the budget strategy and the approach to this funding stream in the MTFF.
- 4.13. There are a number of significant budget risks that may affect the 12/13 budget process and these are set out within Appendix B. The risks include items that could be positive to the budget forecast as well as negative. The current list of risks will be monitored and amended throughout the budget process.

4.14. In summary there is a forecast budget gap of circa £0.3m which is lower than at this stage last year partly reflecting the impact of additional savings identified as part of the 11/12 budget. In addition funding from the New Homes Bonus will provide additional resources to support the 12/13 budget. However, as is common there are a number of potential budget risks and variables that may require further savings to be identified to produce a balanced budget.

#### **Delivering the 2012/13 Budget**

4.15. The Council's approach to the budget is that it is primarily driven by the Strategic Plan. We have adopted a number of different ways to identify savings or additional income to support Strategic Plan priorities and to meet a number of substantial cost pressures. The strategy for 11/12 was based upon 5 tracks:-

1. Income generation
2. Efficiencies (including Fundamental Service Reviews)
3. Total Place projects / themes
4. Shared services and different models for service delivery
5. Cuts and reductions

4.16. For 2012/13 it is proposed to continue to build on these tracks with a focus on

- Identification and delivery of FSR efficiency savings
- Continuing role of Budget Group reviewing new areas and revisiting other options
- Review and development of income strategy
- On-going consideration of shared service opportunities

#### *Efficiencies and FSR*

4.17. The FSRs reported to Cabinet in respect of Housing, Revenues and Benefits and Street Services have demonstrated that significant savings are possible with each review identifying savings. The review of Street Services is now in the implementation phase and the 12/13 budget forecast includes additional full year savings expected to be delivered from this review. Other reviews are currently in progress including the museum service and sport and leisure service. Further reviews are timetabled for this year including a review of frontline / customer contacts and support service functions.

4.18. There are other areas outside of the FSR framework that have already been identified such as the new ICT contract where it is expected that savings can be delivered for next year.

#### *Income Strategy*

4.19. We know that as an organisation we already generate significant amounts of income and in benchmarking do well compared to other councils. The 2011/12 budget includes a target of £100k and work is underway to support colleagues to achieve this over the next year. The achievement of this target will be an important first step in delivering a major shift in the way we fund activity within the Council we move towards an environment in which we become less reliant on Government Grant; as costs pressures increase, resources are reduced and the need to protect valued services becomes more difficult. However, these drivers create an opportunity for change and to raise our ambitions to grow our income significantly in ways that will require a very different approach to our staff, their skills, our financial arrangements and our governance.

#### *Shared Services and different models for delivery*

- 4.20. The Council is already delivering services through partnership arrangements, whether formal shared service agreements such as the museums and parking partnerships as well as more informal sharing of resources. The 2011/12 budget includes a target of £150,000 in respect of shared management arrangements.

#### *Budget Group*

- 4.21. The Budget Group comprising Cabinet members and senior officers has operated for two years. It is intended that the Budget Group continues and has the overview of all the tracks, monitoring progress and taking relevant reports.
- 4.22. The different tracks are not mutually exclusive and there will need to be a balanced approach to closing the budget gap through the use of all of them.
- 4.23. The Council's approach to budgets has always been to consider the longer-term impact of decisions. The budget process for 2012/13 will continue to reflect this by recognising that some service changes (reductions, income and growth) will often be delivered over a period longer than a year. This is likely to be particularly true for outcomes of the FSRs.
- 4.24. Appendix C sets out the proposed budget timetable.

#### **Housing Revenue Account (HRA)**

- 4.25. The HRA is a ring fenced account that relates to costs and income in respect of the Council's housing stock. The HRA budget and rent setting process is carried out alongside the General Fund budget and elements of the process are carried out simultaneously. This year the budget approach for the HRA will continue to be fully integrated within the General Fund budget process with the final budget report and rent setting being included within the overall budget and Council Tax decisions.
- 4.26. It has been reported previously to Cabinet that 2012/13 will see a significant change to the HRA with the implementation of reform of the HRA subsidy system. This will impact on the HRA, housing capital programme and the Council's overall finances, specifically the need to take on significant levels of debt.

#### **5. Medium Term Financial Forecast**

- 5.1. The Medium Term Financial Forecast (MTFF), as set out at Appendix B, shows a potential budget gap of £2.1m by 2014/15, an annual increase of over £0.7m after 12/13. The key factors affecting the budget gap in later years include the provisions for increased cost including a pay award of 2%.
- 5.2. The forecast needs to be viewed alongside the level of significant risks and uncertainty regarding a number of key factors that will impact on the Council's finances in the medium term. Most of the key risks outlined in the MTFF could result in recurring cost pressures for the Council. This will require recurring cost savings or additional income to be identified to minimise the escalation of these pressures.
- 5.3. The MTFF does also show that the Council continues to hold reserves and balances to support the Council's budgets. The position on these reserves will be reviewed during the year as the 2012/13 budget progresses.

5.4. In summary the MTFF sets out what is likely to continue to be a challenging financial outlook. The budget process needs to establish that the Council's spending plans, in the medium term, are affordable and can be prudently financed.

## 6. Revenue Balances

6.1 Following completion of the final accounts for the year to 31 March 2011 uncommitted revenue balances stand at £2.4m. This compares with the approved minimum balance of £1.5m.

6.2. The separate report on this agenda details proposals to use up to £0.5m from balances to support legal expenses. This report also sets out other proposals to use balances of £370k and to add the New Homes Bonus grant into balances as set out in section 3. If agreed, balances would remain above the agreed £1.5m level by £350k.

## 7. Capital Programme Update

7.1. It has previously been reported to Cabinet that there has been increasing pressure on the level and timing of generating resources to support the capital programme. This continues to be the case and the programme remains under review. There are two items that require consideration at this stage.

### *Castle Walls*

7.2. Colchester Castle is a Scheduled Ancient Monument, which means that Colchester Borough Council has a statutory duty to ensure the repair and maintenance of the structure to prevent any damage or deterioration. English Heritage is responsible for ensuring that these responsibilities are carried out and for approving any application to undertake works.

7.3. The works required to be carried out are to repair the damage caused by weathering, which has been exacerbated by the particularly severe winters over the past 2 years. The repair works will require full scaffolding to each of the facades being repaired and will entail some replacement of stone along with the reinstatement of sacrificial lime mortar. The works to the Western elevation are considered to be urgent works and as such are required to be carried out this financial year. The specific requirements relating to temperature and weather conditions when applying traditional lime mortar mean that these are seasonal repairs which can only be undertaken in the summer.

7.4. English Heritage has been involved and consulted when drawing up the programme of works and they are currently in the process of issuing an authorisation for the whole programme to remove the need to obtain approval for the works to each separate elevation.

7.5. The following table outlines the total cost of the conservation/repair works required and an indication of the order that the works will need to be carried out.

<b>Financial Year</b>	<b>Elevation</b>	<b>Estimated Cost £'000</b>
2011/12	West	200
2012/13	North	160
2013/14 onwards	South and East	410
<b>Total cost of conservation/repair work</b>		<b>770</b>

- 7.6. This scheme is not in the current approved capital programme. It is therefore proposed that the necessary works required in 2011/12 at a cost of £200k is included in the capital programme and released to enable the project to go ahead this year. It is proposed that the cost of the works in later years is considered for inclusion in the capital programme when the programme is next fully reviewed.

#### *Street Services FSR – IT Investment*

- 7.7. The significant savings to be delivered by the Street Services Fundamental Services Review are dependent on capital investment in technology amounting to £157,000 that creates the 'single customer record' and the Knowledge Bank as well as supplying the appropriate hardware for frontline staff to use. It was therefore agreed by Cabinet and Council to include this sum in the capital programme.
- 7.8. Progress has already been made corporately by the introduction of the single Customer Master Index system called 'i-connect' and this investment will build on this initiative. It is therefore requested that £157,000 be released to progress this work.
- 7.9. Finance and Audit Scrutiny Panel (FASP) considered a review of spend on the capital programme in 2010/11. In total there is a net saving on a number of projects of £116.2k which can therefore be considered for allocation in the future. This includes a number of minor net under and overspends across various schemes. The report identified some potential additional costs which may require allocation of funds in due course. Further updates on the programme will be reported to FASP with any overall impact reported to Cabinet.
- 7.10. The current capital programme position shows that based on a number of probable capital receipts there is scope to include the £200k cost of the Castle Walls in the capital programme and to release the funds for this, the Street Services FSR costs and to meet the forecast net overspend on the whole programme.
- 7.11. Further updates of the capital programme will be reported to Cabinet and will consider future demands for capital funding alongside available resources.

## **8. Strategic Plan References**

- 8.1. The Council has agreed three Corporate Objectives including the aim to "shift resources to deliver priorities". The 2012/13 budget and the Medium Term Financial Forecast will be underpinned by the Strategic Plan priorities and will seek to preserve and shift resources where needed to these priorities.

## **9. Financial implications**

- 9.1 As set out in the report.

## **10. Equality and Diversity Implications**

- 10.1 Consideration will be given to equality and diversity issues in respect of budget changes proposed as part of the budget process. This will be done in line with agreed policies and procedures including production of Equality Impact Assessments where appropriate.

## **11. Risk Management Implications**

- 11.1 As set out in report.

## **12 Consultation**

- 12.1. The Council is required to consult on its budget proposals. A consultation exercise took place as part of the production of the Strategic Plan agreed by Council in February 2009.
- 12.2. The budget strategy and timetable aims to ensure that information is available for scrutiny and input from all Members on proposals in the process. The aim is that detailed information will be available prior to the final budget report being submitted to Cabinet and approval by Council in February.
- 12.3. As has been the case in previous years the opportunity remains open for the leader of the opposition to meet with officers to assist with consideration of any alternative budget proposals.
- 12.4. Furthermore, we will continue with the statutory consultation with business ratepayers and will meet with parish councils in respect of grant funding.

## **13. Other Standard References**

- 13.1 There are no direct Publicity, Human Rights, Community Safety or Health and Safety implications as a result of this report.

## **Background Papers**

Revenue and Capital Outturn reports to Finance & Audit Scrutiny Panel Report – 28 June 2011

## New Homes Bonus

### The Scheme

The key points to note as to how the grant is calculated are:-

- The increase in the Council's taxbase expressed as the number of Band D properties (this is based on figures provided now each year to the Government in October)
- This figure is then multiplied by the average national Council Tax Rate (including parish precepts). For the grant in 11/12 the figure is £1,439
- The calculated grant is then split between Upper and Lower Tier authorities. The scheme confirms that 80% will go to lower tier authorities, such as Colchester.
- The calculated sum will be paid for 6 years and will then stop.
- The process is carried out annually and therefore if there is a further increase in the taxbase then further grants are payable.
- A bonus of £350 will also be paid for each additional affordable homes. This is based on figures reported annually. Due to the timescales for collating this information this element of the scheme will be paid in arrears, therefore the increase in 2010/11 will be paid alongside year 2 (2012/13) grants.

### Colchester's Allocation

For Colchester our grant for 2011/12 is £724k. The table below shows the calculation:-

Increase in taxbase (October 2009 to October 2010)	628.7* (band D)
Average Council Tax Rate	£1,439
Grant Payable for 11/12	£904,790
<b>Split: 80% to Colchester BC</b>	<b>£723,832</b>
20% to Essex CC	£180,958

\*The increase equates to c0.9% increase.

This sum will be paid for the next 6 years. The table below provides an illustrative example of how the grant will be paid. This shows that in total we will receive £724k over the next 6 years (i.e. £4.3m in total). Further payments will be made according to growth in the taxbase and the level of affordable homes delivery.

	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
<b>year 1</b>	<b>724</b>	<b>724</b>	<b>724</b>	<b>724</b>	<b>724</b>	<b>724</b>		<b>4,344</b>
year 2		£x	£x	£x	£x	£x	£x	
year 3			£x	£x	£x	£x	£x	
year 4				£x	£x	£x	£x	
year 5					£x	£x	£x	
year 6						£x	£x	
year 7							£x	



## Medium Term Financial Forecast 2011/12 – 2014/15

### 1. Introduction

The Medium Term Financial Forecast (MTFF) sets out the Council's budget forecast for the next three years. The MTFF sets out:-

- A summary of the 2011/12 budget including an analysis of all service budgets
- The budget forecast for next three years including current cost pressures, growth items and assumptions regarding use of reserves.
- A list of key risk items for 2012/13 and beyond
- The current position on Council General Fund balances including the risk assessment for 2011/12
- The current position on all other reserves and balances

The MTFF will continue to be updated during the year as the budget progresses.

### 2. 2011/12 Budget

The Council's General Fund includes all costs and income other than those in respect of the Council housing stock

Colchester's total net revenue budget for 2011/12 is **£20.255 million**.

Net Budget	<b>£'000</b> 20,255
Funded by:	
Government Grant (incl: NNDR – Business Rates)	9,301 (46%)
Council Taxpayers (excl. parishes)	10,681 (53%)
Use of Balances / Reserves and Collection Fund deficit	273 (1%)
	<b>20,255</b>

The following table sets out a summary of the 2011/12 budget including changes made from the previous year.

## 2011/12 Summary Budget

	Adjusted Base Budget	One-Off Items	Cost Pressures	Technical Items	Total Savings	Detailed 11/12 Budgets
	£	£	£	£	£	£
Corporate & Democratic Core	356		4		(19)	341
Executive Management Team	744		1		(20)	725
Corporate Management	6,734	(13)	70		(483)	6,308
Customer Services	1,135		2		(51)	1,086
Environmental & Protective Services	2,577		124		(420)	2,281
Life Opportunities	5,594	(15)	174		(440)	5,313
Resource Management	278	(87)	93		(496)	(212)
Strategic Policy & Regeneration.	2,973	(455)	14		(227)	2,305
Street Services	2,583	4	160		(710)	2,037
<b>Total Services</b>	<b>22,974</b>	<b>(566)</b>	<b>642</b>	<b>0</b>	<b>(2,866)</b>	<b>20,184</b>
<b>Technical Items</b>						
<i>Corporate Targets</i>						
Shared Services	0		0		(150)	(150)
FSR	0		0		(50)	(50)
ICT Review	0		0		(50)	(50)
Office Accommodation Review	0		0		(40)	(40)
Communications & Marketing Review	0		0		(200)	(200)
<i>Corporate Grants</i>						
LABGI	(100)		100			0
HPDG	(648)		648			0
Area Based Grant (ABG)	(22)		22			0
Council Tax Freeze Grant					(267)	(267)

	Adjusted Base Budget	One-Off Items	Cost Pressures	Technical Items	Total Savings	Detailed 11/12 Budgets
	£	£	£	£	£	£
<i>Non-Service Budgets</i>						
Grants to Parish councils	202		0		(100)	102
CLIA (net interest)	619		0			619
Min Revenue Provision	587		71			658
Pensions	2,352		72	(27)		2,397
Redundancy Provision	150	(150)	0			0
ECC Second Homes	(144)		0	(5)		(149)
Heritage Reserve	12		0	(3)		9
Invest to Save	(34)	19	0	15		0
Icelandic Investment Impairment	615	(615)	0			0
GF/HRA adjustments	(2,648)		(12)	(38)	(110)	(2,808)
Total Below the Line	941	(746)	901	(58)	(967)	71
<b>Total incl. Below the line</b>	<b>23,915</b>	<b>(1,312)</b>	<b>1,543</b>	<b>(58)</b>	<b>(3,833)</b>	<b>20,255</b>
<i>Funded by:-</i>						
General Reserve	(671)	671	0			39
Capital Expenditure Reserve	(1,210)	910	0			(300)
Regeneration Reserve	(166)	166	0			0
Other Reserves - S.106	(70)		0			(70)
Government Grant (RSG / NNDR)	(11,156)		1,894			(9,301)
Council Tax	(10,593)		0		(88)	(10,681)
Collection fund Transfer	(49)	49	58			58
<b>Total</b>	<b>(23,915)</b>	<b>1,796</b>	<b>1,952</b>	<b>0</b>	<b>(88)</b>	<b>(20,255)</b>

### 3. Budget Forecast 2012/13 to 2014/15

The following table sets out the Council's budget forecast for the next three years including key assumptions.

<b>Medium Term Financial Forecast 2012/13 to 2014/15</b>			
	<b>2012/13 £'000</b>	<b>2013/14 £'000</b>	<b>2014/15 £'000</b>
<b>Base Budget</b>	20,255	20,179	20,826
Remove one-off items	0	0	0
Cost Pressures	277	742	890
Growth Items	0	0	0
Savings - Agreed	(353)	(95)	0
<b>Forecast Base Budget</b>	<b>20,179</b>	<b>20,826</b>	<b>21,716</b>
Government Grant	(8,404)	(7,984)	(7,585)
Council Tax	(11,003)	(11,334)	(11,676)
Collection Fund Surplus	0	0	0
Use of Reserves	(467)	(472)	(370)
<b>Total Funding</b>	<b>(19,874)</b>	<b>(19,790)</b>	<b>(19,631)</b>
<b>Budget (surplus) / gap before changes (cumulative)</b>	<b>305</b>	<b>1,036</b>	<b>2,085</b>
<b>Annual increase</b>	<b>305</b>	<b>731</b>	<b>1,049</b>

<b>Key Assumptions</b>			
Inflation - Pay assumed at 0% for 12/13 and 2% pa thereafter , other cost and income circa 1 / 1.5%			
Gov't Grant – The grant for next two years is reduced in cash terms by 15.5%, 9%. For the following two years a reductions of 5% pa has been shown for indicative purposes			
Based on an increase in Council Tax of 2.5% for next three years			
Next actuarial review will impact in 14/15 and a planning assumption of £250k has been assumed.			

<b>Cost Pressures</b>			
General Inflation	140	640	640
Pensions	97	102	250
MRP (Minimum Revenue Provision)	40	0	0
<b>Total</b>	<b>277</b>	<b>742</b>	<b>890</b>
<b>Savings (incl. one off adjustments)</b>			
One off adjustments	153		
HR – Reduced IT costs	(13)		
Staff Costs – Subscriptions	(15)		
Carbon Management Programme	(42)		
Revenue and Benefits FSR	(150)		
Accountancy Review	(10)		
Street Services – FSR	(276)	(95)	
<b>Total</b>	<b>(353)</b>	<b>(95)</b>	<b>0</b>

<b>Use of Reserves</b>			
Balances (General)			
S106 monitoring reserve	(70)	(70)	(70)
Pensions Provision	(97)	(102)	
Capital Expenditure Reserve:- Community Stadium	(300)	(300)	(300)
<b>Total</b>	<b>(467)</b>	<b>(472)</b>	<b>(370)</b>

#### 4. Risk Areas / Uncertainty

There are several key risk areas or areas where the outcome is uncertain which will impact on the 2011/12 budget forecast and potentially in later years. The main areas are:-

<b>Ref</b>	<b>Risk / Area of uncertainty</b>	
1	<i>Government Grant and the Comprehensive Spending Review 10 (CSR10)</i>	<p>The CSR10 sets out the background to public sector finances over the next 4 years. The grant settlement which followed in December provided grant figures for 2011/12 and 2012/13 showing a reduction of 15.2% and 9% respectively. Further reductions in later years are expected and a provision for cash reductions of 5% in each of the last two years of the MTFF has been included.</p> <p>The Government has announced the intention to review Local Government resources and is expected to announce proposals for change later this year. These are expected to include proposals relating to NNDR (business rates) and also the localisation of Council Tax benefits. These are likely to be significant for district councils such as Colchester.</p>
2	<i>Government grants and partnership funding</i>	<p>The Council's budget has changed over recent years with a greater emphasis on funding from both partner organisations and Government bodies. These funding streams can rarely be guaranteed and can therefore add to our cost pressures.</p> <p>Provision has been made for reductions in Government grants in respect of housing benefit administration and sport and leisure. Further changes are possible over the coming years.</p> <p>No provision has been made in the 2011/12 budget for the New Homes Bonus. Future budget reports will consider this source of funding and the implications for the MTFF.</p>
3	<i>Pensions</i>	<p>An allowance has been built in for increases in pensions costs based on the results of the recent actuarial review and which therefore are fixed until 2014/15.</p>
4	<i>Fees and charges and other income</i>	<p>As has been seen in the past few years we have experienced a number of pressures arising from changes in income levels. In the current year income from off street car parks, sport and leisure, planning and cemetery and crematorium have all experienced a level of shortfall. Looking ahead to 2011/12 and beyond it is difficult to estimate how income levels may continue to be affected. The 11/12 budget assumes some decrease in revenue from car parking, planning and cemetery and crematorium and future updates of the MTFF will consider any changes to</p>

Ref	Risk / Area of uncertainty	
		income.
5	<i>Inflation</i>	<p>An allowance for general inflation has been built into the 11/12 forecast and MTFF, and specific increases allowed for items such as energy.</p> <p>The current (April 2010) CPI is 4.5% and RPI is 5.2% The economic forecasts published by HM Treasury point to inflation figures for 2011 of 4.1% and 5% for CPI and RPI respectively. Not all the Council's costs are directly linked to RPI and therefore we will continue to monitor the impact of inflation on all Council costs with particular attention on energy costs.</p> <p>An assumption of no annual pay increase has been shown for 2012/13 with an increase of 2% pa thereafter. Any changes to this will need to be considered in future updates.</p>
6	<i>Use of reserves</i>	<p>The budget position for 2011/12 includes proposals to use certain reserves. The MTFF assumes the ongoing use of the capital expenditure reserve and S106 reserve.</p> <p>The 2011/12 budget includes the proposal to agree that up to £0.6m be made available to meet one-off costs required to deliver the budget savings.</p>
7	<i>Legislation</i>	<p>There is likely to be several items of new legislation over the life of the MTFF for which any available funding may not cover costs or which may impact significantly on the Council e.g. universal credit.</p>
8	<i>Impact of regeneration programme e.g. car park closure and staff resources</i>	<p>As the regeneration programme progresses there will be an ongoing impact on income from car parks due to temporary and permanent closure of certain car parks and also the introduction of park and ride.</p>
9	<i>Property review</i>	<p>A review of our assets was carried out and a 5-year Building Repairs and Maintenance Plan produced. There will continue to be financial implications arising from this for both the revenue budget and capital programme and these will continue to be considered in detail and included in the on-going updates of the MTFF.</p>
10	<i>Impact of growth in the Borough and demand for services</i>	<p>A number of Local Authority services are directly impacted by the increase of population in the Borough, such as waste services, planning, benefits etc.</p> <p>As part of the budget it will be necessary to consider whether there is a need for additional resources in these or other areas in order to maintain levels of service.</p> <p>At this stage no allowance for these areas has been provided within the MTFF. Fundamental Service Reviews (FSR) have been carried out or are being implemented on some of the key areas affected by growth and such as benefits, housing and street services. The financial assumption made is that these reviews will assist in identifying efficiencies to cope with changes in demand, however, this will be regularly reviewed.</p>
11	<i>Delivery of budget savings</i>	<p>The 2011/12 budget includes a number of budget targets including cross cutting reviews such as ICT and communications as well as FSR and other budget changes. The MTFF assumes these will be delivered as proposed.</p>

Ref	Risk / Area of uncertainty
12	<p><i>Net earnings and investments</i>      <i>Interest and</i></p> <p>The budget is influenced by a number of factors including interest rates and cashflow movements. The treasury management strategy highlights the outlook for interest rates in the medium-term which points to continuation of unprecedented low levels into 2011/12.</p> <p>The MTFF currently assumes no further recovery in this area. This will be monitored and considered again as part of the 2011/12 budget.</p> <p>No further provision has been made in respect of the Icelandic investment impairment. The situation will be monitored and any changes reported and reflected in the MTFF.</p>

All these issues will remain as risks to be managed over the course of the MTFF.

## 5. General Fund Balances – Risk Assessment

### Introduction

A risk assessment has been undertaken to determine the prudent level of general fund balances as part of the 2011/12 budget process.

### Background

Historically we have maintained a strong level of balances and these have been used to:-

- Support the annual budget - particularly to fund one off items.
- Fund new initiatives identified during the year.
- Provide cover for cashflow and emergency situations.
- Provide flexibility and a resource for change management.

Over recent years general fund balances have been reduced in a managed and prudent manner: -

	£'000	
31 March 2006	1,997	
31 March 2007	2,708	(includes £902k to support 2007/08 budget)
31 March 2008	3,347	(includes £1,232k to support 2008/09 budget)
31 March 2009	2,891	(includes £1.17k to support 2009/10 budget)
31 March 2010	3,926	(includes £1.89m to support 10/11 budget)
31 March 2011	3,457	

A thorough review of the balances position was reported to Cabinet as part of the 2010/11 budget exercise. This included a risk assessment to establish the minimum level, which was agreed at £1.5 million.

### Risk Assessment

The risk assessment has been kept under review. The results of the current assessment are summarised below showing that the minimum level of balances being maintained at £1.5 million. It is then a matter of judgement whether it would be desirable to hold any further level of balances beyond this, or to seek to rebuild balances above this level to provide for future flexibility.

Factor	Assessed Risk		
	High £'000	Medium £'000	Low £'000
Cash Flow	950		
Capital (nil given reserves and receipts)			0
Inflation		100	
Investment Income	150		
Trading Activities and fees and charges		200	
Emergencies		50	
Benefits			100
New Spending – legal commitments			100
Litigation		150	
Partnerships			100
VAT Exemption Limit			350
Budget Process		100	
Revenue impact of capital schemes			150
Renaissance programme			0
Concessionary fares			50
Pension Contribution			50
	1,100	600	900
	<b>Minimum Provision</b>		
High Risk – 100%	1,100		
Medium Risk – 50%	300		
Low Risk – 10%	90		
<b>Sub Total</b>	<b>1,490</b>		
Unforeseen factors,	10		
<b>Recommended level</b>	<b>1,500</b>		

The main issues to mention concerning the assessment are: -

- While the possible requirement to meet capital spending from revenue resources is still recognised as a potential risk the assessment is "nil" because of the current level of funds held in the capital expenditure reserve and the introduction of the Prudential Code.
- Investment income has been identified as a risk area. In last year's risk assessment this was changed to be classified as a "high risk" and due to the continuing uncertainty in the world economy this has been maintained for next year.
- The assessment includes the risk that the VAT exemption limit will be exceeded with a consequent loss of recoverable VAT. Regular monitoring and active management of new schemes minimises this risk.
- The concern over the funding of the pension fund is recognised in the assessment. However "risk" is assessed as "low" because the anticipated increased contributions from the 2010 valuation have been built into the budget assumptions.

### Implications

The risk assessment will be carried out at least annually as part of the budget process. While the current assessment indicates a minimum level it is important to recognise that there are implications of operating at this level. As noted above we have traditionally had a



level of balances that have provided flexibility and enabled new initiatives to be considered outside the annual budget process. Operating at the minimum level requires an approach and a discipline to: -

- Ensure all spending aspirations for the coming year are assessed as part of the annual budget process. The continued development of the Medium Term Financial Forecast will assist in this.
- Recognise that it will not be possible to draw on balances to fund new discretionary initiatives identified in the year, however desirable they may be; an alternative source of funding would need to be identified.
- Realise future assessments could identify a need to rebuild balances
- Accept that the potential for interest earnings on balances will change depending on the level of balances held. (This will be reflected in the budget accordingly).
- Acknowledge that any balances desired for future flexibility/change management will need to be built up over and above the prudent level identified.

In addition it is acknowledged that it may be necessary for balances to fall below the recommended level. Balances are provided to mitigate unbudgeted cost pressures and as such at times they may be used to provide temporary support to the Council's budget.

## 6. General Fund Balances - Position

The following table sets out the current level of General Fund balances.

### General Fund Balances

	£'000	£'000
Balance as at 31 March 2011 (note 1) (As per Statement of Accounts)		3,457
<b>Proposed use of balances during 2011/12:</b>		
• Financing carry forwards – Proposed carry forward of 10/11 budgets (note 2)		292
• Funds released in previous years carried forward to 11/12 (note 3)		169
• Supporting the 11/12 Budget (Note 4)		600
• Further Changes in 2011/12:-		
Firstsite legal fees	500	
Tour Series event	30	
Customer service review	40	
Planning appeals	100	
Food waste trial	200	
Receipt of New Homes Bonus (note 5)	(324)	
	500	546
<b>Projected Balances as at 31 March 2012</b>		<b>1,850</b>
Agreed minimum balance		1,500
<b>Potential Surplus Balances as at 31 March 2012</b>		<b>350</b>

#### Notes:

1. The balance at 31 March 2011 reflects the outturn for 10/11
2. Carry forward budgets have been reviewed by the Head of Resource Management and reported to FASP 28 June.

3. This includes previous approved releases from balances which have not yet been spent and the previously approved transfer of £205k from the insurance provision
4. It was agreed to earmark up to £600k from balances to support one off-costs required to deliver budget savings.
5. Contribution to balances from grant received of £724k.

This forecast is on the basis that there are no further calls on balances during 2011/12 and the current year's budget does not overspend.

## 7. Earmarked Reserves and Provisions

The Council maintains a number of earmarked reserves and provisions, which allows it to prudently plan for future expenditure requirements. As at 31 March 2011 earmarked reserves totalled £4,816k and provisions £384k.

As part of the budget process a review was undertaken into the level and appropriateness of earmarked reserves and provisions. The review concluded that the reserves and provisions detailed in the following table remain appropriate and at an adequate level.

The position on these reserves will be reviewed as part of the 2012/13 budget process including forecasting and assessing the impact of future commitments.

### Earmarked Reserves

Reserve	Amount 31/03/11 £'000	Estimate 31/03/12 £'000	Comment
Renewals and Repairs (including Building Maintenance Programme)	1,734	1,200	Maintained for the replacement of plant and equipment and the maintenance of premises. Annual contributions are based upon the estimated renewal or repair cost, spread over the life of the asset.
Insurance	517	350	To cover the self-insurance of selected properties. The balance of the fund is split with a proportion specifically identified as a provision against the cost of claims (see section B). Following an actuarial review it has previously been agreed that £205k of the current balance will be transferred to balances.
Capital Expenditure	1,362	1,062	Revenue provision to fund the capital programme. The reserve is fully committed to funding the current capital programme. However actual use of balance is dependent not only on progress of spending on approved capital schemes but also level of other resources, mainly capital receipts, received. This Reserve is also being

<b>Reserve</b>	<b>Amount 31/03/11 £'000</b>	<b>Estimate 31/03/12 £'000</b>	<b>Comment</b>
Asset Replacement Reserve	10	0	used to support some financing costs of the Community Stadium. A reserve for the future replacement of vehicles and plant. The vehicle replacement policy has been reviewed. Revenue contributions to this reserve have now ceased and the funding for the majority of repairs is now sourced from the Council's Capital Programme.
Gosbecks	391	391	Maintained to provide for the development of the Archaeological Park. The main source of funding was a 'dowry' agreed on the transfer of land.
On Street parking reserve	63	0	Any surplus ring fenced to cover deficits.
Heritage Reserve Mercury Theatre	5 234	5 259	Provision for the building's long term structural upkeep. (See comment in report regarding funding roof repairs).
Hollies Bequest	10	12	Provision for the upkeep of open space.
Section 106 monitoring	142	100	Required for future monitoring of Section 106 agreements. From 2010/11 onwards it has been agreed to use £70k from this reserve on an annual basis to support the budget.
Community Stadium - loan	35	0	To cover set up costs and working capital. No repayments are expected within 2010/11. The loan is repayable to the Council within 7 years from the agreement date of 29 January 2008.
Building Control	29	0	The Building Control Reserve is maintained under the requirements set down by the Building Control (Local Authority Charges) Regulations and it holds the surplus/deficit on the chargeable Building Control work performed by Council officers.
Revenue grants unapplied.	284	0	The Revenue Grants Unapplied Reserve is a new reserve maintained to hold the revenue grants income which has no conditions attached and is yet to be applied by the Council. It is assumed that this will fully be applied in 11/12.
	<b>4,816</b>	<b>3,379</b>	

## Provisions

<b>Reserve</b>	<b>Amount 31/03/11 £'000</b>	<b>Estimate 31/03/12 £'000</b>	<b>Comment</b>
Insurance	384	300	This element of the fund is specifically set aside as a provision to meet the cost of claims, notably subsidence.
	<b>384</b>	<b>300</b>	

<b>2012/13 Budget Timetable</b>	
<b>Budget Strategy March 11 – July 2011</b>	
<b>March – June (SMT and Budget Group)</b>	Budget Group Meetings Agreed Update MTFF /Budget Strategy Review potential cost pressures, growth and risks Consider approach to budget Initial budget reviews started
<b>Cabinet – 13 July 11</b>	<ul style="list-style-type: none"> <li>• Report on updated budget strategy / MTFF</li> <li>• Timetable approved</li> </ul>
<b>SOSP – 19 July 11</b>	Review Cabinet report
<b>Budget Group / Leadership Team - June / July</b>	Consider review of capital programme Consider approach to consultation
<b>Detailed Budget preparation and Budget Setting Consultation</b>	
<b>Budget Group / Leadership Team regular sessions on progress / budget options now - December</b>	Review budget tasks (the 5 tracks) Consider outcomes of Fundamental Service Reviews
<b>Cabinet – 7 September 11</b>	<ul style="list-style-type: none"> <li>• Budget Update</li> <li>• Proposals for consultation</li> <li>• Review of capital resources / programme</li> </ul>
<b>Cabinet – 12 October 11</b>	Budget Update (if required)
<b>Cabinet – 30 November 11</b>	<ul style="list-style-type: none"> <li>• Budget update</li> <li>• Reserves and balances</li> <li>• Grant settlement</li> </ul>
<b>SOSP – 13 December 11</b>	Review Cabinet report / Budget Position (Strategic Review)
<b>FASP – 24 January 12</b>	Review consultation / Budget position (Detailed proposals)
<b>Cabinet – 25 January 12</b>	Revenue and Capital budgets recommended to Council
<b>Council – 22 February 12</b>	Budget agreed / capital programme agreed / Council Tax set

*Timing of consultation to be included within process when agreed.*

*Leadership Team to review budget progress during year.*

<b>Report of</b>	<b>Head of Resource Management</b>	<b>Author</b>	<b>Sean Plummer</b> ☎ 282347
<b>Title</b>	<b>Capital Programme Projects</b>		
<b>Wards affected</b>	Castle Ward		

**This report concerns proposals relating to projects to be shown in the capital programme in respect of the Moot Hall organ and repairs to the Mercury Theatre roof.**

## **1. Decisions Required**

1.1. It is recommended that the Council:-

- (i) Agree to submit a bid to the Heritage Lottery Fund (HLF) in respect of the Moot Hall organ on behalf of the Friends of the Moot Hall Organ on the condition that the Council does not allocate funding for this project.
- (ii) Agree to progress the planned roof repairs to the Mercury Theatre and that this be included in the Capital Programme and funded from a combination of the funds held by the Trust and in the Mercury Reserve as part of the 2012/13 budget report to Cabinet.

## **2. Reasons for Decisions**

- 2.1 This report sets out two potential capital schemes that need to be shown in the capital programme.
- 2.2 The decision in respect of the Moot Hall organ concerns the proposal for the Council to submit a bid to the Heritage Lottery Fund (HLF) for funding on behalf of the Friends of the Moot Hall Organ.
- 2.3 The decision in respect of the Mercury Theatre roof is to progress this scheme to determine the final scope of the project and procure a contractor. Sufficient funding for this scheme has been identified and final proposals for the use of the different sources will be reported to Cabinet as part of capital programme proposals for 2012/13.

## **3. Alternative Options**

- 3.1. The Council could decide not to make the bid to the HLF, however, this is likely to reduce the prospect of securing external funding to support the Moot Hall organ scheme.
- 3.2. The Council, as corporate trustee, of the New Theatre Trust has responsibilities to repair and keep the Mercury Theatre premises in good condition (i.e. the fabric of the building). Survey reports conclude that roof coverings are now in generally poor condition and that it has now exceeded its serviceable life.

## 4. Supporting Information

### *Moot Hall Organ*

- 4.1. The aim of the 'Friends of the Moot Hall Organ' (the 'Friends') is to bring back into use the Edwardian organ in the Moot Hall at Colchester's Town Hall. The refurbishment work will entail the removal of the organ from the hall to an organ builder's workshop where it will be restored, and some later alterations reversed. It will then be reinstalled in the building.
- 4.2. The 'Friends' had been developing a Heritage Lottery Fund (HLF) to obtain the funds to deliver this project. However, following discussions it is considered that to make this bid it will be necessary for it to be made by the Council given that the Town Hall and organ is owned by the Council.
- 4.3. The intention is that any successful HLF grant award would supplement funds raised by the Friends. The cost of the project is currently estimated to be £385k. It is therefore proposed that a bid to the HLF be submitted on the condition that there is no requirement for the Council to allocate any finances to this project.

### *Mercury Theatre – Roof*

- 4.4. The Council is the sole Corporate Trustee of the Colchester New Theatre. The Mercury Theatre (and studio) is owned by the Trust and is leased to the Mercury Theatre Ltd. The lease specifies that the responsibilities showing that company is responsible for the vast majority of cost relating to the operation of the theatre and internal parts of the building with the Trust being responsible for the structural and exterior of the building.
- 4.5. A report has been produced that describes the condition of the existing roof and the methodology for installing a new roof. Essentially the existing felt roof is the original that was installed when the building was built. It is therefore 40 years old and is past its useful service life. The roof has been patch repaired in the past, but its condition is such that it is now beyond patch repairs and only a complete replacement of the roof covering will suffice.
- 4.6. The estimated cost of the repairs is currently forecast to be in the region of £230k to £300k. There are two potential sources of finance for this project:-
  - Funds held by the Trust
  - The Mercury reserve

### *Trust funds*

- 4.7. The accounts of the Trust are included within The Council Statement of Accounts. These show there are funds in total of almost £168k.

### *Mercury Reserve*

- 4.8. In 1999/2000 the Council agreed to establish a Mercury Reserve. This was done as part of the recovery plan for the Theatre and specifically the need to improve the approach to the planned repairs and maintenance and investment. The purpose of the Reserve was reported as being to *'help provide for the major replacement of fixed equipment and fittings and the refurbishment of the premises, or part(s) of the premises or particular facilities, to ensure they are kept up to date in a competitive market place and to respond to new operating standards, trends of use and customer demands'*.
- 4.9. After an initial one off contribution of c£80k the reserve has been added to annually. On the basis of a budgeted contribution in 11/12 budget there will be c£260k in the reserve.

- 4.10. In total there are therefore sufficient funds in a combination of the funds held by the Trust and in Council's reserve to fund the planned work. The specification for the work and tender process will be reported in due course.

## **5. Proposals**

- 5.1 It is proposed that the Council:-

- (iii) Agree to submit a bid to the HLF in respect of the Moot Hall organ on the condition that the Council does not allocate funding for this project.
- (iv) Agree to progress the planned roof repairs to the Mercury Theatre and that this be included in the Capital Programme and funded from a combination of the funds held by the Trust and in the Mercury Reserve as part of the 2012/13 budget report to Cabinet.

## **6. Consultation**

- 6.1. The Council has worked with the Friends of Moot Hall Organ and the bid to the HLF will be based on their draft submission.
- 6.2. The initial survey report setting out the condition of the Mercury Theatre roof and potential funding sources have been discussed with the relevant theatre committee. These discussions will continue including final proposals for the scheme including timing and selection of a contractor.

## **7. Publicity Considerations**

- 7.1. Relevant publicity relating to the Mercury Theatre roof repairs will be predominantly dealt with by the theatre company.
- 7.2. The Council's website provides links to the Friends of the Moot Hall Organ.

## **8. Financial implications**

- 8.1. The report sets out that funding for Mercury Roof exists in a combination of the Mercury Reserve and funds held by the Trust, therefore, it will be possible to include the scheme in next year's capital programme without a need to allocate other capital resources.
- 8.2. No funding for the Moot Hall organ scheme has been identified in the capital programme and the proposal to support the HLF bid is made on the condition that there is no call on Council funds.

## **9. Other Standard References**

- 9.1 There are no particular references to the Strategic Plan, equality, diversity and human rights, community safety, health and safety or risk management implications.



<b>Report of</b>	<b>Executive Director</b>	<b>Author</b>	<b>Ian Vipond x 2717</b>
<b>Title</b>	<b>Firstsite – Construction Related Legal Proceedings</b>		
<b>Wards affected</b>	<b>Castle Ward</b>		

This report requests the Cabinet to recommend to full Council the release of additional revenue funding to continue the legal proceedings in relation to the construction project for 'firstsite' previously known as the Visual Arts Facility (VAF)

**1. Decision Required**

- 1.1 To recommend to full Council the release of five hundred thousand pounds of additional revenue funding towards the legal costs of resolving legal disputes in relation to the construction of firstsite for the reasons set out in this report.

**2. Reasons for Decision**

- 2.1 In July 2009 the Cabinet agreed that proceedings could be issued against Banner Holdings Ltd (BHL) and Turner and Townsend (T&T) and that actions be considered against other professional advisors. Since that time additional sums have been sought to defend the Councils position and seek redress for the Council and the other funders loses. In total the Cabinet has authorised £1,465,000 which was also supplemented by a further £150,000 recovered from a construction performance Bond.
- 2.2 In order to continue legal actions, with a view of recovering public funds, the legal advice is that a further £500,000 is now required.

**3. Background**

- 3.1 BHL issued proceedings against the Council which the Council was required to defend or risk the prospect of paying significant sums to BHL. It was reported last year that following adjudication in the Councils favour BHL went into administration and their claim against the Council was subsequently struck out by the Court. This then allowed the Council to claim against a construction performance Bond, specifically put in place on the project to help protect the Council against such a situation arising and the Council has recovered £1.25 million from this Bond. The Council also reached a settlement with a separate professional advisor relating to a specific element of the buildings design.
- 3.3 Cabinet will note that the Council had been forced to incur significant legal costs because of the approach to the litigation adopted by BHL and that although the result of the adjudication has saved the Council significant further legal costs, the fact that BHL are now in administration has reduced the prospect of recovering sums due from the previous main contractor. Nevertheless the actions of the

Council has now secured a series of significant successes in its legal approach already recovering substantial public funds.

- 3.4 The Council has commenced proceedings against T&T and the legal advice obtained remains that there are good prospects of success for the recovery of substantial sums from T&T who have the benefit of Professional Indemnity Insurance cover. The claims against T&T are the final and most substantial claims to be pursued to recover losses suffered by CBC and others. CBC is under a legal duty to pursue claims that have a good prospect of success to ensure that the public purse (whether for CBC or its Funders) is protected.
- 3.5 The Court has now set a timetable to prepare the case for trial and a trial date has been set to take place in June 2012 for 20 days. There is much preparatory work to undertake for the trial and the Court has set out these steps and when they should be completed by. They include ensuring that the parties disclose all relevant documents (which are very substantial) and to prepare and exchange witness statements and expert evidence.

#### **4. Financial implications**

- 4.1 The sums identified in section one are not included within the 2011/12 Budget and there will now need to be a separate allocation.
- 4.2 Under the Financial Procedure Rules the Cabinet can only approve a virement of up to £250,000 of revenue funding. Accordingly, the virement of five hundred thousand pounds will need to be approved by full Council assuming Cabinet is minded to agree the recommendation contained in this report.
- 4.3 Also, as the five hundred thousand pounds has not been approved by Council within the 2011/12 budget the Council will need to assess how this extra funding can be accommodated in the budget. See separate budget report on the agenda covering this matter.

#### **5. Alternative Options**

- 5.1 Given that the Council has already commenced legal proceedings and the legal advice is that there remain good prospects of recovering significant sums there is a clear case for the Council to continue to fund the litigation.
- 5.2 In order for the Council to reach a decision not to proceed the Council would have to consider its public law duties relative to the risks associated with legal proceedings and the budgetary implications. The judgement would have to be weighed against (i) potential recovery for the Council of what could be significant sums, (ii) other potential risks associated with not progressing the claims in circumstances where the external advice is that there are good prospects for the recovery of significant sums and other funders have expended costs (iii) the prospect of losing such action and awards for costs being made against the Council.

#### **6. Strategic Plan references**

- 6.1 Delivery of firstsite is seen as contributing to the Strategic objective of making Colchester a place where people wish to live, work and visit.

#### **7. Consultation**

7.1 Not applicable.

**8. Publicity considerations**

8.1 This is a high profile project and so any report may attract public and media interest and will need to be managed by the Councils communications team in liaison with the Portfolio Holder.

**9. Equality, diversity and Human Rights; Community Safety; Health and Safety Implications**

9.1 There are no particular implications relating to these matters.

**10. Risk Management Implications**

10.1 Whilst there is clear legal advice that there are good prospects for success there are always risks with litigation such that if the Council fails to recover its costs and/or in the event of unsuccessful litigation the Council could be responsible for other parties' legal costs. The Council will continue to take appropriate advice in relation to these litigation matters to ensure it is acting in the best public interest.



## Licensing Committee

Item

6

1 June 2011

Report of	Head of Environmental and Protective Services	Author	Colin Daines ☎ 282596
Title	Statement of Licensing Policy for Sex Establishments		
Wards affected	All		

**This report provides background information to the attached proposed final draft of the Council's Statement of Licensing Policy for Sex Establishments following that Policy's scrutiny by Counsel and the response to the public consultation process that was carried out.**

### 1. Decision(s) Required

- 1.1 Members are asked to consider the attached proposed final draft Statement of Licensing Policy for Sex Establishments following the incorporation of amendments that have resulted from the legal opinion given on the Policy by our appointed Counsel.
- 1.2 The Licensing Committee is then asked to formally adopt the revision of the Statement of Licensing Policy as it stands, thus enabling its use by the Council in considering future applications.

### 2. Reasons for Decision(s)

- 2.1 The reasons behind the production of this report is to enable the Council to license and control "Sexual Entertainment Venues" (lap dancing and pole dancing clubs and similar venues) in the same way that it can currently license the other two types of Sex Establishment i.e. Sex Shops and Sex Cinemas.
- 2.2 Under the Licensing Act 2003, which currently is used to control Sexual Entertainment Venues, the Licensing Authority can only consider representations to a premises licence application which directly relate to how the proposed activities will either undermine or promote the four licensing objectives in the vicinity of the premises, regardless of whether the entertainment sought by the application is for what might be considered as 'adult' entertainment'. These objectives are:
  - The Prevention of Crime and Disorder,
  - Public Safety,
  - The Prevention of Public Nuisance, and
  - The Protection of Children from Harm.
- 2.3 Refusal of an application is also restricted to much narrower criteria under the Licensing Act 2003 and, once again, must relate to the negative impact that an application might make on one or more of the four licensing objectives if it is granted.
- 2.4 This report and the attached Policy Statement will provide a much wider range of controls over the establishment and subsequent operation of such venues.

### **3. Alternative Options**

- 3.1 Colchester Borough Council does not have to adopt the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as introduced by the provisions of Section 27 of the Policing & Crime Act 2009. The new provisions are discretionary not mandatory in that regard.
- 3.2 However, having resolved to do so, it is clearly necessary to adopt a Statement of Licensing Policy for use in considering any future applications for Sex Establishments.

### **4. Supporting Information**

- 4.1 On 13 October 2010 the Council resolved to re-adopt the provisions of Schedule 3 of the Local Government Act 1982, as amended by Section 27 of the Policing & Crime Act 2009. The provisions of the act came into effect in the Borough, after advertisement, on 31 January 2011. The adoption of this legislation has had the effect of requiring all premises operating as sex establishments in the Borough (including sex shops, sex cinemas and sexual entertainment venues) to be licensed. It also allows the Council to set terms and conditions for the grant, renewal, transfer and variation of these licences and to prescribe the number of licences that can be issued in the area, including setting this figure at nil.
- 4.2 A report was subsequently brought before the Committee on 9 March 2011 with a proposed draft Statement of Licensing Policy which was suggested for use in public consultation.
- 4.3 This version was sent to a range of interested parties, as detailed in Section 6 below. It has also been sent to a leading licensing barrister for legal scrutiny.
- 4.4 Counsel has now given his opinion on the draft Statement of Licensing Policy and his suggested amendments to the Policy have been incorporated into the original draft. The amended final draft is attached to this report. (See Appendix 1).
- 4.5 By adopting the amendments suggested by Counsel, the Policy itself will be stronger and more robust.

### **5. Strategic Plan References**

- 5.1 The new provisions introduced by Section 27 of the Policing & Crime Act 2009, which amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, links into the Council's strategic plan for Community Safety and Community Development.

### **6. Consultation**

- 6.1 Unlike other Licensing Policy Statements, such as those for alcohol and gambling, there are no statutory provisions regarding consultation on this particular policy. Therefore, in formulating a suggested process, consideration was given to the general principles and case law concerning consultation.
- 6.2 The Council has consulted widely and, in particular, with the following:

- (a) the Chief Officer of Police for the Licensing Authority's area;
- (b) the holders of premises licences carrying out relevant regulated entertainment and those holding sex establishment licences issued by that Authority,
- (c) such other persons as the Licensing Authority considers to be representative of businesses and residents in its area;

6.3 Invitations were also sent out to other agencies and authorities, business groups, and residents' associations, Ward Councillors and Town and Parish Councils to comment on the proposed draft Policy. A copy of the draft policy and an invitation to comment on the policy was also placed on the Council's website.

6.4 Unfortunately, the response to this consultation process was effectively non-existent.

## **7. Publicity Considerations**

7.1 Publicity on the draft Sex Establishment Policy was not required by legislation but has been provided by inviting various representative bodies to comment on the policy and by placing it on the Council's website and inviting comment.

7.2 It is anticipated that there would also be coverage of this subject in the local media, drawing the attention of the wider public to the matter.

## **8. Financial Implications**

8.1 Other than as yet unknown, but minimal, costs of any publicity or printing costs concerning the publication of the final approved Policy, there have also been some costs incurred by the Licensing Authority in having sought Counsel's opinion on the proposed draft revised Policy.

8.2 There may also be costs incurred in defending any action brought against the Council which seeks to judicially review the Statement of Licensing Policy. However, having sought Counsel's opinion and agreed to the amendments that Counsel has suggested, the Policy is undoubtedly more robust and compliant with the law and national guidance. Therefore any such action is considered unlikely to be successful.

## **9. Equality, Diversity and Human Rights Implications**

9.1 The draft revised Statement of Licensing Policy has been developed in accordance with and has taken account of, all relevant legislation and national and local strategies.

9.2 All other equality and diversity matters will have been considered when the Policing and Crime Act 2009 was passed by Parliament and by the Home Office when issuing its guidance to Local Authorities, existing operators and new applicants entitled 'Sexual Entertainment Venues', guidance for England and Wales.

9.3 An Equality Impact assessment can be found on [www.colchester.gov.uk](http://www.colchester.gov.uk) > Council and Democracy > Policies, strategies and performance > Diversity and equality > Equality Impact Assessments > Equality Impact Assessments for Environmental and Protective Services > Sex Establishments Policy.

## **10. Community Safety Implications**

- 10.1 The adoption by the Council of the amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as introduced by Section 27 of the Policing & Crime Act 2009, will enhance community safety with regards to how and what the Council is able to consider when determining applications to provide relevant entertainment at sexual entertainment venues, and will also allow 'local people' to have a greater input into this process than the Licensing Act 2003 currently allows for.

## **11. Health and Safety Implications**

- 11.1 Not applicable within the context and recommendations of this report.

## **12. Risk Management Implications**

- 12.1 A flexible yet robust revised Statement of Licensing Policy will continue to provide both the Council and the Licensing Authority with a sound basis for decision making in relation to proposals to establish Sex Establishments within the Borough.

## **Colchester Borough Council**

### **Statement of Licensing Policy for Sex Establishments (including Sex Shops, Sexual Entertainment Venues and Sex Cinemas)**

This policy sets out the Council's proposed approach to regulating sex establishments and the procedures it will adopt in relation to applications for sex establishment licences.

The policy is intended as a guide to applicants, licence holders, objectors and members of the licensing committee and provides information on what the Council expects to see in relation to an application. The advice and guidance contained in the appendices attached to the policy are intended only to assist applicants and other parties and should not be interpreted as legal advice. All parties are advised to seek their own legal advice if they are unsure of any of the requirements of the legislation in so far as they relate to the licensing of sexual entertainment venues. It should be noted that the Council, as licensing authority, is required to implement the licensing regime in accordance with the law and not in accordance with any moral codes.

Any comments on this policy should be sent to:-

Colchester Borough Council  
Head of Environmental and Protective Services  
Licensing Specialist Unit  
33 Sheepen Road  
Colchester  
Essex  
CO3 3WG

Or by e-mailing [EPS.Support@colchester.gov.uk](mailto:EPS.Support@colchester.gov.uk) or by telephoning Customer Services on 01206 282222

May 2011



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## 1. Adoption of legislation

- 1.1 Colchester Borough Council resolved to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 on 14 October 1982. This provided the Council with the ability to license sex establishments. The Policing and Crime Act 2009 amended the Miscellaneous Provisions Act, in so far as it related to the licensing of sex establishments, by adding the new category of “sexual entertainment venue”.
- 1.2 On 13 October 2010 the Council resolved to re-adopt Schedule 3 of the Miscellaneous Provisions Act, as amended by the Policing and Crime Act 2009, thereby requiring all premises operating as sex establishments in the Council’s area to be licensed. The definition of sex establishments now includes sexual entertainment venues. Adoption of Schedule 3 also allows the Council to set terms, conditions and fees for the grant, renewal, transfer and variation of such licences and the number of licences that may be issued in the area. The provisions of the Act came into effect, after advertisement, in the Colchester Borough area on 31 January 2011.

## 2. Definition of ‘Sex Establishment’

- 2.1 A ‘sex establishment’ is defined under the Act as a ‘sex shop’, a ‘sex cinema’ or a ‘sexual entertainment venue’. Full definitions of those terms can be found in **Appendix A** to this policy.

## 3. Existing Premises

- 3.1 To date the Council has not imposed a restriction on the number of sex establishment licences that can be issued. The town currently has 2 licensed sex shops located in Butt Road, Colchester. In addition, there is a premises in St Botolph’s Street providing adult entertainment in the form of lap dancing or similar entertainment. This is currently licensed as “regulated entertainment” under the provisions of the Licensing Act 2003.
- 3.2 These premises are shown by Ward in the table below.

Ward	Sex Shop	Sexual Entertainment Venue	Sex Cinema
Castle		1	
Christ Church	1		
New Town	1		

- 3.3 The Council recognises that there are existing businesses in the Borough providing such services and it is the Council’s policy to allow these licences to be maintained. However, in the event that these existing premises cease to trade there will be no presumption that a licence will be granted to a new applicant wishing to trade in the same location.

## **4. Location of Licensed Premises**

4.1 The Council has a discretion to refuse to grant or renew licences for sex establishments on the grounds that the licence would be inappropriate having regard to the character of the locality or the use of premises in the vicinity. Without prejudice to other elements of the policy, and whilst treating each new application on its own merits, the Council's policy is ordinarily to refuse licences on these grounds for premises that are in close proximity to;

- (a) residential accommodation;
- (b) schools, nurseries and other premises used by children and vulnerable persons;
- (c) parks or other recreational areas used by children and other vulnerable persons;
- (d) religious centres and places of religious worship;
- (e) youth, community and leisure centres;
- (f) access routes to and from premises listed above;
- (g) historic buildings or visitor attractions;
- (h) an area designated either as an area under regeneration, or due to be regenerated.

## **5. Impact**

5.1 The Council, in considering whether the discretionary grounds for refusal apply and whether the licence should be refused on such grounds, will take into account the following, where it is relevant to do so:

- (a) the type of activity, the duration of the licence and the proposed hours of operation;
- (b) the layout and condition of the premises;
- (c) any cumulative and adverse impact of existing sexually related licensable activities in the same locality as the proposed premises;
- (c) crime and disorder issues;
- (d) any evidence relating to actual or likely noise or disturbance caused by the premises;
- (e) the character of the locality;
- (f) the use of other premises in the vicinity.

## **6. Suitability of the Applicant**

6.1 The Council, in considering whether the applicant or applicants are fit and proper to hold a licence will take into account the following, where it is relevant to do so:

- (a) the operation of existing or previous licences held by the applicant, including their track record of compliance;

- (b) their experience and knowledge of the type of sex establishment they are applying to run;
- (c) their ability to comply with the licensing requirements and minimise the impact of the business on local residents and businesses;
- (d) any reports concerning the applicant received from the Police or any other source;
- (e) the honesty of the applicant(s);
- (f) whether the applicant(s) intend to operate the premises or employ other people to do so;
- (g) whether the management proposed will deliver compliance with operating conditions through managerial competence; presence; a credible management structure including individuals experienced in running premises of this nature; enforcement of rules internally through training, monitoring and the publication of rates for performers and customers; a viable business plan;
- (h) whether management can be relied upon to act in the best interests of the performers;
- (i) whether there is a written welfare policy for performers and how this is to be enforced;
- (j) what system is in place to ensure that performers are adults and entitled to live and work in the UK;
- (k) whether management can be relied upon to protect the public by, for example, transparent charging and freedom from solicitation.

## 7. Applications

- 7.1 An application for the grant, renewal, transfer or variation of a licence must be made in writing to the Council in accordance with the requirements shown in **Appendix B** of this policy document.
- 7.2 A specimen example of the Council's application form and also a notice for the newspaper and public advertisements of the application are attached as **Appendix C and also appendices E and F** of this policy document.
- 7.3 An application can be served on the Council as follows:-
- (a) by post to Head of Environmental and Protective Services, Licensing Specialist Unit, 33 Sheepen Road, Colchester, CO3 3WG
  - (b) by personal service to the Customer Services Team, Colchester Borough Council, Angel Court, High Street, Colchester, CO1 1SP
  - (c) by e-mail to EPS.Support@colchester.gov.uk;
  - (d) by fax to 01206 – 282598
  - (e) on-line (when the facility becomes fully operational).
- 7.4 The Council encourages applicants to serve their applications and other notices on it electronically. In line with the Provision of Service Regulations 2009, where an application for the grant, renewal or transfer of a licence is submitted electronically, the Council will send a copy of the application to the Chief Officer of Police not later than 7 days after the date that the application

is received. In all other cases, it will still be the responsibility of the applicant to serve a copy on the Police within 7 days of submitting an application to the Council.

- 7.5 The Council expects that any premises for which a licence is required should have either planning consent or lawful use under planning legislation for the intended use and hours of operation. The Council will not treat licensing applications as a re-run of a planning application however, and it will not seek to impose licensing conditions which duplicate conditions that have been imposed on a planning consent.
- 7.6 The Council will notify relevant Ward Councillors of an application in their area.

## **8. Fees**

- 8.1 The licence fees for all sex establishments including sexual entertainment venues have been reviewed and set at a level that is reasonable and proportionate to the effective cost of administering and enforcing the application and licensing process.
- 8.2 The application process involves paying a non-returnable application fee. The fees will be reviewed annually by the Council and the current schedule of fees is shown at **Appendix D**. No further fees will be applied by the Council in the event that objections are received to an application and a hearing is required to determine the application. However, should the application be subsequently refused, the proportion of the fee associated with enforcement will be refunded.

## **9. Advice and Guidance**

- 9.1 The Council will seek to liaise with applicants and, wherever possible and necessary, mediate between applicants and objectors in order to achieve a satisfactory outcome for all stakeholders. Applicants are advised to discuss their proposals with the Council and any interested parties prior to an application being made.

## **10. Grant, renewal or transfer of licences**

- 10.1 The Council may grant to any applicant and renew a licence for the use of any premises as a 'sex establishment' on such of the terms and conditions specified by the Council which are shown in **Appendix H** of this policy document.
- 10.2 A licence once granted will usually remain in force for 12 months, but can be issued for a shorter period if deemed appropriate. In order to continue operating as a sex establishment the licence holder must make a renewal application to the Council prior to the expiry of the existing licence.

- 10.3 An application to transfer a licence to any other person may be made.
- 10.4 Where an application for renewal or transfer of a licence is made before the expiry of the existing licence, the licence shall remain in force until such time as the application has been determined.

## **11. Variation of licences**

- 11.1 The holder of a licence may apply to the Council to vary the terms, conditions or restrictions on, or subject to which, the licence is held.

## **12. Objections**

- 12.1 Anyone wishing to object to an application must do so in writing within 28 days of the application being made to the Council. Representations can be made via-

- (a) by post to Head of Environmental and Protective Services, Licensing Specialist Unit, 33 Sheepen Road, Colchester, CO3 3WG
- (b) by personal service to the Customer Services Team, Colchester Borough Council, Angel Court, High Street, Colchester, CO1 1SP
- (c) by e-mail to [EPS.Support@colchester.gov.uk](mailto:EPS.Support@colchester.gov.uk);
- (d) by fax to 01206 – 282598

The objection must state the grounds on which it is made.

- 12.2 A person making a representation must state their full name and address and their grounds for objecting to the application and indicate whether they consent to have their name and address revealed to the applicant. The Council will not consider objections that are frivolous, vexatious or relate to moral grounds. Moral objections cannot be made under the terms of the Act.
- 12.3 The Council has the discretion to consider representations made after the 28 day consultation period. The Council's acceptance of late representations will be assessed on a case by case basis having regard to the length of delay, the mitigating reason or circumstances that caused the delay and the amount of time before the hearing date that the applicant has to consider the representation.
- 12.4 Where written objections are made the Council will provide copies to the applicant. However, the Council will not normally divulge the identity of the objector/s to the applicant without their permission to do so.
- 12.5 Where objections are made and are not withdrawn, a hearing before the Licensing Committee or Licensing Sub Committee will normally be held within 20 working days of the end of the objection period, unless all parties agree in writing beforehand that a hearing is no longer necessary. The Council may under certain circumstances need to hold a hearing later than 20 working days after the end of the objection period and may do so at its discretion.

- 12.6 There is no explicit provision in the legislation for objectors to be heard at a Licensing Committee or Sub Committee hearing. However it is likely that in most cases the Council will use its discretion to allow objectors or their representative to put their case at a hearing. The Council must be notified in writing by the objector, prior to the hearing, if they wish someone else to speak on their behalf.

### **13. Determining applications**

- 13.1 The Council reserves the right to consider each application in its own right and on its own merit.

- 13.2 When considering applications, the Council will have regard to:

- (a) the Local Government (Miscellaneous Provisions) Act 1982
- (b) the Human Rights Act
- (c) the Provision of Services Regulations
- (d) Section 19 of the Crime and Disorder Act 1998
- (e) the Equality Act
- (f) any supporting or accompanying regulations;
- (g) this Statement of Licensing Policy.

- 13.3 When determining applications, the Council will take account of any written objections, comments or observations made by the Chief Officer of Police and any objections made by other persons or interested parties such as statutory agencies or authorities.

### **14. Conditions**

- 14.1 No condition will be imposed by the Council that cannot be shown to be necessary, reasonable and proportionate to the application that has been submitted.

- 14.2 In the event that conditions are attached to the grant of a licence they will be adapted to the operating circumstances and requirements of the individual premises and may also take into account any objections, comments or observations received, particularly where they have been received from the Chief Officer of Police.

- 14.3 The Council will attach those conditions shown in **Appendix H** which are relevant to the activities granted to the sex establishment licence applied for. These conditions are not exhaustive however and further conditions may be granted on the advice of a responsible authority such as the Police for example, or may be attached by the Council's Licensing Committee or Licensing Sub-Committee as they believe necessary, reasonable and proportionate at any licensing hearing that the Council has had to convene to

consider relevant objections to an application submitted for a sex establishment licence

## **15. Refusal of Licences**

15.1 Except where the Council is prohibited from granting, renewing, varying or transferring a licence, it will not refuse a licence without first;

- notifying the applicant or holder of the licence in writing of the reasons;
- giving the applicant or holder of the licence the opportunity of appearing and making representations before a Licensing Committee or Sub Committee as may be determined by the Council.

15.2 The circumstances in which the council must or may refuse a licence are shown in **Appendix G** of this policy document.

## **16. Appeals**

16.1 In all cases for the grant, renewal or transfer of a sex establishment licence, applicants that are aggrieved by a decision of the Council relating to a refusal on mandatory issues are entitled to appeal to the Magistrates' Court. Appeals against refusals on discretionary grounds are not permissible unless they relate to the suitability of persons involved in the business. Under certain circumstances that are set out under paragraph 12(3)(c) or (d) of the Local Government (Miscellaneous Provisions) Act 1982 an applicant or objector can challenge a refusal of an application by way of seeking a judicial review of the Council's decision.

## **17. Revocation of Licences**

17.1 The Council may revoke a licence;

- on any of the grounds specified in paragraph 1 of **Appendix G** of this policy document;
- on either of the grounds specified in paragraph 3(a) and (b) of **Appendix G** of this policy document.

17.2 The Council will not revoke a licence without first giving the holder of the licence the opportunity of appearing and making representations before a Licensing Committee or Sub-Committee.

## **18. Cancellation of Licences**

18.1 The licence-holder may surrender the licence at any time and may request the Council in writing to cancel the licence.

18.2 In the event of the death of a licence holder, the licence will be deemed to have been granted to their personal representative(s) and will remain in force for 3 months from the date of death, unless previously revoked.



18.3 Where the Council is satisfied that it is necessary for the purpose of winding up the estate of the deceased licence-holder, it may extend or further extend the period for which the licence remains in force.

## **19. Complaints**

19.1 Wherever possible and appropriate the Council will give early warning to licence holders of any concerns which have been identified at premises and of the need for any improvements to the way that the premises is operated. It is hoped and expected that licence holders will actively participate in such dialogue.

## **20. Enforcement**

20.1 The Council is responsible for the administration and enforcement of the licensing regime and will carry out its regulatory functions in a fair, open and consistent manner.

20.2 Specifically, the Council is committed to:

- (a) be proportionate – to only intervene when necessary and when remedies will be appropriate to the risk posed;
- (b) be accountable – to justify decisions, be subject to public scrutiny and allow opportunities to resolve differences before enforcement action is taken, unless immediate action is needed;
- (c) be consistent – to implement rules and standards fairly;
- (d) be transparent – to be open and to provide clear explanations of what is needed, by when and the rights of appeal.
- (e) target its regulatory action at cases in which action is needed.

20.3 The Council recognises and acknowledges the interests of residents, visitors and businesses and will actively work closely with its partners to assist licence holders to comply with the law and the conditions attached to their licence.

20.4 Necessary, reasonable and proportionate enforcement action will be taken by the Council against those who commit serious offences or consistently break the law or breach the conditions of their licence.

20.5 The Council has set clear standards of service and performance that the public and businesses can expect. In particular, an enforcement policy has been adopted that explains how the Council will undertake its role and how the principles of effective enforcement will be achieved.

20.6 This policy is freely available from the Council, as are details of its corporate complaints procedures, both of which can also be viewed on the Council's website; [www.colchester.gov.uk](http://www.colchester.gov.uk) or further details can be provided by the Council's Customer Service Centre by e-mailing [EPS.Support@colchester.gov.uk](mailto:EPS.Support@colchester.gov.uk) or by phoning customer services on 01206 282222.

## **21. Human Rights**

- 21.1 When considering transitional applications or new applications, the Council will take into account rights that the applicant has under Article 1, Protocol 1 of the European Convention of Human Rights (peaceful enjoyment of possessions) and Article 10 (freedom of expression). The Council also acknowledges that 'freedom of expression' extends to the right to use particular premises as a sexual entertainment venue in line with the judgment in *Belfast City Council v Miss Behavin' Ltd* in 2007.

## **22. Updates to this policy document**

- 22.1 The Council may update this policy document with any changes that have been made by legislation or accompanying guidance, or to the Council's own terms and conditions. The policy will be reviewed as and when the Council considers it appropriate. If the Council considers that the changes are of significant importance to applicants or to other interested parties the Council will put those changes out to public consultation. Minor amendments to this policy document will be made at the Council's discretion and will not be subject to any public consultation or comment.

### Definitions

- The Act – refers to the Local Government (Miscellaneous Provisions) Act 1982
  - Authorised Officer - any Officer of the Council authorised under the Council's Scheme of Delegation as detailed within the Council's Constitution
  - The Council - refers to Colchester Borough Council
  - Licence Holder - a person or persons who holds a sex establishment licence under the Act
  - This Policy - refers to Colchester Borough Council's sex establishment policy
  - Premises - a building or part of a building and any forecourt, yard or place of storage used in connection with a building or part of a building which is the subject of a sex establishment licence granted under the Act. It includes any vessel, vehicle or stall but does not include any private dwelling to which the public is not admitted.
  - Sex Establishment - as defined in section 2 of Schedule 3 of the Act
  - A Sex Establishment means a sexual entertainment venue, a sex shop or a sex cinema as defined below in extracts from the Act.
  - Sexual Entertainment Venue - as defined by Paragraph 2A of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as inserted by Section 27 of the Policing & Crime Act 2009.
  - Relevant National Authority – in relation to England means the Secretary of State.
- (1) In this Schedule “**sexual entertainment venue**” means any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer. (An audience can consist of just one person).

The organiser means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. While in most instances this is likely to refer to the manager of the premises, it could also mean a person who is responsible for organising the entertainment on behalf of persons responsible for the management of the premises. This will therefore mean that the organiser must be a person who is in a position of responsibility over the provision of the relevant entertainment and will not be interpreted as meaning

a member of staff employed to work during the provision of relevant entertainment).

(2) In this paragraph “**relevant entertainment**” means-

- (a) any live performance; or
- (b) any live display of nudity;

which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether verbally or other means).

- Paragraph 2A(14) of Schedule 3 defines a “**display of nudity**” as being in the case of a woman, it means the exposure of her nipples, pubic area, genitals or anus and in the case of a man; it means exposure of his pubic area, genitals or anus.

However, a display of nudity included in for example a part of a theatre or drama performance, will not require a sex establishment licence unless it is being provided solely or principally for the purpose of sexually stimulating any member of the audience (whether verbally or other means).

(3) The following are not sexual entertainment venues for the purposes of this Schedule-

(a) sex cinemas and sex shops;

(b) premises which the provision of relevant entertainment as mentioned in sub-paragraph (1) is such that, at the time in question and including any relevant entertainment which is being provided at that time-

(i) there have not been more than eleven occasions on which relevant entertainment has been so provided which fall (wholly or partly) within the period of 12 months ending with that time;

(ii) no such occasion has lasted for more than 24 hours; and

(iii) no such occasion has begun within the period of one month beginning with the end of any previous occasion on which relevant entertainment has been so provided (whether or not that previous occasion falls within the 12 month period mentioned in sub-paragraph (i));

(c) premises specified or described in an order made by the relevant national authority.

- Spontaneous entertainment - Where activities take place at a premises that would ordinarily be considered as relevant entertainment but are not provided for financial gain of the organiser or entertainer such as a spontaneous display of nudity or a lap dance by a customer or guest, the premises will not

be considered as a sexual entertainment venue by virtue of those circumstances alone.

- Sex Cinema as defined in Section 3 of Schedule 3 of the Act-

(1) In this Schedule, “**sex cinema**” means any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures, by whatever means produced, which-

(a) are concerned primarily with the portrayal of, or primarily deal with or relate to, or are intended to stimulate or encourage-

(i) sexual activity; or

(ii) acts of force or restraint which are associated with sexual activity; or

(b) are concerned primarily with the portrayal of, or primarily deal with or relate to, genital organs or urinary or excretory functions, but does not include a dwelling-house to which the public is not admitted.

(2) No premises shall be treated as a sex cinema by reason only-

(a) if they may be used for an exhibition of a film (within the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003) by virtue of an authorisation (within the meaning of section 136 of that Act), of their use in accordance with that authorisation; or

(b) of their use for an exhibition to which section 6 of that Act (certain non-commercial exhibitions) applies given by an exempted organisation within the meaning of section 6(6) of the Cinemas Act 1985.

- Sex Shop as defined in Section 4 of Schedule 3 of the Act

(1) In this Schedule “**sex shop**” means any premises, vehicle, vessel or stall used for a business which consists to a significant degree of selling, hiring, exchanging, lending, displaying or demonstrating-

(a) sex articles; or

(b) other things intended for use in connection with, or for the purpose of stimulating or encouraging-

(i) sexual activity; or

(ii) acts of force or restraint which are associated with sexual activity.

(2) No premises shall be treated as a sex shop by reason only of their use for the exhibition of moving pictures by whatever means produced.

(3) In this Schedule “**sex article**” means-

(a) anything made for use in connection with, or for the purpose of stimulating or encouraging-

(i) sexual activity; or

(ii) acts of force or restraint which are associated with sexual activity; and

(b) anything to which sub-paragraph (4) below applies.

(4) This sub-paragraph applies-

(a) to any article containing or embodying matter to be read or looked at or anything intended to be used, either alone or as one of a set, for the reproduction or manufacture of any such article; and

(b) to any recording of vision or sound, which-

(i) is concerned primarily with the portrayal of, or primarily deals with or relates to, or is intended to stimulate or encourage, sexual activity or acts of force or restraint which are associated with sexual activity; or

(ii) is concerned primarily with the portrayal of, or primarily deals with or relates to: genital organs, or urinary or excretory functions.

### Requirements for applying for grant, variation, transfer or renewal of a sex establishment licence

#### Grant of a licence

- 1) To apply for the grant of a sex establishment licence an applicant must: -
  - a) send the Council: -
    - i) a completed application form;
    - ii) a plan to the scale of 1:100 of the premises to which the application relates;
    - iii) an application fee of £5,000;
  - b) display a notice on or near the premises;
  - c) advertise the application in a local newspaper;
  - d) send a copy of the application and plan to the Chief Officer of Police, Essex Police, 10 Southway, Colchester, CO3 3BU within 7 days of making the application to the Council.

#### Plan requirements

- 2) The plan shall show:
  - a) the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
  - b) the location of points of access to and egress from the premises;
  - c) the location of escape routes from the premises;
  - d) in a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity;
  - e) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
  - f) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
  - g) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
  - h) in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
  - i) the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and
  - j) the location of a kitchen, if any, on the premises.
- 3) The plan may include a legend through which the matters mentioned or referred to above are sufficiently illustrated by the use of symbols on the plan.

#### Public notices

- 4) A notice must be displayed at or on the premises to which the application relates for a period of not less than 21 consecutive days from the day following the day the

application was given to the Council, where it can be conveniently read from the exterior of the premises.

- 5) Where the premises frontage extends for more than 50 metres, a further identical notice must be displayed every 50 metres along the external perimeter of the premises abutting any highway.
- 6) The notice must be on pale blue paper sized A4 or larger and printed legibly in black ink or typed in black in a font size equal to or larger than 16.
- 7) The notice must state: -
  - a) details of the application and activities that it is proposed will be carried on or from the premises,
  - b) the full name of the applicant,
  - c) the postal address of the premises, or in the case where there is no postal address, a description of the premises sufficient to enable the location and extent of the premises to be identified,
  - d) the date, being 28 days after that on which the application is given to the council, by which representations may be made to the Council and that representations should be made in writing,
  - e) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine (£5000) for which a person is liable on summary conviction for the offence.
- 8) A similar notice must be published in a local newspaper or similar publication within 7 days of giving the application to the Council.

### **Variation of a licence**

- 9) The holder of a licence may apply at any time for any variation of the terms, conditions or restrictions on, or subject to which, the licence is held.
- 10) The process of applying for a variation is the same as that for applying for an initial grant except that a plan of the premises is not required unless the application involves structural alterations to the premises.

### **Renewal of a licence**

- 11) The holder of a licence may apply for renewal of the licence. In order for the licence to continue to have effect during the renewal process, a valid application together with the appropriate fee must be submitted before the current licence expires.
- 12) The process of applying for renewal of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

### **Transfer of a licence**

- 13) A person may apply for transfer of a licence at any time.



14) The process of applying for transfer of a licence is the same as that for applying for an initial grant except that a plan of the premises is not required.

For details on how the Council intends to process applications, including those to which objections are made, please see Section 7 of this policy document entitled '**Applications**'.

COLCHESTER BOROUGH COUNCIL

Local Government (Miscellaneous Provisions) Act 1982  
Part II, Schedule 3

Application for grant / renewal / transfer / variation of a Sexual Establishment  
Licence (Sexual Entertainment Venue/Sex Shop/Sex Cinema)\*  
(\*Please delete as appropriate)

Applications may be made by individuals, corporate bodies or unincorporated bodies.

1. Application is hereby made and the necessary fee enclosed for a

New Licence ( )\*

Transfer of Licence ( )\*

Renewal of Licence ( )\*

Variation of Licence ( )\*

\*Tick as appropriate

2. Name and address of premises to which this application relates.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If application relates to a vehicle / vessel / stall give a description and state where it is to be used as a sex establishment.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Full Name of Applicant.

\_\_\_\_\_

Date of Birth.

\_\_\_\_\_

Occupation (during preceding six months).

\_\_\_\_\_

4. Address for Correspondence (If different from permanent address)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No.

\_\_\_\_\_  
\_\_\_\_\_

If application is made on behalf of a corporate or unincorporated body.

5. Name of applicant body: \_\_\_\_\_  
State whether a corporate or unincorporated body. \_\_\_\_\_
6. Address of registered or principal office. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Full names of all directors and other persons responsible for the management of the body, including if applicable the names of managers, company secretary and similar officers and the manager of the establishment.  
(You will be required to complete a statutory declaration sheet for each person) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. What hours and days do you require the licence to cover? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. What "relevant" entertainment do you wish to provide?
10. If you are seeking to vary the licence, what does the variation consist of?
11. If the premises are not open between 9.00 am and 4.00 pm, state name, address and telephone number of person responsible for keys to the premises. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. If only part of the building is to be licensed, give details. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Will any part of the premises be used for the exhibition of moving pictures? Yes / No

14. Does the applicant presently use the premises or the vehicle, vessel or stall as a sex establishment? Yes / No

If not, what is the present use? \_\_\_\_\_

If yes, give details of any person, other than the applicant(s) who has run the premises, vehicle, vessel or stall as a sex establishment since that date? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. If the premises, vehicle, vessel or stall are presently used as a sex establishment, when did the use commence? \_\_\_\_\_

16. Give full details of the type of business to be conducted at the establishment. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17 I declare I have checked the information given on this application and attached statutory declaration forms and to the best of my knowledge and belief it is correct.

I understand that if the above requirements have not been complied with my application may be rejected.

I understand that the information given may be used in conjunction with other authorities for the prevention and detection of fraud, and will be held on computer, subject to the Data Protection Act 1998.

I understand that it is an offence, liable on conviction to a fine not exceeding level 5 on the standard scale to make a false statement in, or in connection with, this application.

18 I enclose a cheque for £XXXX (please delete the amounts not applicable) being the appropriate application fee.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Capacity of applicant –  
Personal/Director/Other  
(Please delete as  
appropriate).

**All applicants are required to send with this application: - (a) two plans showing the area to be licensed, (b) statutory declarations in the form shown in the attached document in respect of (i) the applicant, (ii) directors of any company applying for a licence and (iii) any other person who will be responsible for the management of the licensed premises.**

**Return by post to: Licensing Professional Support Unit Colchester Borough Council 33 Sheepen Road, Colchester, CO3 3WG**

**Return in person to Colchester Borough Council Customer Services Centre, Angel Court, High Street, Colchester, CO1 1SP**

**Return by e-mail to [EPS.Support@colchester.gov.uk](mailto:EPS.Support@colchester.gov.uk)**

**Return on line (when facility available)**

**Return by Fax to 01206 282598**

**COLCHESTER BOROUGH COUNCIL**

**Statutory declaration sheet for application for grant / renewal / transfer of Sex Establishment Licence (Sexual Entertainment Venue/Sex Shop/Sex Cinema)\*  
(\*Please delete as appropriate)**

To be completed by the applicant for (i) the applicant, (ii) directors of any company applying for a licence and (iii) any other person who will be responsible for the management of the licensed premises.

Full name. \_\_\_\_\_

Position held. \_\_\_\_\_

Date of birth. \_\_\_\_\_

Place of birth. \_\_\_\_\_

Permanent address. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Address(es) at which person has been resident during the five years preceding the date of this application. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Details of any relevant previous convictions and/or cautions  
*Please give details of any convictions, whether 'spent' or 'unspent' or cautions (see overleaf)*

Date of conviction	Court of conviction	Nature of offence	Sentence	Spent Yes/No?

Please photocopy extra sheet for each declaration

## Convictions - To be declared in respect of Applications for a Sex Establishment Licence

If you have been convicted of any of the following offences and they are "unspent" they must be declared on the application form:-

- Sexual offences.
- Offences involving obscenity.
- An offence involving the use, possession or supply of any drug.
- An attempt, incitement or conspiracy to commit any of the above offences.

The Rehabilitation of Offenders Act 1974 provides that after a certain period of time, convictions for offences are to be regarded as "spent". Set out below are some examples of when convictions become "spent". Please note it is from the date of **conviction** that the time commences. The periods of time which must elapse in other cases before the conviction becomes "spent" may vary considerably according to the nature of the offence and other circumstances. The rehabilitation period may, for example, be extended by the commission of a further offence during the rehabilitation period. Further guidance on this may be obtained from the Home Office publication "A Guide to the Rehabilitation of Offenders Act 1974", available for reference from the Licensing Specialist Unit or from a Solicitor.

<b>Sentence.</b>	<b>Rehabilitation Period.</b>
1. 2½ years (30 months) imprisonment and over, whether sentence suspended or not.	Never spent.
2. Imprisonment or detention in a young offender institution (previously known as youth custody) between six months and 30 months, whether sentence was suspended or not.	Ten years.
3. Imprisonment or detention in a young offender institution (previously known as youth custody) of six months or less, whether sentence was suspended or not.	Seven years.
4. A fine, compensation or community service order.	Five years.
5. Conditional discharge, bound over or probation order. Also includes fit person, supervision and care orders.	One year or period of probation sentence (whichever is longer).
6. Absolute discharge.	Six months.
7. Disqualification, disability or prohibition.	Period of sentence unless a longer period as above (e.g., disqualification and a fine 5 Years)
8. Remand Home/Approved School/Attendance Centre Orders.	One year after Order expires.
9. Hospital Order under Mental Health Acts.	5 years, or two and a half years after the order expires (whichever is the longer).

**Offences under HM Services** - please make enquiries to the Licensing Specialist Unit in respect of periods of rehabilitation for such offences.

## Appendix D

### **Fees**

*Grant*      *£5,000*

*Renewal*    *£2,500*

*Transfer*    *(To be determined)*



## Example of Newspaper Advert and Site Notice

### COLCHESTER BOROUGH COUNCIL

#### Sex Establishment Licence Application

**Notice of application for the grant/renewal/transfer (delete as applicable) of a sex establishment licence pursuant to Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982**

TAKE NOTICE that on (date) (name of applicant(s) applied to Colchester Borough Council for the grant/renewal/transfer (delete as applicable) of a sex establishment licence

NAME AND ADDRESS OF PREMISES/LOCATION OF VEHICLE/VESSEL/STALL (delete as applicable):

(Please note that the precise address or location, sufficient to identify the location and extent of the premises, must be given)

DAYS AND HOURS OF OPERATION:

ACTIVITY; Sex Shop/sex cinema/ sexual encounter venue (delete as applicable)

INSPECTING THE APPLICATION: The application may be inspected at the offices of Colchester Borough Council, Angel Court, High Street, Colchester, CO1 1SP

OBJECTIONS: Any person wishing to support or object to this application should do so in writing to the Head of Environmental & Protective Services, Licensing Specialist Unit, Colchester Borough Council, 33 Sheepen Road, Colchester CO3 3WG or by email to [EPS.Support@colchester.gov.uk](mailto:EPS.Support@colchester.gov.uk) The grounds for objection must be stated in general terms and received by the Council by no later than (date – insert 21 days after the date of the application)\*)

Please note that any written representations received in response to this application may be required to be made available for public inspection in accordance with the Local Government (Access to Information) Act 1985.

Signed  
Name  
Organisation  
Address  
Date

**Please note that for site notices the notice must be printed on pink A3 paper in Black 20 point Times New Roman font.**

**Example of Certificate for Site Notice**

**FORM OF CERTIFICATE FOR SITE NOTICE**

**Notice of application for the grant/renewal/transfer (delete as applicable) of a sexual establishment licence pursuant to Schedule 3 of the Local Government (Miscellaneous Provisions) Act, 1982**

To the Head of Environmental and Protective Services,  
Licensing Specialist Unit,  
Colchester Borough Council,  
33 Sheepen Road,  
Colchester CO3 3WG

I CERTIFY that on the Day of XXXX I displayed a site notice of which a true copy is attached and ensured that the notice continued to be displayed on or at the premises at:-

in a prominent position so that it could easily be read by passers-by, and ensured that the site notice remained in position for at least twenty one days.

Date:\_\_\_\_\_ Signed:\_\_\_\_\_

**Refusals and revocations of licences**

1. The council must refuse to grant or transfer a licence to: -

- (a) a person under the age of 18;
- (b) a person who is for the time being disqualified from holding a licence;
- (c) a person who is not resident in the United Kingdom or was not so resident throughout the period of 6 months immediately preceding the date upon which the application was made;
- (d) a body corporate which is not incorporated in the United Kingdom;
- (e) a person who has, within the period of 12 months immediately preceding the date upon which the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

2. The Council may refuse-

- (a) an application for grant or renewal of a licence on one or more of the grounds shown in paragraph 3 below;
- (b) an application for transfer of a licence on either or both of the grounds shown in paragraph 3 (a) and (b) below.

3. The grounds for refusal are-

- (a) That the applicant is unsuitable the licence by reason of having been convicted of an offence or for any other reason;
- (b) That if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;
- (c) That the number of sex establishments in the relevant locality that the application is made is equal to or exceeds the number which the Council considers is appropriate for that locality;
- (d) That the grant or renewal of the licence would be inappropriate having regard to:-

- i. The character of the relevant locality;
- ii. The use to which any premises in the vicinity are put; or
- iii. The layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

4. Nil may be an appropriate number for the purposes of paragraph (3)(c) above.

### Standard Conditions applicable to Licences for Sex Establishments

#### Notes

- (i) Except where the context demands otherwise the singular includes the plural and the masculine includes the feminine.
- (ii) Nothing in these conditions shall be construed as interfering with (i) the discretion of the licensee or his representative regarding the admission of any person or (ii) the need to strictly comply with all relevant statutory requirements.
- (iii) These conditions are divided as follows-
  - Part 1 General
  - Part 2 Conditions which apply to all premises
  - Part 3 Conditions which apply to sex shops
  - Part 4 Conditions which apply to sex cinemas
  - Part 5 Conditions which apply to sexual entertainment venues
- (iv) In these rules all references to the British Standard (BS) shall be deemed to refer to the current standard.
- (v) A premises licence may also be required for the operation of a sex cinema

#### Part 1 General

- 1. In the event of a conflict between these conditions and any special conditions contained in a licence relating to a sex establishment the special conditions shall prevail.
- 2. The grant of a licence for a sex establishment shall not be deemed to convey any approval or consent which may be required under any enactment, by law, order or regulation other than the Third Schedule of the Local Government (Miscellaneous Provisions) Act 1982.

#### Part 2 Conditions which apply to all premises

##### Exhibition of Licence

- 1. The copy of the licence and these Regulations which are required to be exhibited in accordance with paragraph 14(1) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 shall be reproductions to the same scale as those issued by the Council. The copy of the licence required to be displayed as aforesaid shall be suitably framed and exhibited in a position that it can easily be seen by all persons using the premises. The copy of these Regulations shall be retained in a clean and legible condition.

## **Responsibility of Licensee**

2. The licensee shall take all reasonable precautions for the safety of the public and employees and, except with the consent of the Council, shall retain control over all portions of the premises.
3. The premises shall not be used for regulated entertainment, exhibition or display of any kind unless the Council's consent has been first obtained and any necessary licence granted.

## **Conduct and Management of the Premises**

4. The licensee, or a responsible person over 18 years of age and nominated by him in writing for the purpose of managing the sex establishment in his absence, shall be in charge of and upon the premises during the whole time it is open to the public. Such written nomination shall be continuously available for inspection by an officer authorised in writing by the Council. The person in charge shall not be engaged on any duties which will prevent him from exercising general supervision and he shall be assisted as necessary by suitable adult persons to ensure adequate supervision. The person in charge shall be conversant with these rules, a copy of which shall be held on the premises.
5. The licensee, or the responsible person approved under Regulation 4, shall maintain a daily register to be kept on the premises in which he shall record the name and address of any person who is to be responsible for managing the sex establishment in his absence and the names and addresses of those employed in the sex establishment. The register to be completed each day within 30 minutes of the sex establishment opening for business and is to be available for inspection by the Police and by authorised officers of the Council.
6. The Licensee shall ensure that, during the hours the sex establishment is open for business, every employee wears a badge of a type to be approved by the Council bearing a photograph of the employee and indicating his name and that he is an employee.
7. A notice showing the name of the person responsible for the management of a sex establishment shall be prominently displayed within the sex establishment throughout the period during which he is responsible for its conduct.
8. Where the licensee is a body corporate or an unincorporated body any change of director, company secretary or other person responsible for the management of the body is to notified in writing to the Council within 14 days of such change and such written details as the Council may require in respect of any new director, secretary or manager are to be furnished within 14 days of a request in writing from the Council.

9. The licensee shall ensure that no part of the premises is used by prostitutes (male or female) for the purposes of soliciting or any other immoral purpose.
10. The licensee shall ensure that the public are not admitted to any part or parts of the premises other than those which have been approved by the Council.
11. Neither the licensee nor any employee or other person shall seek to obtain custom by means of personal solicitation outside or in the vicinity of the premises.
12. No person under the age of 18 shall be admitted to the premises or employed in the business of the sex establishment.

### **External Appearance**

13. No display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing or any other matter or thing (whether illuminated or not) shall be exhibited so as to be visible from outside the premises except;
  - (i) any notice of a size and in a form approved by the Council which is required to be displayed so as to be visible from outside the premises by law, or by any condition of a licence granted by the Council.
  - (ii) Such display, advertisement, word, letter, model, sign, light, placard, board, notice, device, representation, drawing, writing, or any matter or thing as shall have been approved by the Council.
14. The entrances, windows and openings to the premises shall be of a material or covered with a material which will render the interior of the premises invisible to passers by.

### **State, Condition and layout of the premises**

15. The premises shall be maintained in good repair and condition.
16. The number, size and position of the doors or openings provided for the purposes of the ingress and egress of the public shall be to the satisfaction of the Council and shall comply with the following requirements :-
  - (i) All such doors or openings approved by the Council shall be clearly indicated on the inside by the word "exit".
  - (ii) Doors and opening other than exits which lead to parts of the premises to which the public are not permitted to have access shall have notices placed over them marked "private".
  - (iii) No access shall be permitted through the premises to any other premises adjoining or adjacent except in the case of emergency

17. The external doors to the premises shall be fitted with a device to provide for their automatic closure and such devices shall be maintained in good working order. The external door shall only be opened at such times as person(s) require access and egress to the interior of the premises.
18. The licensee shall make provision in the means of access both to and within the premises for the needs of members of the public visiting the premises who are disabled.
19. Alterations or additions either internal or external and whether permanent or temporary to the structure, lighting or layout of the premises shall not be made except with the prior approval of the Council.
20. All parts of the premises shall be kept in a clean and wholesome condition to the satisfaction of the Council.

### **Maintenance of the means of Escape**

21. The means of escape provided for all persons on the premises shall be maintained unobstructed, immediately available and clearly identifiable in accordance with the approved arrangements.
22. All fire resisting and smoke stop doors shall be maintained self closing and shall not be secured open.

### **Fire Appliances**

23. The premises shall be provided with fire appliances suitable to the fire risks on the premises, and such fire appliances shall be maintained in proper working order and shall be available for instant use.
24. The licensee shall comply with any fire precautions and safety measures that may be required of him by the Fire Authority.
25. Portable fire appliances shall be examined at least once a year and periodically tested in accordance with the current British Standard by a competent person and the date of such test shall be clearly marked on the appropriate extinguishers or on stout tabs securely attached to them. Extinguishers which incorporate an anti-freeze agent shall be examined and recharged in compliance with the manufacturer's instructions.

### **Lighting**

26. The licensee or any other person concerned in the conduct or management of the licensed sex establishment shall, in the absence of adequate daylight, ensure that adequate lighting is maintained to the satisfaction of the Council in all parts of the premises to which the public and staff have access and is in operation continuously during the whole time the premises are open to the public.

27. The normal lighting levels and the lighting to 'EXIT' notices shall be maintained at all times and shall not in any circumstances be extinguished or dimmed while the public are on the premises provided that, so long as there is sufficient daylight in any part of the premises, artificial light need not be used in any part.

### **Electrical Installations**

28. The electrical installation for the premises shall be maintained in a safe working condition, as prescribed in the current edition of the Regulations for electrical installations issued by the Institute of Electrical Engineers.
29. Unless the Council decides otherwise an inspection certificate, as prescribed in the current edition of the Regulations for electrical installations issued by the Institute of Electrical Engineers, for the electrical installation associated with the premises shall be submitted to the Council at least once every five years or such other time specified on the certificate. The certificate shall be signed by a qualified engineer.

### **Change of Use**

30. No change of use of any portion of the premises from that approved by the Council shall be made until the consent of the Council and the Police has been obtained.
31. The Licensing Authority and Essex Police must be informed should the licensee seek to change the use of the establishment to another form of sex establishment.

### **Sale of goods**

32. Neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a sex cinema or a sexual entertainment venue.

### **Admission of Authorised Officers**

33. Officers of the Council, Police, and other authorised agencies who are furnished with authorities which they will produce on request, shall be admitted immediately at all reasonable times and at any time the premises are open for business to all parts of the premises.

## **Part 3 Conditions which apply to Sex Shops**

1. It is permitted to play music or words either via national or local radio stations or any pre-recorded means, but no material whatsoever of an adult theme or nature can be played or broadcast, whether by means of sound or moving picture.



## Goods available in Sex Establishments

2. All sex articles and other things displayed for sale, hire, exchange or loan within a sex shop shall be clearly marked to show persons who are inside the sex shop the respective prices being charged.
3. All printed matter offered for sale, hire, exchange or loan shall be available for inspection prior to purchase, hire, exchange or loan and a notice to this effect is to be prominently displayed within the sex establishment.
4. No film or video film shall be exhibited, sold or supplied unless it has been passed by the British Board of Film Censors, and bears a certificate to that effect, or approved by the Council and is a reproduction authorised by the owner of the copyright of the film or video film so certified.

## Part 4 Conditions which apply to Sex Cinemas

### Film Categories

1. The categories U, PG, 12, 15, 18 and RESTRICTED 18 have the following effect:

U	Universal – Suitable for all
PG	Parental Guidance. Some scenes may be unsuitable for young children.
12	Passed only for persons of 12 years and over.
15	Passed only for persons of 15 years and over.
18	Passed only for persons of 18 years or over
RESTRICTED (18)	Passed only for persons of 18 or over who are members (or their guests) of a properly constituted club.

### Exhibition of Films

2. 'Film exhibition' means film exhibitions as defined in the Cinemas Act 1985, i.e. any exhibition of moving pictures which is produced otherwise than by the simultaneous reception and exhibition of (a) television programmes, broadcast by the British Broadcasting Corporation or the Independent Broadcasting Authority or (b) programmes included in a cable programme service which is or does not require to be licensed under Section 4 of the Cable and Broadcasting Act 1984.
3. No film shall be exhibited at the premises unless:
  - (a) it is a current news reel; or

- (b) it has been passed by the British Board of Film Classification as a U, PG, 12, 15, 18, or RESTRICTED (18) film
- (c) it has been passed by the Council as a U, PG, 12, 15, 18, or RESTRICTED (18) film.

### **Restricted (18) films**

- 4. Films in the RESTRICTED (18) category may be shown at the premises only with the Council's prior written consent and in accordance with the terms of any such consent.

### **Unclassified Films**

- 5. Not less than twenty-eight days notice in writing shall be given to the Council of any proposal to exhibit any other film which has not been classified as specified above. Such a film may only be exhibited if the Council's written consent has been obtained and in accordance with the terms of any such consent.

### **"Persons under 18" Notice**

- 6. No person appearing to be under the age of 18 shall be admitted to any part of the programme and the licensee shall display in a conspicuous position at the entrance to the premises a notice in clear letters in the following terms:

PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS CINEMA FOR ANY PART OF THE PROGRAMME

### **Category Notices**

- 7. A representation or written statement of the terms of any certificates given by the British Board of Film Censors or the British Board of Film Classification shall be shown on the screen immediately before the showing of any film to which it relates and the representation or statement shall be shown for long enough and in a form large enough for it to be read from any seat in the auditorium.

### **Timetable of Films**

- 8. The licensee shall display in a conspicuous position, to the satisfaction of the Council, at each entrance to the premises, during the whole time the public are being admitted to the premises and so as to be easily seen and read by the public, a timetable of the films on exhibition.

### **Advertisements**

- 9. No advertisement displayed at the premises of a film to be exhibited at the premises shall depict as a scene or incident in the film any scene or incident which is not included in the film as certified by the British Board of Film

Censors or the British Board of Film Classification or approved for exhibition by the licensing authority, as the case may be.

10. Where the licensing authority has given notice in writing to the licensee of the premises objecting to an advertisement on the ground that, if displayed, it would offend against good taste or decency or be likely to encourage or incite crime or lead to disorder or be offensive to public feeling, that advertisement shall not be displayed at the premises without the prior consent in writing of the licensing authority.

### **Objection to exhibition of film**

11. Where the licensing authority has given notice in writing to the licensee of the premises prohibiting the exhibition of a film on the ground that it contains material which, if exhibited, would offend against good taste or decency or would be likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling, that film shall not be exhibited in the premises except with the prior consent in writing of the licensing authority.

### **Additional conditions for 'Club' cinemas showing films in the restricted classification**

12. (i) No club showing films in the 'restricted 18' category may operate in a multi-screen complex whilst persons under 18 are being admitted to any performance in the complex unless the Council's written consent has first been obtained.

(ii) When the programme includes a film in the 'restricted 18, category the licensee shall display in a conspicuous position at the entrance to the premises a notice in clear letters in the following terms:

**"CINEMA CLUB – MEMBERS AND GUESTS ONLY. PERSONS UNDER 18 CANNOT BE ADMITTED TO THIS CINEMA FOR ANY PART OF THE PROGRAMME"**

(In the case of a multi-screen complex where consent has been granted the notice shall specify the particular part of the premises in which films in the 'restricted 18' category are being exhibited).

(iii) The timetable of films required by rule 52 shall include the following addition to the categories shown;

**"Category RESTRICTED 18" passed only for persons of 18 years and over who are either members of the cinema club or who are guests of a member".**

(iv) All registers of members and their guests shall be available for immediate inspection by the Council's officers during any performance, or at any other reasonable time.

(v) Tickets shall in no circumstances be sold to persons other than members.

(vi) No persons under 18 years of age shall be employed in any capacity at licensed premises which are operating as cinema clubs.

(vii) Subject to prior written consent by the Council, a subscription may entitle the club member to attend other clubs under the same management.

(viii) Membership rules for these club cinemas shall include the following –

- (a) The club rules must be submitted to the Council 4 days before the club commences operations and notice of all rule changes shall be given to the Council within 14 days of the change.
- (b) Only members and their guests shall attend exhibitions of moving pictures classified in a restricted classification.
- (c) Membership shall be open to persons of both sexes of not less than 18 years of age. Applications for membership, including both name and address, shall be in writing, signed by the applicant, and if deemed necessary such applicants shall provide satisfactory references and proof of age.
- (d) No person shall be admitted to membership until the expiration of at least 24 hours after such written application has been approved by the licensed proprietors.
- (e) New members shall be supplied with a personal copy of the club rules before being admitted to membership and be given a copy of any rule changes within 14 days of the change.
- (f) An annual subscription shall be fixed for the club and shall run for 12 months from the date of registration. Membership may be renewed annually at the subscription for the time being in force, but the licensed proprietors may refuse to renew any membership without assigning reason for such refusal.
- (g) Members shall be entitled on any day to bring not more than one guest to accompany the member, and the name of the guest shall be entered in the visitors' book and counter-signed by the member.
- (h) On admission a member and his guest shall be bound by the rules of the club and by any by-laws and regulations made thereunder.
- (i) Tickets shall be sold only to members on the production of a membership card and members shall, if required, sign an acknowledgement for the ticket or tickets issued.
- (j) Membership cards shall be personal to the member and shall not be transferable to any other person.

- (k) Neither membership tickets nor guest tickets shall be transferable.
- (l) No member shall introduce as a guest any persons under the age of 18 or any persons whose application for membership had been refused. The proprietors will reserve the right to refuse admission to any person.
- (m) Proof of identity, or of age, or of any particulars of any guest shall be produced by any member or guest if demanded by the licensed proprietors.
- (n) Members shall undertake to behave in a proper and orderly manner. Any member or guest acting in a manner which is offensive, or a nuisance or annoyance to others may be refused admission or expelled from the premises. A member may also be deprived of membership.

### **Sale of Sex Article**

13. Neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a 'sex cinema'.

## **Part 5 Conditions which apply to Sexual Entertainment Venues**

### **Performances of Relevant Entertainment**

1. The performance of relevant entertainment within the premises shall not be visible from any area outside of the premises at any time.

### **Age Restrictions**

2. A prominent clear notice shall be displayed at each entrance to the premises advising customers that no person under 18 will be admitted and they may be asked to produce evidence of their age.
3. Members of staff at the premises shall seek "credible photographic proof of evidence" from any person who appears to be under the age of 25 years and who is seeking access to the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or Proof of Age card carrying a "PASS" logo.

### **Club Rules**

4. The premises must provide a copy of its Club Rules to the Council and to Essex Police for consideration and approval.
5. All performers and staff shall be aware of the Club Rules.

6. All dancers, staff and door supervisors shall read a copy of the rules relating to operating relevant entertainment. They shall sign and date a copy which shall be retained by the premises as part of their due diligence.

### **Management Operation Manual**

7. A management operation manual detailing all aspects of procedure when the premises are operating relevant entertainment shall be produced and approved by the Council. This document shall be reviewed annually and the manual as reviewed shall be submitted for approval of the Council together with the application for renewal of the licence.

### **Performers**

8. Performers shall be aged not less than 18 years and the "Challenge 25" scheme will be used to manage this.
9. All performers shall be aware of the management operation manual.
10. A log book shall be maintained on the premises detailing the names and start and finish times of individual performers involved in all forms of adult entertainment.
11. At all times during the performance, performers shall have direct access to a dressing room without passing through, or in close proximity to, the audience.
12. On leaving the premises performers, who wish to be, shall be escorted by staff member to their vehicle or other safe location.

### **Performances**

13. Whilst dancers are performing in any public area there shall be a minimum distance of one metre maintained between the dancer and the seated customers. Prominent, clear notices shall be displayed at each table stating this requirement.
14. There shall be no physical contact between customers and the dancers except for the placing of money or tokens in a garter or into the hands of the dancer at the beginning or conclusion of a performance. A touch and go policy will operate i.e. any person/customer touching dancers will be ejected from the premises and barred from those premises.
15. No performances shall include any sex act with any other performer, persons in the audience or with the use of any object.
16. No audience participation shall be permitted.

17. Signs displaying the rules on the performance of relevant entertainment will be displayed throughout the premises and be clearly visible to patrons. This will include any private individual booth area.
18. In the event of the relevant entertainment being performed for private viewing, the patron shall be informed of the duration and price of the relevant entertainment, and the details shall be specified in a clearly visible notice in each area designated for private relevant entertainment. Each such area shall be capable of being continually monitored by a member of staff.
19. No performer or member of staff shall sit on, straddle, stroke, fondle or make any form of sexual contact with a customer at any time.

### **Door Supervisors**

20. One SIA registered door supervisor per 75 customers shall be on duty on the premises whilst relevant entertainment takes place plus there shall be at least one door supervisor on each entrance in each separate part of the premises and on the door to the dressing room.
21. The door supervisors shall be on duty at the premises at all times when the premises provide relevant entertainment.
22. The premises shall be a member of the Pub/Townlink Radio scheme.

### **Closed Circuit Television (CCTV)**

23. A high quality CCTV system shall be installed to cover all entrances and exits to the premises and areas where relevant entertainment will take place, with the exception of the performers' changing area. This system must be installed and fully operational before the premises opens for the licensable activity applied for. All cameras shall continually record whilst the premises are open to the public and video recording shall be kept available for a minimum of 31 consecutive days with date and time stamping.
24. At the time of installation or upgrading of any CCTV system it shall comply with the current and relevant Police guidelines for Standard Minimum closed circuit television requirements. To obtain a clear head and shoulders image of every person entering the premises on the CCTV System, persons entering the premises should be asked to remove headwear, unless worn as part of religious observance.
25. A member of staff who is fully trained in the use of the system shall be on duty at all times when the premises are open until the premises are clear of customers, cleared of staff and closed.
26. Within 24 hours of a request made by Essex Police or the Licensing Authority, the premises will provide the CCTV footage requested.

### **Crime Survey**

27. Upon completion of a crime survey by Essex Police, the licence holder shall act accordingly with all recommendations of the survey in so far as they relate to licensable activities,

### **Layout of premises**

28. The approved activities shall take place only in the areas designated by the Licensing Authority.
29. All dance booths are to be equipped with a panic alarm for safety.
30. Arrangements shall be put in place to restrict access to the dressing room at all times when the relevant entertainment is taking place, and until such time as all performers have vacated it. The performers' dressing rooms will be off-limits to all non-employees.
31. The layout within the areas used by customers shall not undergo substantial change without the prior written consent of the Licensing Authority.

### **Sale of goods**

32. Neither sex articles nor other things intended for use in connection with, or for the purpose of stimulating or encouraging sexual activity or acts of force or restraint which are associated with sexual activity shall be displayed, sold, hired, exchanged, loaned or demonstrated in a 'Sexual Entertainment Venue'.

### **Door Policy**

33. No entry to be permitted to any customer who is considered by the management or door staff to be incapable of controlled or acceptable behaviour, especially those who may be showing sign of having been intoxicated through alcohol or drugs.
34. All customers will be explained the rules for the venue before entry is permitted.
35. One member of door staff will be present at the entrance to the venue at all times during opening hours.
36. Door staff will carry two-way radios at all times.
37. Dress code will be smart at all times; no sports wear will be permitted.

### **Operation of the Venue**

38. A copy of the house customer rules will be on display at the entrance to the venue and in the bar area.



39. Waitresses/Waiters and bar staff must remain fully clothed at all times.

### **Supervision of Performers**

40. Proof of citizenship or working permits must be provided.
41. No working auditions will be permitted; a cooling off period of three days is enforced at all times.
42. All performers and staff must complete an emergency contact form before working within the venue.
43. Performers must sign a 'contract' before working stating that they have read, understood and will abide by the performer rules and rules of the house while working in the venue.
44. A member of staff will be in the private dance area at all times whilst private dances are taking place.
45. No dances will be permitted without supervision from a member of staff.
46. Performers must be provided with a full briefing on the Club rules.

### **Customer and Performer Conduct**

There should be published rules on customer conduct and performer conduct and the rules should contain as a minimum the following requirements, and the licensee shall ensure that the rules are enforced.

47. Any customer who is offensive either by language or action towards the performer will be ejected from the venue. They will also be barred from entry on any future occasion.
48. Strictly no photographing or videoing of performances or performers before, during or after the performance will be allowed. All customers' mobile phones will be switched off whilst on the premises. Anyone found breaching this condition will be ejected from the venue and barred from entry on any future occasion.
49. Any customer found in possession of drugs, attempting to consume drugs or selling drugs will be detained by the security staff and the Police will be called. They will also be barred from entry on any future occasion.
50. Throwing of money at performers will not be permitted before, during or after the performance, nor will the giving of any other gift. Anyone breaching this condition will be ejected from the venue and barred from entry on any future occasion.

51. Customers will not be allowed to pass on personal details such as business cards or telephone numbers to performers before, during or after a performance.
52. Payment must be made to the performer only and strictly in advance of the performance taking place.

### **Performer Conduct**

53. No performer will be allowed to carry or use any sex toy, sex aid or other paraphernalia.
54. No performer will be allowed to wear bondage or sadomasochist clothing or paraphernalia. No accessories such as sex toys or aids are to be carried or used by the performers.
55. No handing out of cards, telephone numbers or personal contact information to customers or any other persons by performers.
56. Performers must not encourage customers to touch them in any way before, during or after a performance.
57. Performers found in possession, using or attempting to sell drugs or even under the influence of drugs before, during or after a performance will be immediately dismissed and the Police notified.
58. Performers will instruct all customers to keep their hands by their sides at all times during a private dance.
59. Any approach by a customer to make personal contact with a performer must be immediately reported to the management or security.
60. Performers will not be permitted to enter any part of the venue other than the private dance area and dressing room areas while fully nude.

