



Colchester
City Council

Cabinet Meeting

**Grand Jury Room, Town Hall, High Street,
Colchester, CO1 1PJ
Wednesday, 22 November 2023 at 18:00**

The Cabinet deals with the implementation of all Council services, putting into effect the policies agreed by Full Council and making recommendations to Full Council on policy issues and the budget.

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Colchester City Council

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COLCHESTER CITY COUNCIL
Cabinet
Wednesday, 22 November 2023 at 18:00

Leader and Chair	Councillor King Councillor Burrows Councillor Cory Councillor Goss Councillor Jay Councillor Luxford Vaughan Councillor Smith Councillor Sommers
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AGENDA
THE LIST OF ITEMS TO BE DISCUSSED AT THE MEETING
(Part A - open to the public)

Live Broadcast

Please follow this link to watch the meeting live on YouTube:

[\(107\) ColchesterCBC - YouTube](#)

1 Welcome and Announcements

Cabinet will welcome members of the public and councillors to the meeting and remind those participating to mute their microphones when not talking. The Chair will invite all councillors and officers participating in the meeting to introduce themselves.

2 Urgent Items

The Chair has agreed to take the following item as an urgent report. The urgency arises from the need to resolve the pay dispute following a vote for industrial action and to ensure that staff receive the pay award due for 2023/24 promptly.

The Chair of the Scrutiny Panel has agreed the submission of this report to this Cabinet meeting despite it being a key decision which was not possible to include on the Forward Plan of Key Decisions.

Resources

Revised Pay Award 2023 - 24

Cabinet will consider a report setting out the revised pay offer to Council staff from 1 April 2023 (the report is published in the Supplementary Agenda).

3 Declarations of Interest

Councillors will be asked to say if there are any items on the agenda about which they have a disclosable pecuniary interest which would prevent them from participating in any discussion of the item or participating in any vote upon the item, or any other registerable interest or non-registerable interest.

4 Minutes of Previous Meeting

Cabinet will be invited to confirm that the minutes of the meeting held on 11 October 2023 are a correct record.

11-10-23

9 - 18

5 Have Your Say! (Hybrid Cabinet Meetings)

Members of the public may make representations to Cabinet meetings on any item on the agenda or any other matter relating to the business of Cabinet. This can be made either in person at the meeting or by joining the meeting remotely and addressing the Cabinet via Zoom. Each representation may be no more than three minutes. Members of the public wishing to address Cabinet remotely may register their wish to address the meeting by e-mailing democratic.services@colchester.gov.uk by 12.00 noon on the working day before the meeting. In addition, a written copy of the representation should be supplied for use in the event of technical difficulties preventing participation at the meeting itself.

There is no requirement to pre-register for those attending in person.

6 Decisions Reviewed by the Scrutiny Panel

Cabinet will consider the outcome of a review of a decision by the Scrutiny Panel under the call-in procedure. At the time of the publication of this agenda, there were none.

7 Strategy

7(i)	Proposed Future Strategy for Amphora	19 - 34
	Cabinet is invited to approve the Proposed Future Strategy for Amphora which seeks to respond to the change in the external environment which has impacted on both the City Council and its wholly owned trading companies.	
7(ii)	Hibernation of Colchester Amphora Energy Ltd	35 - 74
	Cabinet will consider a report inviting it to approve the formal hibernation of Colchester Amphora Energy Ltd (CAEL) and the transfer of its assets to Colchester City Council.	
7(iii)	Asset Management Review: Corporate Landlord Model (transfer of functions from Colchester Borough Homes)	75 - 124
	Cabinet will consider a report that details the rationale for the corporate landlord team model and its future development as part of the Council's Transformation programme. It proposes, as a first step, bringing teams currently in Colchester Borough Homes who are undertaking non-housing assets functions, such as capital works, facilities management and maintenance, back into direct Council governance and management.	
8	Resources	
8(i)	Officer Pay Policy Statement for 2024-25 - WITHDRAWN	125 - 142
	This item has been withdrawn and a revised report will be submitted to a future meeting of the Cabinet.	
9	Housing	
9(i)	Housing Ombudsman Reports	143 - 150
	Cabinet will consider a report informing it of the contents of the reports by the Housing Ombudsman.	
9(ii)	Viability Assumptions and Affordable Rent for New Build Council Homes	151 - 160
	Cabinet will consider a report seeking agreement to updated development appraisal assumptions used to calculate viability and to seek a decision on the Council charging affordable rent (set at the local housing allowance rate) on all new build developments, including new build acquisitions.	

10 **General**

10(i) **Nomination for Deputy Mayor 2024-25**

Cabinet will consider nominations for Deputy Mayor for 2024-25 Municipal Year and will make a recommendation to Council.

11 **Exclusion of the Public (Cabinet)**

In accordance with Section 100A(4) of the Local Government Act 1972 and in accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 to exclude the public, including the press, from the meeting so that any items containing exempt information (for example 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).

Part B
(not open to the public including the press)

12 **Housing**

12(i) **Viability Assumptions and Affordable Rent for New Build Council Homes - Part B**

Cabinet will consider a report that provides not for publication information in support of the report at item 9(ii) of the agenda.

13 **Strategy - Part B**

13(i) **Proposed Future Strategy for Amphora - Part B**

Cabinet is invited to note the not for publication appendices to the report.

Please note that Appendix 2 is also Appendix 1 to item 7(ii) Hibernation of Colchester Amphora Energy Ltd.

CABINET
11 October 2023

Present: - Councillor King (Chair)
Councillors Burrows, Cory, Jay, Luxford Vaughan,
Smith, Sommers

Also in attendance: Councillors Law, Smalls, Spindler

788. Minutes

RESOLVED that the minutes of the meeting held on 6 September 2023 be confirmed as a correct record.

789. Have Your Say!

Alan Short attended and addressed Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(1) in respect of development at Middlewick. It was noted that there was now a prospective purchaser for the site. It was critical that the conditions specified by the Inspector for the site were imposed on the developer before development started. This would prevent any arguments from the developer once construction had been completed around affordability and viability. He had raised these arguments at both Environment and Sustainability Panel and Local Plan Committee had received support and been advised to bring his concerns to Cabinet.

Councillor Luxford Vaughan, Portfolio Holder for Planning, Environment and Sustainability, explained that the conditions specified by the Inspector were now policy and the Council would have to ensure any development was policy compliant. What the Council could not control was decision by a government inspector should a refusal of any application be subject to appeal. Before any planning permissions was granted the Council would work with any prospective developer to ensure appropriate section 106 agreements were in place and could be delivered by the developer. In view of the size of the development, any application would be referred to the Planning Committee to determine. Developers would be aware of the conditions imposed by the Inspector and it was for them to consider issues of viability before any planning application was made.

Carrina Cooper attended and addressed Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(1). She believed that searches as a condition of entry to a public meeting in a public building, were unlawful and provided details of the relevant legislation. Whilst the Council had mitigated this by the use of SIA licensed staff, the unlawful conditions of entry had been maintained for the last meeting of the Environment and Sustainability Panel. Concern was also expressed about the police presence at that

meeting. There had never been any threat of violence from the group she represented. At the first meeting they had attended they had not been aware of Council procedures, but once rules had been explained they had abided by them. The basis on which searches had been imposed at the next meeting was queried. Searches had also become increasingly aggressive. A formal complaint about this had been raised in June 2023 but had not been responded to. The Council's unfounded fears about their behaviour should not override the need to behave lawfully and unless a reassurance was given that the unlawful searches would stop a complaint would be made to the SIA. This policy reflected the erosion of rights by central government over recent years. Searches excluded those who had abusive experiences or who refused to submit to a search. The searches felt like a tactic to prevent attendance by members of the group she represented.

Councillor King, Leader of the Council and Portfolio Holder for Strategy, explained that Councillors made themselves available to residents, some of whom disagreed strongly with Council policy and decisions, both in private and public meetings. The conditions of entry to public meetings at the Town Hall were intended to be proportionate and in line with industry good practice. A formal response would be sent to the complaint that had been made. There had been instances, albeit rare, where Members of Parliament and Councillors had been attacked, and there was a genuine concern by some that noise and disruption could escalate. He would arrange for the issue to be looked at again.

Councillor Smalls attended and with the consent of the Chair, addressed the Cabinet to express her concerns about shoplifting, given the further reports of a shopworker being attacked in Colchester. She had been surprised that the reports to the recent Crime and Disorder Committee did not include any statistics on shoplifting, given this had been widely reported as an issue of concern nationally and locally. The Committee had heard from Michelle Reynolds for Colchester Business Against Crime, who had spoken powerfully about the impact of shoplifting in Colchester. The debate at Crime and Disorder Committee had perhaps focused too much on resident's perception of crime rather than the reality of what was happening. The Shadow Home Secretary had referenced a policy whereby crime involving goods of a value less than £200 were not investigated or only received a fine through the post, which may have helped explain the lack of statistics on shoplifting and did not deter repeat offenders.

Councillor Sommers, Portfolio Holder for Communities, explained that she was hoping to receive shoplifting statistics from the police on a monthly rolling basis so that they could be included in future reports and would investigate the issues raised about repeat offenders.

Councillor King, Leader of the Council and Portfolio Holder for Strategy, explained that he had robust discussions with business representatives on this issue. This was an issue which the Council cared about and would act together with partners. It was not managing expectations either up or down and it was not in anyone's interests to be unrealistic about the situation.

790. Ferry Marsh Nature Reserve Improvements

Cabinet considered the recommendation made by the Environment and Sustainability Panel at its meeting of 21 September 2023 a copy of which had been circulated to each Member together with the report considered by the Environment and Sustainability Panel on 21 September 2023.

Councillor Cory, Portfolio for Resources, explained that Ferry Marsh was part of the Wivenhoe Nature Reserve. It was a valuable site at which biodiversity was increasing. However, a nearby estate drained into the Marsh. Whilst there was a sluice to allow this water to drain into the river, this often silted up leading to flooding. A report had been submitted to the Environment and Sustainability Panel on methods of dealing with this issue. The Panel had asked for further information on several issues, but had recommended that capital funding be made available now to extend the outfall pipe to prevent further flooding. Thanks were given to Essex Wildlife Trust, Natural England, the Environment Agency, Council officers and residents for their work on this project.

Councillor Burrows, Portfolio Holder for Leisure, Culture and Heritage, explained that as Ferry Marsh linked to the Wivenhoe Trail, this was a sustainable Active Travel opportunity with physical and mental health benefits for residents.

RESOLVED that Work to extend the outfall pipe leading from the sluice at Ferry Marsh Nature Reserve be included within Colchester City Council's Capital Programme.

REASONS

The work to extend the outfall pipe would bring improvements to the Ferry Marsh site by reducing flooding. This would also lead to physical and mental health benefits for residents.

ALTERNATIVE OPTIONS

It was open to the Cabinet not to agree the recommendation from the Environment and Sustainability Panel.

Councillors Smith and Sommers (in respect of their involvement with the Oak Tree Centre) declared an other registerable interest in the following item pursuant to the provisions of Meetings General Procedure Rule 9(5).

791. Mid-Year Capital Programme Updates 2023

The Section 151 Officer submitted a report a copy of which had been circulated to each Member.

Councillor Cory, Portfolio Holder for Resources, introduced the report and explained that the capital programme was being reviewed, in view of the national economic situation. There was a need to rationalise the programme and ensure it was affordable and achievable. This had also been recommended by the LGA Peer Review Team, who had supported the work undertaken to date in their recent update report. The review was well underway and a cross party workshop had recently been held. The report before Cabinet provided an update on in year projects that required capital investment and those projects for which capital funding was ceasing. A full report on the future capital programme would be submitted alongside the budget report in January 2024.

RECOMMENDED to COUNCIL the schemes listed in Appendix B and C of the Section

151 Officer's report be included in the Approved Capital Programme and the schemes listed in Appendix D of the Section 151 Officer's report be removed from the Approved Capital Programme.

REASONS

The Council's Financial Regulations state that Cabinet has delegated authority to vary the Capital Programme within the overall approved envelope but any additions which require an increase in the Capital Programme beyond this must be referred to Council for approval. Variations will not normally be sought except for reasons of operational necessity, legislative requirement or reasons of Health and Safety compliance. The delay to updating the Capital Programme in February 2023 has resulted in some services experiencing operational issues which threaten the continued smooth delivery of core services.

ALTERNATIVE OPTIONS

All schemes proposed could be delayed until a formal Capital Programme revision in February 2024, but this would prevent or impact upon the delivery of some core services.

792. Housing and Homelessness Update

Cabinet received a presentation from Karen Loweman, Director of Operations, Colchester Borough Homes (CBH), and Philip Sullivan, Chief Executive, Colchester Borough Homes. The presentation set out the national context in which homelessness was increasing. It set out sources of funding and the impact of temporary accommodation needs and other factors on the budget. It explained the current situation and the pressures on the system and how these were being managed and potential solutions to the current situation.

Councillor King expressed his thanks on behalf of Cabinet for the work of CBH in responding to the challenge presented by the current situation. There needed to be better government support to improve the housing system. The Council would work together with CBH on many of the solutions identified in the presentation.

Councillor Smith, Portfolio Holder for Housing, highlighted that a further factor that was driving the current housing crisis was section 21 "no fault" evictions, where tenants could be evicted with 8 weeks notice despite not having breached their tenancy agreement. There was no process of challenge or compensation. The numbers of children in temporary accommodation was hugely concerning. Some were in bed and breakfast accommodation outside of Colchester, which separated residents from their family and support networks. In addition, social housing providers increasingly were not taking up the property built for social housing more due to the rent cap imposed by the government. This had damaged the business model of Housing Associations as it had made smaller units in particular uneconomic.

In terms of next steps, the Council would:-

- Increase the local letting restrictions on three bed and one bed properties in particular, to try and ensure that the first lets went to local residents.

- In the acquisitions programme, the emphasis would be on purchasing fewer but larger properties. This should increase the supply of larger homes for which there was the most need.
- A report on affordability and viability issues would be submitted to the next Cabinet meeting.

Councillor Luxford Vaughan, Portfolio for Planning, Environment and Sustainability, expressed her hope that forthcoming legislation may address no fault evictions. Some tax incentives to rent were disappearing which contributed to the crisis. It was suggested that there may be a need to review the Council's policy for 80% of social housing delivered through the planning system to be social rented. How longstanding was the need for 3 bedroom homes and could planning policy be amended to emphasise the need for 3 bedroom homes.

The Director of Operations explained that CBH did reflect with and learn from other authorities. The need for three bedroom housing was longstanding and families waited much longer than single people on the housing list. For reasons of affordability and viability 3 bedroom housing could not always be secured through planning gain on all developments.

Councillor Burrows, Portfolio Holder for Leisure, Culture and Heritage, asked what was being done to identify and support those children in bed and breakfast accommodation, given the impact that this would have on them, particularly in terms of education.

The Director of Operations explained that the aim was to ensure that any stay in bed and breakfast accommodation was kept as short as possible. Where possible families were housed through the Peabody Trust, who provided support for families. CBH also worked closely with social care and with an organisation called Catch 22 who provided support and help on issues such as school access and equipment, and also on health issues.

Simon Collis attended and addressed Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(1). He explained his personal circumstances and that he and his family would be potentially homeless after receiving a section 21 notice from their landlord. There was uncertainty on how they would be housed once evicted. He explained the devastating impact that this had on him and his family. There had been a very significant drop in the amount of social housing in Colchester since 1994.

Councillor King thanked Simon for his comments and expressed the Cabinet's sympathy for the position he was in. He hoped the discussion showed how seriously the Council took the issue and how it was working to try and address the issues. The importance of housing and its impact on life chances was well understood. CBH would do all it could to support him.

Councillor Cory also thanked Simon and stressed that the Council was doing what it could to address the issue in terms of finding and building new accommodation. However, this was a national crisis that needed to be addressed by central government. In particular a programme of national housebuilding and a moratorium on right to buy purchases needed to be introduced.

RESOLVED that:-

- (a) The comprehensive presentation from Colchester Borough Homes be noted and accepted.
- (b) The strong performance by Colchester Borough Homes in intolerable circumstances be welcomed.
- (c) The Council commits to working with partners and government to secure better housing provision.
- (d) The Council commits to develop and share cross party a forward plan of actions with partners to address the housing crisis.

793. Response to Anti-Social Behaviour

The Head of Public Protection submitted a report a copy of which had been circulated to each Member.

Sam Good, Chief Executive of the Business Improvement District (BID), attended and addressed Cabinet pursuant to the provisions of Meetings General Procedure Rule 5(1). The BID were supportive of the Public Space Protection Order (PSPO) and the BID had met with officers to discuss its renewal. It was disappointed that its three point plan to improve the order had not been addressed or responded to. The BID had suggested the following:-

- Moving to a license base process for A-Boards, so business could apply for an A-Board in a similar way as they could for pavement permits.
- Ensure that the process did not apply to businesses looking to place A-Boards on private land.
- Better approach by the Council and police to the collection and issuing of warnings.

The Council had undertaken to review the viability of a license based system but the outcome of this had not been shared with the BID. Their suggestions were based on considerable experience in supporting businesses and were designed to iron out inconsistencies. The BID did not want to return to a free for all approach to A-Boards. If there were issues with resources or funding then the BID may be able to help.

There were also slight concerns about two further elements of the PSPO. The wording around activities that could affect the central nervous system could be interpreted to include smoking and vaping and confirmation was sought that the Council was not seeking to ban these activities. The wording of the bullet point on begging needing to be addressed by an "authorised person" ran counter to the work they had been doing. The BID could not accept the renewal of the PSPO as it was currently drafted.

The recommendation from the Policy Panel was also noted. Why therefore had business crimes not been included with the list of prohibited activities?

Councillor King, Leader of the Council and Portfolio for Strategy, indicated that he would ask the Monitoring Officer to take up the issues on the PSPO with the relevant officers as a matter of urgency and see what could be done to address the concerns of the BID. It

was not the Council's intention to prevent smoking and vaping.

Councillor Cory presented the comments of Councillor Sommers, Portfolio Holder for Communities, who had left the meeting. This was a key priority for the Council and the Community Safety Partnership. The Council had been responding to concerns of residents. She had been in discussion with the police on crime figures and these did show a reduction but due to high profile incidents this had caused a perception of an increase in anti-social behaviour. Some localities had also seen spikes of anti-social behaviour and she was working in particular on the issues at St Mary's car park. Both long term and short term strategies were being considered to tackle anti-social behaviour across Colchester and she recommended the introduction of a new Anti-Social Behaviour Policy. She also endorsed the renewal of the PSPO and supported the need to make the town centre safer. However, the issues raised by the BID needed to be addressed.

RESOLVED that:-

- (a) The contents of the report from the Head of Public Protection be noted.
- (b) The introduction of an ASB policy that clearly states the types of behaviour that can be investigated and acted upon using the Council's legal powers, the appropriate mechanisms for reporting, and the methodology that the Council will use to take proportionate action in response to issues be endorsed; so that this information is more clearly communicated to the public.
- (c) The renewal, of the Public Space Protection Order (PSPO) for the City Centre for a further 3-year period to October 2026 (Draft PSPO in Appendix A of the report) by the Head of Public Protection in line with the Scheme of Delegation to Officers be endorsed, subject to further consideration of the issues raised by the BID at this meeting.

REASONS

Anti-Social Behaviour (ASB) is one of the five priorities for the Safer Colchester Partnership, with a multi-agency approach to preventing, or supporting victims of such crimes or misbehaviour. Given the heightened publicity around this issue an ASB policy would set out clear objectives, responses times to reports and provide guidance and reassurance to residents that the Council has a commitment to address the issue of ASB. This can be made available online and updated so that the latest information is always easier to find using the Council resources.

In addition, the Public Space Protection Order (PSPO) for the City Centre will currently expire on 23 October 2023. The issues that the PSPO seeks to prohibit are still relevant, and therefore the PSPO should be renewed for a further 3 years to allow more robust enforcement to be practiced and dissuade potential perpetrators from taking part in such behaviours.

ALTERNATIVE OPTIONS

Not to introduce a Policy; this would maintain the status quo as to how information is provided, expectations managed, and how the Council works currently. However, it would miss an identified way to improve the way that the Council works, and the information

given to our residents, visitors, and businesses.

Not to renew the Public Space Protection Order; but this would mean that the Council would have a reduced ability to act on issues that have been highlighted as important and would conflict with our Strategic Plan.

794. Reinforced Autoclaved Aerated Concrete

Councillor King, Leader of the Council and Portfolio Holder for Strategy, explained that in view of recent concerns about reinforced autoclaved aerate concrete (RAAC) he wanted to make the Council's position clear.

The Council had taken the issue seriously. Colchester Borough Homes had reviewed all the Council's corporate buildings to understand the nature of their construction materials. Two buildings, Leisure World and Hunwick Road Centre, had been physically inspected. There was no evidence or indication that any of the Council's corporate buildings had RAAC. In terms of the housing stock, CBH had also commissioned a review. There were three types of non-traditional housing stock. Of these there were no RAAC issues with two types. The third included gas rendered concrete panels but these were not classed as structural. There was no need for urgent work and further surveys would be commissioned on these properties and the risks managed appropriately.

Therefore, the Council was confident from the work undertaken and assurances it had received that there were no issues from RAAC. However, it was aware that partners also had issues and the Council was offering support to the County and to partner organisations in identifying properties with RAAC and addressing any issues. The Council had a long term role in ensuring that the government's promises of support to deal with the issue were monitored and implemented.

RESOLVED that the position on RAAC within the City of Colchester be noted.

795. Recommendations from the Policy Panel

Cabinet considered the recommendations from the Policy Panel at its meeting of 27 September 2023, a copy of which had been circulated to each Member.

Councillor Law, Chair of the Policy Panel, attended and with the consent of the Chair, addressed the Cabinet in support of the Panel's recommendations. She thanked Councillor King for attending the meeting of the Policy Panel on 27 September. The meeting had reflected some of the key ways the Council engages with and supports residents. The Panel had received a presentation from the BID and Council officers and arising from that were keen to receive a report from the City Status Marketing Task and Finish Group. It was also keen that the Cabinet receive more information about retail offers outside of the city centre and consider the development of a Retail Strategy that addressed this. The concerns of the Panel around the impact of anti-social behaviour crimes against business had been reflected in discussion earlier in the meeting. In terms of the recommendation on the cost of living crisis, the Panel had heard about the excellent and challenging work done by the Employment and Financial Support team. However it was concerned by the impact on vulnerable residents from staffing levels and staff

turnover and that this might place an additional burden on the voluntary sector.

Councillor King, Leader of the Council and Portfolio Holder for Strategy, thanked the Panel for its recommendations. In terms of the recommendations relating to the City Centre Marketing Cabinet accepted the recommendation in respect of the report from the City Status Marketing Task and Finish Group. This would reinforce closer working relations with partners. In respect of the retail strategy, it was noted that whilst most retail was still concentrated in the city centre, a number of significant retail offers were now developing outside of the city centre and there would be value in a Strategy that addressed this. The BID supported this. However, some concern was expressed by Cabinet members about the potential cost and resource needed to undertake this work, which would need to be commissioned externally. It was also noted that the Council already had a retail planning policy and it was not clear how a new retail strategy would link to that. Cabinet agreed that it should ask officers to investigate the costs and benefits of such a strategy and report back to Cabinet. There may be opportunities to share costs with partners.

In respect of the recommendation on anti-social behaviour and retail crime, it was not the Council's role to set priorities which were led to the police and Cabinet agreed a revised wording to reflect this.

In terms of the recommendation on the cost of living crisis, Cabinet was of the view that whilst this was not the forum to decide on staffing levels for the Employment and Financial Support Team, the recommendation should be accepted.

City Centre Marketing & Inward Investment

RESOLVED that: -

- (a) Approval be given for the Panel to receive a report from the City Status Marketing Task and Finish Group, as led by the Business Improvement District.
- (b) Cabinet commissions officers to explore how best to develop a wider Retail Strategy which addresses the retail offer beyond the city centre
- (c) In light of the Panel's concerns regarding increasing anti-social behaviour and crimes against businesses (including shoplifting), Cabinet advocates that the Safer Colchester Partnership should ensure tackling anti-social behaviour and crimes against businesses is a priority, and that all local partnerships should work together to address these problems, and issues, data and progress be shared with the public.

Cost of Living Crisis – Council Response reflection and next steps

RESOLVED that Cabinet agrees that adequate staffing levels are vital for the Employment and Financial Support Team to conduct its work, given the essential work it does to support residents, and the likely additional costs to the Council and public services later, if eligible residents are not able to access the advice and support provided by this team.

ALTERNATIVE OPTIONS

It was open to Cabinet not to approve the recommendations from the Policy Panel.

796. Progress of Responses to the Public

The Democratic Services Manager submitted a progress sheet a copy of which had been circulated to each Member. The Democratic Services Manager explained that a response to Mr Vince from his contribution at Environment and Sustainability Panel on 21 September remained outstanding as it raised some complex issues. However, progress would continue to be monitored.

RESOLVED that the contents of the Progress Sheet be noted.

REASONS

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

ALTERNATIVE OPTIONS

No alternative options were presented to the Cabinet.



Cabinet

Item
7(i)

22 November 2023

Report of	Managing Director (Interim) Colchester Commercial (Holdings) Ltd	Author	Richard Carr ☎ 282421
Title	Proposed Future Strategy for Amphora		
Wards affected	All wards		

1. Executive Summary

- 1.1 Much has been achieved through the Amphora arrangements but a change in the external environment and, in particular, the City Council's ability to accommodate risk requires a new strategy for the future. At the heart of this lies a simplification of Amphora to focus on services which can genuinely trade, the hibernation of Colchester Amphora Energy Limited (CAEL) and Colchester Amphora Homes Ltd (CAHL) and the repurposing of skills within the company to support the delivery of the City Council's strategic objectives.

2. Recommended Decision

- 2.1 Cabinet is asked to approve the Proposed Future Strategy for Amphora set out in Appendix A, supported by the Board of Colchester Commercial (Holdings) Ltd on 26 September 2023 and recommended by the Governance and Audit Committee of 17 October 2023.

3. Reason for Recommended Decision

- 3.1 The proposed strategy seeks to respond to the change in the external environment which has impacted on both the City Council and its wholly owned trading companies. In particular, the change in the City Council's ability to accommodate risk.

4. Alternative Options

- 4.1 The principal alternative to the strategy proposed would be a continuation of the current arrangements. However, this would require the City Council to underwrite costs for an indefinite period, with little certainty about when those costs might be recovered. This would place added strain on the City Council's already challenging financial position.

5. Background Information

5.1 The background is set out in Appendix A and, in particular, section 2.

6. Equality, Diversity and Human Rights implications

6.1 The proposals set out in Appendix A are designed to help the City Council achieve its objectives and discharge its obligations.

7. Strategic Plan References

7.1 The proposals contained in Appendix A are set in the context of the Council's Strategic Plan and section 4, in particular seeks to address the City Council's strategic objectives.

8. Consultation

8.1 The implementation of the proposed strategy will entail appropriate staff consultation.

9. Publicity Considerations

9.1 The rationale for the proposed strategy should help with the public explanation of the proposals.

10. Financial implications

10.1 Section 7 refers.

11. Health, Wellbeing and Community Safety Implications

11.1 The proposals set out in Appendix A are designed to help the Council achieve its objectives and discharge its obligations.

12. Health and Safety Implications

12.1 There are no specific health and safety implications associated with the proposals set out in Appendix A.

13. Risk Management Implications

13.1 The proposals set out in Appendix A are designed to respond to a change in the risk environment. In addition, section 9 sets out the risks that will need to be managed in the implementation of the proposals.

14. Environmental and Sustainability Implications

14.1 The proposals entail the hibernation of CAEL which was established to progress the delivery of a low carbon heat network. For circumstances outside of CAEL's

control and explained in the report, this is not possible in the way envisaged originally but the assets created are proposed to transfer to the City Council to enable this to be taken forward in the future.

Appendices

Appendix A: Proposed Strategy for Amphora: Report to Board of Colchester Commercial Holdings (September 2023)

- Appendix 1: STRICTLY CONFIDENTIAL - 5 Year View Trading Areas
- Appendix 2: STRICTLY CONFIDENTIAL - CIPFA Report - CCC CCHL Companies Review

APPENDIX A PROPOSED STRATEGY FOR AMPHORA

To: Colchester Commercial Holdings Ltd Board

Date: 26 September 2023

From: Interim Managing Director

1. PURPOSE

1.1 Taking account of the current external environment, and in particular, its impact of the City Council's ability to accommodate risk, to propose a future strategy for Amphora, based on the refocussing and simplification of the current arrangements.

2. BACKGROUND

2.1 The Amphora group of companies, comprising a holding company (**Colchester Commercial Holdings Ltd**) and three subsidiaries were incorporated in 2017 as Local Authority Trading Companies. They are wholly owned by the City Council and were intended to generate income for the authority, including in the form of dividends and, in some instances, to take advantage of Government grants for the development of new forms of energy generation (a low carbon heat network) and the roll out of fibre, which were not readily available at the time to Council directly.

2.2 The subsidiary companies are:

- * **Colchester Amphora Trading Ltd (CATL)**, which delivers a range of services, some of which are genuinely trading, such as Events, Helpline and Colchester Fibre, whilst others are essentially functions provided back to the City Council, such as estates management or support with the delivery of the capital programme.
- * **Colchester Amphora Homes (CAHL)**, which was intended to deliver new housing by borrowing from the City Council to acquire land and cover the costs of development. This approach was intended to take advantage of the ability of local authorities to borrow more cheaply than a commercial organisation. The plan was to focus, in particular but not exclusively, on the development of new homes as part of the Northern Gateway.
- * **Colchester Amphora Energy Ltd (CAEL)**, which was designed to take advantage of grant regimes available at the time to bring about the development of a low carbon heat network, again to support the development of the Northern Gateway.

2.3 Much has been achieved as a result of these arrangements and the companies have attracted some committed and highly skilled staff. However, over time, a succession of reviews (the City Council's Corporate Peer Challenge in 2022, a review by Ethical Consulting and subsequently by CIPFA (the Chartered Institute of Public Finance and Accountancy), Appendix 2, have pointed to improvements required. At the heart of these lies the need to revisit the purpose of the companies, taking account of significant changes in the external environment in which both the City Council and therefore its trading companies now find themselves.

3. CHANGED CONTEXT

3.1 There are various facets that have contributed to a changed context in which the City Council and therefore its trading companies find themselves in, but these include:

- * A more **challenging economic environment**, which has included higher costs and more subdued property values. Amongst other things, this has resulted in greater **strain on the City Council's finances** and **reduced its ability to accommodate risk**. This is especially significant for the original plans for new housing to be delivered by CAHL and the approach to the development to the Northern Gateway; in essence, the City Council's ability to fund investments through its companies, taking the risk that these would result in a commercial return, is considerably more constrained now than in the past.
- * As a result of the difficulties in which some councils elsewhere have found themselves, greater scrutiny of local authority borrowing.
- * Less emphasis on grants being made to arm's length bodies, rather than councils themselves, to support initiatives such as low carbon energy and fibre connectivity.

3.2 Meanwhile, locally, the City Council has been reviewing aspects of its operations. Mostly notably in this context, is its approach to the management of assets and it is anticipated that the City Council will move to a '**corporate landlord**' model, where decisions about its assets are taken corporately, rather than left to individual service areas to determine. This approach has much to commend it and does entail a move away from a rather dispersed approach to asset management, with different functions being discharged by different parts of the 'Colchester family'.

3.3 Particularly in view of these changed circumstances and developments, it is appropriate for the Board to review the future strategy for Amphora and to consider the best approach to meeting the City Council's objectives.

4. SUPPORTING THE CITY COUNCIL'S STRATEGIC OBJECTIVES

4.1 As part of the 'Colchester family', the starting point for any review of Amphora's strategy should be to consider how best the delivery of the City Council's strategic objectives can be supported, against the background of the changes mentioned in paragraph 3.1 above. Particularly important in this context are the Council's objectives relating to the Northern Gateway, housing and wider regeneration, the move to low carbon energy generation and the economic development of the City.

4.2 The planning permissions in place for the **Northern Gateway** recognise the strategic significance of the site to Colchester and provide for a mixed-use development, covering employment, housing, leisure and health facilities. Various teams within the Amphora group have been supporting the delivery of the development, including with the relocation of the rugby club and the creation of a new sports centre, and the leisure and retail element of the site, currently referred to as Turnstone. The full development is impacted by the need to secure infrastructure enhancements, including the upgrading of junction 28 on the A12 and associated road improvements, which again Amphora has been supporting. However, there is a dependency here on Essex County Council (ECC), as the highways authority, and National Highways. Until these infrastructure works have been agreed with the highway authorities and delivered, other aspects of the development cannot be progressed. This includes the housing and heat network, for which CAHL and CAEL were established to deliver.

4.3 In effect, the City Council has assumed the role of master developer for the Northern Gateway, funding key elements of the scheme, albeit with some third-party contributions, in anticipation of future value from rental income from premises created, capital receipts (from selling the private housing element of the development) or dividends from the Amphora companies supporting the delivery of different elements of the overall project. However, the factors described in 3.1 mean that it is now questionable whether the City Council can continue to act as a master developer, and this therefore has implications for the Amphora companies. This is especially compounded by rising construction costs and more subdued property values.

4.4 All this does not mean that the City Council should abandon its aspirations for the Northern Gateway. Some compromises may need to be struck, but the change in circumstances should propel a review of the strategic delivery options available, as an alternative to the Council acting as a master developer. These include joint venture arrangements, or even a partial or full disposal of the site, or a combination of both. In this context, while it may no longer be appropriate for Amphora to play the roles envisaged originally, the skills within the company could be repurposed to assist with the assessment of strategic delivery options and the management of which ever option or combination of options is selected by the City Council. For a development scheme of this nature, it is especially important that the Council has access to the appropriate skills. It is also important that the Northern Gateway is managed as a 'multifaceted programme' to understand the interplay between the different elements of the development and to manage the links between the development and the Council's Medium Term Financial Plan and Capital Programme.

4.5 The City Council's **housing and wider regeneration** objectives are arguably more important than ever as the 'cost of living crisis' compounds the difficulties experienced by an increasing number of residents in finding somewhere to live that is within their means. Although many councils established Local Authority Housing Companies in a similar way to Colchester, in practice, few have been able to make a significant contribution to housing supply through such vehicles. This is because the factors set out in paragraph 3.1 mean that, like Colchester, many councils are now unable to accommodate the financial risks associated with advancing funds to their housing companies in the hope that this will result in both new homes and a commercial return to the sponsoring authority. This reinforces the suggestion made by CIPFA, as part of their review referred to in paragraph 2.3, that Amphora Homes should be 'hibernated' or moved to a dormant status, as the prospects of it being able to recover its costs in the foreseeable future are currently limited. However, as with the Northern Gateway, the skills within Amphora could be used by the Council in a different way that helps it to develop and deliver a strategy to alleviate the emerging housing crisis in Colchester. This might include supporting the delivery of existing housing locations with the Local Plan, exploring the scope to put forward sites within the Council's ownership for potential housing development in the forthcoming 'call for sites' and helping to overcome obstacles to several garage site redevelopments.

4.6 The delays with the development of the Northern Gateway site have inhibited the ability of CAEL to complete the low carbon heat network and its prospect of generating an income in the foreseeable future; in essence, CAEL will have no customers to sell the heat that would be generated by the network it was established to create until homes and other facilities are built. CAEL has no influence over the timing of when this will be. It is for this reason that CIPFA recommended that CAEL should be hibernated and that the assets created (bore holes) should be transferred to the City Council. Proposals for this hibernation are included elsewhere on this agenda. In due course, the Council will need to consider how it wishes to deliver the operational management functions of the heat network that CAEL was to perform. In the meantime, the climate change agenda and the concern to move to **low**

carbon forms of energy generation remains a strategic priority for the City Council. Once again, the skills within Amphora have the potential to help the Council in working towards these ambitions, including by supporting the delivery of the micro grid and solar panel farm proposed for the northern part of the Northern Gateway and arguably other projects within the Council's Capital Programme. As with the housing and regeneration objectives, it would make sense to redeploy these skills, even though the original intention to apply them through a quasi-commercial model is no longer viable for the reasons set out in paragraph 3.1. Assuming these skills remain within Amphora (but transferred to CATL), the associated costs would need to be reflected in a review of the Management Fee paid to the company by the City Council.

4.7 The City Council is also concerned to strengthen and enhance the **economic performance** of Colchester. A number of services delivered by Amphora contribute to this objective but the role of **Colchester Fibre** is particularly relevant in this context. The origins of Colchester Fibre lie in a recognition of the importance of access to broadband connectivity to future business development, including for the creative sector, as well as to residents. Colchester secured a Government grant of c£3.3m to support the roll out of full fibre broadband at a time when the city was not well served by commercial suppliers. Over time, a network has been created that is currently serving about 500 residential customers and 80 businesses in the city and beyond, as well as delivering operational savings from broadband provision to the City Council within its own assets. Whilst Colchester Fibre is technically loss making at the moment, it has the potential to grow significantly, and a number of options are being reviewed for expanding both the residential and the business customer base with several third parties who are interested in partnering with the company. These options require proper appraisal and assessment and recommendations for Colchester Fibre will be brought forward to the Board when this has been completed. In the meantime, the proposal is that Colchester should remain part of Amphora for the time being.

4.8 The City Council's recently adopted Strategic Plan reflects a commitment to deliver **modern services** and the use and maintenance of the Council's assets has the potential to make an important contribution to that objective, and, indeed, the others discussed already. In this context, the City Council commissioned CIPFA to carry out an Asset Management Review which, as mentioned in paragraph 3.2 above, has recommended a move to a **Corporate Landlord** model. Currently, Amphora delivers an estates management service for the City Council in return for a management fee, whilst facilities management support is provided by Colchester Borough Homes. Although the current distribution of functions across the Colchester family could be accommodated within a Corporate Landlord model, the current arrangements have led to some ambiguities. In view of this, it is anticipated that the City Council will wish to repatriate all asset-related functions within the local authority.

5. CAPITAL PROGRAMME DELIVERY

5.1 Amphora employs several staff with technical and other project-management related expertise that are needed to support the delivery of the City Council's Capital Programme, including schemes that are funded from the authority's own resources, including borrowing, accessing external funding such as grants either from Government or others, or developer contributions. The costs of these staff are recouped from a combination of a management fee and project specific charges. Theoretically, the skills could be traded, ie. offered to third parties on a chargeable basis but in practice the scope for this has been constrained by capacity considerations.

5.2 The City Council is seeking to strengthen its approach to project delivery, which is to be welcomed as at times ambiguity over the sponsorship, scope, financial and time parameters for projects has led to confusion, potential rework and, historically, strained relations. Arguably, the current charging arrangements have deterred some Council staff from drawing on the necessary technical expertise that exists within Amphora to the detriment of project delivery.

5.3 Going forward, there are three main options for those services that Amphora currently provides to support the delivery of the Council's capital programme:

- (i) Transfer the staff into the City Council
- (ii) Retain the current arrangement but move to a management fee covering the full costs of the service provided to the City Council
- (iii) Move to a Shared Service model

5.4 None of these options would negate the need for proper project management disciplines and procedures to be applied consistently as described in paragraph 5.2 above. But the first and second might help overcome the current disincentive for the City Council to take technical advice when needed. The third option could help deliver financial benefits and resilience and is a recognition that many authorities are struggling to source the required technical skills to deliver their capital programmes and end up resorting to expensive consultants or agency staff. Some preliminary discussions have commenced with one authority about a shared service option, but these arrangements require a genuine commitment politically and managerial to work, and effective governance.

5.5 Pending further analysis of the viability of a Shared Service model, it is recommended that the second option is pursued for the time being, not least as this would leave open the other two options later.

6. TRADED SERVICES

6.1 The residual services delivered by Amphora through CATL cover **Events, Helpline and CCTV**, the latter of which is closely linked to the capability created by Colchester Fibre. These services are already servicing customers beyond the City Council; for example, Events has secured contracts with two other neighbouring councils. As a group, they are profitable and indeed there could be scope to grow this income further. Although there is a need to agree any appropriate mechanism for continued investment, they are not capital intensive and can trade in a way that does not expose the City Council to unmanageable risk.

6.2 Conceivably, these services could be brought into the Council and continue to trade but they have developed a reputation and a culture which should not be jeopardised. On balance, there is no obvious advantage to be gained from moving them out of a company structure, especially if that were simplified by virtue of the proposals set out in this report, including with more proportionate overheads.

6.3 As these services win business from other customers, the 'Teckal', arrangements which allow local authorities to place work with any commercial companies they have established without market testing that work, can no longer be relied upon. This is because of the increased likelihood that the proportion of Amphora's turnover that is accounted for by customers, other than the City Council,

would exceed the appropriate legal thresholds. In other words, it becomes more likely that the City Council cannot place work with Amphora without some form of market testing. This does bring a degree of risk with it, as the company could lose business to competitors. This will need to be monitored regularly.

6.4 As with the support for the delivery of capital projects, there is the potential for at least some of the services delivered to move to a Shared Services model if there was a genuine appetite for this amongst other councils.

7.0 FINANCIAL IMPLICATIONS

7.1 Detailed work will be required with the City Council to model the full impacts of the proposals set out in the report. However, the underpinning assumptions are that:

- * Where staff and functions are transferred into the City Council, there is a reduction in the management fee paid to Amphora, taking this into account.
- * Where staff are retained within Amphora, but they provide support to the City Council, the costs of this are recovered fully from the Council through an appropriate management fee.
- * Traded services are given the maximum scope to realise their true potential of generating future income to the Council. This includes a review of overhead costs charged by the City Council through the current Service Level Agreement. There will also need to be and an agreed approach to investment in the companies in order that they remain competitive.

7.2 Projections for Traded Services based on current contracts are set out in Appendix 1.

7.3 The transfer of residual assets and liabilities arising from the proposed hibernation of CAEL and CAHL will need to be agreed with the City Council in a way that protects the interests of both parties.

8.0 STAFFING IMPLICATIONS

8.1 The strategy set out in this report has significant staffing implications and as such appropriate staff consultation is planned. However, if the principle of redeploying skills within Amphora in the way described is accepted, whilst some staff may end up working for a different part of the Colchester family, they should not be disadvantaged in terms of their conditions of employment.

9.0 RISKS

9.1 This strategy is designed to respond to the substantive risks that flow from the circumstances described in paragraph 3.1 and in particular to the constraints on the City Council's ability to accommodate risk.

9.2 Risks that will need to be monitored closely arising from this strategy, include the potential loss of staff if the delivery of the proposals is not managed carefully. Some staff who currently work for Amphora but who would transfer to the Council if the proposals set out in this report are agreed, might not welcome such a move due to their perspectives about the differences in culture between a local authority and trading company and the value that might be placed on their professional expertise by

a local authority. Unless managed carefully, this could also compromise the City Council's ability to recruit appropriate expertise in the future.

9.3 It will also be important to review regularly the Teckal implications of further trading as described in paragraph 6.

9.3 None of the proposals negate the need for effective working relationships within the Colchester family at all levels, nor the application of appropriate project management disciplines as described in paragraph 5.4.

10. TRANSITION PLANNING

10.1 Without pre-empting decisions the made by the Board and the City Council on this proposed strategy, transition planning is underway, including to cover:

- * Staff communication
- * Staff consultation on the implications of the proposed transfer of functions
- * Financial implications based on the principles set out in paragraph 7
- * Future company structure and governance
- * Programme management arrangements for the Northern Gateway and the assessment of strategic delivery options
- * Consideration of how those teams that would transfer from Amphora onto the City Council would be accommodated within the Council's management arrangements and the operation of the 'Corporate Landlord' model in practice and the delivery of future housing support
- * Measures to mitigate the risks identified in 9 above

11. CONCLUSION

11.1 Much has been achieved through the Amphora arrangements but a change in the external environment and in particular the City Council's ability to accommodate risk requires a new strategy for the future. At the heart of this lies a simplification of Amphora to focus on services which can genuinely trade, the hibernation of CAEL and CAHL and the repurposing of skills within the company to support the delivery of the City Council's strategic objectives.

12. RECOMMENDATIONS

12.1 The Board is recommended to endorse the strategy set out in the report and commend it to the City Council, based on the following core elements:

- A move to a simplified Amphora with a focus on services which can genuinely trade and thereby bring financial benefits to the City Council.
- The hibernation of CAEL and CAHL but the repurposing of the skills they contain to support the delivery of the Council's strategic objectives.

- The transfer of the Estates function and the staff within it to the City Council as part of a move by the local authority to a Corporate Landlord model.
- For the time being, the retention of those staff who support the delivery of capital projects within Amphora but on the basis that their costs are met in full by the City Council through a management fee, pending the further exploration of a Shared Services model with other councils.
- A further report on the opportunities and implications of developing Colchester Fibre.

12.2 The Board commissions a report on a revised company structure, reflecting the simplification proposals set out in the proposed strategy.

Extract from the minutes of the Governance and Audit Committee meeting of 17 October 2023

384. Amphora Future Strategy

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

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

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

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

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

considered that useful skills which were contained within the Amphora group should be deployed to help the Council in other ways.

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

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

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

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

Councillor Warnes, Chair of CCHL, attended the meeting remotely and, at the invitation of the Chair, addressed the Committee. He offered his support to the Interim Managing Director and his team for the work which had gone into the proposals, and agreed that the suggested changes had been driven by changes in external factor. He supported the suggestions which had been made with regard to hibernating some trading companies and simplifying the operation of CCHL.

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

Public session

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

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

In discussion, the Committee noted that risks associated with the operation of the companies would not be removed by the proposals, but would be transferred back to the Council. The Interim Managing Director of CCHL confirmed that this was correct, but in practice this would not represent a substantial change in the position. In reality CAEL was not able to recover the costs it expended and the Council stood behind this position, meaning in practical terms the proposals did not represent a change in the Council's exposure to risk.

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

RECOMMENDED TO CABINET that:

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



Cabinet

Item
7(ii)

22 November 2023

Report of	Managing Director (Interim) Colchester Commercial (Holdings) Ltd (CCHL)	Author	Richard Carr ☎ 282421
Title	Hibernation of Colchester Amphora Energy Ltd (CAEL)		
Wards affected	All wards		

1. Executive Summary

- 1.1 In the context of the proposed Amphora Future Strategy contained elsewhere on the agenda, to approve the formal hibernation of Colchester Amphora Energy Ltd (CAEL) and the transfer of its assets to Colchester City Council, as supported by the Colchester Commercial (Holdings) Limited Board on 26 September 2023 and recommended by the Governance and Audit Committee on 17 October 2023. Delays with the development of the Northern Gateway, due to factors outside of the company's control, have impacted the completion of the low carbon heat network. The absence of customers in the foreseeable future for the heat that the network would supply means that the company is incurring costs which it is unable to recover for the time being. The proposed hibernation would leave the City Council with options for the completion of the project in the future.

2. Recommended Decision

- 2.1 That Cabinet accepts the recommendation contained in minute 385 of the Governance and Audit Committee of 17 October 2023 that Colchester Amphora Energy Limited should be placed in hibernation.
- 2.2 That the Cabinet approves (as shareholder) the recommendations contained in the minutes of Colchester Commercial (Holdings) Limited's Board meeting of 26 September 2023 contained at Appendix 4 of this report.
- 2.3 That Colchester Amphora Energy Limited is prepared for, placed into and maintained in a dormant state as detailed in section 2 of Appendix A of this report.
- 2.4 That Colchester Amphora Energy Limited's contracts and agreements are transferred or otherwise dealt with in accordance with recommendations detailed in the table below and at section 8 of Appendix 1 to this report:
- 2.5 That the employment of Colchester Amphora Energy Limited's staff is transferred in accordance with arrangements set out under section 8 of Appendix A of this report.

3. Reason for Recommended Decision

- 3.1 Given delays with the development of the Northern Gateway, the company is unable to complete the delivery of the low carbon heat network on a commercial basis, in the foreseeable future. This position may change in the future but for the moment, transferring the assets created to the City Council and hibernating CAEL, would keep open options for the completion of the scheme in the future, whilst curtailing the costs currently being incurred.

4. Alternative Options

- 4.1 Alternatively, the City Council would need to agree to continue to underwrite the costs of CAEL, in the knowledge that there is no realistic prospect of an offsetting income in the foreseeable future.

5. Background Information

- 5.1 The background is set out in Appendix A of this report.
- 5.2 The Governance and Audit Committee as part of its terms of reference acts as the Council's shareholder committee and makes recommendations to Cabinet regarding Colchester Commercial (Holdings) Limited and its subsidiary companies. At its meeting on 17 October 2023 the Committee considered a report on the proposed hibernation of CAEL. The Committee recommended to Cabinet that CAEL be hibernated for the reasons contained in this report and its appendices. This recommendation is appended to this report at Appendix B of this report.

6. Equality, Diversity and Human Rights implications

- 6.1 The proposals set out in Appendix A of this report do not impact on the City Council's obligations covering equality, diversity and human rights.

7. Strategic Plan References

- 7.1 The proposals contained in Appendix A of this report flow from the proposed Amphora Future Strategy that sits elsewhere on the agenda. That Strategy describes the links to the Council's Strategic Plan and objectives.

8. Consultation

- 8.1 CAEL employs one member of staff who has been consulted on their intended transfer to Colchester Amphora Trading Limited either at or before the point of hibernation.

9. Publicity Considerations

- 9.1 The rationale for the proposed decision should help with the public explanation of the proposals.

10. Financial implications

- 10.1 The report highlights that hibernation is essentially unavoidable and therefore needs to take place. Without any immediate prospect of income generation, the costs incurred to date by CAEL fall on to the Council and will need to be accounted for within the 2023/24 Accounts.
- 10.2 The report highlights the actions required to put the company in to dormancy. As part of the proposed hibernation process, CAEL's assets and liabilities will be acquired by the City Council.

- 10.3 The activity and exploratory work of CAEL was undertaken at the request of the Council on the back of a specific Grant allocation from the Government, (through the Department for Business, Energy & Industrial Strategy), for schemes of this type. All costs incurred to date have been incurred against this allocation.
- 10.4 The Council gave CAEL a working capital advance in the form of a loan to enable it to fund the development of the Heat Network, which has resulted in assets (eg. boreholes). Part of putting CAEL into dormancy will require this loan to be unwound and require the assets and liabilities held within CAEL to be transferred to the Council This forms part of the wider transaction and will be applied against the Grant allocation, except for the interest charged to CAEL by the Council, which is not eligible for Grant funding and will therefore need to be written off.

11. Health, Wellbeing and Community Safety Implications

- 11.1 The proposals set out in Appendix A of this report have no particular health, wellbeing and safety implications.

12. Health and Safety Implications

- 12.1 There are no specific health and safety implications associated with the proposals set out in Appendix A of this report.

13. Risk Management Implications

- 13.1 Given the understandings reached with the City Council, the proposed hibernation of CAEL effectively extinguishes the principal risks to the company which are associated with its inability to complete the project for which it was established and to recoup income from customers, for reasons outside of its control.
- 13.2 The residual risks stem from a failure of the arrangements with the City Council to be fully completed. However, given the discussions that have taken place with the City Council, this risk is considered manageable although it will need careful monitoring and management.
- 13.3 The risk of the company being reactivated inadvertently referred to at section 6 of Appendix a of this report should also be noted.

14. Environmental and Sustainability Implications

- 14.1 The proposals entail the hibernation of CAEL which was established to progress the delivery of a low carbon heat network. For circumstances outside of CAEL's control and explained in the report, this is not possible in the way envisaged originally but the assets created are proposed to transfer to the City Council to enable this to be taken forward in the future.

Appendices

- A. Report on the Hibernation of CAEL.
 - 1. CIPFA Report (confidential) – exempt from publication para 3 of schedule 12A etc.
 - 2. Report on Governance & Decision Making, by Anthony Collins Solicitors
 - 3. Report on Agreements Review, by Anthony Collins Solicitors
 - 4. CCHL - Shareholder Resolution

- B. Minute from Governance and Audit Committee dated 17 October 2023

REPORT TO THE BOARD OF DIRECTORS OF COLCHESTER AMPHORA ENERGY LTD

Re. Putting the Company into Dormancy

1. EXECUTIVE SUMMARY

- 1.1 This report sets out for the Board’s formal consideration the options for the treatment of Colchester Amphora Energy Ltd (CAEL) and recommendations, for the Board’s formal determination, that CAEL is prepared for and placed into dormancy.
- 1.2 The recommendations set out under section 2 below reflect discussions and informal agreement to date between the Board, the Board of Colchester Commercial (Holdings) Ltd (CCHL), in its capacity as CAEL’s parent company, and Colchester City Council (the Council), as CAEL’s ultimate shareholder. The recommendations at section 2 are in consideration of the recommendations of the Chartered Institute of Public Finance (CIPFA), and advice received from Anthony Collins LLP (Anthony Collins) as regards CAEL.
- 1.2 On consideration of this report and having considered the matters set out in section 172 of the Companies Act 2006, if the Board is satisfied that the recommendations set out under section 2 are in the best interests of the company, the Board is invited to approve the resolutions set out at appendix 4 to effect the recommendations.

2. RECOMMENDATIONS

- 2.1 That CAEL is prepared for, placed into and maintained in a dormant state as set below under sections 6,7,8 and 9.
- 2.2 That CAEL’s contracts and agreements are transferred or otherwise dealt with in accordance with recommendations detailed in the table below and at section 8;

Agreement	Parties	Recommendation
Heat Pump Agreement	CAEL and GEA	Novate agreement: From CAEL/GEA To Council/GEA
Development Management	CAEL and Council	Instructions from the Council to CAEL to (i) suspend the

Services Agreement		agreement under clause 9 and (ii) authorisation for CAEL board to terminate the agreement under clause 10.1 if the suspension is for six months or more
Technical Consultancy Agreement	CAEL and WSP	Novate agreement: From CAEL/WSP To Council/WSP Novation agreement to incorporate terms and conditions of WSP's appointment from the GLA framework agreement
Facility Agreement	CAEL and Council	Terminate the agreement by Deed of Termination and Release to provide for simultaneous termination of the agreement and release from the debentures. Removal of charges from Companies House. Provision incorporated in the Deed of Termination and Release for the partial write-off of the outstanding loan.
Grant Agreement	CAEL and Council	No action required for dormancy
Concession Agreement	CAEL and Council	Terminate by Deed of Termination (mutual agreement)

- 2.3 That the employment of CAEL's staff is transferred in accordance with arrangements set out under section 8 below;
- 2.4 That Board resolves to approve the Board resolutions and the form and circulation of the shareholder resolutions set out in appendix 4 of this report to effect CAEL's dormancy.

3. INTRODUCTION

- 3.1 This report details the options and recommended course of action for the Board's consideration and determination as regards the treatment of CAEL in view of the recommendations contained in a report prepared by CIPFA following its review of the Council's companies.
- 3.2 The Board has previously considered the findings of the CIPFA report – Colchester City Council: *Review of the CCHL Companies January 2023*, which have also been considered by the board of CCHL and the Council. The report is appended (appendix 1).
- 3.3 The recommendations set out below are further in consideration of the advice of Anthony Collins as set out in their below detailed reports, which are also appended to this report:
 - 3.3.1 Report to Colchester City Council - *CAEL: Governance and Decision-Making May 2023* (appendix 2);
 - 3.3.2 Report to Colchester City Council and Colchester Amphora Energy Ltd – *Agreements Review July 2023* (appendix 3).
- 3.4 This report sets out those matters which have been discussed and informally agreed by the Board, CCHL and the Council, and in view thereof, the key issues for the Board's consideration and formal determination:
 - 3.4.1 The CIPFA report and recommendations;
 - 3.4.2 Winding up CAEL and the implications;
 - 3.4.3 Placing CAEL into dormancy and the implications;
 - 3.4.4 Preparing CAEL for dormancy;
 - 3.4.5 The treatment of CAEL's agreements, assets, liabilities and staff;
 - 3.4.6 Maintaining CAEL's dormant status;

3.4.7 Governance, decision-making and resolutions (the process and resolutions required to effect and subsequently maintain the dormancy of CAEL).

Subject to the Board's approval, the resolutions to effect the recommendations detailed in this report, are appended (appendix 4).

4. THE CIPFA REPORT & RECOMMENDATIONS

4.1 At section 5.3 of the CIPFA Report three broad recommendations for CAEL are advanced:

4.1.1 Recommendation 1. leave it CAEL as is (i.e. 'do nothing');

4.1.2 Recommendation 2. find an alternative delivery mechanism (i.e. wind up and dissolve CAEL);

4.1.3 Recommendation 3. put CAEL into a dormant state (i.e. CAEL will continue to exist as a company but will not carry on its business).

4.2 The Board has previously agreed with CCHL and the Council that 'doing nothing' is not an option as uncertainty around the future of the Northern Gateway project, the heat network component of which was the purpose for which CAEL was set up, means the company has no current or medium prospect of continuing to meet its liabilities without relying on further financial support from the Council. As such, CAEL remaining in its current state is not considered further here.

4.3 Winding-up and dissolving CAEL has previously been considered and the Board, CCHL and the Council have agreed against this course of action in consideration of the implications of dissolving the company as set out below. However, for comparative purposes winding up CAEL as against placing the company into dormancy is briefly considered below.

4.4 CIPFA's recommended course of action is that CAEL be made dormant as this affords the greatest agility and allows for the consideration of longer-terms options including the potential 'resuscitation' of the company. Placing CAEL into dormancy is also the recommendation of Anthony Collins.

5. WINDING UP CAEL AND THE IMPLICATONS

5.1 Winding up CAEL is the process by which the company will be prepared for the submission of an application to voluntarily 'strike-off' the company from the register of

companies maintained by the Registrar of Companies (Companies House), and subsequently dissolved. The voluntary strike-off procedure is relatively quick and simple and is provided for under sections 1003 to 1011 of the Companies Act 2006 (CA2006). However, winding up the company involves significant preparatory work to be undertaken as detailed at below at paragraph 5.3.

5.2 While CAEL does not formally have to discharge all its liabilities before it is struck-off, in preparation for its voluntary strike-off CAEL's creditors must be notified of the company's intention to apply for voluntary strike-off and its directors will commit an offence if they are aware of liabilities and fail to notify known creditors.

5.3 In the process of winding up CAEL for voluntary strike off and before the strike off application is submitted, in addition to notifying the company's creditors of the proposed voluntary strike off, the Board will need to:

5.3.1 Obtain tax advice / undertake a full assessment of the company's existing tax liabilities;

5.3.2 Discharge / transfer the company's debts and financial liabilities;

5.3.3 Transfer the company's property and assets (tangible and intangible);

5.3.4 Provide for the transfer or otherwise of the company's staff;

5.3.5 Transfer (novate, assign) or terminate (if possible and appropriate) the company's contracts and commercial agreements;

5.3.6 Consider and effect how the company's share capital may be lawfully returned to CCHL / the Council, or how the share capital reduced before applying for strike off;

5.3.7 Consider and effect how any distributions may be made to CCHL / the Council;

5.3.8 Close bank accounts, cancel insurance policies etc.

Any property or rights in which CAEL has a beneficial interest immediately prior to its dissolution which have not been transferred will be deemed 'ownerless property' once the company has been dissolved and will pass to the Crown as a matter of law.

5.4 The application to voluntarily strike-off CAEL is made by the submission to Companies House of Form DS01 and the CA2006 specifies those who must be served with a copy of the application. The CA2006 also specifies the circumstances

in which CAEL would be unable to submit an application for voluntary strike off which include where, in the three months preceding the intended submission, the company has traded or otherwise carried on its business, disposed for value property or rights that the immediately before ceasing to trad or carry on it's business, the company held for such purposes, and engaging in any activity other than one that is necessary or expedient for the purpose of making the strike application, concluding the company's affairs or complying with a statutory obligation.

- 5.5 On being satisfied with CAEL's application for voluntary strike Companies House will register it on the company's public record and publish notification in the Gazette. Not less than two months after this publication, CAEL will then be dissolved by Companies House and will no longer exist. However, until Companies House publishes notification CAEL's dissolution, technically the company will still need to file accounts and any other such Companies House documents which fall to be filed during this period.
- 5.6 In certain circumstances, interested persons can also object to CAEL's application for voluntary strike off in the two months following its publication in the Gazette, and in further circumstances can apply for the company to be restored subsequent to its dissolution.
- 5.7 **The key point to be remembered is that save for exceptional circumstances, once CAEL has been dissolved it will cease to exist and cannot be resurrected. As such, if the same or similar circumstances arise for which CAEL was originally established or may be repurposed, it will not be possible to bring CAEL back to life and if necessary, an entirely new company will have to be established.**
- 5.8 **For the reasons set out above, it is recommended that CAEL is not struck-off and dissolved at this time.**

6. PLACING CAEL INTO DORMANCY AND THE IMPLICATONS

- 6.1 The alternative to winding up and dissolving CAEL recommended by CIPFA and Anthony Collins, and as yet the 'minded to' option of the Board, CCHL and the Council, is to place the company into a 'dormant state' for the purpose of Companies House.
- 6.2 As a dormant company CAEL will not, and indeed cannot, trade or carry on its business or any activities which generate income, but it will continue to exist as a

legal entity and can be revived in the future simply by recommencing its business. CAEL can remain dormant indefinitely unless and until it intentionally or inadvertently becomes active again, or is voluntarily struck off or the subject of compulsory strike off by Companies House. The company will become active again if it trades or undertakes activities other than its statutory filing requirements.

- 6.3 While it is dormant, CAEL is required to have a least one natural person as a director, who will remain bound by their statutory, common law and fiduciary duties as a company director, and the company will still be required to file with Companies House annual accounts (for a dormant company) and the company's annual confirmation statement. The composition of the Board during CAEL's dormancy and which director(s) are remain in office during the period will need to be decided.
- 6.4 Once CAEL informs HMRC that it is dormant, the company will no longer be required to pay corporation tax or file a tax return until it starts trading again.
- 6.5 For its purposes, Companies House will determine whether CAEL is and remains dormant. CAEL will become dormant when it has no significant accounting transactions recorded in the fiscal years for which it files accounts with HMRC and Companies House. Significant accounting transactions do not include filing fees or penalties paid to Companies House. A company which qualifies as 'small' under Companies House rules can file 'dormant accounts' without including an auditor's report, and as a subsidiary of CCHL / the Council, CAEL may also be otherwise exempt from audit requirements. CAEL is not required to notify Companies House if it becomes active again by recommencing trading or carrying on its business, as the first filing of accounts thereafter will show Companies House that the company is active again and as such it will no longer be considered dormant by Companies House.
- 6.6 The reactivation of CAEL would require the submission of an application to HMRC not less than three months before the company recommences trading or receiving income and also requires:
 - 6.6.1 registering for corporation tax no more than three months from the date of the reactivation notification to HMRC;
 - 6.6.2 submitting all company account to Companies House within nine months of CAEL's accounting reference date;
 - 6.6.3 submitting CAEL's tax returns to HMRC within twelve months of the company's accounting reference date.

- 6.7 **There are a number of advantages to placing CAEL into a dormant state rather than winding up and dissolving the company. As detailed above, such advantages include CAEL continuing to exist as a legal entity whilst it is dormant and as such it being possible to quickly and easily resurrect the company at any time – either for the purpose for which it was originally established or otherwise. It should also be easier and quicker to wind up and dissolve CAEL after a period of dormancy if to do so is subsequently determined as the best course of action, as much of the work undertaken in preparing the CAEL for dormancy will also be required for winding up the company in preparation for dissolution.**
- 6.8 **It must be remembered however if CAEL is placed into a dormant state, the filing requirements for a dormant company must be satisfied, and care must be taken not to reactivate CAEL inadvertently, as regardless of intention, once Companies House considers the company active again, all the company's various obligations will become live.**
- 6.9 **For the reasons set out above, it is recommended that CAEL is placed into dormancy for the immediate future.**

7. PREPARING CAEL FOR DORMANCY

- 7.1 Many of the steps required to be taken in preparation for CAEL to placed into dormancy are the same or similar to those which would be taken in winding up the company for voluntary strike off and dissolution. Preparing CAEL for dormancy will require:
- 7.1.1 tax advice / a full assessment of the company's existing tax liabilities;
 - 7.1.2 the company to cease trading or carrying on its business or any activities which generate the company income;
 - 7.1.3 the satisfaction of the company's debts and financial liabilities to the extent possible, and likewise to the extent possible, the collection of all monies due from creditors;
 - 7.1.4 the transfer to the Council or as appropriate the company's property, assets (tangible and intangible) and liabilities (see further section 8 below);
 - 7.1.5 the transfer (novation, assignment) or termination the company's contracts and commercial agreement (see further below section 8 below);

- 7.1.6 the transfer or otherwise of the company's staff;
- 7.1.7 considering and effecting how the company's share capital may be lawfully returned to CCHL / the Council, or how the share capital reduced before applying for strike off;
- 7.1.8 considering and effecting how any distributions may be made to CCHL / the Council;
- 7.1.9 considering and effecting the composition of the Board during the company's dormancy;
- 7.1.10 considering and effecting arrangements to ensure the required Companies House filings are undertaken during the company's dormancy;
- 7.1.11 notifying HMRC of the intention to make CAEL dormant, and submission of corporation tax return if required and the settlement of any outstanding corporation tax;
- 7.1.12 close payroll, bank accounts etc.

8. The Transfer of CAEL's Contracts, Agreements and Staff

8.1 Anthony Collins' advice as regards dealing with CAEL's various contracts and agreements is appended to this report (appendix 3) and their recommendations are summarised in the below table.

Agreement	Parties	Recommendation
Heat Pump Agreement	CAEL and GEA	Novate agreement: From CAEL/GEA To Council/GEA
Development Management Services Agreement	CAEL and Council	Instructions from the Council to CAEL to (i) suspend the agreement under clause 9 and (ii) authorisation for CAEL board to terminate the agreement under clause 10.1 if the suspension is for six months or more

Technical Consultancy Agreement	CAEL and WSP	Novate agreement: From CAEL/WSP To Council/WSP Novation agreement to incorporate terms and conditions of WSP's appointment from the GLA framework agreement
Facility Agreement	CAEL and Council	Terminate the agreement by Deed of Termination and Release to provide for simultaneous termination of the agreement and release from the debentures. Removal of charges from Companies House. Provision incorporated in the Deed of Termination and Release for the partial write-off of the outstanding loan.
Grant Agreement	CAEL and Council	No action required for dormancy
Concession Agreement	CAEL and Council	Terminate by Deed of Termination (mutual agreement)

8.2 **It is recommended that the agreements detailed in the above table are transferred according to the recommendations detailed in the table.**

8.3 CAEL currently has a single employee – Mr Michael Woods whose employment will transfer pursuant to agreed arrangements.

9. MAINTAINING CAEL'S DORMANT STATUS

9.1 As detailed above, once CAEL is dormant there are a number of obligations which must be satisfied to maintain the company's dormant status:

9.1.1 the company must have at least one director who is a natural person;

9.1.2 the company must file with Companies House annual accounts for a dormant company (with an auditor's report if required);

9.1.3 the company must file with Companies House its annual confirmation statement;

9.1.4 the company must not trade, carry on its business or receive income.

The directors will be liable for failing to file the company's annual accounts and confirmation statement as required.

9.2 During the period of its dormancy CAEL will be considered active / reactivated and as considered for corporation tax purposes if, whether intentionally or not, the company engages in any of the following activities:

9.2.1 trading, carrying on its business or professional activities;

9.2.2 buying / selling goods with the intention of making a profit or create a surplus;

9.2.3 provides services;

9.2.4 earns interest;

9.2.5 manages investments;

9.2.6 receives an income.

10. GOVERNANCE, DECISION-MAKING AND RESOLUTIONS

10.1 Anthony Collins' report on the governance and decision-making process to effect the dormancy of CAEL is appended (appendix 2). In summary, in consideration of the Board approving the recommendations set out above under section 2, and their subsequent approval by the CCHL board and ultimately the Council, the procedure is as follows:

10.1.1 the Board approves the CAEL Board resolutions and the form and circulation of the CCHL shareholder resolutions and the Council shareholder resolutions at appendix 4 to the CCHL board (in its capacity as the board of CAEL's parent company) with the recommendation that the CCHL board likewise

approves the CAEL board resolutions, CCHL shareholder resolutions and Council shareholder resolutions and recommends their approval by CCHL as the first instance shareholder of CAEL;

10.1.2 the CCHL board approves the CAEL Board resolutions, the CCHL shareholder resolutions and CCC shareholder resolutions at appendix 4 and approves their circulation to CCHL as CAEL's first instance shareholder with the recommendation that they are approved and circulated to the Council as CAEL's ultimate shareholder with the recommendation that Council approves the resolutions.

10.1.3 the Council in its capacity as CAEL's ultimate shareholder approves the resolutions.

10.2 The Council's shareholder function is ultimately exercised on behalf of the Council in the whole by the Cabinet, or delegated as it deems fit, in consideration of the recommendations of the Council's Audit and Governance Committee.

10.3 **The Board is recommended to approve the CAEL Board resolutions and the form of and circulation to the shareholder of shareholder resolutions at appendix 4.**

11. SUMMARY

11.1 For the reasons set out above, it is recommended that CAEL is placed into a dormant state.

11.2 On the Board being satisfied that CAEL being placed into a dormant state in accordance with the recommendations set out in this report, the Board is invited to approve the Board resolutions, and the form and circulation of the shareholder resolutions, attached at appendix 4.

Appendix 1

Colchester City Council: *Review of the CCHL Companies*, CIPFA, January 2023

[place holder]

Appendix 2

Report to Colchester City Council - *CAEL: Governance and Decision-Making*, Anthony Collins, May 2023

[place holder]

Appendix 3

Report to Colchester City Council and Colchester Amphora Energy Ltd, *Agreements Review*, Anthony Collins, July 2023

[place holder]

Appendix 4

CAEL Board Resolutions and CCC Shareholder Resolutions

[place holder]

1. INTRODUCTION

- 1.1 We are instructed by Mr Julian Wilkins, the Legal Services Manager of Colchester City Council (the “Council”) We are asked to advise on the governance and decision-making arrangements on the potential winding-up or ‘hibernating’ (of Colchester Amphora Energy Ltd (“CAEL”).
- 1.2 We understand that in due course the Council may commission wider advice on options for the treatment of CAEL. As such this report is not concerned with the merits of either winding-up (dissolving the company) or hibernating it (placing the company into a state of dormancy), or the means by which the either course of action may be effected and what is involved. We understand the Council may require advice on such matters in due course which we would be happy to provide, however, they are beyond the scope of our immediate instructions.
- 1.3 CAEL is a subsidiary of Colchester Commercial (Holdings) Ltd (“CCHL”). CCHL is sole shareholder of CAEL. CCHL is wholly owned by the Council and as such the Council is the ultimate shareholder of CAEL.
- 1.4 In preparing this report we have reviewed and considered the following documents:
- 1.4.1 CAEL – Articles of Association and Companies House record;
 - 1.4.2 CCHL – Articles of Association and Companies House record;
 - 1.4.3 Group Governance Agreement dated 28 November 2017;
 - 1.4.4 The Council’s Constitution (dated November 2022):
 - Part 3 A, Responsibility for Functions;
 - Part 3 C, Scheme of Delegation to Cabinet Members;
 - Part 3 D, Scheme of Delegation to Officers;
 - Part 4 G, Governance and Audit Committee Procedure Rules.

2. CAEL

- 2.1 CAEL is a private limited company limited by shares and was incorporated under the Companies Act 2006 (the “CA2006”) on 1 June 2017. Pursuant to a special resolution of the shareholder (CCHL) the company adopted new Articles of Association (the “CAEL Articles”) on 17 October 2017. CAEL is a subsidiary of CCHL..

- 2.2 On 28 November 2017 CAEL entered into a Group Governance Agreement (the “Governance Agreement”) with Colchester Borough Council, CCHL, Colchester Amphora Trading Ltd and Colchester Amphora Homes Ltd. The Governance Agreement takes precedence where there is any inconsistency between its provisions and the CAEL Articles.
- 2.3 Subject to the CAEL Articles and the Governance Agreement, the CAEL Directors are responsible for the management of the company’s business, for the purpose of which they may exercise all the powers of the company. Under the CAEL Articles, CCHL has a reserve power pursuant to which, by way of a special resolution, CCHL may direct the CAEL directors to take or refrain from taking a specified action.
- 2.4 Decisions of the CAEL Board are determined by a majority decision of the CAEL Directors at a meeting of the CAEL Board, or a unanimous decision where the decision is in the form of a written resolution.
- 2.5 The CAEL Articles provide that shareholder decisions are determined by a show of hands on a resolution put to the vote at a general meeting (unless a poll vote is demanded). The CAEL Articles make no reference to written shareholder resolutions, however, they are provided for under the CA2006. An ordinary shareholder resolution is determined by a simple majority; a special shareholder resolution must be approved by not less than 75% of the shareholders entitled to vote on it.
- 2.6 Companies House records the board of directors of CAEL (the “CAEL Board”) as comprising two directors (the “CAEL Directors”).

3. THE CURRENT STATUS OF THE MATTER

- 3.1 We understand that discussions and considerations for the future treatment of CAEL are in the initial stages and follow a review undertaken by CIPFA and recommendations made in light thereof. We understand that in due course the Council may require substantive advice on options for the company which are likely to include it being wound-up or prepared for dormancy.

4. CCHL

- 4.1 CCHL is a private limited company limited by shares and was incorporated under the Companies Act 2006 (the “CA2006”) on 1 June 2017. Pursuant to a special resolution of the shareholder (the Council) the company adopted new Articles of Association (the “CCHL Articles”) on 17 October 2017. CCHL is the holding company of CAEL and CAEL’s shareholder.
- 4.2 On 28 November 2017 CCHL entered into the Governance Agreement with Colchester Borough Council, CAEL, Colchester Amphora Trading Ltd and Colchester Amphora Homes Ltd. The Governance Agreement takes precedence where there is any inconsistency between its provisions and the CCHL Articles.

- 4.3 Subject to the CCHL Articles and the Governance Agreement, the CCHL Directors are responsible for the management of the company's business, for the purpose of which they may exercise all the powers of the company. Under the CCHL Articles, the Council (as shareholder) has a reserve power pursuant to which, by way of a special resolution, the Council (as shareholder) may direct the CCHL directors to take or refrain from taking a specified action.
- 4.4 Decisions of the CCHL Board are determined by a majority decision of the CCHL Directors at a meeting of the CCHL Board, or a unanimous decision where the decision is in the form of a written resolution.
- 4.5 The CCHL Articles provide that shareholder decisions are determined by a show of hands on a resolution put to the vote at a general meeting (unless a poll vote is demanded). The CCHL Articles make no reference to written shareholder resolutions, however, they are provided for under the CA2006. An ordinary shareholder resolution is determined by a simple majority; a special shareholder resolution must be approved by not less than 75% of the shareholders entitled to vote on it.
- 4.6 Companies House records the board of directors of CCHL (the "CCHL Board") as comprising four directors (the "CCHL Directors").

5. THE GOVERNANCE AGREEMENT AND DELEGATIONS SCHEDULE

- 5.1 The Governance Agreement provides for an advisory "Shareholder Committee" the purpose of which in respect of CAEL (and the other CCHL subsidiary companies) is to:
- 5.1.1 *(6.1.1) Receive, review and comment on or recommend any amendments to the CCHL business plan;*
- 5.1.2 *(6.1.2) Review the financial performance of the group;*
- 5.1.3 *(6.1.3) Make recommendations to the Council on how it should exercise the function flowing from its ownership of shares.*
- 5.2 The Shareholder Committee has no power to make decisions on behalf of the Council or CCHL – its remit is to advise CCHL and the Council in its capacity as the shareholder of the companies.
- 5.3 The Governance Agreement provides that until otherwise resolved by the Council, the Council's "Trading Board" shall fulfil the role of the Shareholder Committee.
- 5.4 We understand that Shareholder Committee function is now performed by the Council's Governance and Audit Committee. The procedure rules for the Audit and Governance Committee set out at Part 4, Section G of the Council's Constitution include its terms of reference as the Shareholder Committee for Colchester Commercial (Holdings) Ltd, as set out below at paragraph 6.2.4.
- 5.5 In accordance with the Governance Agreement, the CCHL Board reports to the Shareholder Committee or the Council both as the board of CCHL, and in the CCHL Board's capacity as the 'first instance' shareholder of CAEL and the other subsidiary companies. In exercising the Council's shareholder function in respect of the subsidiary

companies the CCHL Board determines those matters delegated to it for the purpose set out in schedule 1 of the Governance Agreement.

- 5.6 Schedule 1 to the Governance Agreement is a “Delegations Schedule” which details particular matters for the determination of the Council or the delegation of their determination to CCHL or CAEL. The Delegations Schedule provides that the following matter is for the determination of the Council:

Making any petition or passing any resolution to wind up the relevant party or making any application for an administration or winding up order or any order having similar effect or giving notice of intention to appoint an administrator or file a notice of appointment of an administrator.

As such, a decision to wind up CAEL is to be made by the Council in its capacity as the company’s ultimate shareholder.

- 5.7 Additionally, the Delegations Schedule includes various matters categorised as “corporate”, “operational” or “finance” which may also be required in the winding up of the company or in preparing for it to become dormant. Under the Delegations Schedule, decisions on such matters may be reserved to the Council or delegated to CCHL or CAEL.
- 5.8 Once the future of CAEL has been determined it will be possible to identify all the matters which need to be determined to effect the company’s winding up or dormancy and whether, under the Governance Agreement, decisions on such matters are also to be made by the Council, or if they have been delegated to CCHL or CAEL.
- 5.9 Those matters which fall for the Council’s determination (along with the decision to wind up the company or prepare it for dormancy) could be included in a single set of shareholder resolutions (with conditions or limits if necessary) which once approved by the Council would negate or reduce the need for further resolutions. Alternatively, provided sufficient information was available to the Council for the purpose, the Council may resolve to approve the given course of action (winding up or dormancy etc) and delegate to CCHL / CAEL overarching authority to take such steps as necessary to effect the given course of action (again with conditions or limits if necessary). Either way, it will be necessary to check whether any of the matters falling for the determination of the Council are required to be resolved as special resolutions under the CA2006.
- 5.10 The operational winding up of CAEL or its preparation for dormancy will be the responsibility of the CAEL Board.

6. COUNCIL DECISION-MAKING AS SHAREHOLDER

- 6.1 The Council operates an ‘executive arrangement’ model of governance and as such the Council’s role and decision-making as shareholder of its companies is an executive function. This is reflected in the arrangements for the Council’s exercise of its shareholder function and shareholder decision-making provided for in the Council’s Constitution.

6.2 The Council's Constitution provides that:

6.2.1 **Part 3, Section C: Functions Retained by the Leader of the Council and Portfolio Holder for Strategy:**

(16) *Client role for Colchester Commercial (Holdings) Ltd*

6.2.2 **Part 3, Section C: Delegation to Deputy Leader of the Council and Portfolio Holder for Local Economy and Transformation:**

(9) *To review and monitor the performance of Colchester Commercial (Holdings) Ltd and its subsidiaries: Colchester Amphora Housing Ltd, Colchester Amphora Trading and Colchester Amphora Energy Ltd together with the commercial aspects of Sports and Leisure.*

6.2.3 **Part 3, Section D: Scheme of Delegation to Officers**

Delegated to All Strategic Directors:

1. *Authority to act as client officer for the Council in relation to matters related to Colchester Commercial (Holdings) Limited and its subsidiary companies.*

2. *Authority to act as the Council's shareholder representative in relation to Colchester Commercial (Holdings) Limited and to cast the Council's vote at any relevant Board or shareholder meeting.*

6.2.4 **Part 4, Section G: Audit and Governance Committee – Rules of Procedure**

Terms of Reference as Shareholder Committee for Colchester Commercial (Holdings) Ltd:

6.2.4.1 (8) *Consider and review the activities and financial performance of Colchester Commercial (Holdings) Limited and its subsidiary companies i.e. Colchester Amphora Housing, Colchester Amphora Energy and Colchester Amphora Trading.*

6.2.4.2 (9) *Receive, review and recommend to Cabinet Colchester Commercial (Holdings) Limited's business plans (including its subsidiary companies) annually and to review performance including delivery of the dividend.*

6.2.4.3 (10) *Monitor, challenge and make recommendations to Cabinet regarding Colchester Commercial (Holdings) Limited and its subsidiary companies.*

6.2.4.4 (11) *Make recommendations to Cabinet on how it should exercise the functions flowing from its ownership of shares in Colchester Commercial (Holdings) Limited and its subsidiary companies.*

6.3 We note that pursuant to its terms of reference the Audit and Governance Committee, in its capacity as the Shareholder Committee, makes recommendations to the Cabinet

as to the Cabinet's execution of the shareholder function in respect of CCHL and the subsidiary companies. The terms of reference make no mention of the Strategic Directors to whom the shareholder function has been delegated as detailed above at paragraph 6.2.3. However, in our view this does not put the Shareholder Committee terms of reference at odds with the scheme of delegation to officers which is still operable but may not in fact be the current arrangement.

- 6.4 The Cabinet is the Council's ultimate shareholder body and may retain and / or delegate the shareholder function and shareholder decision-making as deemed appropriate. As such, it would be expected that the terms of reference provide for the Shareholder Committee's reporting to the Cabinet as the ultimate shareholder body. As seemingly the Cabinet has delegated the shareholder function to each Strategic Director, a Strategic Director would be advised and assisted by the Shareholder Committee in the same way the Cabinet would be.

7. DECISION-MAKING AND THE DECISION-MAKING PROCESS

- 7.1 As detailed above, a decision to wind up CAEL falls to be made by the Council in its capacity as the company's ultimate shareholder, and whilst not expressly provided for in the Delegations Schedule, in our view so too would be a decision to effect the dormancy of the company given that such a course of action is likely to be outside of the company's current business plan, and involve matters which must be determined by the Council pursuant to the Delegations Schedule.
- 7.2 The exercise of the Council's shareholder function as regards CCHL and as the ultimate shareholder of CAEL and the other subsidiary companies is currently delegated to each of the Council's Strategic Directors. In making the Council's shareholder decisions a Strategic Director should be advised by the Shareholder Committee.
- 7.3 The delegation to the Strategic Directors is permissible under the Local Government Act 2000, pursuant to which the delegation of executive functions, and as such the delegation of the shareholder function and shareholder decision-making is within the gift of the Leader of the Council. The Leader's retention or delegation of executive functions is set out in the Constitution at Part 3 Section 3 and Section 4 as detailed above under paragraph 6.2. The Leader may require that a given shareholder decision is made by themselves, an individual Cabinet Member, another officer or committee of the Cabinet, or the Cabinet collectively. However, given that the Leader has retained the exercise of the 'client role' for CCHL (as detailed above at paragraph 6.2.1) which we take to mean the Council's commissioning function in respect of CCH, the Leader would likely be conflicted if also exercising the shareholder function in respect of CCHL or the subsidiary companies. As such, in our view it would be preferable for the Leader to delegate a shareholder decision to a Cabinet Member where the decision is not being made by Cabinet or a Strategic Director – as currently delegated.
- 7.4 Subject to the Council's Constitution, a shareholder decision may also be a key decision and / or subject to 'call-in'. In such an instance the decision will need to be

taken in accordance with the procedure for determining key decisions and if applicable so too the call-in procedure provided for in the Constitution.

- 7.5 Whether it is a Strategic Director, Cabinet Member or Cabinet who, acting in the capacity as CAEL's ultimate shareholder, determines that the company should be wound up or put into dormancy, the decision-making process will start with a resolution of the CAEL Board. To avoid the need to call general meetings to effect shareholder resolutions, we recommend using written shareholder resolutions and the process set out below is based on the same.

CAEL

- 7.6 At a duly convened and quorate meeting of the CAEL Board the CAEL Directors will need to resolve a proposed course of action as regards the company for the approval of the Council as the company's ultimate shareholder. The CAEL Board will need to have the information and any advice required to make an informed decision, and the CAEL Directors will each need to be satisfied that in making the decision s/he is acting in the best interests of the company and in compliance with his/her duties as a director.
- 7.7 Assuming the CAEL Board agrees on a proposed course of action, the CAEL Board will need to approve the form and circulation of a written shareholder resolution to the CCHL Board, with a recommendation that the CCHL Board approves the proposed course of action and circulates to the Council as shareholder a written resolution with a recommendation from the CCHL Board that the Council resolves to approve the written shareholder resolution put by the CAEL Board. The resolution may provide for the approval of specific matters set out within it which fall to be determined by the shareholder under the Delegations Schedule and / or a general authorisation for the CAEL Board to take such steps as necessary to effect the given course of action proposed for CAEL (e.g., winding up or dormancy).

CCHL

- 7.8 At a duly convened and quorate meeting of the CCHL Board the CCHL Directors will need to consider the course of action proposed by CAEL and the written shareholder resolution circulated by the CAEL Board. The CCHL Board will need to have the information and any advice required to make an informed decision in exercising its role as the 'first instance' shareholder of CAEL.
- 7.9 Assuming the CCHL Directors agree with the CAEL Board's proposed course of action, the CCHL Board will need to resolve accordingly and approve the circulation to the Council of the CAEL written shareholder resolution and the CAEL Board's recommendation that the Council approve the resolution. The CCHL Board resolution approving the form and circulation to the Council of the CAEL written shareholder resolution must be circulated to the Council with the original written shareholder resolution and recommendation put by the CAEL Board.

The Council as Ultimate Shareholder of CAEL

- 7.10 The written shareholder resolution put by the CAEL Board, and the CCHL Board resolutions in respect thereof, should be circulated in the first instance to a Strategic Director as they have the standing delegation under the Constitution. The Strategic Directors have each been delegated shareholder decision-making in respect of CAEL where, under the Delegations Schedule, a shareholder decision cannot be made by the CCHL Board acting as the first instance shareholder of CAEL.
- 7.11 If the decision remains with the Strategic Director s/he will determine the written shareholder resolution on behalf of the Council as the ultimate shareholder of CAEL.
- 7.12 The Strategic Director, Cabinet or Cabinet Member Cabinet determining the resolution will need to be satisfied that they have the information and advice required to make an informed decision and have consulted as may be required or appropriate. If the resolution is also a key decision under the Council's Constitution, it will need to be made in compliance with the rules and procedures for determining key decisions as set out in the Constitution, including if applicable, as regards call-in. The shareholder decision-maker would be assisted and advised by the Shareholder Committee.
- 7.13 Once the resolution has been determined the decision may be subject to call-in but then must be notified to the parties concerned with the duly executed written shareholder resolution returned to CAEL and copies retained by the Council and CCHL. Any special shareholder resolution will need to be filed with Companies House. As per paragraph 7.12 above, if the resolution is also a key decision, its determination, recording and publication will need to accord with the relevant rules and procedures of the Council's Constitution.

8. CONFLICTS OF INTEREST

- 8.1 At each stage of the decision-making process care will need to be taken to guard against potential conflicts of interest. Those making decisions on behalf of CAEL or advising them should not also be involved in decision-making on behalf of the shareholder or advising them.

9. SUMMARY

- 9.1 A decision to wind up or place CAEL into dormancy is a matter for the Council as the ultimate shareholder of the company in accordance with the Group Governance Agreement and Delegations Schedule.
- 9.2 The decision will be effected by a (written) shareholder resolution(s) proposed by the CAEL Board and circulated in the first instance to CCHL Board acting as the 'first instance' shareholder of CAEL. In turn, the CCHL Board will circulate the resolution to the relevant Strategic Director (or as may otherwise have been decided) for determination on behalf of the Council as CAEL's ultimate shareholder.

- 9.3 The operational implementation of the resolutions and thereby the winding up of CAEL or preparing it for dormancy will be the responsibility of the CAEL Board. There are procedures to be followed for either course of action in respect of which we would be happy to advise if required.
- 9.4 Effecting the board and shareholder resolutions required to implement the course of action determined for CAEL is not complex as a matter of law but is very much process driven. The requirements for shareholder decision-making are provided for under the CA2006 and the process is somewhat administratively burdensome as well as potentially confusing for those not familiar with it. In addition to the requirements of the CA2006, the decision-making process must give effect to the governance arrangements in place for the Council and its companies in accordance with the Constitution.
- 9.5 The key to effecting the decisions required to implement the course of action determined for CAEL is preparation and ensuring that the operational issues, actions and decisions required at each stage of winding up or preparing the company for dormancy (or any other course of action) and the decision-makers are identified in advance. We would expect that much can be agreed between the parties informally and then provided for in reports and the documents prepared to give effect to the agreed arrangements.
- 9.6 Resolutions can be formulated and 'bundled' where possible and circulated to the decision-maker with the information required to make an informed determination. This should then reduce the number of occasions on which a matter needs to be referred to a given decision-maker.
- 9.7 Potential conflicts of interest arising for decision-makers and those advising them need to be guarded against. It is important that the parties each understand the course of action decided upon for CAEL, what is required at each stage of the process and who needs to make the necessary decisions.

10. NEXT STEPS

- 10.1 Once the preferred course of action for CAEL has been decided we would be happy to advise further on the resolutions needed, the resolutions process, and to draft the necessary resolutions and reports if required.
- 10.2 Please do not hesitate to contact us with any queries or if any further information is required.

Anthony Collins

May 2023

Ref. MM/068786.0001

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AGREEMENTS REVIEW

Appendix 3

1. BACKGROUND

- 1.1 Colchester Amphora Energy Limited (“CAEL”) was set up as part of the planned Northern Gateway project to deliver a low carbon heat network for residents, businesses and other commercial users (the Northern Gateway Heat Network or “NGHN”). CAEL is a wholly owned subsidiary of Colchester Commercial (Holdings) Limited (“CCHL”) which in turn is wholly owned by Colchester City Council (“Council”).
- 1.2 Due to the uncertainties surrounding the delivery phasing and dates of the Northern Gateway project, it has been decided to make CAEL dormant because it has no current or medium term prospect of being able to continue to meet all its liabilities without relying on shareholder support. There are also benefits to bringing arrangements to a close from an accounting perspective for the Council.
- 1.3 The objective is for the benefit of CAEL’s assets and existing agreements to be transferred to the Council. This will preserve flexibility for the Council, allowing a decision to be made about the extent to which the Council or its companies wish to be involved in future Northern Gateway infrastructure provision. The Council has asked for six agreements to be reviewed and for AC to set out the actions needed to achieve the objective.
- 1.4 There are two legal terms used in this report which describe how arrangements which have previously been made by CAEL may be “transferred” to the Council:
 - 1.4.1 An “assignment” is where the legal benefit is transferred to a party where there are no actions or live obligations to be fulfilled under the contract. The party to whom the benefit has been transferred can then use that benefit – for example a benefit of most contracts is to be able to enforce them if a supplier has not complied with its obligations.
 - 1.4.2 A “novation” is where all the parties must agree (the supplier, CAEL and the Council) to change the “customer” from CAEL to the Council. This is to be used where the Council needs to continue to order services or goods from the same supplier.
- 1.5 The recommendations for the reviewed agreements are either to assign, novate, leave alone or suspend. Each agreement needs dealing with properly to ensure that there are no questions left about CAEL’s obligations or the Council’s rights and responsibilities in future.

- 1.6 This advice does not factor in tax issues, and you have confirmed that the Council and Amphora group of companies will obtain separate advice about progressing the objective in a tax efficient manner. If a tax adviser has any comments on our proposals for each of the agreements, AC will gladly collaborate with them to ensure that the most efficient result is achieved.

2. HEAT PUMP AGREEMENTS

- 2.1 A fourth version of the proposed tender by GEA dated 6 March 2023 has been provided for review (“the Fourth Tender”) and it is assumed that this is the final version accepted by CAEL. The Fourth Tender only specifies “Amphora” as the customer (and not specifically CAEL), however it lists as being for the attention of Michael Woods – an employee of CAEL so it is reasonable to imply that CAEL is the customer.
- 2.2 The Fourth Tender states that a deposit of £165,732 was paid to GEA on 16 August 2021 and that the delivery date may not be until Q1 2025 due to the NGHN project delays.
- 2.3 A report by the Chartered Institute of Public Finance & Accountancy (“CIPFA”) dated January 2023 states that CAEL intended to novate this agreement to Pinnacle. Pinnacle is a contractor which was successful in CAEL’s procurement process for its requirements to construct an energy centre and to provide operations and maintenance for the NGHN. However, the Fourth Tender should be novated to the Council because it is unlikely that Pinnacle will be appointed at all as it is probably now too long since the conclusion of the tender process to rely on the result (see below).
- 2.4 As part of the novation, the Council would need to pay CAEL an amount to reflect the deposit already paid. The Council would then be required to pay the remainder of the purchase price to GEA at the relevant times set out in the Fourth Tender and GEA would act as if the Council had been the purchaser from the start of the transaction. Under the Fourth Tender the next payment, of 40% of the purchase price, is due at delivery of the “*main parts of the Scope of Supply to [the] Site*”.
- 2.5 The Council could consider whether or not to continue with the purchase of the heat pump altogether, instead of perusing novation, particularly if the future of the NGHN is unclear. GEA’s terms do not appear to give a right to cancel the order, but if this is potentially preferred position, careful negotiation would be needed to discuss this with GEA without causing contractual issues. It is acknowledged by CAEL that the terms of the heat pump purchase were not ideal – indeed there are very strict caps on GEA’s liability. This is because the purchase was concluded under considerable time pressure. It might be possible to negotiate the return of some of the deposit if there is goodwill from GEA if the manufacturing of the pump has not progressed. More information about this would be needed to see if there is any realistic prospect of such a negotiation succeeding.

- 2.6 To the extent that parts of the heat pump or any other equipment has been delivered, a sale and purchase agreement should be concluded between the Council and CAEL to transfer these assets. It might be appropriate to incorporate the sale and purchase terms into the novation agreement instead of having a separate agreement. This is a detail that can be worked out later.

3. DEVELOPMENT MANAGEMENT SERVICES

- 3.1 A development management services agreement has been entered into between the Council and CAEL dated 20 December 2019 (“the DMSA”). As part of the DMSA, CAEL is providing a wide range of management and design services to the Council. Whilst CAEL itself was carrying out some of the management function, it was sub-contracting much of the design to WSP.
- 3.2 Once CAEL is dormant, there will be no further services carried out under the DSMA. As the Council already has the benefit of this agreement, and there doesn’t appear to be any advantage in novating it to any other Amphora Group companies, the other options are to not do anything, or suspend or terminate the DMSA. If nothing is done, the DMSA is just left “hanging”, with neither party carrying out its obligations, which is unhelpful from an audit and legal perspective. To preserve future flexibility, all of the DMSA obligations could be suspended under clause 9. The Council can issue an instruction to suspend – this will trigger a requirement to pay CAEL up to the date of suspension. The Council has the right to re-mobilise the services if it wishes in future, but if not, the suspension can last any period until the Council decides how to re-procure the NGHN in future. Once 9 months of suspension have elapsed, the Council can terminate if it wants to, or if there are strong views it should be terminated now, the DMSA could be terminated now by agreement.
- 3.3 The DMSA has some key provisions missing, such as a copyright licence back to the Council and was said to be executed as a deed, but it does not comply with the required formalities so will take effect as a simple contract. Bearing in mind the relationship between the parties, neither of these issues is a significant problem but should be rectified if any further services were ever provided under the DMSA.

4. TECHNICAL CONSULTANCY - WSP

- 4.1 Pursuant to a tender response document dated 12 October 2018 (“the Tender”), WSP has and continues to provide consultancy services including the CDM principal designer role in relation to the NGHN. The services that WSP provided ranged from developing the technical specification, to modelling, and in future, project management during the construction phase.
- 4.2 It does not appear that any formal agreement was entered into between WSP and CAEL. An unsigned framework agreement has been provided with the Greater London Authority stated as the contracting entity alongside the Tender.

- 4.3 Although not an immediate risk to the project, it would be strongly recommended for CAEL to have an executed formal appointment of WSP. The framework terms deal with this by providing a template for this at Schedule 6A of the framework. This will ensure certainty as to the terms of the appointment and it should ideally be executed as a deed, both ensuring greater protection for CAEL and the Council. From a brief review, unfortunately the framework agreement and the Schedule 6A terms are missing key points (such as Construction Act compliance, CDM and copyright licensing) but this should be rectified when the appointment is formalised.
- 4.4 We assume that WSP's involvement in the NGHN is still ongoing, and that the Council wishes to retain WSP's services for future development of the NGHN. The agreement between CAEL and WSP can be formalised and novated to the Council all in one document.
- 4.5 As WSP planned to use a sub-contractor, Norr, to provide architectural services for the energy centre, collateral warranties should be required when Norr is appointed by WSP. However, there does not appear to be provision for collateral warranties in the WSP arrangements so this should also be remedied on novation.
- 4.6 If the Council does not formalise the appointment, then this may cut down its options in terms of later passing risk to the market. If the Council (or any Amphora Group company) were to take the project forward, it might be under a master concession arrangement with an external provider, such as Vital or Pinnacle. In this instance, the benefit of all the WSP work and contract would need to be transferred to that new entity, if indeed the objective were to pass the design, construction, operation and maintenance on to a single responsible external entity. That single entity would not currently accept a novation or assignment of a non-formalised appointment. Formalising the appointment is also required as part of the Council's contracts procedure rules.

5. FACILITY AGREEMENT

- 5.1 A facility agreement, providing a loan of up to £2,250,000 has been entered into between CAEL (as the borrower) and the Council (as the lender) dated 25 June 2019 ("the Facility Agreement"). A fully executed copy is not available but it may have been executed in counterpart. It is understood that approximately £1.3million has been drawn from this facility.
- 5.2 As part of the Facility Agreement, CAEL entered into a debenture with the Council dated 25 June 2019 which was executed in counterpart ("the Debenture"). The Debenture provides CAEL with a first legal mortgage over "*all estates or interests in any freehold, leasehold or commonhold property now owned by it...*" (clause 3.1), which also includes "*all buildings and fixtures and fittings...*" (clause 1.4(a)).
- 5.3 Once CAEL has been paid under the DMSA for all the management and design services it has provided up to date, and has been paid for all the other assets (such as

the GEA order) which are being transferred to the Council, it is likely that CAEL could then pay back the Council the borrowings under the Facility Agreement. Potentially, there will be some part of the loan which may have to be written off. Once the full amount of cash requirement is known up to the date of dormancy, then the write off amount will be known and at that stage, the Facility Agreement and Debenture could be terminated by mutual agreement. All this should be formalised in a very short deed of termination. Writing off debts is likely to be a financial benefit not given to any other entity so could be a subsidy subject to the Subsidy Control Act 2023 - however, it is assumed that any other market provider of loans would do the same so there is no real concern here.

6. GRANT AGREEMENT

- 6.1 A grant agreement has been entered into between CAEL and the Council, dated 25 March 2017 (“the Grant Agreement”). The Council agreed to provide CAEL with up to £220,000 towards the cost of set up of CAEL and the NGHN.
- 6.2 Clause 6.1 of the Grant Agreement shows that the last instalment of funds would have occurred in the financial year 2020-21, therefore there are no future planned payments by the Council to CAEL under the Grant agreement.
- 6.3 The Grant Agreement allows the funds to be used very broadly in connection with the NGHN, with only limited ineligible expenditures listed within Annex B. We presume the grant has been paid in full and expended by CAEL in accordance with the terms of the Grant Agreement.
- 6.4 The Grant Agreement does not appear to have any restrictions on dealing with assets which have been funded through the grant. This means that the assignments, transfers and novations suggested in this do not need specific Council consent if they relate to supplies, services or works funded by this grant.
- 6.5 As there does not appear to be any breach of the Grant Agreement, and the terms have been fulfilled, there is no particular need to assign, novate or terminate this agreement and it can be left in place during any dormant period.

7. CONCESSION AGREEMENT

- 7.1 A concession agreement has been entered into between the Council and CAEL dated 31 January 2018 (“the Concession Agreement”). The Concession Agreement granted CAEL the exclusive right to supply heat to the individual residential, commercial, retail and/or leisure units to be constructed within the concession area. The Council was required to ensure developers within the concession area entered into a connection and supply agreement with CAEL on terms in accordance with the Concession Agreement.
- 7.2 The Council could terminate the Concession Agreement. Although the termination provisions within clause 11 provide for only termination in the event of non-remedied

material breach and a party exceeding its liability cap, the CAEL and the Council would be able to terminate upon mutual agreement with one another and this should again be recorded in a very short Deed.

- 7.3 The other option is to suspend both parties' obligations by mutual agreement in case the concession agreement could be resurrected in future to be used between the Council and CAEL. Whilst the Concession Agreement was no doubt fit for the early stages of developing the NGHN, it is too lightweight to be used for the next stage. There are insufficient terms dealing with commercial viability in the early years of operation, and insufficient terms around the operation and maintenance of the project. In our view, it is therefore probably advisable to terminate and to put new arrangements in place once the options have been appraised.

8. PINNACLE AND PROCUREMENT

- 8.1 CAEL should clarify whether it has entered into any contractual arrangements or has any obligations towards Pinnacle. We would be happy to review any additional documentation relating to Pinnacle and the heat pump, as CIPFA's comment suggests such documents exist. AC's last involvement in the procurement process was when the procurement was paused after evaluation had been carried out. The procurement process should probably be formally abandoned without award, just so that there is a clear audit trail, and that if the Council or others need to conduct a further procurement process in future, there is no question of a challenge from Pinnacle that has any claims to be awarded the contract under the previous process.

9. OVERVIEW

- 9.1 The below table illustrates a high-level overview of the recommendations for each of the agreements reviewed.

AGREEMENT	RECOMMENDATION
HEAT PUMP AGREEMENT	NOVATE THE AGREEMENT TO THE COUNCIL
DEVELOPMENT MANAGEMENT SERVICES	SUSPEND BOTH PARTIES' OBLIGATIONS
TECHNICAL CONSULTANCY	FORMALISE THE AGREEMENT AND NOVATE IT TO THE COUNCIL – ADD COLLATERAL WARRANTIES AND A NUMBER OF OTHER MATTERS
FACILITY AGREEMENT	DEED OF TERMINATION WHICH RECORDS TERMS RELATING TO WRITE OFF
GRANT AGREEMENT	NO FURTHER ACTION

10. DECISION MAKING REQUIRED

- 10.1 As already advised, a decision to place CAEL into dormancy is a matter for the Council as the ultimate shareholder of the company in accordance with the November 2017 Group Governance Agreement and delegations schedule therein.
- 10.2 The decision will be effected by a (written) shareholder resolution(s) proposed by the CAEL board and circulated in the first instance to CCHL board acting as the 'first instance' shareholder of CAEL.
- 10.3 The operational implementation of the resolutions and thereby CAEL preparing and making all necessary arrangements prior to dormancy will be the responsibility of the CAEL board. There are procedures to be followed for either course of action in respect of which we would be happy to advise further.

11. NEXT STEPS

- 11.1 It is suggested that the implications of the decision to place CAEL into dormancy should now be documented so that all matters can be contained into one report for governance purposes. That report will then be the basis upon which the recommendation will be made.
- 11.2 We would be happy to support the Council and CAEL to implement some or all of the suggested courses of action above once necessary governance is completed. It might be useful to discuss the conclusions and we could attend a brief meeting to check you are in agreement with our advice.
- 11.3 If requested we would be happy to draft the necessary resolutions and cover reports if required from a governance perspective.
- 11.4 Please do not hesitate to contact us with any queries or if any further information is required.

Anthony Collins Solicitors LLP

24 July 2023

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Colchester Commercial (Holdings) Ltd

Company Number: 10798878

Resolutions of the Board of Directors

Appendix 4

THE COMPANIES ACT 2006
PRIVATE COMPANY LIMITED BY SHARES
RESOLUTIONS OF THE BOARD OF DIRECTORS OF
COLCHESTER COMMERCIAL (HOLDINGS) LIMITED

Company No: 10798878

("the Company")

26 September 2023

At a meeting of the Board of Directors of the Company held on the above date, in view of the recommendations and advice pertaining to Colchester Amphora Energy Ltd, ("CAEL") a subsidiary of the Company ("CCHL"), in the following reports:

- Colchester City Council, *Review of the CCHL Companies*, CIPFA January 2023
- Colchester City Council, *Colchester Amphora Energy Ltd, Governance and Decision-Making*, Anthony Collins, May 2023
- Colchester City Council and Colchester Amphora Energy Limited, *Agreements Review*, Anthony Collins, July 2023

on the Chair being satisfied as to the declaration of each Director as to the nature and extent of any interest s/he may have in the transactions proposed as the business of the meeting, and being satisfied as to the quorum of the meeting, having carefully considered the proposed transactions and the resolutions and recommendations of the Board of CAEL and having carefully considered the matters set out in section 172 of the Companies Act 2006,

THE BOARD RESOLVED TO:

1. Approve the resolutions and recommendations of the Board of CAEL;
2. Approve the form of, and circulation to, the Shareholder of the written CCHL shareholder resolutions;
3. Recommend to the Shareholder that it approve the written CCHL shareholder resolutions;
4. Approve the form of, and circulation to, Colchester City Council as the shareholder of the Company and ultimate shareholder of CAEL, the written Colchester City Council

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Colchester Commercial (Holdings) Ltd

Company Number: 10798878

Resolutions of the Board of Directors

shareholder resolutions (subject to the Shareholder's prior approval of the written CCHL resolutions);

5. Recommend to Colchester City Council as the shareholder of the Company and ultimate shareholder of CAEL, that Colchester City Council approve the written shareholder resolutions (subject to the Shareholder's prior approval of the written CCHL resolutions);

.....

Chair of Colchester Commercial (Holdings) Ltd

Dated.....

**Extract from the minutes of the Governance and Audit Committee meeting of
17 October 2023**

385. Hibernation of Colchester Amphora Energy Limited (CAEL)

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

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

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

RECOMMENDED TO CABINET that:

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

Date: 22 November 2023

Report of	Strategic Director	Author	Mandy Jones 
			282501
Title	Asset Management Review: Corporate Landlord Model (transfer of functions from Colchester Borough Homes)		
Wards affected	All		

1. Executive Summary

- 1.1 A report undertaken by the Chartered Institute of Public Finance and Accountancy (CIPFA) reviewed how the Council manage, maintain and invest in the Council’s (non-housing) future land and property assets and outlined the need to transform our approach to the delivery of our assets functions. CIPFA proposed the creation of a **‘corporate landlord team’ model** within the Council.
- 1.2 Currently asset management functions are dispersed and managed in each of the Council’s companies. Moving these functions into the Council is the first step to a longer-term transformation towards more co-ordinated delivery of asset management, where decisions concerning the use of assets are taken corporately against a delivery framework, policy, strategy and asset management plan. This corporate landlord team model strengthens the Council’s oversight of assets, allows for more effective decision making and a ‘single view’ of all assets for future planning, improving standards and minimising risk. Better support for the Council’s strategic priorities are underpinned by more effective and efficient delivery mechanisms enabling assets to further support future Council budget challenges.
- 1.3 This transformation to a corporate landlord model will make the best use of all the skills and talents of the staff involved through a better set of arrangements, including more robust governance and decision-making frameworks, a future strategy, policy and asset plan, enhanced data management systems and improved business processes to allow for better oversight, planning and delivery.
- 1.4 This report details the rationale for the corporate landlord team model and its future development as part of the Council’s Transformation programme. It proposes, as a first step, bringing teams currently in Colchester Borough Homes who are undertaking non-housing assets functions, such as capital works, facilities management and maintenance, back into direct Council governance and management.
- 1.5 This approach is aligned to a report to this Cabinet meeting of the Managing Director (interim) of Colchester Commercial Holdings Ltd entitled ‘Amphora Future Strategy’ which proposes investing estates management functions, currently in Amphora Trading Ltd, back into the Council. Both these reports taken as one will allow for all teams undertaking assets functions to be consolidated, enabling further transformation to a corporate landlord team model.

2.1 Recommended Decision

- 2.1 To approve the transfer of all functions and associated staff relating to General fund (non Housing Revenue Account) property and facilities management from Colchester Borough Homes into the Council to support the development of a centralised corporate landlord team by 1 April 2024, with shadow management arrangements to be provided by the Council preceding that date to allow for a managed transition.
- 2.2 To approve future changes to the management agreement, service level agreements and the associated fees paid to Colchester Borough Homes to reflect these revised arrangements.
- 2.3 To delegate authority to the Chief Operating Officer in consultation with the Leader of the Council to undertake all subsequent operational decisions related to the transfer that arise following this decision.
- 2.4 To make changes to the Council's Constitution to reflect these changes in the responsibility for functions.

3. Reason for Recommended Decision

- 3.1 Bringing functions, teams and budgets together in the Council is the first step of a transformation to a corporate landlord team as recommended by CIPFA. It is part of the development of a strategy, policy and delivery framework that responds to a number of external factors since the development of the Council's last Asset Management Strategy in 2016 (refreshed in 2019 prior to Covid-19) and will facilitate a more co-ordinated, efficient and effective approach to maintaining and utilising Council land and buildings.

4. Alternative Options

- 4.1 The principal alternative option would be continuing with the current arrangements. However, a decentralised approach would not facilitate the co-ordinated up approach recommended by CIPFA.

5. Background Information

5.1 In addition to Council housing, the Council owns a large property portfolio of land and buildings, which has been acquired, gifted or inherited over many years. This amounts to a book value of approximately £238 million on 31 March 2022.

Categories of assets for accounting purposes include:

- a. **Operational properties** which are 'operational' that is, used for direct provision or operation of services such as the Town Hall, Rowan House and Shrub End depot)
- b. **Community leased properties:** Properties that are held in Council budgets but which are leased to tenants such as community groups and sports clubs, for example the Headgate Theatre and the Abbeyfield Community Centre.
- c. **Investment properties:** those held for income but that also support economic growth for instance, such as Amphora Place and some local parade shops.
- d. **Surplus land and property:** property and land declared surplus or those that are regeneration sites (mostly at Colchester Northern Gateway)
- e. **Assets held for sale:** these are sites which were under offer at the time of valuation (such as the Turnstone site in Colchester Northern Gateway during the last valuation in 2021).
- f. **Vehicles, Plant and Equipment** (however, this stream of work is **not** included in the CIPFA review or corporate landlord team model proposals as separate functions cover these – this amounts to approximately £9m of the total value of assets).

5.2 Effective asset management is an enabler to all strategic objectives and contributes to the delivery of some of the major challenges faced by the Council. These include:

- **Climate Change** – reducing carbon emissions and improve sustainability (decarbonisation of assets core is our 2030 climate emergency target).
- **Financial resilience and commercialisation** – helping to realise gains in efficiency through rationalisation of assets and energy reduction, for example. Capital receipts can be gained from assets we no longer need and improved income from our estates.
- **Place shaping:** to improve quality of public realm and economic well-being and regeneration.
- **Health well-being, housing social value:** Health and well-being hubs, public open spaces, leisure, arts, museums, community leases, allotments all contribute, as well as the benefits of our land to future housing delivery.
- **Exceptional service delivery:** assets support how we do business and work together for local democracy (for instance the Town Hall and Shrub End depot)
- **Transformation and partnerships:** Enable the introduction of new working practices and help trigger cultural organisational changes. For instance our new working hub, Rowan House. has enabled co-location and future knowledge sharing with our County Council and Health colleagues.
- **Inclusion and Equality** – our assets can improve accessibility and support inclusivity.

5.3 In May 2023 the Council commissioned CIPFA to review current arrangements for managing assets and develop the outline for an asset strategy and policy with the purpose of ensuring a co-ordinated approach to how we plan for, and react to, different strategic priorities and pressures in the management and organisation of land and buildings. The Council's last Strategic Asset Management Document (Asset Management Strategy) was produced in 2016 and refreshed in 2019 prior to the

Coronavirus pandemic, but numerous changes occurred both prior to and since that time that have an impact on our future strategy and the management of our current assets and future investments. The reasons for the review are outlined below:

- National research has shown that over the past decade, local authorities have demonstrated a reduction in the amount of resource needed to keep assets safe and maintained in the light of challenging budgets, leading to increased risk and a reduction in standards of maintenance. In addition, a lack of awareness of the importance the impact Councils' assets can have on future financial forecasting (both positively and negatively) has also been recorded.¹ This prioritises the need to focus on future Asset strategies, policies, and delivery mechanisms.
- Currently the responsibility for Asset Management is dispersed, with various functions discharged to different parts of the Council family. The 'Estates' function is currently divested to Amphora Trading Ltd (the Council's wholly owned trading company), whilst facilities management and the delivery of our building maintenance and capital works are delivered by Colchester Borough Homes.
- Whilst there are excellent staff operating across the Council family, the current dispersed structure and way of operating has led to a lack of clarity of roles, some strategic gaps and a need for more cohesive decision making. In addition, the recording and co-ordination of data needs improving alongside improved monitoring and performance management, and both informal engagement, and formal governance arrangements.
- Changes in requirements affecting the use of property assets and accessing Council services ways of working as a result of Covid-19 (and prior to the pandemic) have had an impact on the way we do business, leading to less face to face interactions with customers, for instance.
- A challenging economic environment, inflationary pressures specific to property construction, including increased operating costs and fragility in construction and property management supply chains, alongside significantly increased interest rates and subdued property values have had an impact on the ability to invest in our assets.

5.4 The CIPFA review examined existing property, land and financial data and undertook interviews and workshops with staff and Members to gain a fuller picture of our current arrangements. This culminated in a report which outlines a 'framework' for Asset management: an outline for a future strategy and an asset management policy (including the development of a corporate landlord team) and some further recommendations for improving asset management. The report is included at Appendix A for information.

5.5 The strategic objectives suggested by CIPFA Council, are for the Council to provide a land and property portfolio which:

- Ensures excellent value for money, with priorities driven by our current service and community needs whilst ensure planning for the future.
- Is fit for purpose and represents our organisation, celebrating our heritage and culture.
- Tackles the climate challenge and leads on sustainability.
- Supports the growing of a fair economy so everyone benefits.
- Is managed corporately to support all of the Council's key strategic priorities.

5.6 Whilst these objectives have a clear fit with the Council's strategic plan, the strategy and policy will need further development prior to formal Cabinet consideration. However, CIPFA have been clear that a fundamental first step to maximising our assets as part of

¹ Chartered Institute of Public Finance and Accounting (CIPFA) (2020) **A Guide to Local Authority and Public Sector Assets Management.**

that strategy is the development of the **corporate landlord team model**. This is the strategy for **how** the Council is set up to manage our land and buildings as corporate resources against our strategic objectives. This needs to involve the right stakeholders and ensure robust decisions are made in the context of contracting resources and competing priorities.

- 5.7 With a corporate landlord team model, all budgets, decision making and activities are centralised within a team in the Council. This consolidation of property functions aims to improve standards of maintenance and provide greater efficiencies and effective management of land and buildings, enabling better utilisation to deliver on strategic plan priorities and minimising risk. Decisions concerning assets are taken corporately rather than through individual services areas, with functions centralised in the Council to ensure improved ownership of resources and more effective asset management. Bringing the teams under direct Council governance and management enables is the vital first step in enabling the transformation to a corporate landlord team model.
- 5.8 Although bringing teams together in the Council is fundamental to establishing a corporate landlord model, this is only the first step. In order to realise the objectives outlined by CIPFA and create a robust corporate landlord model, further transformation will need to occur. This could include optimising team arrangements, making the best use of all the skills and talents of the staff involved through a better set of arrangements including a robust governance structure, integrated data, systems and business processes, consistent policies and procedures, improved engagement with Members, staff and communities and strengthened partnership working to enable rationalisation across estates.
- 5.9 This transformation to a corporate landlord team model, if undertaken and planned effectively will facilitate greater strategic oversight of assets, mitigate risk, optimise use of assets against strategic priorities, improve standards through better planning and performance management, enable efficiency and effectiveness in asset management and allow for better planning of future capital investment.
- 5.10 As part of this Transformation, CIPFA have suggested an asset challenge framework could also be created for the Council's corporate buildings, where, prior to decision making, the performance of individual corporate assets are measured against a set of criteria and alongside each other, to outline whether costs can be reduced, an asset could be retained for use and invested in, or, for assets surplus to requirements, whether disposal is recommended.
- 5.11 This report proposes the adoption of the corporate landlord team model and as a first step, the transfer all functions and associated staff relating to General fund (non Housing Revenue Account) property and facilities management from Colchester Borough Homes into the Council by 1 April 2024 with shadow management arrangements provided by the Council preceding that date to allow for a managed transition. This proposal is aligned to a report to this Cabinet meeting of the Managing Director (interim) of Colchester Commercial Holdings Ltd entitled 'Amphora Future Strategy' which proposes divesting functions related to estates management from Amphora Trading Ltd and investing back into the Council.
- 5.12 As this has staffing implications, consultation with all Colchester Borough Homes staff involved has been commenced. Without pre-empting decisions made by Cabinet in relation to the corporate landlord model and approach, transition planning is underway. This will cover staff communication and consultation on the implications of the proposed transfer of function and consideration of how the teams that would transfer into the Council would be accommodated within the Council's management arrangements.

5.13 Should Cabinet take the decisions contained in this report the timeline for the transformation to a full Corporate Landlord Team model, including all the elements outlined in item 5.8 will need to be considered alongside other priorities in the Council's Transformation programme, as it will involve considerable organisational capacity, particularly in relation to the Council's corporate services (for example, ICT, Governance, Finance and Human Resources).

6. Equality, Diversity and Human Rights implications

6.1 The proposals set out in this report (and contained in Appendix A from CIPFA) are designed to help the Council achieve its objectives and obligations. Issues of equality and diversity in relation to land and buildings will be considered centrally as part of these obligations.

7. Standard References

7.1 There are no particular references to the Strategic Plan; consultation or publicity considerations or financial; community safety; health and safety or risk management implications.

7. Strategic Plan References

7.1 The proposals set out in this report support enable the Council's assets to be managed more effectively against all of the Council's Strategic Plan priorities (see Appendix A section 2). [Strategic Plan 2020-23](#).

8. Consultation

8.1 The implementation of the proposals will entail appropriate staff consultation.

9. Publicity Considerations

9.1 The rationale for the corporate landlord team model will help with any public explanation of these proposals and should enhance public confidence in the ability of the Council to manage it's current and future assets.

10. Financial implications

10.1 Detailed work is currently being undertaken by officers to capture the costs of these functions within Colchester Borough Homes, so we can determine the cost that will transfer back to the Council, and also ascertain the related reduction in the management fee paid to CBH and any other financial implications.

10.2 It is proposed that the financial implications, including adjustments to the budget and the management fee will be reflected in the 2024/25 Budget, which will be presented to Cabinet at its January 2024 meeting.

11. Health, Wellbeing and Community Safety Implications

11.1 The proposals outlined will help manage assets more effectively and efficiently against all priorities, including those with health, wellbeing and safety implications. These will be considered in any decisions made around the future use and management of Council assets.

12. Health and Safety Implications

- 12.1 These proposals will allow for a more co-ordinated approach to the maintenance of Council assets and enhanced mitigation of any future associated risks.

13. Risk Management Implications

- 13.1 Risks involve the potential loss of staff if the delivery of the proposals are not managed properly and engagement with staff is lacking. A detailed transition plan will be put in place to mitigate this risk and ensure staff are engaged with, and fully aware of, the need for change and the process itself. The proposals could also reduce health and safety risks by co-ordinating data, records, processes and governance.

14. Environmental and Sustainability Implications

- 14.1 Co-ordination of Assets functions should allow greater oversight of how assets as a whole (and separately) contribute to the Council's Climate Change and carbon reduction priorities. This will enable the development of the Council's carbon management plan to be considered alongside other Council priorities, with a more joined up approach and greater emphasis given to environmental and carbon reduction objectives in future Asset Management Strategy, Policy and plans.

Appendices

Appendix A: Colchester City Council Property Asset Management Framework – incorporating suggested Policy, Strategy and Action Plan

Colchester City Council

Property Asset Management Framework – incorporating Policy, Strategy and Action Plan

2 October 2023

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1. Introduction

1.1 Background

Local Authorities across the UK hold large property portfolios (assets made up of buildings and land) which have been acquired, gifted, or inherited over many years.

Colchester City Council (the Council) owns 200 operational assets and 91 commercial (investment) assets with a current book value of c. £218m (excluding housing, infrastructure assets, vehicles, plant, furniture and equipment).

1.2 Purpose/Aim of the Strategic Asset Management Documentation

The Council's last Strategic Asset Management Documentation (an Asset Management Strategy (AMS)) was produced in 2016 and was refreshed in 2019 and 2020, prior to and during the global Coronavirus pandemic. We have drawn on certain material from the 2016 AMS in order to prepare this updated version and to ensure continuity, but there have been numerous changes since 2016, including:

- changes in ways of working which affect the use of property assets;
- changing requirements to access Council services;
- the current cost of living crisis and inflationary pressures specific to property construction and operating costs;
- fragility in the construction and property management supply chains; and
- significantly increased interest rates including the Public Works Loan Board (PWLB) rates.

It is important that the Council has a coordinated approach in how it reacts to these different priorities and pressures in relation to the management and organisation of its land and buildings. To support this, we have adopted a new Property Asset Management Framework which comprises three separate elements as follows:

- An Asset Management Policy
- An Asset Management Strategy.
- An Asset Management Working Action Plan.

1.3. Property Asset Management Framework

Good practice suggests the use of this three-tier document approach of:

1. A high-level Property Asset Management **Policy** or vision which links the strategic aims and objectives of the Council to the key property vision and behaviours. This document is the Property Asset Management Policy at Section 2;
2. A Property Asset Management **Strategy** which takes the property vision outlined in the Policy and explains how it will be delivered. This document can be found in Section 3;
3. A working Property Asset Management **Action Plan** that lists the key property initiatives and projects and will be used to manage these at a corporate level. This document can be found in Sections 4, supported by Annex 1.

Together these elements combine into the Property Asset Management Framework (the Framework) which is a suite of living documents. Not all parts will need to be updated at the same time for it to remain current. Accordingly, readers are advised to ensure that they have the most up to date versions and that the parts are always read together to ensure that the correct context is understood. The benefit of adopting such a structure is that many areas are likely to remain constant for several years (such as the Property Asset Management Policy). The Action Plan is a working 'living document' and will be used and adapted to manage the asset management programmes of work on a regular basis.

The three documents in the Framework have been given different periods / dates, with the Policy potentially running for five years, the Strategy for the period 2023-26 and the Action Plan for 18 months. This approach will help distinguish the different purposes of each document.

2. Property Asset Management Policy (2023-28)

2.1 Background

This is shaped by three key strands:

- The Council's Strategic Plan 2023-26;
- The links between the Council's Strategic Plan 2023-26 and the Property Asset Management Policy 2023-28; and
- Property Objectives, Actions and Behaviors

2.2 The Council's Strategic Plan 2023-26

The Council's Strategic Plan 2023-26 sets out six strategic themes, with 14 priorities across the themes. The six strategic themes are:

- Respond to the climate emergency;
- Deliver modern services for a modern city;
- Improve health, well-being, and happiness;
- Delivering homes for those most in need;
- Grow our economy so everyone benefits; and
- Celebrating our city, heritage and culture.

It is important that there is a "golden thread" between these six strategic themes, the Property Asset Management Framework documents and the programme and project business cases which will arise from these.

2.3 The links between the Council's Strategic Plan 2023-26 and the Property Asset Management Policy 2023-28

Taking each of these six strategic priority themes we now link these to the Property Asset Management Policy:

- **Respond to the climate emergency** – the focus of this Property Asset Management Policy is non-Housing Revenue Account (HRA) property assets (with the housing assets being subject to a separate policy in line with the approach taken by many other councils). Work is ongoing to develop and deliver climate emergency plans with respect to non-HRA assets. There are some ambitious regeneration and energy efficiency / generation plans. The ability to achieve carbon neutral is one of the attributes we have considered in the red, amber, green (RAG) rating of a sample of key existing Council properties set out in the Annex 1;
- **Deliver modern services for a modern city** – this includes having modern Council property assets which are suitable for the "ways of working" and accessible for the communities that the Council serves. Again, suitability and accessibility are two attributes we have considered in the RAG rating of a sample of key existing Council properties;

- **Improve health, well-being, and happiness** – the Council has ambitious regeneration plans. The Council has been successful in securing grant funding for a range of schemes. It remains important that these schemes focus on the outcome of healthy, well-being and happy communities as well as the inputs of capital projects. There is an opportunity to continue to link these schemes with Service delivery, e.g., linking Leisure more closely to health and well-being. The Council benefits from strong relationships with wider public body partners, including health partners;
- **Delivering homes for those most in need** – the focus of this Policy is non HRA assets. However, it is important that good public realm is developed in parallel with homes. Also, as part of the asset challenge process (potentially started with the RAG rating approach set out below) consideration needs to be given to repurposing Council property assets and wider community property assets for residential purposes;
- **Grow our economy so everyone benefits** – the Council holds commercial / investment properties, e.g., industrial units, offices and retail units and it is important to ensure that these secure an income stream and are held to boast economic outcomes. For the avoidance of doubt, the Council supports the view that public bodies should not hold all assets purely for the commercial return. Many of the proposed regeneration schemes are focused on economic stimulus, including as a result of upskilling in new and emerging industries. In addition to the Council's Strategic Plan there are important links to the Council's Economic Development Strategy, which outlines actions to attract certain employment sectors into the City;
- **Celebrating our City, heritage and culture** – the Council holds many heritage and cultural assets / buildings including to attract tourist/visitors to Colchester with the economic boost they bring. To safeguard this it is important that these assets / buildings are both promoted and maintained to a high standard.

2.4 Emerging Policy level considerations and themes:

- **This Policy provides the opportunity to balance** Corporate and Service priorities with respect to occupational (corporate) assets, commercial assets, regeneration and surplus land assets;
- **Adoption of the Property Asset Management Framework documents** – Policy, a proactive Strategy, underpinned by an Action Plan aligned with the corporate delivery framework represents a key next step;
- The three documents of the framework: Policy, Strategy and emerging Action Plan will ensure that the property asset holdings **reflect the Corporate priorities, the needs of Services and engagement with Service Users**;
- The Property Asset Management Framework relies on **engagement** across the organisation and with Members for awareness and buy-in. This engagement builds on the Service and support Service workshops run as part of developing the suite of three documents and should be re-run periodically potentially supported by individual Service Asset Management Plans created for each service (SAMPs);

- **There is a need to update the organisational framework and governance arrangements.** At present (July 2023) there is a historic lack of clarity on roles between Colchester Borough Homes (CBH), Amphora and the Council. CBH and Amphora are “delivery partners”, akin to other private sector and voluntary sector partners. Under the current arrangements, as Council owned companies they need to be overseen at a strategic level through the shareholder route and shareholder reporting. However, as organisations delivering for the Council with respect to property asset management they also need to be actively managed by the Council who have a strategic and ‘commissioning’ role;
- We acknowledge there is a debate to be had as to what the right balance is. However, the Council is clear that Council Companies, acting as delivery partner cannot set the Strategic Asset Management Policy. Also, having one Council Company instructing another is unhelpful. Finally, having multiple channels for a delivery partners (in this case a Council Company) from which they receive instructions without any central coordination is a risky approach when looking to secure best value;
- A future approach should involve management through a **Corporate Landlord Team (CLT) approach** in the Council with responsibility for commissioning and ownership of the Asset Management Strategy, the governance and delivery framework, with reporting from KPIs.
- The concept of a Corporate Landlord Approach is that the ownership of an asset and the responsibility for its management and maintenance is transferred from service areas into the corporate centre. The service area then becomes a corporate tenant and their priority is to plan and deliver their service to the best of their ability. The Corporate Landlord’s function is to ensure all services are adequately accommodated and to maintain and manage the associated land and property assets.
- Over the life of the strategy the Corporate Landlord will be delivered and further developed to assume full responsibility for asset planning, review, feasibility, and options appraisal, accounting for the needs of all service areas, but most importantly, making decisions based on overall corporate priorities.
- The Property Asset Management Framework relies on a **governance model (including Corporate Asset Group and Corporate Landlord Team (CLT) approach)** to review the Strategy and develop the Action Plan, monitor performance, approve documentation to Member Leads and / or Cabinet and undertake an Asset Challenge process (retain, develop, manage, dispose, business case). Thereby bringing together functions under a corporate umbrella. Work is ongoing with respect to the governance model, including the Corporate Landlord Team.
- Delivering and further developing a Corporate Landlord approach could involve substantial Transformation and is a change to current operations. The ambition is to have a plan for how this approach could operate by January 2024. This updated governance is aimed at bringing clarity of role, responsibilities and

functions across the Council 'family'. In turn this requires a collaborative culture that enables working across the Council family and with services and a shared problem-solving approach;

- This suite of documents provides a methodology for assessing the potential for repurposing, disposals and any requirement for acquisitions driven initially by the **RAG assessment and 3x2 matrix** shown in the Asset Management Action Plan / Section 5. Proposed repurposing, disposals or acquisitions should then be supported by the **good practice HM Treasury better business case approach**, including the benefit / cost modelling and best practice Project Management Office approaches and be aligning with the outcomes outlined in the recent review of the Council's capital programme;
- Key to the Property Asset Management Framework is a **data driven approach, with a single live time database of property asset data** and agreed, consistent KPIs brought together for performance monitoring. The Council is working on further developing its property asset data;
- In developing the Framework an important consideration is **addressing historic underinvestment** in property maintenance and planned works and reductions in Council budgets;
- To successfully progress the Framework there is a need for **clarity between the Council's capital ambitions (including regeneration ambitions) and the Capital Programme / Investment Strategy / Economic Development Strategy** including the use of grants, S106 and CIL monies. This links to the above point re the Capital programme.

2.5. Property Objectives, Actions and Behaviours

In the section below we have developed five key property objectives. These are based on our strategic priorities but balance these against the specific needs of managing a cost effective, safe and relevant land and property estate.

In developing these objectives there are certain actions and behaviours that we need to adopt relating to our land and buildings. These are set out under each objective, but not in any particular order of priority. It is also accepted that there will be occasions where some of these elements may appear to be in conflict. The key challenge for the Council is ensuring that we maintain an appropriate balance between all of these elements as decisions around land and buildings are made.

Our Mission is to provide a land and property portfolio which.....

..... Ensures excellent value for money with priorities driven by our current service and community needs whilst planning for the future

- We will manage and maintain property effectively and efficiently together with optimising financial return and commercial opportunities

Behaviours

- We will seek efficiencies in occupancy and utilisation and introduce new ways of working
- We will use a performance management framework to challenge the cost and qualitative performance of our buildings and the property activities that support them to ensure they deliver excellent value for money
- We will financially appraise and challenge our use of assets where appropriate including options for disposal, acquisition, and optimising space for third party demand and maximise income generation
- Capital Projects will be managed efficiently and effectively, and prioritised to support the Council's Strategic priorities
- We will engage with community organisations to optimise the use of assets where beneficial
- We will ensure a transparent decision-making process is in place which the Council operates based on formal arrangements (e.g. clear governance, service level agreements (if appropriate and Key Performance Frameworks)

..... Is fit for purpose and represents our organisation, celebrating our heritage and culture

- We will provide property that is well designed in the right place and work with partners to promote co-location, integration, and joint service delivery

Behaviours

- We will promote a high-quality physical environment, seeking to create and sustain high quality spaces
- We will prioritise expenditure to make our buildings suitable and sufficient for service delivery and resilient to respond to future need, changes in the economy and social demand
- We will ensure our property is secure and safe to use, fulfilling statutory requirements and supporting the health and wellbeing of our employees
- We will take an Asset Based Community Development (ABCD) Approach, working alongside and empowering communities in the use and/or management of assets where appropriate
- We will enhance and promote our heritage through our assets by supporting projects and initiatives to increase public awareness and access
- Recognising the funding constraints we will explore a range of other funding and financing options, including grant arrangements and partnerships

..... Tackles the climate challenge and leads on sustainability

- To promote a sustainable environment for people's wellbeing, the economy and for the natural environment

Behaviours

- We will ensure Council-owned buildings are more energy efficient and reduce CO₂e emissions, where practicable to help achieve a carbon neutral target for Council Services by 2030
- We will increase our use of renewable energy and undertake energy efficiency audits of our operational estate to identify 'invest to save' opportunities where appropriate.
- We will minimise the environmental impact of our activities and enhance environments to create more natural spaces and encourage biodiversity.
- We will improve facilities and routes for cyclists and walkers and ensure major regeneration projects put physical activity at the forefront of development

- We will actively prioritise carbon reduction and wide emissions reduction through more responsible and sustainable procurement, and where possible to by supporting local and regional suppliers and businesses.
- Recognising the funding constraints, we will explore a range of other funding and financing options, including grant arrangements and partnerships.
- We will explore the potential of low carbon heat networks and how they can be used to further decarbonise our buildings.

..... Supports the growing of a fair economy so everyone benefits

- We will use land and buildings to stimulate development, housing, regeneration, and growth together with increasing the number of jobs in our key economic sectors

Behaviours

- We will continue to regenerate Colchester City Centre using Council assets and investment
- We will ensure a good supply of employment land and premises to attract new businesses and allow existing firms to expand and thrive.
- We will use assets to encourage income generation and to create local employment and training opportunities
- We will manage our income generating portfolio to effectively balance regeneration needs, job creation and income generation
- We will ensure the Council has a good supply of land available for new homes and business

..... Is managed corporately to support all of the Council's key Strategic Priorities

- We will adopt a 'Corporate Landlord' approach which supports in shaping our Council's priorities for the future

Behaviours

- We will challenge and make decisions on property matters at a corporate level in line with our strategic priorities
- We will manage property budgets centrally creating the flexibility to prioritise key investment needs across the estate considering property alongside our other resources as part of business planning and budget setting

- We will take account of service demand and individual service priorities and balance these against our overall corporate objectives
- We will work to ensure that property information and data is accurate, current and comprehensive so that we can make informed choices

3. Property Asset Management Strategy (AMS) (2023-26)

This Asset Management Strategy provides an overview of our land and property estate, together with our main priorities for managing and developing that estate over the next three years.

The Asset Management Strategy incorporates the following sections:

- 3.1 Comment on changes since 2016;
- 3.2 Overview of the Council's property assets / estate;
- 3.3 Detail on the organisational framework (Corporate Landlord Team approach) for the management of the property assets;
- 3.4 Detail on the governance arrangements that the Corporate Landlord Team report to;
- 3.5 Implementation of a Corporate Landlord Approach;
- 3.6 Comment on capital funding;
- 3.7 An outline of the process by which the Council will challenge its property assets in the future;
- 3.8 How the Council will measure performance of assets;
- 3.9 A strategic overview of how maintenance will be conducted and prioritised;
- 3.10 An overview of each service area in relation to their key asset direction/programmes; and
- 3.11 Background on the existing Service Level Arrangement and potential future Key Performance Indicators (KPIs).

3.1 Comment on changes since 2016

Since 2016 the Council has achieved a range of successes with respect to property assets and property asset delivery. These include the successful delivery of the Colchester Northern Gateway (CNG) Sports Hub, Mercury Theatre Redevelopment and the Events Company's utilisation of the Council's estate.

The Council has had significant success in securing Government grants available for capital/regeneration/growth/carbon reduction projects including through the Towns Fund, Levelling Up Fund and the Public Sector Decarbonisation Scheme. We also have a good historic track record of securing other grants such as Homes England, Housing Infrastructure Fund, Heritage Lottery, etc.

Meanwhile, Central Government's emphasis on holding property assets purely for commercial income has changed with focus now being on the socio-economics benefits through economic growth that results from holding these assets and regeneration purposes.

3.2 Overview of the Council's property assets / estate

Colchester City Council (the Council) owns or operates 200 operational assets and 91 commercial (investment) assets. These have a current book value of c. £218m (excluding housing, infrastructure assets, vehicles, plant, furniture and equipment). See the breakdowns below provided by the finance team

We set out below information on the Council's property asset holdings as of April 2023 provided by the finance team:

	Number of Properties
Land & Buildings	
Operational	148
Non-operational	32
Community	8
Surplus	12
Assets Held for Sale	
Investment Properties	91
Total	291

We set out below information on the current book value of the Council's property asset holdings as of April 2022, post the external audit, provided by the finance team in October 2023:

	Current Book Value
Land & Buildings	£173.919 million
Community	£0.399 million
Under Construction	- £17.392 million
Surplus	- £26.517 million
Total	£218.227m

In addition the Council holds investment properties with a current book value at 31 March 2022 of £46.2m.

We include in Annex 2 an extract from the Council's DRAFT Statement of Accounts 2021/22, which expands on the above.

This includes the following types of properties:

- Offices;
- Sports & leisure facilities;
- Museums, theatres and galleries;
- Industrial units;
- Depots;
- Car parks;
- Shops, shopping centres and restaurants;
- Regeneration assets;
- Community use assets/facilities;
- Surplus assets

Further information on the Council's property asset holdings is included in Annex 1, including some benchmarking of the level of holdings compared to the Council's nearest neighbours.

3.3 Detail on the organisational framework (Corporate Landlord Team approach) for the management of the property assets

The way we manage our assets is important. We need to ensure that our land and buildings are managed as corporate resources, the right stakeholders are involved, and decisions are made in the context of the council's priorities and objectives.

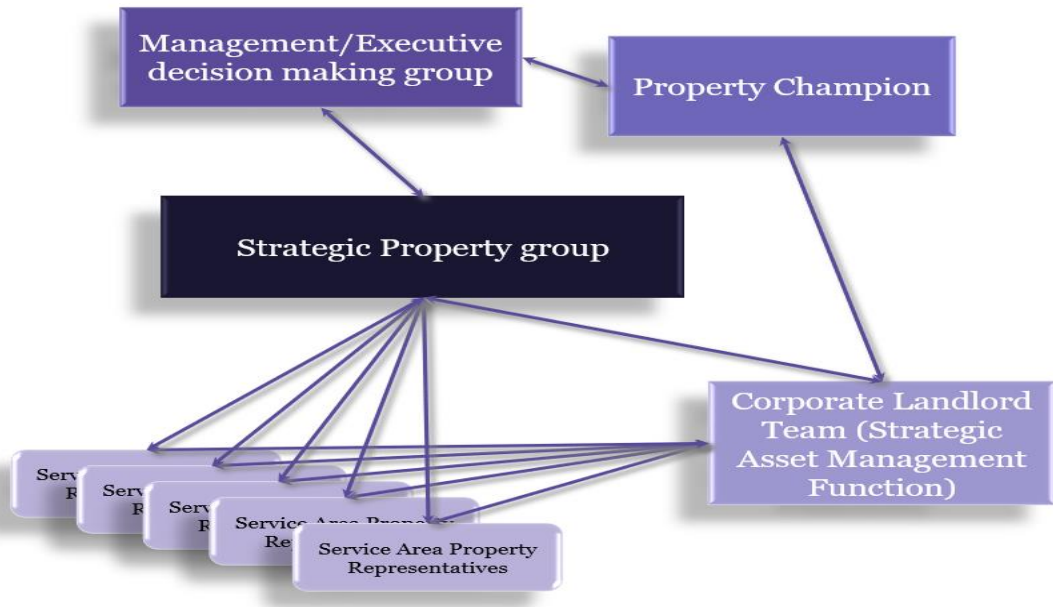
As set out in both the overarching Property Asset Management Policy and the Action Plans there is a need to update the organisational framework and governance arrangements.

This could be managed through a corporate landlord model (CLT) approach in the Council with responsibility for commissioning and ownership of the Asset Management Strategy, the governance and delivery framework and managed and monitored through service level agreements, with reporting from KPIs.

The concept of a Corporate Landlord Approach is that the ownership of an asset and the responsibility for its management and maintenance is transferred from service areas into the corporate centre. For the remainder of the suite of documents we refer to this Council function as the CLT. We include material on setting up a CLT below. Also, included in below are comments on the current service level agreement(s) (SLA(s)) between the Council and the "delivery partners" and future KPIs. There are actions in the Action Plan with respect to a CLT and future KPIs (see Annex 3).

3.4 Detail on the governance arrangements that the Corporate Landlord Team report to

A robust governance structure is imperative to provide direction and transparency of the management of the Council’s property assets and for the Corporate Landlord Team to report into. The diagram below outlines a potential governance structure:



Here:

- The Corporate Landlord Team is the ‘Strategic Asset Management Function’;
- The Management/Executive decision-making group is likely to be the Senior Leadership Board, but could be an Elected Member Committee;
- The Strategic Property Group is a sub-committee focused on the property asset portfolio, the Corporate Asset Group;
- The Property Champion is an Elected Member with responsibility for the property assets portfolio;
- Finally, there are Property Representatives from each of the Service areas feeding into the Strategic Property Group.

As the Council works toward a Corporate Landlord Approach this proposed governance structure will be refined and tailored.

3.5 Implementation of a Corporate Landlord Approach

As stated in the Policy, the implementation of the Corporate Landlord Approach would involve substantial Transformation and change to current operations. The ambition is to have a plan for how this model would operate by January 2024, which represents a significant scale of the transformation in order to operate the CLT effectively.

Part of the complexity is caused as Corporate Landlord (Corporate Landlord Model and Corporate Landlord Team (CLT)) can mean different things to different people and there is a wide spectrum of corporate landlord models. To help, the common elements for consideration include where responsibilities sit for:

- Policy setting and corporate approach
- Procurement
- Budget responsibility
- Monitoring
- Day to day management
- Technical expertise
- Occupation

Good practice reflects a Corporate Landlord approach for the Council, with this team sitting in the Council.

The benefits of this approach include:

- To support wider organisational objectives and priorities
- To better plan resources
- To set clear and consistent policies and procedures in a strategic setting
- To ensure skills and resources are best used
- To enable a comprehensive understanding of the performance of the portfolio and its use to inform strategic decision making
- To ensure that the property portfolio is safe and fit for purpose
- To ensure a sustainable asset base

There are choices between a CLT and decentralisation structure to be made across the following activities:

- Strategic asset management;
- Statutory compliance;
- Facilities management;
- Repairs & maintenance;
- Estates management; and
- Major projects.

We acknowledge there is a debate to be had as to what the right balance is. However, the Council is clear that Council Companies, acting as delivery partner cannot set the Strategic Asset Management Policy. Also, having one Council Company instructing another is unhelpful. Finally, having multiple challenges for a delivery partners (in this case a Council Company) from which they receive instructions without any central coordination is a risky approach when looking to secure best value.

In terms of what good looks like with respect to strategic asset strategy & asset planning:

- A fully resourced section that is separate
- Engages with corporate centre and services
- Has clear understanding of current estate & reasons for ownership/use

- Fundamental roll in working with other public bodies on assets

A function that uses data and intelligence about portfolio and performance of assets to produce the Asset Management Framework of documents (Policy, Strategy and Action Plan). Effective management and governance of our assets is paramount.

The Council needs to ensure that our land and buildings are managed as a corporate resource, that the right people are involved, and decisions are made at the right level taking into account the council's priorities and objectives.

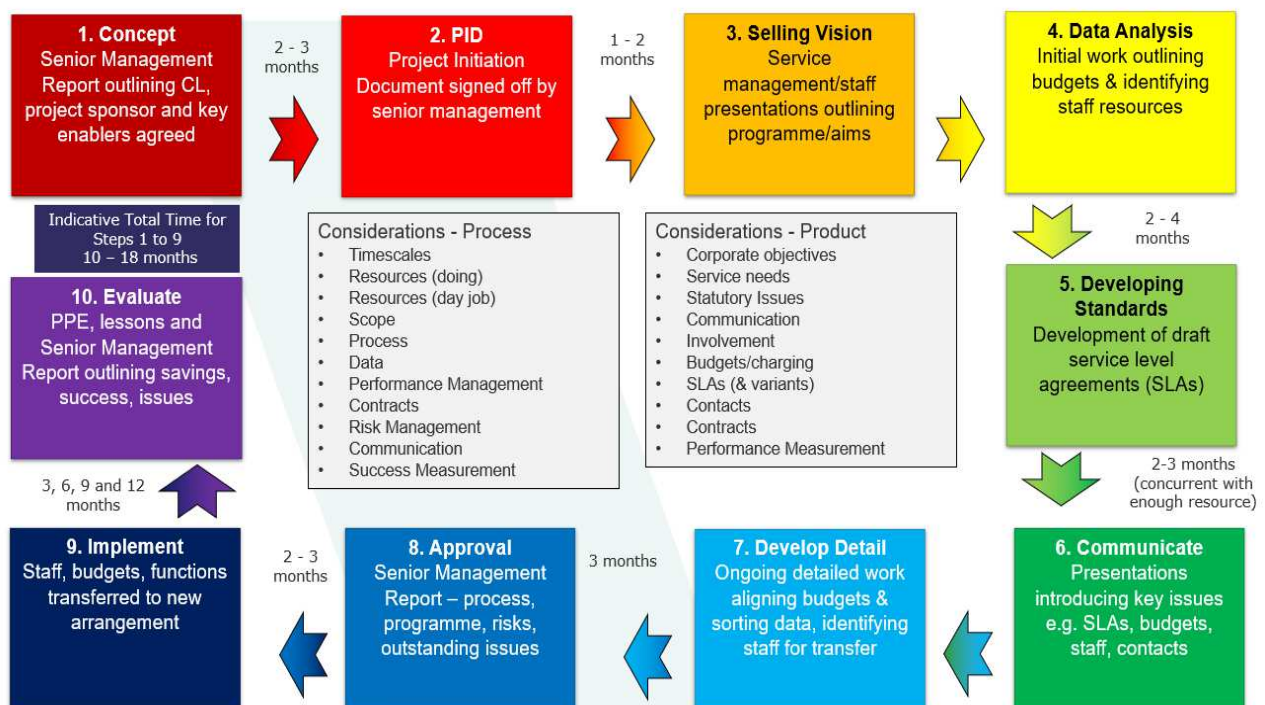
The Corporate Landlord's function is to ensure all services are adequately accommodated and to maintain and manage the associated land and property assets.

Over the life of this strategy, the Council will ensure that our Corporate Landlord Approach is fully embedded within the Council and ensure there is a robust governance structure in place providing direction and transparency of the management of the council's assets. The diagram below outlines the organisational structure for the governance of corporate land and building assets.

The diagram in Section 3.4 reflects good practice approaches with respect to Corporate Landlord governance.

CIPFA has an approach for establishing a corporate landlord, the deployment of which is beyond the scope of this review and can take between 12 and 18 months. Here we show the 10-step process:

CIPFA \ Example 10 steps for introducing Corporate Landlord Model



3.6 Comment on Capital Funding

Like many other councils we have experienced significant funding reductions in recent years, and it is important that we make careful choices when we prioritise the money we spend.

This is especially true in relation to property, with a property related gross revenue budget of circa £11m (22/23) (see Annex 1), and we need to ensure that every pound we spend is done so in the right way.

The Council has challenges relating to the age, condition and suitability of its portfolio, with a backlog maintenance figure not readily available but with work underway to assess this.

Despite these financial challenges, the Council is committed to supporting economic growth and encouraging job creation and investment through its capital programme. New building development plays an important part in this and it is important to note that the council's capital investment attracts further inward investment. This helps the local economy to grow and thrive so that every pound invested by the authority generates a local economic benefit well in excess of this initial investment.

3.7 An outline of the process by which the Council will challenge its property assets in the future

Asset Challenge is an embedded process, which means that we will be reviewing all of our asset portfolio on a continuous rolling programme. This ensures that only those assets that are needed are retained. The ultimate aims of Asset Challenge are to reduce costs, identify assets that should be retained for use and/or invested in, identify those that are surplus to requirements and therefore can be disposed of.

To do this, each asset is assessed using a step-by-step challenge process, ensuring that every asset has been fundamentally tested against a common set of criteria.

Through the work to support the development of this AMS there have been a significant number of interviews held with Services and support services across the Council and with external stakeholders. These have provided an approach to challenge the Council's current and future property asset holdings, including through the RAG rating approach set out in Annex 1, where we focus on nine properties, being the ones raised by services and the largest operational property assets held by the Council. Where the RAG ratings recommend repurposing, disposal or acquisition, the "front end filter" offered by the RAG ratings should be developed into a formal, but proportionate to the scale and complexity, business case.

3.8 How the Council will measure performance of assets

Work is currently ongoing (July 2023) to improve the data held with respect to property assets. This work will be coordinated and ultimately ensure a 'one source of truth' that provides a more robust understanding of property running costs, condition, compliance, the links between ownership, design, build and operations and maintenance, etc.

We need to know how our assets are performing to be able to manage them effectively and efficiently. To do this we are developing a selection of Key Performance measures, covering performance in utilisation, cost and income. This information will allow greater granularity and understanding of performance, allowing evidence-based decision making regarding the management of the estate.

Regular reporting will be adopted through Service Directorate and Management Team meetings. The performance of each asset will feed into the Asset Challenge process.

3.9 A strategic overview of how maintenance will be conducted and prioritised

It is important that these our assets are maintained to ensure a safe and appropriate environment to deliver services, support the customer / service users and the workforce. With reducing revenue expenditure and significant alternative demands on the available financing required to drive service transformation, achieve revenue savings and to respond to other areas of need it is becoming increasingly difficult for the Council to provide the additional funding required to keep our corporate estate safe and wind and watertight.

This financial pressure creates the very real prospect of buildings or elements of buildings having to close due to the lack of capital maintenance. It is important that Asset Challenge is undertaken to ensure we invest in those assets we need and devise an appropriate process to dispose of those we no longer require.

Further work is required on stock condition survey data. Historically some of the maintenance planning has been driven by in year financial budgets. However, a more strategic, multi-year, 'whole life' costing approach is needed as it is very easy to save money on routine cyclical/planned maintenance in one year that would reduce the need for emergency/reactive maintenance and/or major maintenance in future years as well as reduce the risk of failure. Through this strategy there is an opportunity for the Council to revisit the level of property asset holdings it can afford to maintain and explore options to dispose of properties where running costs and/or future capital costs and investment needs, including the works required to become carbon neutral, would point to a disposal.

For context we set out below background on maintenance:

- Emergency/reactive maintenance – this includes the day-to-day repairs arising from a very wide range of immediate building failures relating to the fabric of the building and mechanical and electrical issues e.g. leaking roofs, blocked drains, loss of heating etc.
- Routine cyclical maintenance – is the regular inspection and testing of plant and equipment in line with statutory requirements, undertaking risk analysis and compiling and maintaining evidence of testing regimes. There are a significant number of statutory tests required relating to buildings, e.g. fire risk assessments, lifts, boilers, electrical systems, alarms, lightning.
- Planned preventative maintenance – replacement of mechanical and electrical assets such as lifts and boilers, which have reached the end of their economic life. An annual Forward Maintenance Plan is derived from information from surveys.
- Health & Safety - Statutory Compliance - undertakes a programme of risk assessments for fire, water and asbestos for its corporate estate and from these assessments will commission remedial works as appropriate.

3.10 An overview of each service area in relation to their key asset direction/programmes.

Through the work to support the development of this strategy there have been a significant number of interviews held with Services and support services across the Council and with external stakeholders and Members. The key asset direction / programmes discussed in the interviews have been recorded and inform the development of the Property Asset Policy in Section 2, this Strategy and the Action Plan (both the actions in Section 4 and the RAG ratings in Annex 1).

The Asset Management Strategy and our Action Plan will be informed by Service Asset Representatives as set out in the governance diagram and also potentially by Service Asset Management Plans (SAMPs) that outline current and future land & property requirements, how assets are to be utilised and the potential for greater utilisation (including increasing income potential where appropriate).

3.11 Existing Service Level Agreements and future Key Performance indicators

The Agreement does outline most of the services that you would expect from a 'delivery arm' but the prioritisation of activities is very much left to the company rather than a prioritised programme emanating from the Council. There is an opportunity for greater oversight and direction from the Council / CLT side.

There are also historic SLAs relating to Facilities Management between the Council and Colchester Borough Homes that outline deliverables and some specific performance targets and KPIs, but these are out of date. See Annex 3 for potential future KPIs.

4. Property Asset Management Action Plan – CIPFAs recommendations to be adopted by the Council (18 months to end 2024)

We have run workshops with the individual Services and support Services as well as Senior Officers and then Elected Members. These have been very helpful in gaining a wider understanding of the current use and future plans with respect to property assets, whether operational estate or commercial asset holdings. Also, including the linkages with regeneration programmes / projects incorporating opportunities to repurpose. These workshops and the wider engagement have allowed for the development of the Action Plan as part of the Framework below.

During the Service workshops we introduced the red, amber, green (RAG) rating and 3x2 matrix approach to asset challenge, providing a “front end” to decisions around retain, dispose and acquire and “as is” or with investment / repurposing. We have run the RAG rating and 3x2 matrix for nine key existing properties / buildings, identified by Services, as shown in Annex 1 where we start by setting out the purpose of the RAG rating and the criteria used.

Emerging actions and recommendations from CIPFA to be adopted by the Council:

1. Ownership of the Property Asset Management Framework:

- It is important that the Property Asset Management Policy, Strategy and Action Plans are owned by the Council. Good practice suggests that strategies cannot be outsourced to delivery partners (e.g. Council Companies) to develop and deliver. The Council will further develop this Property Asset Management Framework and seek approval from Senior Officers and Elected Members. This process of engagement with Senior Officers and Elected Members started in July 2023.

2. Updating the capital programme and capital programme delivery:

- The Capital Programme (general fund) is currently being reviewed given the number of regeneration projects underway and which are being discussed. The Capital Programme should be grossed up to reflect project funded by grant monies, S106/CIL, etc. A new Gateway process has been introduced following the capital review, supported by business cases and a more robust and transparent approval process;
- Following the Capital Programme reset, full and up to date understanding will better inform MTFE going forward and affordability of ongoing Asset investment;
- Business cases (programmes and projects) should be driven by Service / Service User needs, not purely by the potential availability of grant monies;
- Updating of the Capital Programme will happen alongside Tighter administration of S106/CIL monies, in line with the findings of the recent S106

review and recommendations. The Council is recruiting someone to support this, including delivery of the recommendations;

- The Capital review and ongoing review of Colchester Northern Gateway has introduced more robust monitoring mechanisms that ensure both new and ongoing projects are affordable given the shifting economic climate, borrowing costs and capacity challenges. For the avoidance of doubt, we are now experiencing much higher borrowing costs, construction costs and property running costs that makes the timing of the Capital review and its reporting particularly relevant.

3. Asset data:

- Currently, multiple IT Systems are used to hold asset data, with further IT Systems being developed, each for different purposes. This puts the Council at risk, prevents planning and monitoring. It is important to consolidate asset data onto a “single” system. The Council has gone some way to bring some of the data together, however more work needs to take place to coordinate asset data onto a single (or linked) system. A business case, proportionate to the challenge, should be developed to assess the relative benefits, costs and risks of have multiple IT systems versus a single system;
- Performance data is not reported or monitored centrally for assurance of compliance, efficiency and effectiveness (or costs, capital spend, carbon, energy, access, gross rate of return). With the creation of the Corporate Landlord Team (see below) the performance data will need to be monitored centrally.

4. Governance, engagement, including service led:

- Engagement across organisation and with Elected Members is critical for awareness and buy in. There is merit in running periodic workshops akin to the Service and support Service workshops we have run as part of this work, supported by Service Asset Management Plans (SAMPs). The engagement, workshops and SAMP process will be led by the Corporate Landlord Team;
- These Service Asset Management Plans need leadership at Head of Service level - lead policy, strategy and AP delivery, ensure linked to transformation, monitoring and communicate performance, engage with and influence of partners and involve Members;
- Development of a governance model (including a Corporate Landlord Team / Model and Corporate Asset Group) to review strategy and develop action plans, monitor performance, approve documentation to Cabinet and undertake Asset challenge process (retain, develop, manage, dispose, business case). This proposed asset challenge process could be based initially on the RAG rating approach set out below.

5. Governance and companies

- Development of a clear organisational delivery model - i.e. a Corporate Landlord Model and Corporate Landlord Team (CLT). See the background on the CLT model. The Council will consider adopting the CLT model with the CLT sitting in the Council rather than in an arms-length company, this mirrors the comment above with respect to the Council setting the strategy and the need for a CLT arrangement in the Council. We acknowledge that at present the required expertise might not sit within the Council, therefore roles/personnel may need to move and there might need to be an expansion of capabilities and capacity in order to align the resource with the management of business-as-usual and also additional project requirements;
- The precise operation of the CLT model needs to be decided by the Council, for example, it could involve changes to structure which move teams into the corporate centre as suggested in CIPFA Guidance. At present (July 2023) there is a historical lack of clarity on roles between CBH, Amphora and the Council. CBH and Amphora are “delivery partners”, akin to other private sector and voluntary sector partners. Under the current arrangements, as Council owned companies they need to be overseen at a strategic level through the shareholder route and shareholder reporting. However, as organisations delivering for the Council with respect to property asset management, they also need to be actively managed by the Council who have a strategic and ‘commissioning’ role. This could be managed through a corporate landlord model (CLT) approach in the Council with responsibility for commissioning and ownership of the Asset Management Strategy, the governance and delivery framework and managed with reporting from KPIs (see potential KPIs at Annex 3).

6. Governance, other Public Bodies:

- The Council has good partnering relationships with a range of other public bodies. This includes Health partners and Essex County Council. There is potential to formalise the Essex County Council / Colchester City Council relationship with respect to property assets through the creation of a Joint vehicle and pool together unused building and unused land to make it available to use for social economic environmental benefit across the City.

7. PMO: Project Management Office:

- The Council has a recently established PMO. The PMO acknowledged that at present the focus is the subset of new capital projects funded by grant monies and that they continue to build the PMO function. There is an opportunity for this PMO to be involved in wider property asset projects. Also as the PMO developments they will continue to draw on the use of a well-established business case / PMO approaches, including setting out who is responsible, accountable, consulted and informed in any property asset decision making, which links with the updated governance arrangements.

8. Asset Challenge:

- When we say “asset challenge” we mean a cross cutting, collaborative process whereby the relevant stakeholders across the Council consider individual property assets or groups of property assets to decide whether to retain, dispose or acquire. This could be in an “as-is” i.e. without investment or with some investment to support repurposing. A tool which could be used to help determine the future of assets in this asset challenge process is CIPFAs RAG rating 3x2 approach which rates the property against nine attributes to help decision making, signalling whether it should be retained, repurposed, shared or disposed against those attributes. The RAG rating and 3x2 matrix is described further in Annex 1.
- This “asset challenge” process (Annex 1) should be run periodically and in some cases will then lead on to the need to develop a good practice business case;
- The approach taken needs to consider the “whole life costs” of an asset. Generally the upfront grant monies are awarded for design and build of the asset. This is not sufficient, as the asset will then have operating and maintenance costs across its life and if these monies are not available it will be a liability;
- The loss of income needs to be considered, for example there have been discussions around City Centre regeneration that might see the loss of some car parks, potentially the loss of an important stream of income to the Council;
- As part of the “asset challenge” cross Service working focused on co-location could be considered, for example in the RAG rating (see Annex 1 we include Leisure World, which should be seen as a “health and wellbeing” offer, and considering whether there should be an expansion of other services based at the site. Also, in the RAG rating is the current depot site which following a successful relocation could be repurposed for regeneration. Then building on the asset challenge across the Council’s services there should be engagement with other public sector bodies on potential co-location. As highlighted elsewhere, given the current lack of robust property asset management data we have relied on the extensive interviews undertaken across the Council for the asset challenge summarised in the RAG rating;
- From these we have gathered supporting information underpinning the RAG approach, including with respect to utilisation, where we have been told by Services and support services where buildings are perceived as underutilised, especially post pandemic. As always before taking definitive action to repurpose or dispose of a building these perceptions need to be challenged. Also, there are opportunities to develop more data with respect to utilisation;
- There have been a few examples of “asset swaps” between the Council and other public bodies. For example the team that look after the crematorium mentioned some small “land swaps” with the Ministry of Defence, who are major landowners in Colchester. Again these should be a consideration when exploring reshaping the Council’s estate.

9. Historic underinvestment and fragmentation of budgets:

- The Council needs to address historic underinvestment in property maintenance and planned works and reductions in Council budgets, the result of which has been disrepair and increasing backlog maintenance. This includes across the significant portfolio of heritage and cultural assets across the City. For the avoidance of doubt, the comment on historic underinvestment in property maintenance was raised in a reasonable number of service, support service and delivery partner interviews. Whilst the Council does hold some stock condition survey information (see Section 5 in relation to the RAG rated buildings work is needed for the Council further quantify the level of backlog maintenance;
- The fragmentation of budgets across the Council family which results in confusion and lack of co-ordination of spend needs addressing. This includes a mismatch between capital ambitions, including regeneration ambitions and projects, discussed during our engagement with Services and the Capital Programme / Investment Strategy. At this time the Capital Programme / Investment Strategy is being reset;
- The Council will ensure that both planned maintenance and compliance is systematically considered. Note, the review undertaken by the Head of Design and Construction Management in CBH suggests improvements are needed to understand need and plan resources.

10. Decarbonisation:

- Further work is needed to develop and deliver plans with respect to decarbonisation of the estate and becoming carbon neutral by 2030. Therefore the Council has recently appointed a range of officers to drive forward the issue of the climate challenge and leading sustainability;
- Achievement to date, or planned in the near future, includes:
 - Having a good understanding of our scope 1 and 2 emissions from the buildings we own and lease;
 - This scope 1 and 2 emissions information is then published annually as our greenhouse gas report;
 - Our energy manager is working on developing a more comprehensive understanding of our buildings energy and utility usage and identifying the measures that could be used to reduce energy and utility consumption and the associated carbon emissions;
 - Work on a detailed carbon reduction management plan. The plan will also show our route to our 2030 carbon neutral target.
- There are some ambitious regeneration and energy efficiency / generation plans, but these need to link these to the capital programme and funding/financing including the available grant monies.

11. Arms-length arrangements:

- As set out in Section 2, the Council's connection to the communities and the use of property assets for community use is a priority. Where this happens it is important to ensure a transparent decision-making process is in place when the Council is considering subletting commercial space to community groups on the basis of a cost/benefit analysis. This could include charging an arms-length rent, then if required, providing a community group subsidy. Also, clarity as to who is responsible for maintenance and compliance going forward and the identification of budget sources if this is to be the Council.

12. Capacity and capability:

- The Council needs is to consider staff capacity in all areas of assets management which feels stretched but there is no analysis of the total cost of staffing. This includes with respect to any newly formed Corporate Landlord Team, data and the PMO function(s);
- The Council is to consider staff capabilities in all areas of asset management, including project management and business cases, with a recommendation that the better business case approach and training is adopted.

Annex 1 - RAG Rating and 3x2 Matrix

During the Service workshop we introduced our RAG rating and 3x2 matrix approach which provides a “front end” to decisions around retain, dispose and acquire and “as is” or with investment / repurposing. We have run the RAG rating and 3x2 matrix for the following nine properties, identified by services.

The RAG approach involves asking services / support services about their key property assets and / or those that are of concern. We then discuss the individual property against nine attributes (shown along the top row in the table below). These attributes include whether the building is front line serving (i.e. accessed by the public), its suitability in terms of both location, accessibility and consistency with the Council’s corporate plans, its suitability in terms of the service’s ways of working and finally the recent level of utilisation of the building. The three attributes covered in the right-hand side of the table cover running costs (revenue), building condition and therefore capital costs and potential for decarbonising the building, the Council having committed to being carbon neutral by 2030.

In order to maintain consistency of scoring (which those shown as red being potential repurposing or disposal candidates) the questions are considered including around the easy of disposal. Therefore, a property that is highly sensitive, of key Civic Importance and would be a real challenge to dispose of would receive a green rating. Similarly, where the tenure/value/commercial model means you cannot dispose it also receives a green rating. So for example, a property that is either held by the Council on a restrictive lease arrangement but ultimately owned by a third party and / or leased out by the Council on a long-term arrangement that cannot be broken would score green. Historically we have also scored this attribute as green if the value generated by any disposal is so small or once other costs are taken into account negative.

The final column then provides an overall RAG rating for the individual property, with green generally being ‘retain’ as is (business as usual), amber suggesting there is some evidence for disposal / repurposing and red means clear evidence for disposal / repurposing. These overall RAG ratings can then be reflected in the 3x2 matrix shown below (Annex 1). However, as above we would expect a more detailed good practice business case to be developed before taking any significant decisions / actions.

Key										
Name of individual Property/ asset	Front line service usage – with public access	Suitability - Access/ location in line with Corporate plans	Suitability - Ways of Working	Utilisation	Sensitivity - Civic Importance	Tenure/Value - Commercial Model	Condition - Annual running costs	Condition - Capital programme costs	Sustainability - Ability to achieve being Carbon Neutral	Overall
Red means strong evidence for disposal / repurposing	Not used for front line services / public	Not in the right location / not accessible	Does not suit ways of working	Poor utilisation	No sensitivity to a disposal	No reason why cannot be disposed of. Also, high value	High annual running costs	Major capital investment required to improve condition	Not practicable to decarbonise (the climate emergency commitment)	Red means strong evidence for disposal / repurposing
Amber means some evidence for disposal / repurposing	Some front line / public use	Some issues with location / accessibility	Reasonable for ways of working	Reasonable utilisation	Some sensitivity but not a major issue	Some minor reasons why cannot dispose of	Somewhat high running costs	Some capital investment required	Significant work required to decarbonise	Amber means some evidence for disposal / repurposing
Green means retain (potentially with some investment)	Used by front line services / public	In the right location / good accessibility. In line with Corporate plans	Good / best practice for current ways of working	Good utilisation	Potential challenge if looked to dispose of	Significant reason why cannot dispose of – e.g. lease agreements in place / other commitments. Is linked physically to a retain building	Low/average running costs	Good condition	Limited work required to decarbonise	Green means retain (potentially with some investment)

Name of individual Property/ asset (Note agreed that these are the key buildings to consider)	Front line service usage – with public access	Suitability - Access/ location in line with Corporate plans	Suitability - Ways of Working	Utilisation	Sensitivity - Civic Importance	Tenure/Value - Commercial Model	Condition - Annual running costs	Condition - Capital programme costs (also see table below)	Sustainability - Ability to achieve being Carbon Neutral (see two sets of energy usage data below)	Overall
Leisure World 1,974m2						Freehold	High	High – check capital programme £4m shown below	Challenging	Consider repurposing/disposal including of redevelopment land. Need to consider Events revenue at Charter Hall.
Town Hall 1,683.4m2					Yes	Freehold - is grade 1 listed		£400k shown below		Consider repurposing elements of
Magistrate Courts 1,070m2				Believe is vacant		Freehold - is grade 1 listed				Consider repurposing/disposal. Note was previously marketed and tenanted but failed. Has been marked for 4 years.
Northern Gateway Park - sports provision 2,446m2		Note is a new development				Freehold				Consider reviewing against original business case
Castle					Yes	Heritage building		£80k shown below		Important events venue. Consider reviewing - including income generations
Two Museums					Yes	Heritage building		£110k shown below		Consider reviewing. Funding bid being progressed

Name of individual Property/ asset (Note agreed that these are the key buildings to consider)	Front line service usage – with public access	Suitability - Access/ location in line with Corporate plans	Suitability - Ways of Working	Utilisation	Sensitivity - Civic Importance	Tenure/Value - Commercial Model	Condition - Annual running costs	Condition - Capital programme costs	Sustainability - Ability to achieve being Carbon Neutral	Overall
Rowan House 1,723m2	Been subject to recent major investment					Some Substantial rental income from letting to ECC	Some defect issues flagged	£1m shown below, but believe now spent		Recent office review resulted in focus at Rowan House, including co-location
Municipal depot Unknown			Issues with future requirements			Freehold				Consider repurposing/relocating
Crematorium Unknown				But is income generating and believe could be expanded on new site		Are partial disposal options		£160k shown below		Review as getting to end of life and are potentially better locations/site for this income generating activity. Recent review carried out for new site

We set out below further data in support of consideration of the nine properties above. This includes the following energy data which we have used to comment on running costs and in support of the comment on the ability to become carbon neutral:

Site Name	m2 (where known)	Gas kWh	Emissions Gas	Elec kWh	Emissions elec	water m3	Emissions water	Total emissions	Emissions per m2 (where known)
Leisure World	1,974	6,328,895	1,159.20	782,719	181	80,019	21	1,361.17	0.689549139
Town Hall	1,683	551,425	101	281,045	65	2,132	1	166.52	0.098918855
Magistrates	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown	unknown	Unknown
Sportspark	2446	95,878	17.56	222,479	51.42	Unknown	Unknown	68.98	0.028201145
Castle Museum	Unknown	159,135	29.15	76,329	18	789	0.21	47.00	Unknown
Natural History Museum	Unknown	66,064	12.1	10,215	2	126	0.03	14.49	Unknown
Hollytrees	705	72,022	13.19	35,186	8	842	0.23	21.55	0.030567376
Rowan House	1723	Difficult to determine as not open with new heating/lighting systems - Using old figures would not be beneficial as usage of space has changed a lot							0
Depot	Unknown	118,245	21.66	68,416	16	1473	0.39	37.87	Unknown
Total		7,391,664	1,353.86	1,476,389	341	85,381	22.70	1,717.58	

Also, information on the Corporate Building Maintenance budget needs for each building prioritised as per the Council's Stock Condition Surveys (SCS). This shows for the buildings that are the subject of the RAG assessment the year in which the Condition Survey was last undertaken (16/17 to 20/21) and then the total required cyclical maintenance spend under the different priority headings (1 to 4). This information is used in support of the comments made in the RAG assessment on the levels of running costs and of capital costs.

Totals	£1,746,900.00	£2,319,858.75	£857,294.28	£247,273.18	£9,795,696.21
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Cyclical Maintenance Programme	Year	Priority 1	Priority 2	Priority 3	Priority 4	Total
Leisure World Colchester, Cowdray Avenue	16/17					£4,224,370.00
Town Hall, High Street	20/21					£400,000.00
Castle Museum, Castle Park	18/19	£25,300.00	£14,962.50	£39,475.01	£319.07	£80,056.58
Hollytrees Museum, High Street	20/21	£200.00	£6,300.00	£24,570.59	£77,853.18	£108,923.77
Natural History Museum, High Street, All Saints Church	20/21					
Rowan House, Sheepen Road, 33	20/21	£246,050.00	£618,177.00	£119,825.76	£561.56	£984,614.32
Shrub End Depot, Shrub End Road, 221	18/19	£140,350.00	£12,148.50	£10,129.22	£0.00	£162,627.72

Here the Magistrates Courts are included as part of the Town Hall. Also, given the Northern Gateway Sports Park was only completed in 2020 it will be surveyed in 2025/26.

Having completed the RAG rating for the sample buildings the 3x2 matrix below summarises the overall column in terms of potential actions:

Group / Action	Retain	Sell	Acquire
As is / BAU	Rowan House	.	.
Invest beyond BAU / repurpose	Leisure World, Northern Gateway sports provision, Castle and Museums, Town Hall.	Courts, Depot and Crematorium	New Depot and Crematorium

It is important to stress that these potential actions, in particular sell, retain with investment, sell with investment or acquire then need to be the subject of a detailed business case and securing of funding as part of the Council's decision making.

Annex 2 – Property Asset Holdings Data and Benchmarking

Property Asset Holdings Data

The fixed asset register summary received from Colchester Finance shows the split of the assets; Property, Plant and Equipment (PPE) (180), Investment properties (91) and Other assets (20).

We set out in Section 3 information on the Council's property asset holdings as of April 2023 and accounting net book values as of April 2022.

The latest published financial statements are for the year ended 31 March 2022. The carrying amounts for other land and buildings are subject to audit review still pending but the total carried forward amount (NBV) as of 31 March 2022 is £614.2 million. Note, to reconcile the Section 3 information with the table below it is necessary to combine certain asset classes and bring in the investment property holdings.

Fixed Asset Register from the Council's DRAFT Statement of Accounts (2021/22) (from the Council's website at October 2023)

14. Property Plant and Equipment

	Council Dwellings	Land & Buildings	Vehicles Plant etc.	Infra- structur e	Commun . Assets	Assets under Constru ction	Surplus Props.	Total
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Cost:								
Opening value 1 April 2021	387,139	163,877	22,501	15,437	399	9,117	23,756	622,226
Additions	20,925	1,287	705	11	0	9,930	0	32,858
Acc. Depreciation and Impairment written out to Gross Carrying Amount	(4,681)	(2,976)	0	0	0	0	(1)	(7,658)
Revaluations to Revaluations Reserve	34,424	18,618	0	0	0	0	1,938	54,980
Revaluations to (Surplus)/Deficit	(12,272)	2,174	0	0	0	0	150	(9,948)
Derecognition - disposals	(3,228)	0	(410)	0	0	0	0	(3,638)
Derecognition - other	(483)	(492)	(1,516)	(6)	0	0	0	(2,497)
Reclassified from/(to) Assets held for sale	0	0	0	0	0	0	0	0
Reclassified within PPE categories	1,144	0	511	0	0	(1,655)	675	675
Value 31 March 2022	422,968	182,488	21,791	15,442	399	17,392	26,518	686,998
Cumulative Depreciation:								
Opening value 1 April 2021	(992)	(7,920)	(13,632)	(3,224)	0	0	(1)	(25,769)
Charge for the year	(4,483)	(4,044)	(2,063)	(723)	0	0	0	(11,313)
Acc. Depreciation and Impairment written out to Gross Carrying Amount	4,464	2,892	0	0	0	0	0	7,356
Acc. Impairment written out to CGA	217	85	0	0	0	0	0	302
Impairment losses to Revaluation Reserve	0	0	0	0	0	0	0	0
Impairment losses to (Surplus)/Deficit	0	0	0	0	0	0	0	0
Derecognition - disposals	19	0	330	0	0	0	0	349
Derecognition - other	0	418	1,516	6	0	0	0	1,940
Reclassified within PPE categories	0	0	0	0	0	0	0	0
Balance 31 March 2022	(775)	(8,569)	(13,849)	(3,941)	0	0	(1)	(27,135)
Net book value 31 March 2022	422,193	173,919	7,942	11,501	399	17,392	26,517	659,863

Property costs are summarised below for the years 2019/20 to 2022/23 (subject to year-end adjustments that are being finalised). Overall the total costs show an overall increase of 10.54% since 2019/20. The key drivers of the cost increase from 2019/20 actual costs to 2022/23 actual costs as shown by the summary below are Highways maintenance (£355k) and Energy costs (£867k).

Property Costs (GF) excl HRA / NEPP; double counts & H		2022/23 Budget	2022/23 Actual	2021/22 Actual	2020/21 Actual	2019/20 Actual	Change
SERVICE GROUPS	DB200 R&M BUILDINGS-RESPONSE <i>(excl PL&M)</i>	443800	538,430	467,171	520,142	456,088	82,402
	DB210 R&M BUILDINGS-PLANNED	118500	105,101	123,333	70,806	51,012	54,095
	DB212 PPM Contracts <i>(excl PL&M)</i>	20400	18,911	16,586	13,635	18,127	244
	DB220 R & M BUILDINGS-CYCLICAL	100	125	-	-	-	125
	DB230 R & M-PLANT	53200	60,714	41,820	47,473	41,006	19,708
	DB235 R&M Management - <i>all R&M</i>	0	-	0	-	-	-
	DB240 R & M GROUNDS - <i>excl as mostly contract</i>	0	-	0	-	-	-
	DB243 HIGHWAYS-MAINTENANCE	458000	366,643	5,103	25,436	13,222	355,427
	DB250 ENERGY COSTS	1185300	1,361,023	139,513	650,335	633,734	861,235
	DB251 WATER CHARGES	281200	238,135	217,376	263,741	213,167	85,568
	DB252 RENTS & RATES <i>(excl PL&M Homelessness, Piv S)</i>	1436000	48,851	138,010	253,157	444,373	335,522
	DB254 Fin Leasee - buildings	0	-	15,213	7,172	7,172	7,172
	DB255 NNDR	1711700	1,601,881	1,782,543	1,683,402	1,658,782	56,302
	DB260 FIXTURES & FITTINGS	25800	13,078	8,746	4,503	5,885	13,193
	DB270 CONTRACT CLEANING & SECURITY	457100	444,615	408,785	400,800	422,385	22,230
	DB295 PROVISIONS	16000	18,636	12,640	16,536	13,377	4,859
		4843400	5,085,882	4,044,304	3,361,222	4,025,247	1,060,635
SERVICE GROUPS	NG000 SUPPORT SERVICES						
	7183 Corp Facilities	176,000	184,660	173,075	133,335	163,700	20,360
	7630 Engineering	53,300	53,300	33,231	41,087	54,140	240
	7526 Insurance - Premises	130,300	130,300	37,652	119,317	103,304	20,336
	7152 R&M	623,700	623,700	674,220	619,312	586,255	43,445
<i>Using Budget or not yet finalised</i>	7946 R&M - PPM	120,700	120,300	87,208	111,436	63,457	51,443
		1,110,600	1,119,460	1,065,447	1,031,207	982,856	136,604
SERVICE GROUPS	8963 Capitalised Depreciation	5,215,000	5,215,000	6,238,674	5,203,415	5,322,905	107,305
	<i>Total of Prem sub total + Support + Dep'n</i>	11,175,000	11,420,341	11,409,025	10,195,844	10,331,007	1,089,334
						1,089,334	10.54%

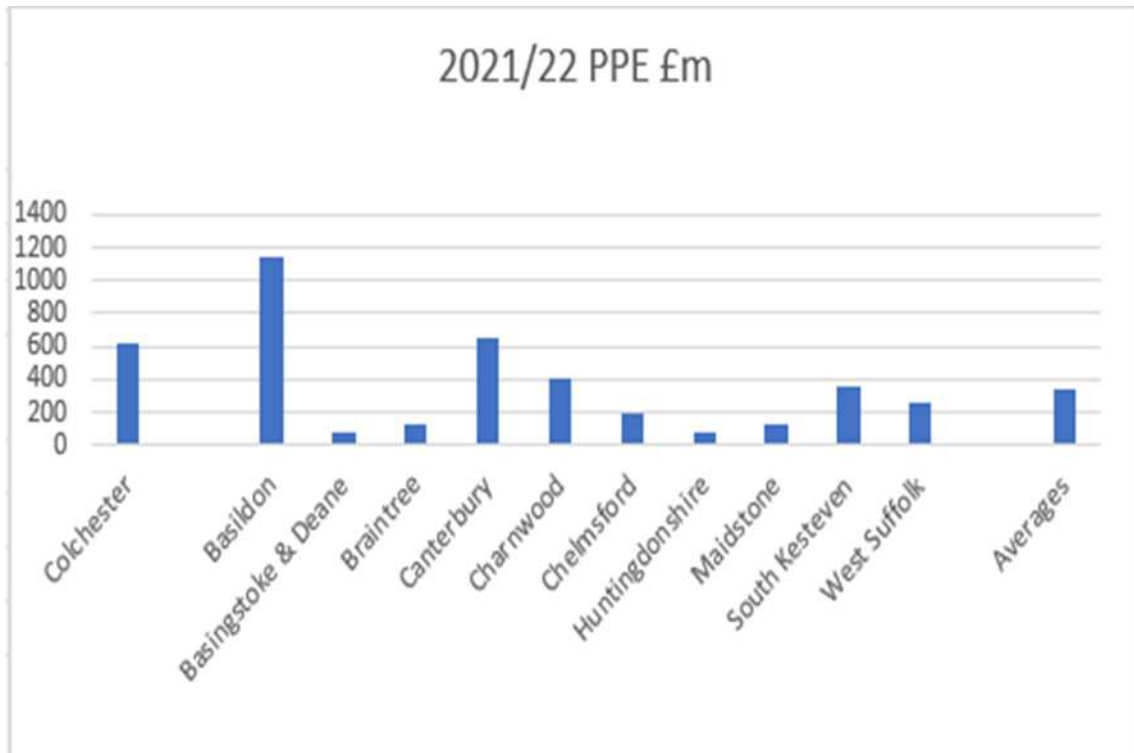
The Statement of Accounts (2021/22) show that the Council generated circa £1.8m of investment property income from its £41m net book value investment properties (circa 4.3% - with the gross and net being similar given low administrative costs and no related borrowing costs charged).

Benchmarking, including via CIPFA's Nearest Neighbours Model

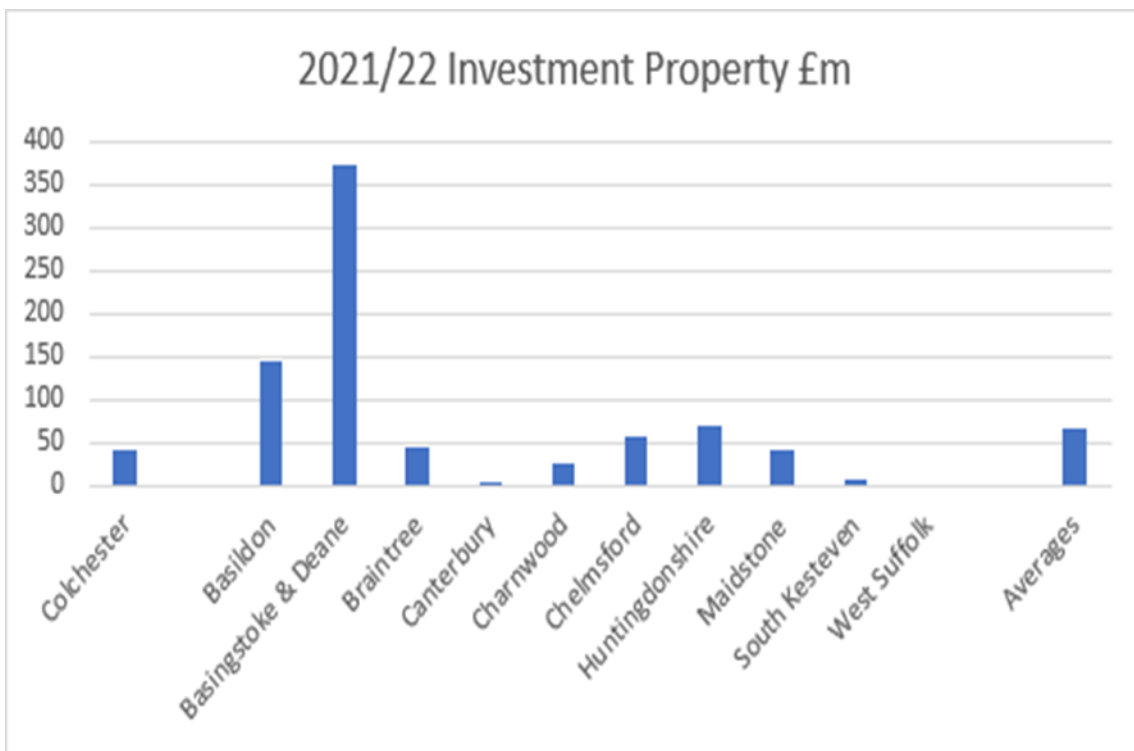
- The Nearest Neighbour Model uses a range of 40 demographic and socioeconomic indicators to determine the statistical distance between each authority according to the characteristics of the area each authority administers.
- In the analysis here, authorities are compared against the 10 councils the model deemed most similar to them, their 'Nearest Neighbours'.
- Indicators used in the model cover characteristics such as: population, geographical area, density, unemployment, taxbase, migration, ethnicity, house banding and business floorspace.
- Populations taken from ONS mid-year estimates.

Colchester and its Neighbours	Population (mid-2021)
Basildon	187,700
Basingstoke & Deane	185,700
Braintree	155,700
Canterbury	156,600
Charnwood	182,800
Chelmsford	181,800
Colchester	192,400
Huntingdonshire	181,800
Maidstone	176,700
South Kesteven	143,800
West Suffolk	180,800

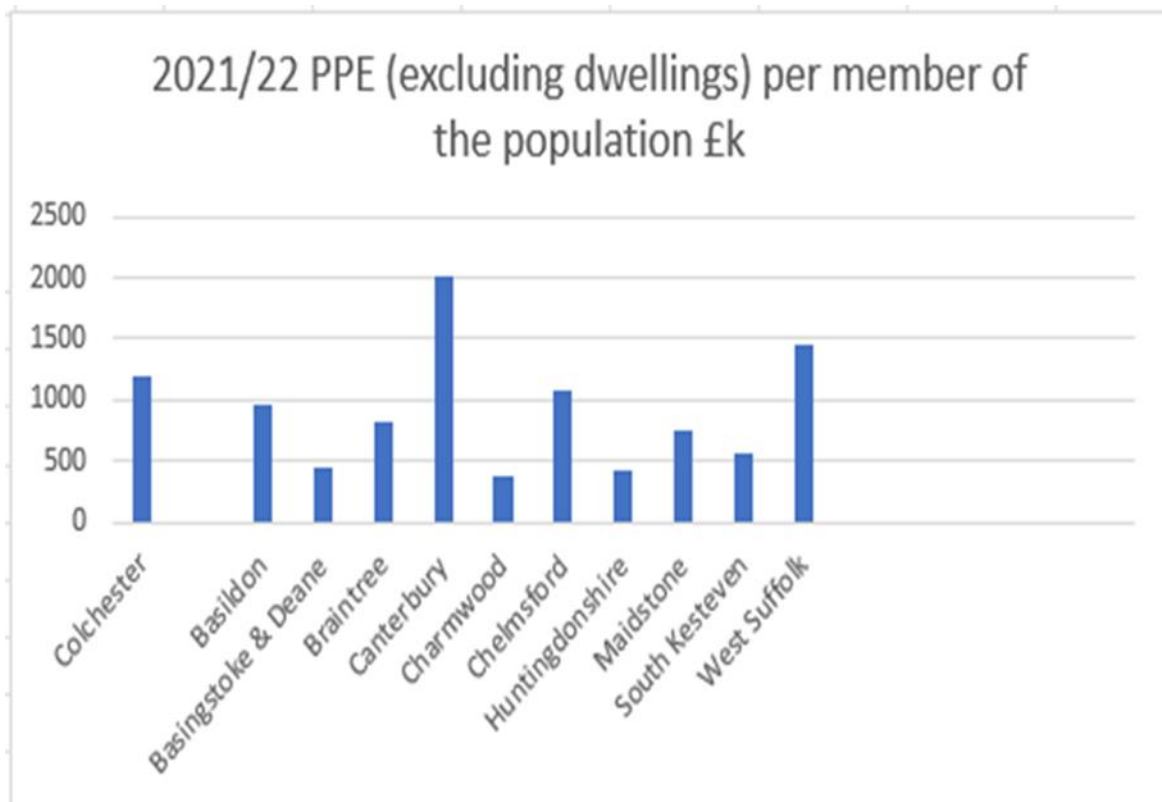
PPE – Property, Plant & Equipment (tangible fixed assets)



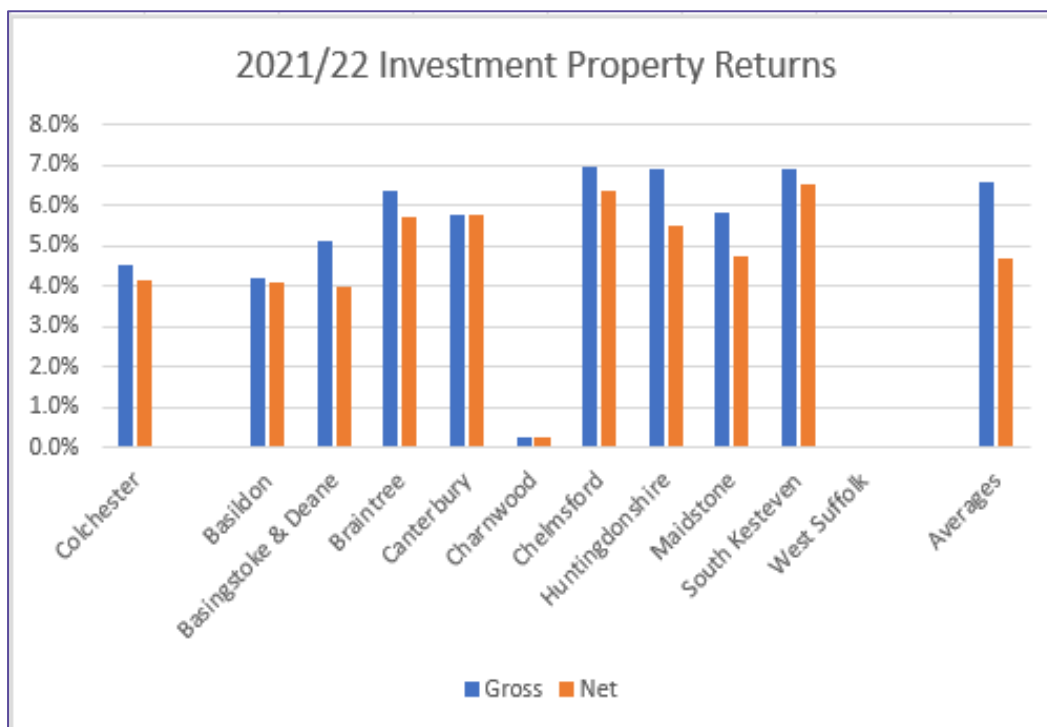
See below, property holdings per member of the population.



Colchester holds a comparatively low level of investment property as indicated above compared to its nearest neighbours.



Colchester holds an average level of property per member of the population.



Colchester's investment property net return in 2021/22 are in line with the average for our nearest neighbours at circa 4.3%. For Colchester the gross and net being similar given low administrative costs and no related borrowing costs charged.

Annex 3 – Potential Key Performance Indicators (KPIs)

Should the Council decide to operationalise the Corporate Landlord model, the below are key indicators that could be considered to measure the performance of Assets. These are split between those focused on service delivery (service performance indicators) and those focused on the assets (asset performance indicators). We acknowledge that there is some overlap, and that further work will be needed to refine these for the Council's context as part of any move to a CLT approach.

Service Performance Indicators	
Annual management costs per square metre of Operational Property.	
Annual management costs of the Commercial & Investment Portfolios as a % of rent role.	
% of lease action dates achieved.	
% of projects where cost within +/- 5% of estimated out-turn.	
% of projects falling within +5% of the estimated timescale	
% of survey programs to be completed as scheduled on Asbestos, Legionella, Fire Risk Assessments and DDA.	
Maintenance Term Contract Performance (internal & external) % of jobs where agreed response times are met.	
Servicing & Testing Contract Performance % of tasks completed on time.	
% Overall compliance levels across the estate – Operational, Commercial	
% Compliance levels of 'Big 5' (Fire, Legionella, Asbestos, Gas, Electric).	
% Compliance remedial actions outstanding above 30 days.	
Energy Consumption by building for the reporting period.	
Waste Consumption by building for the reporting period.	
Number of reportable incidents for the reporting period (RIDOOR).	
Number of accidents for the reporting period.	
Number of Help Desk calls received during the reporting period – by category.	
% of PPM Activities completed within required timescales during the reporting period.	
Number of substantiated complaints received within the reporting period.	
Summary of any major incidents or near misses and the action taken to prevent future occurrence.	
% of reactive jobs completed within specified time period (Emergency, Routine etc.)	
% of jobs which have not been 'closed down' which have been raised in last 6 months.	
% of sites meeting cleaning productivity targets.	

Asset Performance Indicators	
% Gross Internal Floor Area in condition categories A to D - <i>Note 1</i>	Total maintenance costs for priority levels 1-2
% Of costs in priority level 1, 2 & 3 respectfully – <i>Note 2</i>	Average required maintenance per square metre (GIA) by asset
% Split between annual planned and reactive maintenance spend	Annual spend on energy per square metre (GIA)
Annual consumption of energy (kwh) per square metre (GIA)	Emissions of carbon dioxide in tonnes per square metre (GIA) by asset
Cubic Meters of water consumed per square metre (GIA)	Average office floor space per member of staff – office accommodation
% Of property deemed suitable for current use (in categories A & B) by asset type – <i>Note 3</i>	Internal rate of return for commercial and investment portfolios by type and individual asset

Note 1

A (Good): Performing well and operating efficiently.

B (Satisfactory): Performing as intended but showing minor deterioration.

C (Poor): Showing major defects and/or not operating as intended.

D (Bad): Life expired and/or serious risk of imminent failure.

Note 2

Urgent work that will prevent immediate closure of the property, address an immediate high Health & Safety risk and / or remedy a serious breach of legislation.

Essential works required within 2 years that will prevent serious deterioration of the fabric of the property or associated services, address a medium Health & Safety risk and / or remedy a less serious breach of legislation.

Desirable works required within 3 to 5 years that will prevent deterioration of the fabric of the property or associated services, address a low Health & Safety risk and / or remedy a minor breach of legislation.

Note 3

A (Good): Performing well and operating efficiently and supports service delivery and staff needs.

B (Satisfactory): Has minor problems but generally performs well and supports service delivery and staff needs.

C (Poor): Showing major problems and/or not operating optimally and impedes service delivery and/or staff performance.

D (Bad): Seriously impedes the delivery of services.

22 November 2023

Report of	Head of People	Author	Jessica Douglas ☎ 282239
Title	Officer Pay Policy Statement for 2024/25		
Wards affected	Not applicable		

1. Executive Summary

- 1.1 Local authorities must publish an officer pay policy statement each year. The statement must be approved by Full Council.
- 1.2 The statement covers all pay and benefits for all Colchester City Council employees.
- 1.3 The draft statement for 2024/25 is attached, with the detailed rates in the appendix.

2. Recommended Decision

- 2.1 To recommend the approval and adoption of the 2024/25 Statement by Full Council.

3. Reason for Recommended Decision

- 3.1 The Localism Act requires “authorities to prepare, approve and publish pay policy statements articulating their policies towards a range of issues relating to the pay of its workforce, which must be approved by full Council annually. An authority’s pay policy statement must be approved by a resolution of that authority before it comes into force”.

4. Alternative Options

- 4.1 The only alternative would be to not recommend the approval of the Pay Policy Statement, but that would be contrary to the requirements of the Localism Act.

5. Background Information

- 5.1 Local authorities must publish a pay policy statement for the financial year. The Officer Pay Policy for 2023/24 was approved by [Full Council on 1 December 2022](#).

The Localism Act specifies items that must be covered by the statement including the level and elements of remuneration for each chief officer, remuneration of chief officers on recruitment, increases and additions to remuneration for each chief officer, the use of performance-related pay and bonuses for chief officers, the approach to the payment of chief officers on their ceasing to hold office under or to be employed by the authority, and the publication of and access to information relating to remuneration of chief officers.

- 5.2 The Council’s pay policy statement extends beyond the statutory requirements relating to chief officers as shown in 5.1 above to include all officers employed by the Council, in the interests of openness and transparency.

- 5.3 Please see the attached Officer Pay Policy. Appendix 1 of the policy contains the mostly numerical data which sits behind it, and the definitions of terms such as 'chief officer'. These two documents form the Council's officer pay policy statement.
- 5.4 The statement covers all pay and benefits for every employee of Colchester City Council. There are no financial allowances or bonuses other than those mentioned.
- 5.5 The Colchester Commercial (Holdings) Ltd holding company (CCH) and Amphora trading companies set up in January 2018 are not covered by this statement.
- 5.6 Mandatory requirements for data publication under the [Local government transparency code 2015](#), and for the Council's [Statement of Accounts](#) under the [Accounts and Audit Regulations 2015](#) have also been taken into account when preparing this year's update of the pay policy to ensure that the published data is complete and consistent.

6. Living Wage

- 6.1 The Council has chosen to pay the [Living Wage](#), set independently by the [Living Wage Foundation](#), since 2013 as part of its commitment to being a good employer, and its approach to [Social Value](#). The Council will continue to pay the Living Wage as a minimum standard for all its employees. Around 400 permanent/casual Council staff and 60 third-party contracted employees receive the Living Wage.
- 6.2 The Living Wage is calculated annually according to the basic cost of living in the UK. The new Living Wage rate is usually announced each November but was brought forward this year due to the cost-of-living situation. The increase from £10.90 an hour to £12.00 (10.1%) was announced by the Living Wage Foundation on 24 October 2023. The Council implemented the new rate from 1 November 2023. For staff on the national living wage, the new rate means £1.10 an hour/£177 a month/£2,122 a year more if full-time. Updated pay scales are shown in the policy's appendix, and on the [Council's website](#).
- 6.3 This Living Wage hourly rate, paid by the Council and set by the Living Wage Foundation, is higher than the statutory [National Living Wage](#) set by central government for workers who are 23 years or over (currently £10.42) or the [National Minimum Wage](#) (£10.18 if 21-22, £7.49 if 18-20, £5.28 if under 18 or an apprentice).
- 6.4 The Council signed a 'Living Wage Employer' licence with the Living Wage Foundation in February 2016. This means that as well as paying the Living Wage Foundation's recommended hourly rate to staff, this requirement has been included in new third-party contracts from that date for contracted staff and suppliers working on Council business.
- 6.5 The Living Wage uplift is included in the overall budget setting process each year, and is part of the budget set aside for the annual pay award.

7. Changes since the last report and looking ahead to 2024/25

- 7.1 Since the last Officer Pay Policy and report was presented to Cabinet in November 2022, a revised pay deal was agreed which represented an increase of £1925 on the 2021-22 pay scales, on spinal column points 4 to 32 from 1 April 2022 for permanent and fixed term employees in accordance with the National Joint Council (NJC) 2022-23 pay award. This was paid in January 2023 and backdated to April 2022.

- 7.2 Staff on spinal column points 4 to 13 received the real living wage increase from 1 October 2022. They received the difference between the £1925 increase less the living wage increase already paid from 1 April 2022.
- 7.3 Pay negotiations for 2023/24 are on-going. An increase of £1000 per spinal column point and a £500 unconsolidated payment has been offered. The offer includes changes to the spinal column points for the lowest paid to build in pay differential from the living wage rate. An extra two days leave for staff on CMG11-14 with less than five years' service has also been included in the offer. The offer has been rejected and UNISON are balloting members on strike action. The pay scales included in the policy are the 2022/23 pay scales, pending the agreement of the 2023/24 pay award.
- 7.4 The £12 per hour Living Wage uplift announced on 24 October will be implemented on the 1 November 2023.
- 7.5 New Senior Management arrangements have been implemented with the appointment of the Senior Leadership Board and new Heads of Service. The revised pay is within the current grading system.
- 7.6 Included in section 10.2 is the requirement for any redundancy or severance package of £100,000 to be approved by Full Council. This is not a new requirement but has been included in the Officer Pay Policy to reflect the position.

8. Equality, Diversity and Human Rights implications

- 8.1 The Equality Impact Assessment is on the Council's website [here](#) or by following the path: www.colchester.gov.uk > Equality and Diversity > Equality Impact Assessments

9. Strategic Plan References

- 9.1 The performance, remuneration and motivation of employees are key to delivering effective, efficient public services and the Strategic Plan's aspirations and priorities.

10. Publicity Considerations

- 10.1 The statistical data within the Officer Pay Policy is publicly available on the Council's [Council Data](#) web resource so that it is all in one place, helping to improve openness and transparency. Employee benefits including pay scales are also published on the website [here](#). Gender pay gap information is published [here](#), including our supporting narrative and a link to the Government's [gender pay gap portal](#) where the results can be compared with those of other organisations.

11. Financial implications

- 11.1 The pay policy statement provides transparency about the Council's pay and benefits.

12. Other Implications

- 12.1 There are no particular consultation; health, wellbeing and community safety; health and safety; risk management or environmental and sustainability implications.



Colchester
City Council

Officer Pay Policy

www.colchester.gov.uk

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Introduction

The purpose of this policy is to provide an open and transparent framework that ensures clarity, fairness and consistency in the remuneration of officers.

The Council will comply with this policy which covers all officers. It ensures that employees are paid on a fair and equitable basis in accordance with equality legislation.

Colchester City Council recognises the importance of administering pay in a way that:

- attracts, motivates and retains appropriately talented people needed to maintain and improve the Council's performance and meet future challenges
- reflects the market for comparable jobs, with skills and competencies required to meet agreed delivery and performance outcomes
- allows for a proportion of remuneration to be at risk, depending upon the delivery of agreed outcomes and results
- delivers the required levels of competence within an overall workforce strategy within approved budget parameters
- is affordable and transparent.

1. Pay strategy and framework

- 1.1 The Council determines the level of annual salary for employees, including chief officers, using an established job evaluation scheme. Jobs are independently evaluated, using this scheme, by experienced Human Resources staff and all employees have the right of appeal against their pay grade.
- 1.2 The pay grades and salary spinal points are shown on the Council's website [here](#), and in Appendix 1 along with other definitions such 'chief officer'. Each pay grade has a number of incremental points and employees normally progress up their pay grade by one increment on an annual basis, subject to satisfactory levels of performance (see also section 5 - rewarding performance).
- 1.3 The exception to this principle is where employees have transferred their employment to the Council and salary protection exists under the Transfer of Undertakings (Protection of Employment) legislation commonly known as TUPE.
- 1.4 The pay policy incorporates the Council's Equality and Diversity policy (website link [Equality and Diversity in employment - Colchester City Council](#)), and periodic equal pay audits will be conducted.
- 1.5 From April 2017, [Equality Act regulations](#) require public organisations with more than 250 employees to publish a range of gender pay gap figures to show whether there are any differences in pay between male and female employees. The annual gender pay 'snapshot' is published on the Council's website [here](#), with a link to the Government's website where figures from other public and private organisations can also be seen/searched to help with openness and transparency.
- 1.6 The Council implemented the '[Living Wage](#)', which is independently calculated by the [Living Wage Foundation](#), from April 2013 and became an accredited Living Wage Employer in February 2016.

2. Pay review and annual increases

- 2.1 The Council supports the principle of collective bargaining and has a recognition agreement with the trade union 'Unison'. Negotiation and consultation are conducted at a local level in relation to levels of pay and benefits for all employees including Chief / Senior Officers (see definitions in Appendix 1) using 'Colchester Managed Grades' (CMG) pay grades. The Council is therefore not part of any national terms and conditions for local government employees.
- 2.2 Local negotiations around a pay review are conducted on an annual basis, and any increase is agreed taking into account inflationary factors, local salary levels and affordability. Any decision to increase salary levels for all employees has to be approved by the Portfolio Holder under delegated powers set in the Council's [Constitution](#).
- 2.3 The Council publishes its pay multiple (the ratio between the highest and lowest paid employees) and does not currently set a target for this.

3. Remuneration of Chief Officers

- 3.1 The remuneration of all officers is determined using the Council's job evaluation and performance management schemes.
- 3.2 The median average value of Chief Officers' pay is shown in Appendix 1 together with the relationship to the lowest paid staff and other staff (referred to in the legislation as "the pay multiple").
- 3.3 The remuneration of all Chief Officers and Senior Officers is published in the Council's [Annual Statement of Accounts](#), which also includes a wide range of financial information.

4. Other items in addition to salary

The Council pays the following additions to annual salary:

- 4.1 **Overtime:**
This is paid to employees who are required to work in excess of their contracted weekly hours. All overtime is paid at plain-time rate derived from annual salary, and enhancements are not normally paid for working at weekends or public holidays. Employees on pay grade CMG5 or above do not receive overtime pay.
- 4.2 **Unsocial hours working:**
The Council pays an allowance to employees who work unsocial hours which cover 24-hour shift working. Allowances are also paid to employees who undertake standby and call out duties. A small payment can also be made to 'front-line' employees who are required to work over the Christmas and New Year period.
- 4.3 **Maternity, paternity and shared parental arrangements:**
The Council has a policy that supports parents and provides some enhancement to the statutory maternity, paternity and shared parental provisions. These enhancements are shown in Appendix 1.

OFFICER PAY POLICY

4.4 Recruitment and retention payments:

Where the Council is faced with difficulties in recruitment to and retention of specific jobs, as a result of market pressures and skills shortages, the Chief Operating Officer is able to sanction the use of a temporary recruitment/retention supplement, reviewed on a regular basis. This may include a non-consolidated payment on appointment and/or a retention payment to reflect the employment market and the needs of the business. Any such payment is to be authorised by the Chief Operating Officer. If the employee leaves the Council voluntarily within a year, they will be required to pay back this non-consolidated payment.

Where an individual is being recruited and has significant experience or skills in the role for which they are being employed, Heads of Service and above have discretion to appoint at any scale point (within the grade) above the lowest level.

Where an employee is upgraded using the Council's job evaluation scheme, the employee will move to the lowest point of the new pay grade such that they receive at least one increment. Any proposal to move the employee to a higher point on the pay grade has to be authorised by Heads of Service and above.

4.5 Market Supplements:

Market supplements are an additional method of tackling recruitment and retention issues by temporarily increasing pay awarded to specific post(s) without altering the job evaluation determined grade for the role.

A market supplement may be agreed when it can be shown that the salary attached to the grade for the 'hard-to-fill' role is significantly lower than the salary offered elsewhere and that this is having an adverse impact on the ability to recruit and retain staff in specific post(s).

A 'hard-to-fill' post is one where there are proven recruitment and/or retention difficulties and/or there are known significant national shortages. The value of any market supplement is determined by a comparison of the remuneration for a council role against relevant market rates for similar roles.

A market supplement will be applied to all employees undertaking the role.

Market supplements have to be authorised by the Chief Operating Officer.

4.6 Increases in responsibility:

Temporary or permanent payments can be paid at the discretion of the Heads of Service and above to reflect operational needs, the level of additional responsibility and the Council's increment/acting-up policies.

4.7 Other items:

The Council only reimburses reasonable business expenses actually incurred and in line with the Council's travel and subsistence policy.

Professional membership fees are reimbursed to employees at the rate of 50% of fees incurred and only one membership per employee is reimbursed.

External training costs are paid where they form part of agreed learning and development, and in line with the post-entry training policy.

OFFICER PAY POLICY

There are no expense allowances or bonuses other than those mentioned within this pay policy.

5. Rewarding performance

- 5.1 The Council uses a performance management scheme to appraise the performance of all employees, including Chief / Senior Officers. Issues of poor performance can result in any annual increment being withheld.
- 5.3 The Council also recognises the need to incentivise specific jobs whose role involves a proportion of sales or income generation. In such cases a reward package will be developed, which needs approval by Senior Leadership Team. The annual salary and incentive payment will be determined outside of the job evaluation scheme and will be risk-assured in relation to equal pay.
- 5.4 The Council incentivises and recognises employees for their individual contribution towards its organisational goals through a non-salary rewards scheme. Where an employee's contribution is deemed to be excellent, they can be nominated for a non-consolidated payment up to the maximum value if authorised by the Deputy Chief Executive or Chief Operating Officer. See Appendix 1 for the value of these incentives.

6. Pension

- 6.1 In accordance with statutory provisions, employees are offered membership of the Local Government Pension Scheme. The Council has a published pension policy, and this policy applies to all employees including Chief / Senior Officers. It sets out the Council's decisions relating to discretionary powers allowed within the scheme. The pension contribution rates are shown in Appendix 1.
- 6.2 The Council also supports the principle of flexible retirement whereby employees are able to gain access to their pension whilst continuing in employment, subject to the restrictions laid down within the scheme and in the Council's Pension policy. This approach allows the Council to retain skilled employees and to assist individuals in managing the transition to retirement.

7. Other financial benefits

The Council currently offers the following financial benefits to employees, with the value of these charges and benefits shown in Appendix 1:

- 7.1 **Travel Plan incentives/charges:**
In order to encourage employees to use 'greener' travel modes, which also help to reduce town centre congestion, the Council has developed a package of travel plan measures. These measures include a charge for car parking for employees based in the town centre, and discounts for 'home to work' use of bus and rail travel.
- 7.2 **Salary sacrifice schemes:**
The Council has adopted approved government salary sacrifice schemes which enable employees to have deductions from pay to purchase childcare vouchers (closed to new applicants in October 2018) or cycles for travel to work. These schemes are tax efficient for the employee and are cost-neutral to the Council.

OFFICER PAY POLICY

7.3 Long Service Awards:

The Council recognises the commitment of employees to public service and provides a gift to employees for 25 years' service with the Council.

7.4 Other allowances:

An allowance is paid for employees who volunteer to be designated First Aiders in the workplace.

8. Recruitment

8.1 In accordance with the Council's [Constitution](#), appointments to Head of Paid Service (Chief Executive), Deputy Chief Executive, Strategic Directors, Section 151 Officer and Monitoring Officer are required to be approved by the Full Council.

8.2 All appointments are made in line with this Pay Policy.

8.3 The appointment of other Chief Officers and starting salaries within the grade must be approved by the Chief Executive.

8.4 The appointment of employees other than Chief Officers is delegated to the appropriate management level, relevant to the vacant job. The starting salary within the pay grade range is determined taking into account the skills and experience of the applicant and market pressures.

8.5 The Council does not restrict the re-employment of employees previously made redundant by either the Council or other Local Government. All applicants for vacancies are considered equally, based on their knowledge, skills and experience.

8.6 Full Council will be offered the opportunity to vote before large salary packages are offered in respect of new appointments. This level is set out in statutory guidance, and the current level is shown at Appendix 1 along with definitions of roles/posts.

9. Sick Pay

The Council applies the following sick pay scheme for all employees.

Service (years)	Full Pay (months)	Half Pay (months)
During first year	1	*2
During second year	2	2
During third year	4	4
During fourth/fifth years	5	5
After five years	6	6

* After completing 4 months' service

10. Payments when employment status changes

10.1 Redundancy:

The Council operates a redundancy payment scheme which applies to all employees including Chief / Senior Officers. The scheme is based on the

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employee's rate of pay and on the number of weeks paid under the statutory scheme, with an enhancement of 50% subject to a maximum of 45 weeks' pay.

10.2 Any redundancy or severance packages of £100,000 or more will be approved by Full Council. In presenting the information to Full Council the components of any such severance package will be set out including salary paid in lieu; redundancy compensation; pension entitlements; holiday pay; and fees or allowances paid.

10.3 **Pay Protection:**

The Council operates pay protection for a limited time period, within the terms of its change management and redundancy policy. This applies when staff have their pay reduced as part of a process of re-deployment or job evaluation.

10.4 **Agreements:**

Where the Council is in dispute with an employee, the Council will make use of legally binding agreements to settle disputes in appropriate circumstances. The use of these agreements and the value of any settlement will be determined by a consideration of factors such as the potential costs of litigation, the degree of risk at employment tribunal adjudications and any reputational impact. The decision to agree a legally binding agreement will rest with the Chief Executive or, in the case of the Chief Executive, will rest with the Cabinet.

11. Election duties

11.1 The Council has determined that the Returning Officer is the Chief Executive, and the remuneration is separate from the Chief Executive's salary. Remuneration levels for employees who assist with election duties on a secondary employment basis are set by Colchester City Council for City Council elections, Essex County Council for County Council elections and by central government for national elections.

11.2 The amount paid for election duties will vary depending on the number and type of elections which take place. The amount paid to the Returning Officer in the previous year is shown in Appendix 1.

12. Temporary staff and interim arrangements

12.1 The Council occasionally uses temporary agency or interim staff where it meets specific business needs and delivers best value. Levels of reward are determined by market rates. However, the Council will not use payment arrangements that could be perceived to be designed to deliberately avoid personal taxation.

13. Supporting Information

The following references have been used in producing this Pay Policy, along with the Council's existing Human Resource policies:

Legislation and best practice guidelines

- The Localism Act 2011 - [chapter 8 - pay accountability](#).
- The Equality Act 2010
- Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006

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- Local Government Pension Scheme Regulations 2008
- [Accounts and Audit Regulations 2015](#).

Home Office and the Ministry of Housing, Communities and Local Government:

- [Openness and accountability in local pay: Guidance under section 40 of the Localism Act](#) and [Local government transparency code](#)
- [Openness and accountability in local pay: Supplementary Guidance \(publishing.service.gov.uk\)](#)

The Chartered Institute of Public Finance and Accountancy:

- [Code of Practice in Local Authority Accounting](#)

Local Government Association

- [Pay Policy Statements - guidance](#).

Our website

The Council's website www.colchester.gov.uk has a [section with more information about employment](#) and [gender pay gap statistics](#) for Colchester City Council.

The following policies and forms should be taken into account alongside this document:

Policies	
Equality and Diversity policy	Increment policy
Maternity and Paternity policies	Acting up policy
Pensions policy	Overtime policy/Standby and Call-out Policy
Local Government Pension Scheme (Administration) Regulations 2013 Discretionary Decisions by Colchester City Council	Performance management scheme
Post-entry training policy	Change Management and Redundancy policy
Travel and subsistence policy	Travel Plan

The policies are on the Intranet in the HR section: [A to Z of HR Policies and Procedures](#)

Document Information

Title :	Officer Pay Policy
Status :	Annual update of existing policy
Version :	Draft for Cabinet/Council approval
Consultation :	Cabinet 22 November 2023
Approved By :	Full Council
Approval Date :	7 December 2023
EQIA :	click here
Review Frequency :	Annual
Next Review :	November / December 2024

This policy applies to you if you are working under the Terms and Conditions of Colchester City Council.

OFFICER PAY POLICY

Pay Data – Appendix 1

1. [Annual Salary scales](#). The last pay award increase was in April 2022 – £1925 to SCP4 to 32. 2.5% if SCP33 and above. The 2023/24 pay award is pending.
2. The pay scales include the Real Living Wage uplift applied from 1 November 2023.

Salary spine

point	Annual salary (£.p)	point	Annual salary (£.p)
4*	23,151.49	32	38,993.75
*	23,151.49	33	39,459.03
6*	23,151.49	34	40,817.42
7*	23,151.49	35	42,175.82
8*	23,151.49	36	43,534.21
9*	23,151.49	37	44,946.64
10*	23,151.49	38	46,359.09
11*	23,151.49	39	47,771.49
12*	23,151.49	40	51,282.84
13*	23,151.49	41	54,794.21
14	23,151.49	42	58,305.55
15	23,151.49	43	62,984.00
16	23,151.49	44	67,662.39
17	23,151.49	45	72,340.83
18	23,151.49	46	77,019.21
19	23,382.78	47	81,697.63
20	23,987.01	48	86,183.23
21	24,591.18	49	90,668.86
22	25,195.38	50	95,154.43
23	25,799.58	51	99,640.06
24	26,452.24	52	104,125.64
25	28,397.38	53	108,611.27
26	30,390.96	54	113,651.94
27	32,384.55	55	118,692.57
28	33,635.73	56	123,733.22
29	34,886.89	57	128,773.85
30	36,138.04	58	133,814.51
31	37,565.89	59	136,519.59

* these salary points are 'Living Wage'.

The Living Wage rate, as set independently/annually by the Living Wage Foundation, was uplifted to £12 an hour/£23,151.49 a year on 1 November 2023. (previously £10.90 / £21,029.27 – so increase of 10.1%/£2,122 a year, and uplifted pay for SCP 4-18).

Pay Grade range – Colchester Managed Grades (CMG)

Pay Grade (CMG)	Salary spinal column point (SCP) range	Pay Grade (CMG)	Salary spinal column point (SCP) range
14	4 to 7	6	35 to 39
13	7 to 12	5	38 to 42
12	11 to 18	5 GMT	38 to 45
11	18 to 24	4 CCC	42 to 46
10	23 to 27	4 + 1	42 to 47
9	26 to 30	3	46 to 50
8	29 to 33	2	51 to 55
7	32 to 36	1	54 to 59

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Apprentices

The national Apprenticeship Levy was introduced from April 2017. Employers operating in the UK with a pay bill over £3 million each year are required to invest in apprenticeships via an apprenticeship levy charged at a rate of 0.5% of the annual pay bill.

The Council's first intake of apprentices joined in September 2017. The Council agreed that its apprenticeship pay rate would be the [National Minimum Wage \(NMW\) by age](#) - this is more than the NMW rate for apprentices which is £4.81 an hour, and Council apprentices get the [NMW for their age](#) straight away without having to complete the first year of an apprenticeship or be 19.

2. Pay relationship for Chief Officers

	2023/24
Median average pay for Chief Officers	£95,154.43
Median average pay for staff other than Chief Officers	£26,452.24
Median average pay for lowest paid staff	£21,029.27
Pay multiple of Chief Officer (Chief Executive) pay to staff other than this Chief Officer	5.16
Pay multiple of Chief Officers' pay to staff other than Chief Officers	3.6
Pay multiple of Chief Officers' pay to lowest paid staff	4.52 ¹

Notes – please also see definitions of officers at section 8 below:

- Median average pay is based on full-time equivalent annual salary plus additional payments for Chief Officers. It excludes election fees.
- 'Lowest paid staff' is defined as those paid the 'Living Wage' - see chart of 'Colchester Managed Grades (CMG) pay grades on page 8.
- ¹The ratio would be 4.72 if the definition included apprentices.
- Pay multiple - the ratio between the highest and lowest paid staff.

3. Additional payments for Chief Officers

Returning Officer election fees paid to the Chief Executive

Elections held	Amount paid	Year
City and Parish	£11,888	2023/24

4. Other pay additions and allowances – see pages 2 and 4 for eligibility

Unsocial hours working:

Where an employee is required to be on call "out of hours" as part of their duties:

Standby allowance from 1 April 2022:

- higher rate – immediate response must be made – day rate £18.91
- standard rate - non-immediate response – day rate £9.46

Call-out from 1 April 2022: £47.17.

Maternity, Paternity and Shared Parental pay:

In addition to the statutory provisions, the Council pays 20 weeks at half-pay for mothers who go on maternity leave and subsequently return to work. Up to two weeks' paid paternity leave is granted to eligible employees.

OFFICER PAY POLICY

Non-salary rewards scheme:

Quarterly – 1,500 loyalty points (£15 in value) can be redeemed on activities or products within Colchester Leisure World. Maximum of 42 staff across all services each quarter.
Annually – incentive is sourced via reciprocal marketing and voucher schemes.

Exceptional performance:

Non-consolidated payment/honorarium to a maximum of £1,000 if authorised by an Executive Director.

6. Pension contribution rate

Employer rate is 21.2% for 2023/24 (increased from 19% for 2022/23). Employee rates are:

LGPS Contribution Bands April 2023		
Actual Pay (includes overtime, additional hours and so on)	Main section rate	50/50 section rate
Up to £15,000	5.5%	2.75%
£15,001 - £23,600	5.8%	2.90%
£23,601 - £38,300	6.5%	3.25%
£38,301 - £48,500	6.8%	3.40%
£48,501 - £67,900	8.5%	4.25%
£67,901 - £96,200	9.9%	4.95%
£96,201 - £113,400	10.5%	5.25%
£113,401 - £170,100	11.4%	5.70%
More than £170,101	12.5%	6.25%

7. Other financial benefits – see page 5 for eligibility

Travel Plan benefits and charges:

Car parking charge – for employees using designated Council car parks whilst at work:

- £2.50 per day.

Home to work travel, in line with Travel Plan policy:

- Bus season ticket discount 50% / train season ticket or 'bulk buy' discount 35%.

Long Service award:

- Maximum value of £250 for 25 years' service with the Council.

First Aid allowance - for employees designated as First Aiders in the workplace:

- £173.88 a year (pro rata for part-time staff).

8. Definition of terms used in the Officer Pay Policy and Pay Data documents

- Chief Officers – posts requiring appointment by councillors - designated as Chief Executive, Deputy Chief Executive, Chief Operating Officer and Strategic Directors within the Council's constitutional arrangements. It also includes the Head of Paid Service, Section 151 Officer and the Monitoring Officer where those roles are not performed by the Chief Executive, Deputy Chief Executive, Chief Operating Officer and Strategic Directors. These posts meet the Chief Officer definition in section 43 of the Localism Act 2011.
- Senior Officers – any post with a salary of £50,000 and above ([Accounts and Audit Regulations 2015](#))
- Senior Leadership Team – Chief Executive, Deputy Chief Executive, Chief Operating Officer, Strategic Directors and Heads of Service.

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- Large salary package – this is defined in statutory guidance and the current threshold is £100,000 ([section 14 Localism Act guidance](#)).

22 November 2023

Report of	Head of Governance and Monitoring Officer	Author	Andrew Weavers
Title	Housing Ombudsman Reports		
Wards affected	Not applicable		

1. Executive Summary

- 1.1 This report informs Cabinet of the findings made in two recent reports by the Housing Ombudsman in relation to Colchester Borough Homes.

2. Recommended Decision

- 2.1 To note the contents of this report and the actions taken.

3. Reasons for Recommended Decision

- 3.1 To inform the Cabinet of the contents of the reports by the Housing Ombudsman.

3. Alternative Options

- 3.1 No alternative options are presented.

4. Supporting Information

- 4.1 The Constitution (Article 13.03 (a)) requires the Monitoring Officer to report to Cabinet (or to Full Council for non-executive functions) if a decision or omission has given rise to maladministration. This report concerns omissions that the Housing Ombudsman has determined in two reports, one of which had a finding of maladministration and the other finding which included severe maladministration.

- 4.2 The Housing Ombudsman Scheme is approved by the Secretary of State. The law requires social landlords (here meaning the City Council and Colchester Borough Homes) to be members of an approved scheme. The Housing Ombudsman's role is to resolve disputes, including making awards of compensation or other remedies when appropriate, as well as to support effective landlord and tenant dispute resolution by others.

- 4.3 In 2022/23 the Housing Ombudsman made 6,500 determinations including 2,430 findings of maladministration in the social housing sector. In the same period the number of cases of severe maladministration increased by 323%. One housing provider, GreenSquareAccord received 6 findings of severe maladministration over a 3 month period. Islington Council received 14 findings of severe maladministration between December 2022 and June 2023 and in July another landlord, L&Q was ordered to pay £142,000 in compensation to a group of residents. The number of determinations by the Ombudsman increased by 69% in the last quarter. This underlines the importance of good service delivery and effective complaints handling in the social housing sector and the need for lessons to be learned from complaints at a time when Ombudsman

determinations have increased significantly. During 2022/23 Colchester Borough Homes received 271 complaints, the vast majority of which were resolved without escalation to the Ombudsman. The following sets out details in respect of the 2 Housing Ombudsman determinations.

5. The First Report

- 5.1 On 28 July 2023, the Housing Ombudsman determined a complaint submitted to it in relation to the handling of concerns by Colchester Borough Homes (“the landlord”) regarding the condition of one of the Council’s tenanted properties. The Housing Ombudsman also considered Colchester Borough Homes handling of the residents’ concerns about pests in the property. The conclusion of the Housing Ombudsman in respect of the complaint was as follows:
1. Maladministration by the landlord regarding its handling of the residents’ concerns about the condition of their new home.
 2. Service failure by the landlord regarding its handling of the resident’s concerns about pests in the property.
- 5.2 A resident raised concerns to the landlord about the poor condition of her new home from an early point in the tenancy. An inspection was carried out and identified that some work was required, and other work was the resident’s responsibility, but the Ombudsman felt that the landlord did not communicate this adequately. In addition, there were issues caused by the resident not wishing the landlord to decorate her home. This caused an issue as the landlord usually carried out decoration and cleaning of properties together.
- 5.3 The Ombudsman found that the landlord had delayed in acknowledging that standards were not met until its stage 2 complaints response when it apologised for failure and offered redecoration vouchers. However, repair issues remained, and the resident complained regarding an infestation at the property which the landlord responded to by in its stage 1 reply. In this reply the landlord confirmed that some areas of the void standard had not been met and upheld the complaint. The resident remained dissatisfied due to some outstanding works and requested a review which was dealt with as a stage 2 complaint. The landlord recognised that the cleanliness of the property was not up to standard, apologised and also that the repair of the property did not meet the expected void standard and offered a £40 decoration voucher. The Ombudsman felt that the voucher did not offer reasonable redress for the failings and that it had missed opportunities to put the situation right earlier.
- 5.4 Subsequently there was further communication between the landlord and the resident in which the Ombudsman felt that the landlord had not demonstrated that it promptly and clearly set out to the resident those outstanding issues that it was willing to remedy. The landlord sent a final complaint response when it clarified its position and was satisfied that the issues raised had been completed. However, the Ombudsman felt that the landlord did not make it clear what issues it was referring to, what repairs it determined were the resident’s responsibility and the reasoning behind its decisions.
- 5.5 The Ombudsman ordered that the landlord write to the resident within 4 weeks of the report apologising for the service failures it had identified. This letter has been sent. It also ordered that within 4 weeks of the report, the landlord should provide the resident and the Ombudsman with written confirmation of any outstanding work, and an action plan, including timescales, for completion setting out any work the resident is responsible for carrying out and explaining its reasoning.

Further steps the Housing Ombudsman set out were:

- With 4 weeks of the report the landlord pay the resident compensation of £250 (including the offer of the decoration vouchers and reimbursement of associated costs, if not already paid) in recognition of the distress and inconvenience caused; and
- Within 8 weeks of the report the landlord to review this case in relation to its void standard and advise the Ombudsman how it intends to ensure that works are completed within a reasonable timescale from the tenancy start date in future.

5.6 In response to the above, the Chief Executive of Colchester Borough Homes has confirmed that CBH accepted the Ombudsman's determination and has considered how CBH can improve the service to new tenants.

CBH wrote to its tenant on 22 September to apologise and has compensated in accordance with the recommendation.

The Letting standard has been reviewed and is now available on CBH's website and is provided to incoming tenants, ahead of them viewing and accepting a tenancy.

CBH's internal process has always included a "new tenant visit" however, following the findings in this case they have improved this process to ensure that they capture the tenant's satisfaction with their new home and deal with any outstanding issues at this early stage.

5.7 All actions identified by the Ombudsman have now been implemented and CBH's response was acknowledged by the Ombudsman on 22 September.

6. The Second Report

6.1 On 30 August 2023, the Housing Ombudsman determined a complaint submitted to it in relation to the handling of concerns by Colchester Borough Homes ("the landlord") regarding an anti-social behaviour case at one of the Council's tenanted properties. The Housing Ombudsman also considered Colchester Borough Homes handling of the residents' concerns via its complaints process. The conclusion of the Housing Ombudsman in respect of the complaint was as follows:

1. Severe maladministration by the landlord in its response to reports of anti-social behaviour.
2. Maladministration by the landlord in its complaints handling.

6.2 A resident informed the landlord during a "new tenant" visit that he was experiencing noise issues with his neighbour (A) banging on the wall and playing loud music. It was noted that these were the same issues that the resident had experienced at his previous address. The resident suffered from back and spine issues and PTSD. The landlord spoke to A who refuted the allegations. A claimed to be hearing a humming noise coming from the resident's property at night. There was numerous correspondence between the landlord and the resident regarding the problems and the resident reported the issues to the police as he felt he was being harassed.

6.3 The landlord subsequently installed noise monitoring equipment in A's property in order to determine the level of any noise which the resident welcomed. The landlord subsequently removed the equipment and listened to the recording but could not identify

the source of the noise. A informed the landlord that the noise was occurring late at night and preventing her from sleeping. Banging on the wall seemed to cause the noise to stop. However, the situation did not improve, and the resident complained that A was persecuting him. The landlord considered various possible causes of the noise including the boiler at the property, but it did not amount to a statutory nuisance.

- 6.4 The landlord referred the parties to mediation and referred the case to its anti-social behaviour team however, the noise issues continued. Subsequently the landlord visited the resident with a Community Psychiatric Nurse. Following which the landlord made a number of written suggestions to improve the situation for the resident. The resident responded with a number of issues. The police confirmed that A's behaviour did not amount to an offence under the Prevention from Harassment Act 1997 and that the landlord was responsible for resolving the anti-social behaviour and encouraged the parties to participate in mediation. The resident contacted his MP who wrote to the landlord on his behalf regarding the noise. The landlord responded and took further action to investigate the humming noise and check the boiler.
- 6.5 The resident in 2021 made a call to the landlord regarding his neighbour (B) slamming doors and banging dustbin lids. The landlord did not consider that this was anti-social behaviour and was classed as household noise and would not take any action. The landlord suggested the resident speak with B. The landlord liaised with the police but they considered it to be normal day to day noise although the resident felt it was affecting his PTSD. The landlord felt that the resident was a serial complainer and subsequently refused a request for a management move because the landlord felt that it was impossible to find a quieter property in its stock. The resident's MP contacted the landlord regarding the noise caused by B and the landlord responded that it considered the noise to be that from normal daily living and noted that the resident had reported B to the police for harassment which was a waste of police time.
- 6.6 The resident made an initial complaint to the landlord pursuant to its complaints procedure regarding his concerns regarding the action of his neighbours which was dealt with as a stage 1 complaint. The landlord responded setting out what action it had taken. The landlord also considered that the resident was suitably housed and would not be considered for a move but was advised to explore a mutual exchange. The resident was not happy with the response and escalated his complaint. The landlord responded with its stage 2 response which set out several actions it had taken in response to the complaints about the neighbours. The resident then referred his complaint to the Housing Ombudsman in January 2022.
- 6.7 Subsequent to the referral the resident contacted the landlord as A was continuing to bang on the wall and it was affecting his mental health. He was also unhappy about the actions the landlord had taken regarding B. The landlord considered whether the resident could be given a management move however it concluded that the resident would be best served by a mutual exchange. The resident continued to report noise nuisance by B which he reported had escalated and was detrimental to his health. The landlord subsequently served B with a Community Protection Warning and an Acceptable Behaviour Contract in relation to B's actions towards the resident. In January 2023 the landlord arranged a management move for the resident following which the resident's health had improved immeasurably and it was no longer receiving complaints about noise. As part of the investigation the Ombudsman noted that the landlord admitted that it did not have a policy or procedure relating to management moves. The absence of such a policy meant that the landlord could not manage the resident's expectations which reference to appropriate standards.

- 6.8 The Ombudsman was critical of the landlord's response to the reports of anti-social behaviour and the failure by the landlord to fully consider the welfare, safety and wellbeing of the resident. This was considered a significant failing. The Ombudsman considered that the landlord should have assessed the risk of harm to the resident which may have led to a management move earlier on in the process. There was no evidence that the landlord had carried out a risk assessment at any stage of the anti-social behaviour investigations. The Ombudsman felt that the landlord had failed to comply with its anti-social behaviour policy which amounted to severe maladministration.
- 6.9 The Ombudsman felt that the landlord had throughout the complaints process failed to address the residents' concerns in relation to bias regarding concerns raised by the resident at his previous address. The Ombudsman also felt that landlord should have taken an open-minded approach to the residents' concerns whereby it could have considered how it could put things right including (a) ensuring that any further reports of antisocial behaviour were assessed on their own merits and (b) financial compensation for distress caused. There was also a finding that the landlord did not give appropriate regard to its remedies policy. The Ombudsman found that the landlords complaint handling failures amounted to maladministration.
- 6.10 The Ombudsman ordered that the landlord within four weeks of the report:
- (a) pay the resident £1250, comprising:
 - (i) £1000 for the distress and inconvenience caused by its failure to manage the anti-social behaviour case effectively.
 - (ii) £250 for the distress and inconvenience caused by the complaint handling failings identified by the investigation
 - (b) a senior member of staff should issue the resident with an apology.
- 6.11 The Ombudsman ordered that landlord within six weeks of the report should consider the failings identified in this case, and provide refresher training to relevant staff to ensure that they:
- (a) are aware that case management must be based on the merits of a case and that proportionate investigation is not overlooked because of tenancy history.
 - (b) are aware of the evidential test required to enforce breaches of:
 - (i) the terms of the tenancy in relation to noise nuisance.
 - (ii) Community Protection Warnings.
 - (iii) Acceptable Behaviour Contracts
 - (c) complete risk assessments for all cases reported.
 - (d) complete action plans in agreement with the complainant to ensure that appropriate steps are taken in a timely manner.

The landlord to confirm the date and content of the training to the Ombudsman also within six weeks.

- 6.12 Recommendations made by the Ombudsman.

The landlord should:

- (a) review its Anti-social behaviour policy and procedure to reflect the principles of the Antisocial Behaviour, Crime and Policing Act 2014. It should ensure it takes a harm centred approach to its response to antisocial behaviour, including the use of risk assessments and action plans.
 - (b) review its remedies policy to ensure that it complies with section 6.1 of the Housing Ombudsman's Complaint Handling Code. This should include financial redress for distress, inconvenience, or unfair impact.
 - (c) develop a management move policy and /or procedure to ensure that requests for management moves are considered against a criteria based on risk and/or need. This will provide a fair and transparent method of assess requests for management moves.
- 6.13 In response to the above, the Chief Executive of Colchester Borough Homes has confirmed that CBH is disappointed to receive a finding from the Ombudsman of severe maladministration and that requesting a review of the finding was considered. CBH's Board and senior staff reviewed the determination on 4 October and committed to deliver service improvements as a result of it.
- 6.14 The findings have led to an in-depth review of how CBH's housing management and anti-social behaviour services are delivered, including a review of the anti-social behaviour (ASB) policy, the way in which the Housing Management system is used (particularly in respect of holding information and maintaining case notes), how staff deal with complex issues and vulnerable tenants that they are often faced with.
- 6.15 As recommended, CBH completed a series of refresher training for staff who work in the ASB and housing management teams (as well as support staff) in October. This will help ensure they are all aware of the necessity to consider each case on its merits and particularly to consider and mitigate any vulnerability of complainants or alleged perpetrators of nuisance or ASB.
- 6.16 Amendments to the Housing management system were made on 11 October will now mandate completion of a risk assessment and action plan as part of the workflow process. Each contact with tenants will now also include a review of the information that is held to ensure that it is both relevant, up to date and reflects any particular vulnerabilities.
- 6.17 During October, all relevant staff working in CBH's Housing management teams received refresher training, to remind them of the requirements of dealing with reports of nuisance and ASB. This training was delivered by the Community Safety manager and included recommendations and insights from the Ombudsman spotlight report into noise complaints.
- 6.18 To provide additional assurance CBH has added an internal audit of ASB case work to the forthcoming audit timetable.
- 6.19 All tenants transfer requests are dealt with through CBH's wider allocation and lettings policies. This process ensures that all transfers are considered fairly and in line with the policy.
- 6.20 CBH has also reflected on the recommendation in relation to its ASB and Remedies policies and will be taking amendments through its policy change process which includes

resident consultation and approval by CBH's Operations and Performance committee. This process will complete by end of November 2023.

- 6.21 The Ombudsman confirmed on 20 October that compliance with its findings and recommendations had now been met and the case closed.

7. Strategic Plan References

- 7.1 The lessons learnt from complaints to the Housing Ombudsman link in with our Strategic Plan aims to be efficient accessible, customer focused and always looking to improve. Having an effective complaints process helps us to achieve the Strategic Plan's themes of a Wellbeing, making Colchester an even better place to live and supporting those who need help most.

8. Publicity Considerations

- 8.1 Details of the Reports are published on the Housing Ombudsman's website.

9. Financial, Equality, Diversity and Human Rights, Consultation, Community Safety, Health and Safety, Risk Management and Environmental and Sustainability Implications

- 9.1 No direct implications.

10. Background Papers

- Housing Ombudsman Report dated 28 July 2023 Complaint 202122725
- Housing Ombudsman Report dated 30 August 2023 Complaint 202110444

22 November 2023

Report of	Philip Sullivan, Chief Executive of Colchester Borough Homes	Author	Terri Hamilton ☎ 03300 538007
Title	Viability Assumptions and Affordable Rent on New Build Council Housing		
Wards affected	All Wards		

1. Executive Summary

- 1.1 The Council agreed (at Cabinet on 30 January 2019) ambitious plans to deliver a “New Council Housing Programme” that delivers 350 additional affordable homes over 5 years. Since that time, several schemes have been explored to deliver new homes through different methodologies including new build developments on underused council owned garage sites, acquisition of land for council new build developments and working with developers to acquire off the shelf units.
- 1.2 Higher interest rates mean that rents and mortgages in the private market continue to rise and less people are able to afford a home in the private market. This in turn increases the pressure on the Council to provide affordable housing. The Council is facing financial pressure, both in the General Fund and the Housing Revenue Account, whilst the demand for housing continues to be an essential need. A range of opportunities to alleviate pressure on the Council’s finances are hence being explored in an effort to ensure it can continue increasing its affordable housing delivery.
- 1.3 The Council has a strategic priority to delivery affordable housing to residents in need. By charging affordable rent the Council will be able to continue working towards meeting this need. By capping the affordable rent charged at the local housing allowance rate, tenants who claim benefits should not face a financial burden to afford the rent on the properties. If a tenant’s circumstances change and they no longer require benefits towards their rent, support can be implemented to assist with this transition. Some applicants on the housing register may not be able to afford private market rent or a mortgage but are able to afford more than social rent. By charging affordable rent on the new build developments and social rent on the current housing stock, applicants will have the freedom to choose and bid for properties that suit their requirements. New development homes will be built to a high standard and will be energy efficient, reducing tenants fuel usage and in turn assisting with the cost of living crisis. Whilst affordable rent, at the local housing allowance rate, is higher than social rent, it is substantially lower than market rent, and preferable to temporary accommodation which may be the only option for applicants if the Council is not able to continue to deliver more affordable housing.
- 1.4 The purpose of this report is to seek agreement to updated development appraisal assumptions used to calculate viability and to seek a decision on the Council charging affordable rent (set at the local housing allowance rate) on all new build developments, including new build acquisitions. This will help ensure a continued affordable housing

supply that is viable and strengthens the Council's Housing Revenue Account (HRA). In addition, increasing income into the Housing Revenue Account will provide options for the Council in terms of how this increased income is used, for example, to continue with services that support our tenants such as the valued financial inclusion work.

2. Recommended Decisions

- 2.1 To agree updated development assumptions used to calculate viability, and delegate authority to the Portfolio Holder for Housing to review and agree the assumptions annually going forward.
- 2.2 To charge affordable rent, up to the level of local housing allowance rate, for all new build developments, including the acquisition of new builds, that complete from 1st December 2023.

3. Reason for Recommended Decision

- 3.1 The Housing Revenue Account (HRA) is facing a range of pressures arising, for example, from legislative and regulatory changes requiring more money to be spent to keep homes safe or compliant with the Decent Homes Standard, higher costs to build and acquire properties, higher repair and improvement work costs due to increased inflation and the requirement to achieve carbon neutral by 2050. The Council is required to prove that the Housing Revenue Account has a suitable long term business plan, over the 30-year period. With more households in temporary accommodation than has been seen in recent years, the General Fund is also under pressure. The Council will need to review spending to ensure the Council's financial stability, whilst meeting regulatory requirements. Some non-statutory services, such as financial inclusion work and building new homes could be affected if they are not affordable within the Housing Revenue Account business plan.
- 3.2 However, the Council has a strategic priority to increase the number, quality and types of affordable homes. This strategic priority will be met via a mix of Section 106 housing, acquisitions (through both the acquisitions programme and through agreements with local developers), and through the Council's new build programme.
- 3.3 The assumptions used to calculate viability need to be regularly reviewed to ensure that they remain up to date in reflecting the market and can be used to establish whether potential developments strengthen the Housing Revenue Account (HRA). By updating these assumptions to reflect the current benchmarking data available, it is likely to indicate that future developments will be unviable whilst charging social rent. These assumptions are commercially sensitive as at times we will be competing with other parties to acquire units.
- 3.4 By charging affordable rent, the Council will be able to progress with viable development opportunities, increasing the Council's housing stock, alleviating pressure on the housing register, Housing Revenue Account, temporary accommodation and in turn the General Fund. This will assist the Council to continue delivering high quality, energy efficient homes to meet the housing need in Colchester and maintain its current stock to a high standard benefitting applicants on the housing register and current tenants. The Council can bid for Homes England funding on viable developments, strengthening its position as an investment partner with Homes England.

- 3.5 Setting the affordable rent, at Local Housing Allowance rates will help protect tenants from financial difficulties, if they claim benefits towards their housing costs.
- 3.6 The Regulator of Social Housing's *Rent Standard* (Ref 1) allows for existing homes to be converted from social rent to affordable rent if this is pursuant to a housing supply delivery agreement with Homes England. However, the Regulator of Social Housing's current policy is not to permit this and hence the decision on whether to charge affordable rent is purely in respect of new homes being built or acquired.

4. Alternative Options

- 4.1 Not to change the assumptions used to calculate viability or charge affordable rent on new build developments and continue to let all new developments and acquisitions of council housing stock at social rent levels. This will either make schemes less viable and will increase pressure on the Housing Revenue Account or lead to unviable schemes not proceeding, which in turn will fail to alleviate pressure on the housing register, temporary accommodation and the General Fund.
- 4.2 Update the assumptions used to appraise development schemes but continue to charge social rent for all developments. It is unlikely that any developments will prove viable under these circumstances. Homes England will not support a development that is unviable. The Council will be unable to increase the housing stock, failing to alleviate pressure on the housing register, temporary accommodation and the General Fund.
- 4.3 Update the assumptions and agree to the Council being able to charge the maximum affordable rent (up to 80% of the private rent market), without taking into consideration the Local Housing Allowance. This will improve viability of new schemes and reduce the pressure on the Housing Revenue Account, the Housing Register, temporary accommodation and the General Fund. However, this could lead to vulnerable tenants facing financial difficulty, where the Local Housing Allowance will not cover the full rent, and place pressure on the Housing Management service to manage the rent arrears.
- 4.4 To place the new build housing programme on hold, whilst the Council focuses on delivering on the statutory regulations for the Council's current housing stock. This may reduce pressure on the Housing Revenue Account in the short term, however the HRA will not benefit from the rental income generated by new homes which, longer term, has the potential to strengthen the HRA. This option will increase the pressure on the General Fund and the Council will be less able to meet local housing need. More residents may require temporary accommodation, and this will have a negative social impact on Colchester residents.

5. Background Information

- 5.1 (Ref 2) The Council has a Housing Revenue Account; a statutory ring-fenced landlord account that includes rental income from the Council's housing stock. This budget can only be spent on affordable housing delivery, management and maintenance. The HRA has a 30-year Business Plan to ensure finances are managed strategically over a long period, supporting debt and ensuring that expenditure can be maximised in a prudent manner.
- 5.2 In addition to investing in existing stock, the HRA can invest in building or acquiring extra housing stock (which in turn increases the income back into the HRA via additional

rents). The HRA can support investment through prudential borrowing, as long as it is affordable over the long term (similar to typical mortgage arrangements); informing, and informed by, its 30-year Business Plan mentioned above.

- 5.3 Social rent is low-cost rental accommodation, defined in the Housing and Regeneration Act 2008 (ref 3) as accommodation that is available to rent, below market rate and in accordance with rules designed to ensure that it is made available to people whose needs are not adequately served by the commercial housing market. Social rent is exclusive of service charges and cannot be increased by more than the levels prescribed by the Government through the Regulator of Social Housing.
- 5.4 The National Planning Policy Framework (ref.4) defines Affordable housing for rent as “Affordable housing that meets all of the following conditions:
- The rent is set in accordance with the Government’s rent policy for Social Rent or Affordable Rent, or is at least 20% below local market rents (including service charges where applicable);
 - The landlord is a registered provider, except where it is included as part of a Build to Rent scheme (in which case the landlord need not be a registered provider);
 - It includes provisions to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision. For Build to Rent schemes affordable housing for rent is expected to be the normal form of affordable housing provision (and, in this context, is known as Affordable Private Rent).”

With regard to the final condition of affordable rent being inclusive of service charge it is worth highlighting that this brings an element of risk. For example, there is a risk that service charge costs inflate faster than rents can increase. Where a new development scheme includes provision for all owners to pay towards certain costs such as management fees, this will also be inclusive and therefore reduces the amount of income into the Housing Revenue Account. This will be mitigated during the legal process of any new build acquisition by ensuring that the management fees are fair and reasonable before exchanging contracts.

- 5.5 Below is a table that shows the average private rent on the open market for Colchester, compared to the average social rent currently charged on the Councils housing stock.

The table also includes 80% of the private rent average (the maximum affordable rent can be charged at) along with the *Local Housing Allowance for Colchester.

Property type	Private Rent Avg. per week	Social Rent avg. for CCC stock (as % of Private rent)	80% of Private rent (Affordable Rent Max.)	LHA* Colchester 2023 (as % of Private rent)
1 bed	£183	£91.69 (50%)	£146.40	£120.82 (66%)
2 bed	£230	£104.07 (45%)	£184.00	£158.79 (69%)
3 bed	£311	£118.70 (38%)	£248.80	£195.62 (63%)
4 bed	£388	£130.17 (34%)	£310.40	£253.15 (65%)

Taken from Hometrack Housing Intelligence System Sept 2023

Colchester’s Local Plan states that the affordable rent should be set at or below the Local Housing Allowance rate.

- 5.6 As a Local Authority the Council is required to abide by the *Rent Standard* set by the Regulator of Social Housing. The Rent Standard 2023 states that “Affordable Rent may only be charged where the property in question is provided by:
- a registered provider pursuant to a housing supply delivery agreement between that provider and Homes England or the Greater London Authority and the accommodation is permitted by that agreement to be let at an affordable rent...**(Colchester City Council meets this requirement)**
- 5.7 The Homes England, Capital Funding Guide (Ref 5) states that “A Homes England housing supply delivery agreement can be either of the following:
- an Affordable Homes Programme (AHP) 2021 to 2026 Grant Agreement with Homes England to deliver new homes including those for rent; **(Colchester City Council meets this requirement)**
 - If a provider is a party to a current Housing Supply Delivery Agreement via an AHP 2021 to 2026 Grant Agreement they can also charge affordable rent for their new nil grant homes for rent. No Housing Supply Delivery Agreement letter is required from Homes England for these homes. This applies to the Council as we are a Strategic Partnership Delivery Partner.
- 5.8 Colchester City Council signed an Affordable Homes Programme 2021 to 2026 Grant Agreement with Homes England on 27th August 2021 and became a Strategic Delivery Partner. Therefore, Colchester City Council meets the requirements set out in both the Rent Standards 2023 and the Capital Funding Guide to charge affordable rent on delivery where grant funding is provided and on developments where no grant funding is required.

Viability and Development Assumptions

- 5.9 The viability check calculates the cost of the development including acquisition of land / units, works costs (such as construction) and on costs (such as planning fees, surveys etc). The viability check also calculates the potential rental income from the units, and the funding type used towards the development, e.g. Homes England funding.
- 5.10 Part B of this report provides a table based on benchmarking data provided by consultants, Altair. Altair work with over 30 developing organisations. The table shows the range and average assumptions for Local Authorities for 2023-2024, along with the Council’s current assumptions and proposed assumptions. The assumptions currently used in the Council’s viability appraisals are not reflective of the benchmarking data and place pressure on the Housing Revenue Account. For this reason, it is suggested that the assumptions are updated as proposed in the table above.
- 5.11 **Viability Model**
- Part B of the report provides model examples of the viability check using estimated data with the current and suggested assumptions.
- 5.12 Table 1 of Part B of the report provides the net present value (NPV) over 60 years for illustrative purposes and to allow for comparison with the affordable rents option. In reality some schemes in recent years have been viable over a 60 year period and others have not. Schemes that have not had a positive net present value have proceeded with Portfolio Holder agreement where, for example a non-financial business case exists. If the

assumptions are updated to meet the benchmarking data, at social rent, social rent development is not viable and has a negative net present value.

- 5.13 By updating the assumptions to a cash flow and repayment period of 45 years this will reduce the amount of interest the Council will incur on a delivery. Whilst the initial borrowing requirement may be slightly higher as the Council would expect to receive less grant funding, this would be off set against the interest incurred, and result in a higher Net Present Value over a shorter period of time.
- 5.14 Part B of this report compares the output of charging social rent over 60 years using the current assumptions (which places the Housing Revenue Account under pressure) to the output of social rent and affordable rent over 45 years with the updated assumptions. Social rent over 45 years using the updated assumptions is not viable.
- 5.15 Charging Affordable Rent at the Local Housing Allowance level with the new development assumptions will allow more schemes to be viable. It would have a positive financial impact on the Housing Revenue Account business plan. This would allow the Council to continue to delivery high quality, energy efficient homes to help meet the housing need in Colchester. Alleviating pressure on the Housing Revenue Account will assist the Council in continuing to maintain the current housing stock to a high standard and improve the energy efficiency of the current stock, benefitting tenants and the environment.
- 5.16 There is a risk that the affordable rented properties could cause tenants financial difficulty. This would be mitigated, by keeping the affordable rent charge set at the Local Housing Allowance rate. The properties would be advertised through the Gateway to Homechoice. This will show tenants the rent levels allowing them to decide whether to bid for one of the new build affordable rent homes or one of the existing Council homes that are let at social rent. Any tenants choosing to transfer into a new affordable rent property will also free up a social rent home which would then be re-let at a social rent.
- 5.17 **Housing Need**

As at mid October 2023 there were 318 households in temporary accommodation in Colchester including 77 in bed and breakfast (of which 28 are families). As of March 2023, there were 2561 households registered on the Gateway to Homechoice in Colchester with 1482 of these households in priority bands A-C.

Below is a table that compares the properties that were let versus the property type need, with the average time applicants are waiting:

Property Type / Bed size	Let in 22-23	Housing Need (A-C only)	Average waiting time on Housing register (for band B applicants*)
0/1 bed	272	640	13 months
2 bed	272	312	6 months
3 bed	131	415	35 months
4 bed +	27	115	43 months

Band B average provided as this is the band with the highest number of applicants housed. Band A may include applicants with urgent housing needs who may be housed significantly quicker. Applicants in Band C may include homeless prevention and may take significantly longer.

The number of households priced out of the market for first time buyers' affordability has increased. Below is a table to show the percentage of first-time buyers priced out of the

market at 4 times their annual income. This highlights the increasing need for affordable housing delivery within Colchester including both social and affordable rented properties as well as affordable homeownership options i.e Shared ownership/First Homes.

	Percentage of households priced out of the market at 4 times annual income
Flats	35.05%
Terraced Houses	61.43%
Semi-detached houses	71.88%
Detached Houses	85.25%

Hometrack – housing intelligence system Sept 23

Equality, Diversity and Human Rights implications

- 6.1 Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to:
- eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act.
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 6.2 The recommendations will have no disproportionate impact on any protected group. The Equality Impact Assessment for the Council’s provision of new affordable housing is [here](#).

7. Strategic Plan References

- 7.1 The Strategic Plan 2023-26 sets out clearly the Council’s priorities.
- 7.2 This report particularly contributes to the following parts of the Strategic Plan 2023-2026 priority areas:

Respond to the climate emergency

- Reduce our carbon footprint.

Deliver Modern Services for a Modern City

- The Colchester Council family of organisations work together to a shared and ambitious vision for the future of our city.
- The Council transforms services and moves to a community centred approach, where it enables, helps, and supports local communities as they help prioritise, shape and deliver local services.

Improve health, well-being, and happiness

- Tackle the causes of inequality and support our most vulnerable people.
- Work with residents and partners to address quality of life and issues of happiness.

Deliver homes for those most in need

- Increase the number and quality and types of homes.
- Meet our duty to prevent or assist those facing homelessness.

Grow our economy so everyone benefits

- Work with partners to deliver a shared vision for a vibrant city and attract inward investment

Celebrate our city, and our heritage and culture

- To make our city a yet better place in which to live and work and visit.

8. Consultation

- 8.1 Colchester City Council has consulted Homes England regarding the possibility of charging Affordable Rent on new build developments and acquisitions. Homes England have confirmed that social rent is the priority, however if a development is not viable at social rent, funding can be bid for on affordable rented developments and opportunities.

The Council has consulted with Altair to provide relevant benchmarking data. Colchester City Council has also consulted with other Local Authorities who are already charging affordable rent successfully on new developments, including Babergh and Mid Suffolk Council and Ipswich Council.

9. Publicity Considerations

- 9.1 There may be public concern regarding the increased charges for affordable housing. This could be mitigated by publicity highlighting the housing delivery opportunities this decision would provide, the applicants choice to bid on social or affordable housing and relating to other developing local authorities in the area as a way of progressing for the future.

10. Financial implications

- 10.1 By updating the assumptions this decision would protect and strengthen the Housing Revenue Account when considering the viability of future developments.
- 10.2 Charging Affordable Rent set at local housing allowance rates, would strengthen the Housing Revenue Account with additional income.
- 10.3 By agreeing to these decisions the Council would be able to continue providing additional affordable housing in Colchester. This would in turn alleviate the pressure on the housing register, temporary accommodation and therefore reduce the strain on the General Fund.

11. Health, Wellbeing and Community Safety Implications

- 11.1 It is broadly expected that communities, where these developments would take place, will be positively affected by the provision of new affordable housing. Improved buildings and estates reduce anti-social behaviour and crime, improve health and associated outcomes for residents and communities. Recent medical reports have identified, more than ever, that the quality of housing has a significant impact on the health of residents within those properties.

12. Health and Safety Implications

- 12.1 There are no Health and Safety Implications from this report.

13. Risk Management Implications

13.1 The changes suggested in this report would assist the Council in reducing the risk of pressure on the Housing Revenue Account. There is a risk that the affordable rented properties could cause tenants financial difficulty. This would be mitigated, by keeping the affordable rent charge set at the Local Housing Allowance rate. The properties would be advertised through the Gateway to Homechoice, allowing tenants the choice to bid for the properties, that will be advertised along side the Councils current housing stock let at social rent, giving the tenants the opportunity to bid on a property that is suitable to their requirements.

14. Environmental and Sustainability Implications

14.1 Agreeing to update the viability assumptions and charging affordable rent (set at the local housing allowance rate) on new build developments, will reduce the pressure on the Housing Revenue Account. This in turn will free up funds to assist the Council in meeting the government requirements to ensure all current housing stock meet the EPC rating of C by 2030 and carbon neutral by 2050. This will also ensure that viable developments are of a high quality and energy efficient.

Appendices

Appendix A - Affordable Housing delivery in Colchester (on part B of the agenda as it contains not for publication information).

References

1. [Rent Standard April 2023 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) Section 3.8 p4
2. [Document.ashx \(cmis.uk.com\)](https://cmis.uk.com), Housing Revenue Account: Financial Model and New Council Housebuilding Programme Updates - July 2020, Section 7 (i) p29
3. [Housing and Regeneration Act 2008 \(legislation.gov.uk\)](https://legislation.gov.uk)
4. [National Planning Policy Framework \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) – Annex 2 Glossary P65
5. [Capital Funding Guide - 4. Housing for Rent - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk) the Grant Agreement Section 2.2
6. [Key Housing Needs Report Colchester 2023](#)

