

# Audit and Governance Committee

## Agenda

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<b>Date:</b>	<b>Thursday, 14th June, 2012</b>
<b>Time:</b>	<b>2.00 pm</b>
<b>Venue:</b>	<b>The McIlroy Suite, Macclesfield Town Football Club, London Road, Macclesfield SK11 7SP</b>

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

### **PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT**

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the meeting. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

4. **Minutes of Previous meeting** (Pages 1 - 6)

To approve the minutes of the meeting held on 27<sup>th</sup> March 2012.

5. **Lyme Green** (Pages 7 - 106)

A review has been undertaken of the Council's proposal to build a waste transfer station at Lyme Green Depot, Macclesfield. The report details the review's findings, recommendations and proposed management actions.

**THERE ARE NO PART 2 ITEMS**

**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Audit and Governance Committee**  
held on Tuesday, 27th March, 2012 at Committee Suite 1,2 & 3, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor J Hammond (Chairman)  
Councillor D Marren (Vice-Chairman)

Councillors S Corcoran, R Fletcher, S Hogben, A Kolker, A Moran, M J Simon  
and M J Weatherill

**Officers**

Chris Mann, Finance Manager  
Julie Openshaw, Deputy Monitoring Officer  
Paul Mountford, Democratic Services Officer  
Jon Robinson, Internal Audit  
Neil Taylor, Internal Audit  
Joanne Butler, Risk and Business Continuity Officer  
Martin Grime, Lead Emergency Planning Officer

**Audit Commission**

Judith Tench  
Andrea Castling

**Apologies**

Councillor M Hardy

**39 DECLARATIONS OF INTEREST**

There were no declarations of interest.

**40 PUBLIC SPEAKING TIME/OPEN SESSION**

There were no members of the public present.

**41 MINUTES OF PREVIOUS MEETING****RESOLVED**

That the minutes of the meeting of 31<sup>st</sup> January 2012 be approved as a correct record subject to the following amendment to resolution (2) of Minute 38 – Work Plan:

“ a thorough and robust investigation of all issues surrounding the expenditure incurred on the proposed waste transfer station at Lyme Green be added to the work plan; in particular to identify any governance

issues and whether all financial and contractual regulations have been complied with.”

#### **42 CERTIFICATION OF CLAIMS AND RETURNS - ANNUAL REPORT**

The Committee considered a summary of the key findings identified during the Audit Commission’s certification process for 2010-11 specific grant income.

The report summarised the findings from the certification of 2010-11 claims. It included recommendations arising from the auditor’s assessment of the Council’s arrangements for preparing claims and returns and information on claims that were amended or qualified.

The report recommended the strengthening of arrangements to ensure that all claims and returns were submitted in accordance with the timetable and improvements in supporting documentation.

The fees associated with the grant certification work in 2010-11 were £74,647.

The Grants Allocation Report was attached as an Appendix to the report.

Judith Tench and Andrea Castling of the Audit Commission presented the report and answered Members’ questions.

Judith Tench also took the opportunity to announce that contracts for the provision of external audit had been provisionally granted and that the contract for the North-West had been awarded to Grant Thornton, who would become the Council’s auditor with effect from 1<sup>st</sup> September 2012. Grant Thornton were conscious of the need for continuity and would formally present themselves at an event to be held on 1<sup>st</sup> May 2012 to which Council Officers would be invited.

#### **RESOLVED**

That

(1) the Grants Certification Report be noted; and

(2) the future external audit arrangements be noted.

#### **43 INTERNAL AUDIT PLAN 2012/13**

The Committee considered the Internal Audit Plan for 2012/13.

In order to comply with the Code of Practice for Internal Audit in Local Government in the United Kingdom, a risk-based audit plan (Appendix A) had been prepared for the Committee’s approval, but not direction.

There were a number of key themes emerging within the Plan, including:

- Governance & Assurance Framework
- Proposed move to Shared Service Single Legal Entity (SLE)
- New Service Delivery models
- Business & Service Planning
- Care Management & External Provider Contracts

The report supported an effective audit planning process, based on the risks to the Authority and in accordance with the Code of Practice for Internal Audit.

When a more detailed audit plan became available, it would be shared with the specialist Member groups appointed by the Committee.

Members stressed the need to assess the quality of service provided as part of any value for money exercise. Again, this would be considered further within the Member groups.

### **RESOLVED**

That the approach to internal audit planning be endorsed and the Internal Audit Plan 2012/13 be approved.

#### **44 AUDIT COMMITTEE SELF-ASSESSMENT**

The Committee considered a report on the results of a self-assessment of the effectiveness of the Audit and Governance Committee.

The results of the self-assessment were set out at Appendix A to the report. The report was generally favourable, although it recognised that the Committee's role in relation to external audit could be developed further.

### **RESOLVED**

That

- (1) the results of the self-assessment be noted, the Committee being satisfied that the self-assessment had been completed correctly; and
- (2) it be noted that the detailed outcome of the review of the system of Internal Audit will be considered by the Committee as part of the Annual Governance Statement (AGS) approval process.

#### **45 BUSINESS CONTINUITY MANAGEMENT UPDATE**

The Committee considered proposed changes in committee responsibilities for the business continuity management function.

Business continuity had traditionally been reported through the Audit and Governance Committee due to its link to risk. However, it was now

considered appropriate to report on business continuity to the Sustainable Communities Scrutiny Committee, together with emergency planning issues which at present were not reported through to any committee. The role of scrutiny was to review policy and to challenge whether the executive had made the right decisions to deliver policy goals. This was different from the role of the Governance and Audit Committee which was to provide assurance that there were adequate controls in place to mitigate key risks. Therefore, it was felt that both committees should receive business continuity reports in pursuance of their respective roles.

The Committee also considered proposed changes to the organisational arrangements for dealing with business continuity.

### **RESOLVED**

That the Constitution Committee be asked to consider recommending to Council that

- (1) responsibility for considering business continuity management issues be referred to the Sustainable Communities Scrutiny Committee in relation to service issues, together with emergency planning issues, the latter of which at present are not reported through to any committee; and
- (2) business continuity remain on the agenda for the Audit and Governance Committee for risk management purposes as the Committee needs to be made aware of the arrangements in order to form a view on whether they are robust or not and at the very least as part of the training for Members, but possibly not as frequently as at present.

## **46 WHISTLEBLOWING POLICY**

The Committee considered an update on the effectiveness of the Council's Whistleblowing Policy and a breakdown of the number of reports received during 2011/12.

Managers received information about poor practice on a regular basis through their normal day-to-day activities and the majority of these matters would be addressed without the need for a formal Whistleblowing report. However, additional assurance as to the effectiveness of the current arrangements would be obtained by Internal Audit upon the completion of an exercise to raise staff awareness of the Whistleblowing Policy and following consultation with Heads of Service and senior managers as to their perception of the effectiveness of the arrangements. The outcome of this work would be reported to a future meeting.

### **RESOLVED**

That

- (1) the report be noted and the proposed actions for the ongoing review of the Council's Whistleblowing arrangements be endorsed; and
- (2) consideration be given to conducting an anonymous survey of staff to ascertain the degree of satisfaction with the Whistleblowing policy.

#### **47 RISK MANAGEMENT UPDATE REPORT**

The Committee considered an update report on risk management. The report contained a summary of the Council's key corporate risks.

Since the previous update report, the ratings for the following risks had been reviewed:

KCR2	Financial Control
KCR3	Community Safety
KCR5	Vulnerable Adults
KCR10	Workforce

Further details were set out in the report.

A risk heat map showing the direction of travel for the risks from September 2011 to February 2012 was set out at Appendix A to the report.

It was noted that the report dealt with corporate strategic risks. The Officers would be undertaking a separate exercise to check the validity of operational risks within each service area.

The Committee also received reports on other work undertaken on risk management, including a self-review of effectiveness by the Corporate Risk Management Group, an Internal Audit report on the management of strategic risk and action being taken to enhance the risk management guidance for report writing.

#### **RESOLVED**

That

- (1) the risk management update report be noted; and
- (2) for the future, at each meeting of the Committee a risk owner be invited to attend to explain their mitigation plan.

#### **48 WORK PLAN**

The Committee considered an updated Work Plan.

It was noted that the report on the budget expenditure for the waste site at Lyme Green had been deferred to a later meeting.

It was also noted that the work plan did not address any future meetings at this stage.

**RESOLVED**

That

- (1) a special meeting of the Committee be held before the end of the Council year to consider the budget expenditure on the Lyme Green site, the arrangements for the special meeting to be determined in consultation with the Chairman;
- (2) the specialist sub-groups appointed by the Committee to consider specific aspects of the Committee's work be asked to identify items for inclusion on the work plan for consideration at the Committee's next ordinary meeting; and
- (3) the issue of risk management be included as a standard item for all future meetings of the Committee.

The meeting commenced at 2.00 pm and concluded at 3.40 pm

Councillor J Hammond (Chairman)



## CHESHIRE EAST COUNCIL

### Audit and Governance Committee

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**Date of meeting:** 14<sup>th</sup> June 2012  
**Report of:** Strategic Director Children, Families & Adults  
**Title:** Lyme Green

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#### 1.0 Report Summary

- 1.1 A review of the Council's proposal to build a waste transfer station at Lyme Green Depot, Macclesfield has been undertaken. This follows cessation on 30<sup>th</sup> November 2011 of all works in relation to the construction of the facility.
- 1.2 The review, commissioned by the Chief Executive and Leader has indicated that whilst, in the main, appropriate Council procedures are in place to prevent financial and legal irregularities, achieve compliance with Officer Delegations, Standing Orders, EU procurement Rules and ensure effective reporting to Members, in this instance there is evidence that officers failed to comply with many of these arrangements.
- 1.3 This report details the findings of the review, recommendations and proposed management actions to prevent a reoccurrence of such a situation in the future.
- 1.4 Attached at Appendix 1 is the report undertaken by Internal Audit on the project requested by the Chief Executive and Leader.
- 1.5 Attached at Appendix 2 is the agreed Action Plan, detailing proposed actions to prevent reoccurrence.

#### 2.0 Recommendations

- 2.1 Members are asked to:
  - (i) consider the findings and recommendations of the Internal Audit investigation (Appendix 1) and the agreed Action Plan (Appendix 2);
  - (ii) receive progress reports against the identified actions in the Action Plan on a quarterly basis;
  - (iii) note that with regard to the Council's planning functions, a further review is recommended to consider whether the current organisational structure compromises the delivery of the

- Council's often conflicting demands of planning enforcement, service delivery and development;
- (iv) note that the Council in accordance with the Council's Staffing Policies will review the conduct of staff mentioned in the report and consider whether there is a case for appropriate disciplinary or other action to be pursued. This will also include consideration of whether the public or any Members were misled; and
  - (v) acknowledge the failings of the Council in dealing with this matter.

### **3.0 Reasons for Recommendations**

- 3.1 Works associated with the construction and operation of a Waste Transfer Station at Lyme Green Depot and the related, partially retrospective, planning application has attracted significant public and member interest together with adverse publicity.
- 3.2 A number of complaints and Freedom of Information requests have been received and have been acknowledged pending completion and publication of this report. This report seeks to address the concerns of members of the public and their representatives including the Ward Member.
- 3.3 By publishing the findings of this review in full the Council is demonstrating its commitment to transparency on this matter and acknowledges evident failings in its efforts to develop a waste transfer facility in the north of the Borough.
- 3.4 While the review does not cover issues relating to communication with the local community, it is apparent that there were shortcomings in the Council's handling of this matter with the public. This is clearly regrettable.
- 3.5 The Audit and Governance Committee has a key role in overseeing governance arrangements and ensuring the Council has appropriate policies and mechanisms to safeguard resources in place.

### **4.0 Wards Affected**

- 4.1 All

### **5.0 Local Ward Members**

- 5.1 All.

### **6.0 Policy Implications**

- 6.1 The Council operates through a governance framework. It is an interrelated system that brings together an underlying set of legislative requirements, governance principles and management processes.

Good governance leads to good management, good performance, good stewardship of public money, good public engagement and, ultimately good outcomes for citizens and service users.

- 6.2 In its efforts to develop a waste transfer facility in the north of the Borough the Council has undermined local confidence in its governance arrangements. This report seeks to address the concerns of members of the public and their representatives including the Ward Member. By publishing the findings of this review in full the Council is demonstrating its commitment to transparency on this matter.

**7.0 Financial Implications (Authorised by the Council's Deputy Section 151 Officer)**

- 7.1 If the Council subsequently decides that it will still develop a Waste Transfer Station in the north of the Borough, but it is not to be sited at Lyme Green Depot, a decision will have to be made to treat the costs incurred at Lyme Green as aborted capital costs and the costs will then have to be treated as revenue. As at Mid-May total costs of the incomplete Lyme Green WTS project processed within the Projects module of the Council's Oracle financial accounting system stand at approx £696,000. These costs are included within the value of "work in progress" on the Council's balance sheet at 31<sup>st</sup> March 2012. The Professional Services & Framework Manager estimates total costs to this stage at £810,000 but is currently in negotiation with the facility construction contractor (referred to as the main contractor throughout) to effect a reduction in their outstanding balance. The full extent of the costs associated with this scheme cannot be established until a decision is taken by the Council with regard to the site.
- 7.2 Similarly, if the Council decides not to go ahead with the development of a Waste Transfer Station in the north of the Borough a decision will have to be made to treat the costs incurred at Lyme Green as aborted capital costs and the costs will then have to be treated as revenue.
- 7.3 If a decision has not been made by the date of the approval of the draft Statement of Accounts 2011/12, appropriate disclosures will need to be made in the Statement of Accounts for draft purposes in respect of the costs incurred in 2011/12; explaining the potential for them to be declared abortive after the balance sheet date. This will safeguard against any claim that readers of the accounts have been misled regarding the true value of work in progress.
- 7.4 The Council currently procures waste transfer capacity in the north from the Private Sector. In March 2012 an Official Journal of the European Union (OJEU) Contract Notice was placed for bulking Services in the north of the Borough. The Contract period is 4 June 2012 to 13 March 2014 (initial term) with a break clause exercisable from June 2013. The contract value is estimated at circa £43,000 per month, maximum total value is therefore estimated at £900,000.

Should any of the extension periods be taken up, this will increase the overall total value of the contract accordingly. It is estimated that approximately 22,000 tonnes of co-mingled dry recyclates will be delivered by the Council's collection vehicles to the Contractor's premises over each contract year.

**8.0 Legal Implications (Authorised by the Council's Deputy Monitoring Officer)**

- 8.1 All employees must ensure that they use any Council or other public funds entrusted to them through their job role in a responsible and lawful manner.
- 8.2 Employees must also try to ensure value for money and take care to avoid the risk of legal challenge to the Council in relation to the use of its Financial Resources. The Council's Officer Delegations, Standing Orders, Financial Regulations and Operating Procedures should, therefore, be followed at all times.
- 8.3 Any other legal implications are contained within the report.

**9.0 Risk Management**

- 9.1 Laws and regulations, policies and procedures have been implemented to help ensure the Authority's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that assets and interests are safeguarded. Controls are, however, designed to provide reasonable assurance not certainty because systems are susceptible to human error and poor judgement and controls can be circumvented or overridden.
- 9.2 An important way for the Council to assess the efficacy of and provide assurance on its risk management, internal control and governance arrangements is to identify issues that have given rise to adverse incidents that it has had to deal with and provide public assurance that action is taken to ensure that any shortcomings are rectified promptly.

**10.0 Background and Options**

- 10.1 The report attached at Appendix 1 considers management's compliance with established policies, procedures, laws and regulations particularly with regard to the use of assets and resources entrusted to it. In summary the review aims to establish whether controls, procedures or policies have been compromised and identify the steps that need to be taken to prevent a reoccurrence.
- 10.2 Key issues the report seeks to address are:
  - (i) Did development of the waste transfer facility commence without planning permission ?

- (ii) Were EU Procurement Regulations complied with ?
- (iii) Did management spend beyond the approved budget on the scheme and were Finance and Contract Procedure Rules broken ?
- (iv) Did management comply with the Council's Capital Strategy and the requirements of Finance and Contract Procedure Rules?

Outlined below in relation to each of these questions are detailed the following:

- The processes/procedures that exist
- Details of what did happen, including relevant timeline
- The finding

### 10.3 Development of the waste transfer facility commenced without planning permission

10.3.1 Section 57 of The Town & Country Planning Act 1990 (as amended) requires planning permission for any development of land. Under s171A carrying out development without the required planning permission constitutes a breach of planning control. Under the Act Cheshire East is the designated Local Planning Authority responsible for the planning approval process and enforcement of the Act.

10.3.2 A project group tasked with providing a new waste transfer site at Lyme Green towards the end of 2011 proceeded with the task, with the consent of its Director, even though the timetable involved commencement of development without planning permission. Work ceased after objections from planning officers and after complaints from local residents. Whilst a detailed timeline is attached at Annex A the key dates are:

- **17 October 2011** - the project work programme indicates that the submission of the planning application and construction were to run concurrently.
- **24 October 2011** The main contractor commences on site.
- **16 November 2011** a partially retrospective planning application was submitted.

10.3.3 The Planning Application, dated 16 November 2011, indicates that works associated with the construction and operation of the waste transfer station had already started on 1 November 2011. The partially retrospective application acknowledges, therefore, that **development work commenced on this project in advance of the appropriate planning permissions.**

10.3.4 The Project Group and Strategic Director appreciated that planning permission was required: adverse publicity was highlighted as a risk.

However, **the Council as a regulatory authority, should not undertake development without planning permission** even if adverse publicity is unlikely. **It should apply the same standards to its own applications as it does to third parties.**

**10.3.5 In the future all Council development projects should go through the same planning processes as third party applicants in order to ensure a consistent level of service between external applications and our own planning applications.**

#### 10.4 The Council did not comply with EU Regulations

10.4.1 The Council's Contract Procedure Rules (CPRs) set a clear framework for the procurement of goods, works and services for the Council. This aims to ensure a system of openness, integrity and accountability where the probity and transparency of the process will be beyond reproach. Working within the Rules in turn leads to better value for money and gives confidence to all concerned that the Council is fulfilling its fiduciary responsibilities.

10.4.2 Every contract made by or on behalf of the Council must comply with the Council's Contract Procedure Rules and the associated detailed guidance (E6 CPR's). Where a Service has failed to comply with these Rules then the Chief Officer or his designated representative must issue a report outlining the reasons for the non-compliance and the steps taken to prevent a re-occurrence. The Chief Officer or his designated representative will be required to submit the report to the Borough Treasurer and Head of Assets and Borough Solicitor before reporting to the Audit and Governance Committee. (E11 CPR's).

10.4.3 The CPRs set various value thresholds at points where commensurate competition should be undertaken by officers to ensure that value for money is being achieved and that all tender opportunities are fairly and appropriately advertised to suppliers. The thresholds at E19 CPR's are detailed below:

	<b>Total Value</b>	<b>Procedure to follow where no Contract exists</b>
<b>Informal</b>	Below £10,000	E-mail /telephone quotation(s)
	Above £10,000 but below £75,000 for goods, services and works.	Comparison of written quotations from at least 3 bidders
<b>Formal</b>	Above £75,000 but below the EU threshold for goods, services and works.	Formal tender process from at least 3 suppliers.
	Above the EU threshold for goods, services and works.	Tender process in accordance with EU Procurement Rules.

10.4.4 The Purchase of goods, services and works by the Council as a public sector body is regulated by the Public Contracts Regulations 2006 (the Regulations) which implement into English law the EU procurement regime currently in place throughout the EU. The Regulations only apply to contracts with a value that exceeds the relevant thresholds (E35 CPR's). The thresholds that applied to local authorities in September 2011 were as follows:

SUPPLIES (GOODS)	SERVICES	WORKS
£156,442	£156,442	£3,927,260

10.4.5 The procedures set out from CPR E36 follow the model set out in the European Procurement Rules. They represent best practice and should be adopted as the norm for all exercises over the threshold values.

10.4.6 However, rather than following the mandatory procedures and mechanisms prescribed by the EU Regulations and the Council's CPRs the Strategic Director of Places sought an exception, via a delegated decision (DD), to the Council's Contract Procedure Rules which was used to award a contract for the provision of bulking facilities to a preferred supplier (referred to as the waste bulking contractor throughout) without competition. Whilst a detailed timeline is attached at Annex B the relevant issues are as follows:

- **14 September 2011** – The Delegated Decision (DD) form completed in accordance with CPR E8 was signed off by Procurement, Legal and Finance. The form was signed by the Strategic Director Places and sent for approval to the Borough Treasurer and Head of Assets and the Borough Solicitor. The request was to waive the requirement for competition in circumstances where only one company can provide the service (CPR E24).
- **15 September 2011** - The Delegated Decision is approved by the Borough Treasurer and Head of Assets and the Borough Solicitor (CPR E23). The quoted price for the 3 year contract was no longer available as the 90 day period for acceptance expired.
- **3 October 2011** – the contract, awarded directly to the Council's waste bulking contractor, commences.

10.4.7 The Record of the DD recognises that the award to the waste bulking contractor would exceed EU thresholds and that DDs are not available if the proposed exception breaches national or EU legal requirements (CPR E24). However, on the basis that the Council had previously performed a compliant tendering exercise for a three year term that had failed to identify any alternative companies able to tender and there was no significant risk of a challenge to this award of contract the decision was taken. The Council has no facilities of its own in the north of the Borough with the necessary permits. In accordance with the DD it was now too late to arrange haulage and personnel to transfer load

material to the Council's South transfer station [at an estimated cost of £35,000 per week]. Delaying the roll out on the 3<sup>rd</sup> October was no longer an option as bins are being delivered to residents which cannot be collected without the change over of vehicles and use of a transfer station from the 3<sup>rd</sup> October.

10.4.8 On the face of the evidence there is a prima facie case that the Council did not comply with EU Regulations. The officers and the Strategic Director appreciated that compliance with EU Regulations was required: the risk of challenge to the award was highlighted as a risk. The relevant officers exercised their judgement that the risk was low. Under the Council's Constitution Officers did not have the delegated authority to make this decision. They should have escalated the matter to Members for their approval.

10.5 Expenditure beyond the approved budget on the scheme was incurred and Finance and Contract Procedure Rules were broken. Officer Delegations were exceeded.

10.5.1 Finance and Contract Procedure Rules provide the framework for managing the authority's financial affairs. They apply to every Member and Officer of the Authority and anyone acting on its behalf (E1 Finance & Contract Procedure Rules, F&CPRs).

10.5.2 The overall budget is agreed by the Cabinet and approved by the full Council. Chief officers and budget managers are therefore authorised to incur expenditure in accordance with the estimates that make up the budget (A32 b F&CPRs).

10.5.3 As soon as the cost of a project has altered significantly from those approved by Council F & CPRs require the Project Manager to submit a revised Business Case to the Capital Asset Group demonstrating that the project continues to represent value for money for the Authority (B.35 F&CPRs). Prior to committing expenditure the Capital Asset Group would require a virement or supplementary capital estimate to be reported to Cabinet to fund the shortfall, and depending on the funding requirement, an assessment of the revenue affordability of the project.

10.5.4 Virement is the switching of resources between approved estimates or heads of expenditure (not an increase in overall budgets through the addition of new monies) (A.32 c F&CPRs). Cabinet can approve virement over £500,000 and up to and including £1,000,000 for both Revenue and Capital (A.33 F&CPRs).

10.5.5 A supplementary estimate is where services wish to undertake an activity not originally identified in the budget or extend an existing capital scheme where additional income becomes available in year (F&CPRs A.34). Supplementary estimates can be funded from prudential borrowing or from general reserves or balances. Cabinet can



approve fully funded supplementary capital estimates of between £500,000 and £1,000,000 (and schemes where funding is borrowed from reserves and which are subject to a guaranteed repayment plan and are therefore considered to be fully funded) (F&CPRs A37). Supplementary estimates which are not fully funded and are to be funded from general reserves or balances, regardless of value, must be approved by Council (F&CPRs A.36).

10.5.6 The main contractor for construction and related works at Lyme Green Depot and the purchase of the building was appointed via a DD taken by the Asset Manager.

10.5.7 When the DD was taken the value of the works, based on feasibility costs was approximately £1,500,000. The approved capital budget for the scheme was £650,000. The target cost of the works placed with the main contractor were agreed prior to commencement on site (24 October 2011) and after the Delegated Decision was taken (4 October 2011). As at Mid May 2012 total anticipated spend for the Lyme Green Scheme is approximately £810,000. **Despite the cost of the project altering significantly from the figure approved by Council a revised Business Case was never submitted to the Capital Asset Group and expenditure was committed without a virement or supplementary capital estimate being approved by Cabinet to fund the shortfall.** Whilst a detailed timeline is attached at Annex C the relevant issues are as follows:

- **24 February 2011** -Council approve the three-year Capital Programme for 2011/2012 to 2013/2014, £650,000 is included in the 11/12 capital programme for the Materials Waste Transfer Facility
- **14 March 2011** - Cabinet approved the implementation of the new waste collection services as detailed in the covering report with the decision becoming effective from 24 March 2011.
- **16 August 2011** - Feasibility costs for the scheme, based on the Pym's Lane building and brief discussions with the Engineer on site, were established at between £1.4m and £1.55m based on two options the first with a piled foundation and the second "with cut and retaining walls".
- **4 October 2011** - (DD) taken by the Assets Manager to grant approval of the direct appointment, without competition, of a Main Contractor. The DD notes that the project programme required extensive ground works to be undertaken to reduce overall ground levels and form retaining walls. DD fails to identify any budgetary issues.
- **5 October 2011** -The DD was approved by the Director of Finance and Business Services and the Borough Solicitor.

- **6 October 2011** The appointment of the main contractor is confirmed by a Letter of Intent. The letter authorised the company to commence work up to a value of £500,000 (subsequently extended to £750,000).
- The target cost of £1.59m for the works were agreed prior to commencement on site (**24 October 2011**) and after the Delegated Decision was taken (**4 October 2011**).
- As at Mid May the total anticipated spend for the Lyme Green Scheme is £810,000.

**10.5.8 Management breached F&CPRs relating to Managing Expenditure and Capital Monitoring and Amendments to the Capital Programme.** The project group appreciated that compliance with F&CPRs was required: the overall costs being far in excess of current budget was highlighted as a risk. In this instance **the decision to appoint the main contractor and incur expenditure was taken without the necessary authority.** In accordance with Council F&CPRs a revised Business Case should have been submitted to the Capital Asset Group demonstrating that the project continued to represent value for money for the Authority as soon as it was identified that the cost of the project had altered significantly from the figure approved by Council. Prior to committing expenditure the Capital Asset Group would have required a virement or supplementary capital estimate to be reported to Cabinet to fund the shortfall, and depending on the funding requirement, an assessment of the revenue affordability of the project. Only at this stage could a DD be taken and, subject to the DD being approved, expenditure incurred.

**10.6 The requirements of the Council's Capital Strategy and Finance & Contract Procedure Rules were not fully complied with**

**10.6.1** Capital expenditure involves acquiring or enhancing fixed assets with a long-term value to the authority, such as land, buildings, and major items of plant, equipment or vehicles. Capital assets shape the way services are delivered in the long term and create financial commitments for the future in the form of financing costs and revenue running costs.

**10.6.2** The Capital Strategy for 2011/2014, which was approved by Cabinet on 20 September 2010, sets out Cheshire East's approach to capital investment and disposals and how it makes decisions in respect of all types of capital assets. The strategy shows how the Council prioritises, targets and measures the performance of its limited capital resources. Effective management of capital is key to the delivery of the Council's priorities and the Capital Strategy outlines how capital resources are allocated to help achieve these priorities. The requirements of the Strategy are reflected in the Council's F&CPRs.

10.6.3 The strategy describes how schemes are subject to Member and Officer challenge prior to a draft capital programme being recommended for approval by Cabinet and Council in February. As part of this process the strategy and F&CPRs prescribe the following:

- In order to identify and prioritise Capital Schemes an Option Appraisal in the form of a detailed Business Case Template must be prepared for all proposals with a gross estimated cost in excess of £250,000, before being submitted for inclusion in the Capital Programme. These will be used as the basis for assessing the affordability and deliverability of the scheme, as well as for monitoring, reporting and post-implementation review. (F & CPRs B.28)
- The schemes will receive an initial assessment by the Capital Appraisal and Monitoring Group (CAMG) who will assess the viability of the scheme and provide guidance on technical, legal and planning issues to Project Leads

10.6.4 In order to manage the Capital Programme regular monitoring is undertaken throughout the year. Progress updates are submitted to Cabinet on a quarterly basis as part of the financial reporting procedure. The monitoring process focuses on the main issues affecting each service, progress on the Capital Programme, explanations of major variances between the in-year budget and latest forecasts and requests to Members for approval of Supplementary Capital Estimates (SCE's) and Virements.

10.6.5 **A partially completed Capital Appraisal Form (excluded revenue running costs) was submitted as justification for the investment in the waste transfer station at Lyme Green and allowed to progress through the challenge process prescribed by the Capital Strategy.** The construction costs included on the form of £650,000 were taken directly from the cost of the Council's Pym's Lane waste transfer site and were not directly attributable to the site at Lyme Green. Detailed planning/technical considerations had not, at this stage, been taken into account when determining the cost, location or the optimal design for the building.

10.6.6 These issues were not picked up as part of the challenge and approval process due, in part, to the failure of the Capital Appraisal and Monitoring Group (CAMG) to assess the viability of the scheme and provide guidance on technical, legal and planning issues to the Project Lead. **Capital expenditure was, therefore, approved without fully understanding whether building a Waste Service Transfer Station was the most suitable option, or whether the proposed scheme was viable, affordable and achievable.**

10.6.7 As at Mid-May total costs of the incomplete Lyme Green WTS project processed within the Projects module of the Council's Oracle financial

accounting system stand at approximately £696,000. The Professional Services & Framework Manager estimates total costs to this stage at £810,000 but is currently in negotiation with the main contractor to effect a reduction in their outstanding balance.

A timeline, explaining the variance to approved budget is as follows:

- **24 February 2011** - The 2011/12 budget was approved by the Council in February 2011 with £650,000 included in the 11/12 Capital Programme for the Materials Waste Transfer Facility
- **16 August 2011** - The feasibility costs of the scheme at Lyme Green were established at £1.5m.
- The target cost (£1.59m) of the works placed with the Main Contractor were agreed prior to commencement on site (24 October 2011) and after the Delegated Decision was taken (4 October 2011).
- **30 November 2011** - the Main Contractor was instructed, prior to completion, to cease all construction works and demobilise from site.

10.6.8 As previously stated progress on individual schemes within the Capital Programme is monitored by the project leads and service accountants. Quarterly Highlight Reports, completed by the named budget holder and co-ordinated by Finance are used to write progress reports to Cabinet. The Waste Transfer Station Highlight Reports for Q1 completed in July 2011, Q2 completed in October 2011 and Q3 completed in November 2011 all indicate that the estimated total cost of the scheme is £650,000. Consequently, the financial performance report to Cabinet shows forecast expenditure at £650,000.

10.6.9 Management failed to fully comply with the requirements of the Council's Capital Strategy and Finance and Contract Procedure Rules.

## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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**Annex A**

**Planning Permission**

**Timeline**

**14 March 2011** Cabinet approve the Waste Transformation project including the need for a collection/transfer facility in the north of the borough.

**13 September 2011** Director's approval to go ahead with Lyme Green construction and need for discussion with Planning noted.

**14 September 2011** Planning informed of project proposals. Head of Planning advises against progressing without planning permission.

**29 September 2011** Principal Planning Officer raises concerns with project team on grounds of obtaining approvals within proposed timescale of project and particularly with regard to the appropriateness of this development in an area of "green belt".

**4 October 2011** Delegated Decision approved to appoint the main contractor to construct facility at Lyme Green.

**5 October 2011** Project risk log updated with planning issues.

**7 October 2011** Head of Planning advises that an application will be fast-tracked but will need to go to Committee for decision and be referred to the Secretary of State.

**17 October 2011** - final iteration of the project programme, clearly indicating that the submission of the planning application and construction were to run concurrently

**24 October 2011** Main Contractor on site.

**16 November 2011** Planning Application received.

**23 November 2011** Main Contractor instructed to stand down.

**24 November** – further instruction for Main Contractor to recommence works.

**24 November 2011** Planning Application registered on Council Website.

**30 November** – Main Contractor instructed to cease all construction works and demobilise from site

**18 January 2012** decision on application by Strategic Planning Board deferred.

**17 February 2012** Application withdrawn.

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**Annex B**

**EU Procurement Regulations**

**Timeline**

**6 September** - following advice from Procurement a letter is sent to the waste bulking contractor seeking a price for bulking and waste transfer facility services on a four, six or eight month contract.

**13 September** – The waste bulking contractor quotes for interim bulking and waste transfer facility services on a four, six or eight month contract.

**14 September 2011** - A Delegated Decision is taken by the Strategic Director in order to waive the requirement for an additional tendering exercise on the basis that only one company can provide the service and to award a contract to the waste bulking contractor.

Endorsement by Officers from Procurement, Finance and Legal

**15 September** The Decision was approved by the Director of Finance and Business Services and the Borough Solicitor. The quoted price for the 3 year contract was no longer available as the 90 day period for acceptance expired.

**3 October** the interim contract for bulking of comingled recyclate commences.

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**Annex C**

**Officer delegations and approved budget**

**Timeline**

**January 2010.** The project to transform the Council's waste collection service commences. The project identified several related work streams including procuring waste transfer facilities in the north.

**September 2010 – February 2011 - 2011 – 14 Capital Planning Process**

**4 October 2010** Capital Appraisal form in respect of a Materials Waste Transfer Facility submitted as part as capital bids for 2011/12. Construction costs are shown as £650,000.

**14 February 2011** - Cabinet recommended the three-year Capital Programme for 2011/2012 to 2013/2014 to Council for approval. £650,000 included in the 11/12 capital programme for the Materials Waste Transfer Facility.

**24 February 2011** -Council approve the three-year Capital Programme for 2011/2012 to 2013/2014,

**3 March 2011** – Meeting of Environment and Prosperity Scrutiny Committee resolved that the Transformation of Waste & Recycling Collection Services report be noted and that the proposed redesign of waste and recycling collection services be endorsed.

**14 March 2011** - Cabinet approved the implementation of the new waste collection services as detailed in the covering report with the decision becoming effective from 24 March 2011.

**16 August 2011** - Feasibility costs for the scheme, based on the Pym's Lane building and brief discussions with the Engineer on site, were established at between £1.4m and £1.55m based on two options the first with a piled foundation and the second "with cut and retaining walls".

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**4 October 2011** - A Delegated Decision (DD) was taken by the Assets Manager to grant approval of the direct appointment, without competition, of a Main Contractor. The DD to waive competition was taken on the basis that there was an emergency that required an immediate contract or it was considered inappropriate in the interests of the efficient management of the service. The DD was approved by the Director of Finance and Business Services and the Borough Solicitor on 5 October 2011. DD fails to identify any budgetary issues.

**6 October 2011** The appointment of the main contractor is confirmed by a Letter of Intent. The letter authorised the company to commence work up to a value of £500,000 (subsequently extended to £750,000).

The target cost of £1.59m for the works were agreed prior to commencement on site (24 October 2011) and after the Delegated Decision was taken (4 October 2011).

As at Mid May the total anticipated spend for the Lyme Green Scheme is approximately £810,000.



## LYME GREEN – Waste Transfer Station

<b>Report status:</b>	Final
<b>Report date:</b>	30 May 2012
<b>Prepared by:</b>	Jon Robinson, Audit Manager

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## **1 Introduction**

- 1.1 The Council is responsible for establishing and maintaining appropriate risk management processes, control systems, accounting records and governance arrangements. Internal Audit play a vital part in advising the Council that these arrangements are in place and operating properly.
- 1.2 This report has been prepared following a request by the Chief Executive and Leader to review the approach taken by the Council in managing the Waste Transfer Station (North) aspect of the Council's Waste Collection Transformation Project.
- 1.3 The Chief Executive's request recognises the significant public and member interest in the issue including the resolution of the Audit and Governance Committee on 31 January 2012 which stated:

a thorough and robust investigation of all issues surrounding the expenditure incurred on the proposed waste transfer station at Lyme Green be added to the work plan; in particular to identify any governance issues and whether all financial and contractual regulations have been complied with.
- 1.4 Terms of reference (Appendix B) have been agreed with the Chief Executive with the prime objective being to provide an independent and objective opinion to the organisation on management's compliance with established policies, procedures, laws and regulations particularly with regard to the use of assets and resources entrusted to it. In summary the review aims to establish whether controls, procedures or policies have been compromised and identify the steps that need to be taken to prevent a re-occurrence.
- 1.5 This report informs, in the first instance, both the Chief Executive and the Leader of weaknesses that existed in the Council's arrangements for the management of the Waste Transfer Station (North) aspect of the wider transformation project.
- 1.6 Following this introduction, the report explains the background to the decision to locate a Waste Transfer Station at Lyme Green. The report goes onto provide conclusions to the review, and the detailed evidence to support those conclusions and the recommendations made to address the weaknesses identified.
- 1.7 It should be noted that Internal Audit is independent of the activities under review which enables the auditors to perform their duties in a way that allows them to make impartial and professional judgements and recommendations. The assurances given by Internal Audit are never absolute because it is impossible to examine every activity and every transaction.
- 1.8 In preparing the report Internal Audit is mindful of the interests that third parties have expressed on the matter in correspondence with the Council. This report deals exclusively with matters that are within the competence of the Internal Audit Section. Complaints and Freedom of Information requests are dealt with separately to this report.

- 1.9 It is also important to stress that under section 8 of the Audit Commission Act 1998 the Council's External Auditor is empowered to issue a report relating to this matter if it is in the public interest to do so. The decision to issue a report in the public interest is entirely a matter for the appointed auditor to decide.

## 2. Background

- 2.1 On 30<sup>th</sup> November 2011 the Council ceased all works in relation to the construction of a Waste Transfer Station at Lyme Green Depot, Macclesfield. The Planning Application was deferred by the Strategic Planning Board on 18 January 2012 and withdrawn on 17 February 2012.
- 2.2 The construction works and the related, partially retrospective, planning application attracted significant public and Member interest together with adverse publicity. Consequently, the Chief Executive instructed Internal Audit to provide an independent and objective opinion on Managements compliance with established policies, procedures, laws and regulations particularly with regard to the use of resources entrusted to it.
- 2.3 Various public statements were made with regard to the Lyme Green development leading to an apology to both residents and Councillors, and a commitment to “diligently examine all possible site options”. Furthermore, a statement was made with regard to this review and to publishing a summary of the report at a date to be confirmed.

### Policy/Financial Context

- 2.4 The development of the Project must be considered against a financial backdrop of pressure upon the Council's finances as a result of the Comprehensive Spending Review resulting in an overall reduction in funding. The “Pre-Budget Report 2011-12” states that 2011-12 overall central government funding is £8.2M less than in comparison to that received in 2010-11. In addition there were further service pressures on the Council's resources. Throughout the financial year 2011/12 the Cabinet and Corporate Management Team kept these pressures under review. At mid-year the Council reported that it was forecasting a budget deficit in the region of £16m and put in place measures to seek to mitigate the pressures. Such measures included introduction of a ‘recruitment freeze’ for non-essential posts, and the bringing forward of capital schemes that might also ease financial pressures.
- 2.5 In support of the initial proposals put forward to merge the former Waste Collection Authorities (WCAs) that now sit within Cheshire East were budgeted savings to be delivered through integrated delivery of refuse and recycling services. These included both short term and longer term savings, to be met initially through a re-routing exercise considering the inherited collection arrangements and then through potential changes in the service delivery method to deliver greater long term savings.
- 2.6 Throughout 2009/10 studies were completed by consultants including the logistics of joint domestic refuse, recycling, garden and bulky waste collections across Cheshire East in order to deliver operational efficiency savings. The work considered current variations in collection methods that existed across the former WCAs, concentrating on recycling collection methods and optimised round design. The work resulted in the Council moving to a co-mingled dry recycle

collection scheme and in order to do so the Macclesfield area required the provision of suitable infrastructure for the receipt and bulking of the material.

- 2.7 In order to address the need £650,000 was included in the 2011/12 Capital Programme for the Council to build a Waste Transfer Facility at its Lyme Green Depot, together with £233,000 in the revenue budget for operating costs. The capital planning process commenced in August 2010. The scheme was classified as invest to save/transformational. The construction costs of £650,000 were taken directly from the cost of the Council's Pym's Lane Waste Transfer site in the South of the Borough and were not directly attributable to the location. Detailed planning/technical considerations were not, at this stage, taken into account when determining the cost, location or the optimal design for the building.

Extract from an Update Report on the Capital Programme 2011 -14 to CMT/Cabinet 17 December 2010

"The Invest to Save/Transformational schemes are required to deliver revenue savings and are linked to saving proposals for 2011/12. Failure to deliver these schemes will have an impact on closing the revenue funding gap"

- 2.8 In accordance with the Councils Finance and Contract Procedure Rules Chief Officers and budget managers are authorised to incur expenditure in accordance with the estimates that make up the approved budget. The 2011/12 budget that was approved by the Council in February 2011 included £650,000 in the Capital Programme for the scheme. The Budget Report described how the 2011/2012 Capital Programme was developed and noted:

Extract from Budget Report to Council 24 February 2011

"the Council is conscious of the impact of repayment costs on the revenue budget and has only considered schemes where capital investment is required to secure longer term revenue savings and repayment costs are affordable"

- 2.9 The report also described service proposals and considered the impact of these on typical groups of service users. In terms of Environmental Services the report noted that:

Extract from Budget Report to Council 24 February 2011

"In order to provide householders with a much improved waste and recycling collection service, the Council will introduce a new system in 2011/12, based in large measure, on three wheeled bins rather than the current mix of bins, boxes and bags. This will increase the number of materials that can be recycled by all householders and reduce the costs of waste and recycling collections by £0.7m in 2011/12, increasing to over £1m per annum from 2012/13"

- 2.10 In March 2011 a report on the transformation of Waste and Recycling Collection Services was taken to Cabinet. The implementation timetable indicated that the project would be rolled out in two phases; phase 1 from the southern depot from 9 May 2011 and phase 2 from the northern depot from 3 October 2011. Cabinet approved the implementation of the new waste collection services as detailed in

the report with the decision becoming effective from 24 March 2011. The report noted that:

Extract from Report to Cabinet 14 March 2011

“Delivery is challenging in a number of respects and will need to be driven hard to ensure all objectives are achieved in the timescales.

“There are several related work streams that support the service transformation ....Of these related work streams, the timely procurement of new contracts, additional containers and waste transfer facilities are integral to the delivery of new services. Without them the new services cannot be delivered and target savings cannot be achieved.

Another key factor in producing the required savings is the provision of waste transfer facilities in close proximity to Macclesfield, through an EU compliance procurement process...without such a facility, it is impossible to provide the service and attain the savings required”.

Steps Taken to Implement the Decision of Cabinet 14/3/2011

- 2.11 The project to transform the Council's waste collection service from a residual waste service to one where the primary services are recycling at a lower cost to the tax payer started in January 2010. The Cheshire East Waste Collection Improvement Project forms part of the Transformation – Places Directorate Savings Programme.
- 2.12 The project identified several related work streams that supported the service transformation including managing the Private Finance Initiative (PFI) project, procuring new processing contracts for dry recyclate and garden waste, procuring waste transfer facilities in the north, purchasing additional containers to roll out the dry recycling collection borough wide and HR related issues relating to the terms and conditions of employment.
- 2.13 The proposed service, designed to operate across the whole of Cheshire East, included fortnightly recycling collections of household co-mingled dry materials with optimised collection schedules. Dry recycling was to be deposited and bulked up at Pym's Lane, Crewe and a site to be determined in the north.
- 2.14 In July 2010 an Official Journal of the European Union (OJEU) Contract Notice was placed for a Contractor to collect the bulked co-mingled Dry Recyclate from the Council's Recyclate Bulking Facility/Facilities (collection points) and to provide haulage to the Contractor's Materials Recovery Facility for separation and onward transport to re-processors. The Contract Award Notice notes that the recycling contractor was awarded the Contract from 14.3.2011 (the date that Cabinet approved the implementation of the new waste collection services) until 13.03.2014 with the ability to further extend up to a maximum of 3 years. At contract commencement the only operational Collection Point was located at the Council owned Pym's Lane Depot, Pym's Lane Crewe, however schedule 1 of the contract notes that “if so established, the Contractor shall be instructed ...to



commence the collection of an additional quantity of co-mingled Dry Recyclate of approximately 16,000 tonnes per year, and take responsibility for its treatment and reuse/recycling..”

- 2.15 In May 2011 an OJEU open notice was placed for the receipt, handling, storage and despatch of Co-mingled Dry recyclates that is to be collected by the Council’s Refuse and Collection Services in the north of the Borough. The notice indicates that approximately 16000 tonnes will be delivered to the Contractors premises over each Contract year. The estimated contract start date is shown as 3/10/11 with an end date of 02/10/2014.

- 2.16 Following the receipt of one tender from a waste bulking contractor on 15 June 2011, the Strategic Director for Places felt that, despite the tender being within budget, the offer may not represent best value and that it was difficult to demonstrate the prices were competitive because only one bid was received.

*The 2011/12 budget that was approved by the Council in February 2011 included £650,000 in the Capital Programme for a Council owned Waste Transfer Facility. The Strategic Director and budget managers had, therefore, been authorised to pursue this option subject to expenditure being within the approved budget.*

- 2.17 The option of a Council owned Waste Transfer Station at the Lyme Green Highways Depot was, therefore, explored and in August 2011 an indicative works programme of 20 weeks with a completion date of Christmas 2011 was established. Whilst the approved budget for the scheme was £650,000, feasibility costs, based on a Pym’s Lane type building being constructed at Lyme Green, were established at between £1.4m and £1.55m. Furthermore, costings, provided by Finance, indicated that a Council run Waste Transfer Station was cheaper when compared to the waste bulking contractor’s, with savings increasing as recyclate collected increased. The capital financing costs were, however, based on a build cost of £700,000 and not the feasibility costs of £1.55m.

- 2.18 In early September the works programme was reviewed, due to initial delays in obtaining approval to commence the survey and investigations works on site, and a revised target date of March 2012 determined. However, the Strategic Director issued instructions to accelerate the “project”.

- 2.19 By mid September the works programme was revised to allow for a completion date of Christmas 2011. The Strategic Director “approved” the Council run waste transfer station option in an e-mail that states “Yes lets get on with it. We do need to ensure we sign everything off as we go as you know some people choose to watch our every move”. The specific authority to proceed is taken from the 2011/12 budget that was approved by the Council in February 2011 which included £650,000 in the Capital Programme for the scheme. The Strategic Director and budget managers are, therefore, only authorised to incur expenditure in accordance with the approved budget.

- 2.20 In order to allow the roll out of the new Waste and Recycling Service on 3 October 2011 the Strategic Director awarded an interim (6-8 months) contract to the waste bulking contractor for the provision of Waste Transfer Facilities at Macclesfield. The Authority to award the contract was taken from a Delegated Decision (DD),

dated 14 September 2011, that waived the requirement for a tendering exercise on the basis that only one company could provide the service and the fact that the quote was within the approved budget. The DD was signed off by the Director of Finance and Business Services and the Borough Solicitor on 15 September following endorsement by Officers from Procurement, Finance and Legal. The estimated value of the contract, at £240,000 was, however, in excess of the EU minimum for a Notice and tendering process for services.

- 2.21 The new Waste and Recycling service was rolled out on 3 October 2011.
- 2.22 A further DD was taken on 4 October by the Assets Manager to grant approval of the direct appointment, without competition, of a waste facility construction contractor (referred to as the main contractor throughout this report) from the existing North West Construction Hub (NWCH) Medium Value Framework. The DD to waive competition was taken on the basis that there was an emergency that required an immediate contract or it was considered appropriate in the interests of the efficient management of the service. When the DD was taken the value of the works, based on feasibility costs that were received on 16 August 2011 and discussion with the main contractor was approximately £1,500,000. The approved capital budget for the scheme was £650,000.
- 2.23 On 21 October the final iteration of the work programme was determined with a completion date for the Building of January 2012.
- 2.24 The main contractor starts on site on 24 October. At this stage the target cost of the works placed with the main contractor were agreed at £1.59m. The approved capital budget for the scheme was £650,000.
- 2.25 On 16 November a Planning Application was received by the Council for the Waste Transfer Station which was registered on 24 November. The application notes that building, work or change of use has already started.
- 2.26 As at mid-May total costs of the incomplete Lyme Green WTS project processed within the Projects module of the Council's Oracle financial accounting system stand at approximately £696,000. Costs totalling approximately £595,000 have been paid to the main contractor, £94,000 to the various consultants and the balance to miscellaneous costs and internal charges. The Professional Services & Framework Manager estimates total costs to this stage of completion at £810,000.
- 2.27 An examination of the consultants' fees schedule indicates some £26,000 consultants fees yet to be charged to the project. This would leave the balance of approx £88,000 attributable to the main contractor. It is understood that the Professional Services and Framework Manager is currently in negotiation with the main contractor to effect a reduction in their outstanding balance.
- 2.28 A detailed timeline of events which, in effect, articulates the findings to this report, is found at Appendix A of this report

### 3 Conclusions

- 3.1 The Council is responsible for establishing and maintaining appropriate risk management processes, control systems, accounting records and governance arrangements. This review has indicated that whilst the arrangements are in place officers have, in certain instances, failed to comply with them. This reduces the ability of the Council to demonstrate value for money and that it has acted responsibly. The most significant breaches being summarised below:

#### The Business Case/Capital Planning Process

- Officers failed to comply with the Council's Capital Strategy because the Capital Appraisal and Monitoring Group (CAMG) did not, in effect, meet as part of the Capital Planning Process 2011 -14. Consequently, the Capital Programme for 2011/12 included £650,000 for the construction of a Council owned Waste Transfer Station without a detailed assessment of the viability of the scheme (including an understanding of costs involved).

#### Project Management

- Officers involved in the project did not use the Council's standard suite of documents which are available for use in managing and reporting progress. Governance arrangements tended to be informal and seem confused when compared to those described in the Council's Project Health Check document. The audit trail is, therefore, blurred and where actions have been taken to address risks/issues it is unclear that decisions were arrived at with the full knowledge of all the relevant factors or a realisation of the full implications.

#### Planning

- Local confidence in the planning process has been undermined because Officers failed to comply with paragraphs 5.5 – 5.9 of the Council's own Statement of Community Involvement which addresses consultation with the local community and development commenced without planning permission. Pre application advice suggested that the application would be "fast tracked".

#### Non Compliance with European Directives

- The Delegated Decision taken by the Strategic Director on 14 September 2011 failed to comply with EU Regulations. The arrangements for approving this decision are, therefore, flawed because as prescribed in the Council's Constitution a DD can only waive the Council's internal rules.

#### Non Compliance with Finance & Contract Procedure Rules

- The arrangements for appointing the main contractor via a DD are flawed because the Asset Manager only had authority to incur expenditure in accordance with the estimates that make up the budget that was suggested by Cabinet and approved by Council. Despite having an approved budget of

£650,000 the DD was used as the basis for agreeing works to the value of £1.5m. As at mid-May total costs of the incomplete Lyme Green WTS project processed within the Projects module of the Council's Oracle financial accounting system stand at approx £696,000. The Professional Services & Framework Manager estimates total costs to this stage at £810,000 but is currently in negotiation with the main contractor to effect a reduction in their outstanding balance. The full extent of the costs associated with this scheme cannot be established until a decision is taken by the Council with regard to the site

- Scrutiny arrangements with regard to the DD have been compromised because no advance publicity arrangements or special urgency procedures were applied to what was described as a key decision.
- There is no contract under seal with the main contractor despite the value of works being agreed at £1.59m
- The monitoring of this capital scheme is flawed because committed expenditure is not reported to Cabinet or fully approved.

#### Risk Management

- At various stages of the project officers deemed a breach of planning control and non compliance with relevant Regulations and Finance and Contract Procedure Rules as tolerable because it was unlikely that adverse consequences would arise. The risk management arrangements are, therefore, flawed because the Council should not breach relevant Rules and Regulations even if adverse consequences are unlikely. Rules, Regulations, Policies and Procedures have been implemented to help ensure the Authority's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that assets and interests are safeguarded.

- 3.2 It is apparent that Management allowed judgement to be affected by the focus to meet a key objective of providing householders with an improved waste and recycling collection service whilst reducing the costs of waste and recycling collections.

## 4 Findings & Recommendations

### 4.1 The Business Case/Capital Planning Process (August 2010 to February 2011)

- 4.1.1 A vital part of the Council's Capital Planning Process is the scrutiny via detailed business case, of what is proposed to ensure that it is the right sort of investment, affordable and value for money. A partially complete Capital Appraisal Form was submitted by the Waste and Recycling Manager and allowed to progress through the challenge process (See Appendix C for details). The capital appraisal form does not allow all relevant financial and non financial aspects of a proposed scheme to be recorded such as the outcome of options appraisals/feasibility studies.
- 4.1.2 The Capital Appraisal and Monitoring Group (CAMG) which was responsible for assessing the viability of the scheme and providing guidance on all relevant financial and non financial aspects of the proposed project, did not, in effect, meet during the Capital Planning Process. It is difficult, at this stage, to demonstrate that the scheme is the best possible solution for the given set of circumstances.
- 4.1.3 The construction costs of £650,000 were taken directly from the cost of the Pym's Lane Waste Transfer site and were not directly attributable to the location. Detailed planning/technical considerations were not, at this stage, taken into account when determining the cost, location or the optimal design for the building. Capital expenditure was approved without fully understanding whether building a Waste Service Transfer Station was the most suitable option, or whether the proposed scheme was viable, affordable and achievable.

#### June 2011

- 4.1.4 The viability of the scheme was revisited following, what was deemed, an unsuccessful procurement exercise to obtain waste transfer capacity from the private sector. However, the time constraints at this point influenced the path chosen with regard to compliance arrangements.

### **Recommendation**

*The arrangements with regard to business cases must be strengthened to ensure they provide the Council with the evidence to support decision making and provide assurance to other stakeholders that it has acted responsibly.*

*The Capital Planning Process must involve close scrutiny of detailed business cases that include all relevant financial and non financial aspects of a proposed scheme in order to ensure that the best possible solution is selected for a given set of circumstances.*

## 4.2 Project Management

- 4.2.1 All projects will encounter risks and issues which may prevent successful delivery. It is, therefore, important that a disciplined approach is adopted to identify risks and issues and ensure decisions are taken and measures put in place to deliver the desired outcomes.
- 4.2.2 The Council does not have a formal project management framework. There is, however, a standard suite of documents which are available for use in managing and reporting progress. There is also corporate support for project work. Apart from the Risk Log no other document from the suite was used. It is difficult, therefore, to demonstrate that a considered, disciplined and proportionate approach was taken in managing the project.
- 4.2.3 Consequently, there is insufficient evidence to suggest that agreement had been reached with regard to the scope, key milestones, communication and governance arrangements, key links and dependencies and roles and responsibilities at the project initiation stage. Furthermore, as the project progressed it is difficult to demonstrate how much emphasis has been placed on each element and whether this is proportionate.
- 4.2.4 Governance arrangements tended to be informal and seem confused when compared to those described in the Council's Project Health Check document. As a result it is unclear how risk appetite was established/approved and issues resolved. Where actions have been taken to address risks/issues and determine tolerance in terms of cost, quality and time it is unclear that decisions were arrived at with the full knowledge of all the relevant factors or a realisation of the full implications. Formal records of who was asked to do what, when and how well it was done, in order to provide an audit trail, have not been maintained. Regular written project progress reports have not been produced for Senior Management. There is no project plan, reliance being placed on the work programme, which tended to be a stage plan and concerned itself with milestones connected with Construction only.
- 4.2.5 It is acknowledged that action has already been taken by Management within the Places Directorate to ensure that more rigorous project management arrangements are put in place within the Asset Service.

### **Recommendation**

*The Council's Project Management Arrangements must be reviewed and strengthened to ensure that objectives are met, constraints are identified, tolerances defined and benefits realised. Arrangements must ensure there is sufficient evidence to support decision making and provide assurance to other stakeholders that the Council has acted responsibly*

## 4.3 Planning

- 4.3.1 The Planning Application is of a scale and nature to fall within paragraphs 5.5 – 5.9 of the Council's own Statement of Community Involvement which concerns

pre application advice. Pre-application discussions are critically important and benefit developers (in this case the Council), the Council and the wider community in ensuring a better understanding of the existing, and potential objectives and constraints to a development. In this instance the Council failed to undertake appropriate consultation and hence failed to follow its own advice.

- 4.3.2 The steering/project group tasked with providing a new Waste Transfer Station at Lyme Green proceeded with the task, with the consent of its Director, even though the timetable involved the commencement of development without planning permission. Planning Officers advised against this course of action both prior to and during the works. The Council submitted a partially retrospective planning application. Works ceased after objections from Planning Officers and after complaints from local residents and the Ward Member representing them. Commencing development without permission has undermined local confidence in the planning process and contributed to the suspicion that the application was receiving favourable treatment in terms of procedure and substance and that permission was a fait accompli.
- 4.3.3 Pre application advice from the Head of Planning and Housing included a commitment to “fast track” the planning application, once submitted, through registration and deal with it promptly thereafter.
- 4.3.4 The Planning Application was deferred by the Strategic Planning Board on 18 January 2012 and withdrawn on 17 February 2012.
- 4.3.5 It is noted that the Council’s pre-application advice system has been introduced on 3rd October 2011 to “provide a much more structured and improved service for pre-application advice”.

### **Recommendation**

*The Council, as a regulatory authority, should not undertake development without planning permission.*

*All projects that require planning permission should use the Councils pre-application advice system.*

## **4.4 Compliance with European Directives**

### **Appointment of the waste bulking contractor**

- 4.4.1 The purchase of goods, services and works by the Council as a public sector body is regulated by the Public Contracts Regulations 2006 (the Regulations) which implement into English law the EU procurement regime currently in place throughout the EU. The Regulations only apply to contracts with a value that exceeds the relevant thresholds. EU Rules have mandatory procedures and mechanisms which the Council must comply with. Any breach is open to challenge via the civil courts

4.4.2 The thresholds that applied to local authorities throughout 2011 were as follows:

SUPPLIES (GOODS)	SERVICES	WORKS
£156,442	£156,442	£3,927,260

4.4.3 The Council's Constitution contains a set of Finance and Contract Procedure Rules. Where a Chief Officer or his/her designated representative intends to seek an exception to these Rules as they apply to contracts and tenders, he/she shall arrange for a DD to be prepared and submit it for consideration and sign off by the Borough Solicitor and the Director of Finance and Business Services. DDs are not available if the proposed exception will breach national or EU legal requirements. A DD can only waive the Council's internal rules

4.4.4 In order to obtain short term waste transfer capacity a DD was taken by the Strategic Director of Places on 14 September 2011 to award a six month contract to the waste bulking contractor. The estimated value of the contract, at £240,000 was, however, in excess of the EU minimum for a Notice and tendering process for services. The arrangements for approving this decision are, therefore, flawed because a DD can only waive the Council's internal rules. The waste bulking contractor was appointed on an interim 4 month contract, commencing on 3 October 2011, with the option to extend to 6 or 8 months.

4.4.5 The record of the DD indicates that:

- The Council (previously) went out to tender for provision of the service for a 3 year period
- Only one tender was received and it was determined that the waste bulking contractor submitting it was the sole commercial provider of suitable bulking facilities in the area
- In evaluating the (3 year) tender the Council deduced that it could provide the service in house at a lesser cost, however an in house service could not be provided in time to meet an urgent immediate need
- It would take the Council between 6 and 8 months to deal with the construction of a facility and secure the requisite licences and planning permission
- It was, therefore, proposed that in the interim a stop gap contract be entered into
- The quoted price (for the interim contract) was within the Council budget book estimate.
- Under the Council's Finance and Contract Procedure Rules there is the capacity to waive the requirement for competition, via a DD, in circumstances where only one company can provide the service, however this is subject to the contract value not exceeding EU thresholds
- The award of the (interim) contract to the waste bulking contractor did exceed thresholds however the Council had (previously) performed a compliant tendering exercise for a three year term.
- Given the substantial amendment to the term of the (3 year) contract and the potential impact on the cost it was advised that the contract should be retendered.



- It was, however, apparent that due to the geographical and immediate requirements of the Council there were no other companies able to tender and no significant risk of a challenge to this award of contract.
- There were now no alternatives to this offer in order to begin collection of co-mingled recycle on schedule for the 3<sup>rd</sup> of October. The Council had no facilities of its own in the North of the Borough with the necessary permits. It was now too late to arrange haulage and personnel to transfer load material to the Council's South transfer station [at an estimated cost of £35,000 per week]. Delaying the roll out on the 3<sup>rd</sup> October was no longer an option as bins are being delivered to residents which cannot be collected without the change over of vehicles and use of a transfer station from the 3<sup>rd</sup> October.

4.4.6 The quoted price for the interim contract exceeded the tendered price (3 year contract). The quoted price for the 3 year contract was no longer available as the 90 day period for acceptance had expired on 15 September 2011.

4.4.7 In taking the decision the Strategic Director did not comply with EU Regulations seeing this as tolerable because it was unlikely that adverse consequences (challenge via the civil courts) would arise.

4.4.8 A challenge to the decision is available to ANY supplier who felt they would wish to undertake the contract (not just those involved) should they feel the regulations have not been complied with. This could be taken to the High Court should negotiation or arbitration fail to lead to a mutually acceptable result or either party not enter into such a process. The High Court would determine the case and the claim would principally be for damages i.e. financial loss suffered as a result of the decision not to comply with the regulations. If the case were lost the claimant's costs may also be awarded. Depending on the view of the High Court and the stage at which the claim is lodged the tender process can also be suspended or a contract already awarded declared "ineffective" i.e. set aside. Should such a judgement be made there would be additional costs incurred in terms of delay, contingency costs to provide the service in the interim and a further tendering process. The EU may also take action against the UK government for breaches reported to it. Essentially legal action can be taken up to 3 months from the date of the alleged breach, although the Court can determine a longer period where it considers the circumstances warrant it.

4.4.9 The DD was signed off by the Borough Solicitor and the Director of Finance and Business Services who as the Councils Monitoring Officer and Section 151 Officer respectively have specific duties to ensure that the Council acts within the law, and uses resources wisely.

### **Recommendation**

*The Council's Governance Arrangements must be strengthened to ensure that it complies with EU and National Legislation.*

## **4.5 Compliance with Finance and Contract Procedure Rules**

### **Appointment of the facility construction contractor**

- 4.5.1 A framework agreement was used to appoint the main contractor for construction and related works at Lyme Green Depot and the purchase of the Prefabricated building.
- 4.5.2 As part of the North West Construction Hub (NWCH), of which CE is a member, the process for a Medium Value Framework selection should include a “mini-competition” similar in outline to that described in paragraph 4.5.15 for the CE Consultants Framework. There was no competition for this appointment.
- 4.5.3 The absence of competition was authorised by a DD taken by the Asset Manager on 4 October 2011 and counter-signed by the Director of Finance and Business Services and the Borough Solicitor on 5 October 2011. The main contractor was selected on the basis of being on the NWCH framework and previously submitted tenders.
- 4.5.4 The DD was taken on the basis of the Finance and Contract Procedure Rule exemption that, subject to EU rules (below £3.9M for “works”), competition may be foregone in an emergency or if in the interest of efficiency of the service. The DD indicates that:
- There is the potential risk of a challenge by other companies on the Framework
  - Conducting a mini competition would delay the project by at least 3 weeks a delay that would cost the Council £35,000 per week
  - The planned date for completion and roll out of the second phase of the project (silver wheeled bin service) was published as October 2011 and the Council would suffer potentially adverse publicity and criticism, if the proposed new services were unavailable within the outlined timetable
  - Initial consideration was given to a private sector solution as the preferred solution, although due to unforeseen difficulties with sourcing suitable competitive bids, it was determined that best value should be sought through alternative procurement options, focusing on delivery through a Council owned solution.
  - Asset Management Services were approached in August 2011 to assist Waste and Recycling Services, through the use of the Council’s existing framework contracts, to determine appropriate procurement solutions to ensure those cost increases were kept to an absolute minimum and meet the urgent operational service delivery requirements.
  - The preferred project programme forecast an accelerated 22 week programme with a target completion date for the new building of January 2012 and the Council would be required to accept an element of risk and approve a series of key milestone activities to achieve the required completion dates. The programme, which was attached to the DD, indicates that the planning process will run concurrently with site operations.
  - In order to meet the required key milestone events, a large element of civil works (extensive ground works to be undertaken to reduce overall ground

levels, form retaining Walls, a new concrete base and foundations, together with general upgrading and access improvements to the site entrance roads and infrastructure) was to be completed prior to the delivery and installation of the structural frame (December 2011)

- Waste and Recycling Services would put interim arrangements in place ....by utilising the existing established facilities set up in the South. The service would inevitably incur additional costs with increased transportation and staffing inefficiencies,..current estimates suggested increased costs of £35,000.

- 4.5.5 The DD does not state the value of the works to be awarded directly to the main contractor.
- 4.5.6 Alternative options considered in arriving at the decision included an earlier iteration of the programme that was reviewed by the “team” (completion date end of March) allowing more time to procure the project works through well established routes, ensuring formal statutory consents/approvals, together with tendering the appointment and award of the contract to the main contractor, who would then take responsibility for any sub-contract works package. However, the additional project costs together with the costs of the interim service delivery (see last bullet point paragraph 4.5.4) were considered too expensive. The information regarding additional costs is however misleading because an interim contract for Bulk and Waste Transfer Facilities Services with the waste bulking contractor was already in place (DD taken 14 September 2011). Furthermore, the interim contract, which was within budget, would allow the 32 week programme to be implemented because, with extensions, it would expire in June 2012.
- 4.5.7 When the DD was taken the value of the works, based on feasibility costs that were received on 16 August 2011 and discussion with the main contractor, was approximately £1,500,000. The approved capital budget for the scheme was £650,000. The arrangements for appointing the main contractor via a DD are, therefore, flawed because in accordance with the Councils Financial and Contract Procedure Rules Chief Officers and budget managers are only authorised to incur expenditure in accordance with the estimates that make up the budget that was suggested by Cabinet and approved by Council unless arrangements (see paragraphs 4.5.8 – 4.5.9) that comply with the Constitution are put in place. No such arrangements have been put in place with respect to this scheme.
- 4.5.8 The Finance and Contract Procedure Rules do allow for virement; that is, switching resources between approved estimates or heads of expenditure (not an increase in overall budgets through the addition of new monies), or approval of a supplementary estimate (where services wish to undertake an activity not originally identified in the budget or extend an existing capital scheme where additional income becomes available in year).
- 4.5.9 Approval limits for virements and supplementary estimates (as at September 2011) in respect of Capital Schemes are as follows:

<b><u>Approval Level</u></b>	<b><u>Virement Amount/Percentage</u></b>
Chief Officers	Up to £100,000 funded from underspends within the approved Service budget
Chief Officers in consultation with relevant Cabinet Member and Resources Member	Over £100,000 and up to and including £500,000
Cabinet	Over £500,000 and up to and including £1,000,000
Council	£1,000,000 or more; and/or—significant on going financial implications; and/or Significant Policy Change Significant to be defined by the Borough Treasurer and Head of Assets or their representative.

<b>Approval Level</b>	<b>Supplementary Estimate Amount</b>
Chief Officers	Up to £100,000
Chief Officers in consultation with relevant Cabinet Member and Cabinet Member for Resources.	Between £100,000 and £500,000
Cabinet	Between £500,000 and £1,000,000
Council	Over £1,000,000

4.5.10 In accordance with the Councils Procurement Knowledge Map a Delegated Decision will not be approved where there has been a lack of planning to procure a service in good time.

4.5.11 Scrutiny arrangements with regard to the DD have also been compromised because despite being described as a KEY Decision on the face of the document there has been no advance publicity arrangements (it did not appear in the forward plan) or special urgency procedures applied. Such arrangements are necessary so that members of the public and Councillors are able to consider the implications of the decision or seek to influence the decision by making contact with the decision-maker.

- 4.5.12 The appointment of the main contractor was confirmed by a Letter of Intent that was issued on 6 October 2011 by the Professional Services and Framework Manager. The letter authorised the company to commence work up to a value of £500,000 (subsequently extended to £750,000). The method of appointment fails to comply with the Finance and Contract Procedure Rules which state that contracts/agreements over £10,000 also require sign off by the Borough Solicitor. Furthermore, in accordance with the Asset Management scheme of delegation (dated 1 July 2010) the Professional Services and Framework Manager is only authorised to incur expenditure of up to £250,000 in any one transaction. Schemes of Financial Delegation (also known as schemes of delegation) are the documents that set out all authorisations and approval limits as delegated by the Heads of Service to Authorised Officers within their Service.
- 4.5.13 The target cost of the works placed with the main contractor were agreed prior to commencement on site (24 October 2011) and after the Delegated Decision was taken (4 October 2011). The “agreement” at £1.59m required a contract under seal in order to comply with Finance and Contract Procedure Rules. No formally executed contract exists.
- 4.5.14 As at mid-May total costs of the incomplete Lyme Green WTS project processed within the Projects module of the Council’s Oracle financial accounting system stand at approximately £696,000. Costs totalling approx £595,000 have been paid to the main contractor, £94,000 to the various consultants and the balance to miscellaneous costs and internal charges. The Professional Services & Framework Manager estimates total costs to this stage of completion at £810,000. An examination of the consultants’ fees schedule indicates some £26,000 consultants fees yet to be charged to the project. This would leave the balance of approx £88,000 attributable to the main contractor. It is understood that the Professional Services and Framework Manager is currently in negotiation with the main contractor to effect a reduction in their outstanding balance. The full extent of the costs associated with this scheme cannot be established until a decision is taken by the Council with regard to the site.

#### Appointment of Consultants

- 4.5.15 A number of consultants have been engaged to provide various design, construction and quantity surveying services for the Waste Transfer Project.

All have been appointed from the Council’s “Consultants Framework” maintained by the Asset Management Service. This requires:

- An initial outline project brief from the service
- A Full Project Brief developed by the relevant service and Asset Management Services
- For procurements over £10,000 the Full Project Brief must be issued to all consultants on the framework for a “mini-competition” to be conducted
- Proposals are provided by the Consultants
- The relevant Service and Asset Management Services determine the preferred Consultant.

- 4.5.16 In this instance an outline project brief was completed by the Waste and Recycling Service on 16 August 2011. Fee proposals were received from late August onwards and orders placed from 30 August. Analysis of five Consultants out of seven employed indicates that all have been appointed directly with no competition by Officers within Asset Management Services. This is despite the fee proposals/ official orders and actual costs being over £10,000 in three cases. In one further case actual costs incurred exceed £10,000 whilst the order value is below this.
- 4.5.17 For one consultant their fee proposals were £29,000 and costs charged to 27 March 2012 (per Oracle Projects extract) of £58,000. Another consultant carried out work (the feasibility costing estimates dated 15 August 2011) before a fee proposal (estimated at £11,000) was formally submitted.
- 4.5.18 For expenditure over £10,000 the advice of the Borough Solicitor must be sought to agree an appropriate form of contract or written agreement which must be signed by the successful third party and on behalf of the Council by the Borough Solicitor and/or one of his/her authorised signatories, or by two of his/her authorised signatories. This rule has not been complied with.

### **Recommendation**

*The Council's Governance Arrangements must be strengthened to ensure that Finance and Contract Procedure Rules are complied with.*

### Reporting on the Capital Programme

- 4.5.19 In accordance with Finance and Contract Procedure Rules Project Managers must ensure that the project specification remains consistent with the approved capital appraisal and continues to represent value for money for the Authority. Where project outcomes or costs alter significantly from those set out in the original appraisal a revised Business Case Template must be completed and submitted to the officer Capital Appraisal Panel. It would then be necessary to scrutinise the proposal and address any shortfall in budget in accordance with approved procedures (see paragraphs 4.5.8 – 4.5.9) A revised Business Case Template was never submitted to the Capital Appraisal Panel by the Waste and Recycling Manager, and arrangements were not made to seek approval for the full value of the scheme. As previously established the approved capital budget for the scheme was £650,000 compared to agreed costs that exceed £1.5m.
- 4.5.20 Progress on individual schemes within the Capital Programme is monitored by the project leads and service accountants. Quarterly Highlight Reports, completed by the named budget holder, in this case the Waste and Recycling Officer, and co-ordinated by Finance are used to write progress reports to Cabinet. The Waste Transfer Station Highlight Reports for Q1 completed in July 2011, Q2 completed in October 2011 and Q3 completed in November 2011 all indicate that cost is on track with the estimated total cost of the scheme being reported as £650,000. There are no issues for decision contained within the Highlight Reports.

- 4.5.21 On 28 November 2011 Cabinet received a report on the mid year review of the Councils financial and non financial performance. The report showed the Waste Transfer Station Schemes approved budget was £650,000, there was no actual expenditure at this date and no request was made for a supplementary capital estimate or virement despite the value of the agreed target costs (construction) being £1.59m. The monitoring of this capital scheme is flawed because committed expenditure is not reported or fully approved.

**Recommendation**

*The Council's Arrangements for monitoring capital expenditure must be strengthened to ensure that approval is obtained for the full value of a scheme prior to expenditure being incurred and that reports used to monitor expenditure are accurate and timely.*

**4.6 Risk Management**

- 4.6.1 At various stages of the project officers deemed a breach of planning control and non compliance with relevant Regulations and Finance and Contract Procedure Rules as tolerable because it was unlikely that adverse consequences would arise. The risk management arrangements are, therefore, flawed because the Council should not breach relevant Rules and Regulations even if adverse consequences are unlikely. Rules, Regulations, Policies and Procedures have been implemented to help ensure the Authority's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that assets and interests are safeguarded.

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## Appendix A

## Timeline

- 1 In support of the initial proposals put forward to merge the former Waste Collection Authorities (WCAs) that now sit within Cheshire East were budgeted savings to be delivered through integrated delivery of refuse and recycling services. These included both short term and longer term savings, to be met initially through a re-routing exercise considering the inherited collection arrangements and then through potential changes in the service delivery method to deliver greater long term savings.
- 2 Throughout 2009/10 studies were completed by consultants including the logistics of joint domestic refuse, recycling, garden and bulky waste collections across Cheshire East in order to deliver operational efficiency savings. The work considered current variations in collection methods that existed across the former WCAs, concentrating on recycling collection methods and optimised round design.
- 3 Consequently, the project to transform the Council's waste collection service from a residual waste service to one where the primary services are recycling at a lower cost to the tax payer started in January 2010. The Cheshire East Waste Collection Improvement Project forms part of the Transformation – Places Directorate Savings Programme.
- 4 The project identified several related work streams that supported the service transformation including managing the PFI project, procuring new processing contracts for dry recycle and garden waste, procuring waste transfer facilities in the north, purchasing additional containers to roll out the dry recycling collection borough wide and HR related issues relating to the terms and conditions of employment.

Extract from Report to Cabinet 14 March 2011

“Of these related work streams, the timely procurement of new contracts, additional containers and waste transfer facilities are integral to the delivery of new services. Without them the new services cannot be delivered and target savings cannot be achieved.

Delivery is challenging in a number of respects and will need to be driven hard to ensure all objectives are achieved in the timescales”.

- 5 The proposed service, designed to operate across the whole of Cheshire East, included fortnightly recycling collections of household co-mingled dry materials with optimised collection schedules. Dry recycling was to be deposited and bulked up at Pym's Lane, Crewe and a site to be determined in the north.
- 6 In July 2010 an OJEU Contract Notice was placed for a Contractor to collect the bulked co-mingled Dry Recyclate from the Council's Recyclate Bulking

Facility/Facilities (collection points) and to provide haulage to the Contractor's Materials Recovery Facility for separation and onward transport to re-processors.

- 7 The Contract Award Notice notes that the recycling contractor was awarded the Contract from 14.3.2011 until 13.03.2014 with the ability to further extend up to a maximum of 3 years. At contract commencement the only operational Collection Point was located at Pyms Lane Depot, Pyms Lane Crewe, however schedule 1 of the contract notes that "if so established, the Contractor shall be instructed ...to commence the collection of an additional quantity of co-mingled Dry Recyclate of approximately 16,000 tonnes per year, and take responsibility for its treatment and reuse/recycling.."
- 8 In order to address the need for a second collection point in the North £650,000 was included in the 2011/12 Capital Programme for the Council to build a Waste Transfer Facility at its Lyme Green Highways Depot, together with £233,000 in the revenue budget for operating costs. The capital planning process commenced in August 2011. The transformational scheme was required in order to deliver revenue savings and was linked to saving proposals for 2011/12 onward.

Extract from Report to CMT/Cabinet 17 December 2010

"Failure to deliver these schemes will have an impact on closing the revenue funding gap"

- 9 The 2011/12 budget was approved by the Council in February 2011.

Extract from Budget Report to Council 24 February 2011

"the Council is conscious of the impact of repayment costs on the revenue budget and has only considered schemes where capital investment is required to secure longer term revenue savings and repayment costs are affordable"

Extract from Budget Report to Council 24 February 2011

"In order to provide householders with a much improved waste and recycling collection service, the Council will introduce a new system in 2011/12, based in large measure, on three wheeled bins rather than the current mix of bins, boxes and bags. This will increase the number of materials that can be recycled by all householders and reduce the costs of waste and recycling collections by £0.7m in 2011/12, increasing to over £1m per annum from 2012/13"

- 10 **3 March 2011**- the Environment and Prosperity Scrutiny Committee endorsed the proposed redesign of waste and recycling collection services.
- 11 **14 March 2011** - Cabinet approved the implementation of the new waste collection services in accordance with the proposed timetable. The implementation timetable included two phases; phase 1 from the southern depot at Pym's Lane from 9 May 2011 and phase 2 from the northern depot at Commercial Road, Macclesfield from 3 October 2011. At this stage the emphasis had changed from the Council building and operating its own Waste Transfer Station at the Lyme Green Highways depot to one of private sector provision.
- 12 It is understood that the original intention was to implement the new waste collection services across the whole of the Borough from 1 April 2012 however during the 2011/12 budget process Services were requested, if possible, to bring forward savings proposals due to the need to close the revenue funding gap. The only way to bring the roll out forward was to phase implementation between the North and the South of the Borough. This factor obviously impacted on the method of provision of Waste Transfer facilities.

Extract from Cabinet Report 14 March 2011

"Another key factor in producing the required savings is the provision of waste transfer facilities in close proximity to Macclesfield, through an EU compliance procurement process...without such a facility, it is impossible to provide the service and attain the savings required".

- 13 **In April 2011** the procurement process commenced, with an OJEU Invitation to Tender Notice being published in early May for bulking services for the receipt, handling, storage and dispatch of co-mingled dry recyclates in the North of the Borough.
- 14 **8 June 2011** – The first version of the Cheshire East Waste Collection Improvement Project – North Risk Log is produced in conjunction with the Organisational Change Manager indicates that the private sector may not be interested in providing waste transfer station services. Contingency arrangements are limited to the Council building the facility.
- 15 Following the receipt of one tender on **15 June 2011**, and subsequent evaluation of the bid, officers from the Waste and Recycling Service recommended acceptance of the tender (22 June). However, the Strategic Director for Places felt that despite the tender being within budget he was concerned that the offer may not represent best value and that it was difficult to demonstrate the prices were competitive because only one bid was received.

- 16 **By 30 June** the option of a Council owned Waste Transfer Station at the Lyme Green Highways depot was being explored by the Head of Service – Environmental Services because he believed that the Council could deliver a more cost effective in-house service.
- 17 Lyme Green Depot became available because, following the award of the Highways contract it was no longer required as a main depot by highways service. The fact that Lyme Green had been a Council Depot for many decades and a variety of activities had taken place over the years combined with existing buildings and a long standing level of activity for municipal tasks, including the handling of waste, informed the decision to locate a Waste Transfer Station on the site. Furthermore, the ability of the private sector to comply with planning conditions in relation to bank holiday operation whilst delivering the requirements of the Council's Waste and Recycling Service, also influenced the decision to pursue an in-house solution (the new waste collection services had been designed to operate on a standard five day working week, including bank holidays, with the exception of the Christmas and New Year Period). Furthermore, balancing waste policies, recycling, and sustainability against green belt policy on a previously developed site was seen as a reasonable argument to put forward on any subsequent planning application.
- 18 **By mid July** the "transfer station steering group" represented by the Head of Environmental Services and officers from Waste and Recycling, Finance, Procurement, Assets, Highways, Planning and Legal were still debating the "make or buy" decision.

The Waste and Recycling Manager advised the Head of Environmental Services with regard to his preferences. In Summary he believes the best option is to award the contract to the waste bulking contractor submitting the tender which gives time to have a properly considered and well thought out project that considers the whole site at Lyme Green.

- 19 **By the end of July** a Principal Consultant had been appointed from the private sector and the Waste Strategy Manager was pursuing an environmental permit from the Environment Agency which required a Certificate of Lawful Development (see paragraph 17 regarding the belief that the site had been handling waste for a number of years). This procedure allows a person to make a formal application to the Council for a Certificate to determine whether an unauthorised development has become lawful, through the passage of time, and can be continued without the need for planning permission. Construction of a similar building (Prefabricated) to that at Pym's Lane would not, however, be protected by the Certificate because it can only be granted for an existing use, operation or activity. The decision to mirror the Pym's Lane operation was taken during the Capital Planning Process which commenced in September 2010. *The Certificate of Lawful Development option was subsequently discounted because there was insufficient evidence to suggest it was a mixed waste/highways site.*

- 20     **3 August 2011** – the Principal Planning Officer forwards details of a Certificate of Lawful Development to the Waste Strategy Manager. It is noted that there is a statutory period of 8 weeks to provide the written notice of the decision which does not commence until the fee is provided. Furthermore, it is noted that there is currently a backlog.
- 21     **3 August 2011** – The Waste Strategy Manager e-mails the steering group and notes that the information received from the Principal Planning Officer appears to be a “deal breaker”.
- 22     **3 August 2011** – The Head of Planning and Housing responds saying “I think we can do better than implied... our waste planner is going to speak to the environment agency directly and see if they will be content with an official letter rather than a formal Lawful Development Certificate”. The Head of Planning and Housing will support this provided he sees evidence that the depot has been a mixed waste/highways site for more than 10 years. He states that if this fails the group can go down LDC route and do a “rush job as there are no statutory consultations required and deal with it in one or two weeks”.
- 23     **12 August** - the Head of Property Development and Projects put together an indicative programme, based on the various activities to be undertaken and their minimum timescales. It suggested an overall programme of 20 weeks with a completion date of Christmas 2011. This programme indicates that groundworks and base construction would be undertaken by the Council’s former highways maintenance contractor under the terms of the Highways term agreement (this option was later abandoned), and following a mini competition a Contractor from the North West Construction Hub Medium Value Framework would commence construction on 17 October. The groundworks and 3 weeks of construction would be completed before the planning application was determined. The planning process was shown as lasting 8 weeks.
- 24     **16 August** - the Waste Strategy Manager issues a Preliminary Project Brief to Asset Management Services. This is described as an ‘option appraisal stage’ but relates solely to the development at the Lyme Green Highways Depot. On the same day feasibility costs, completed by a contractor specialising in project/construction management, are received by the Head of Property Development and Projects. Feasibility costs are based on two options the first with a piled foundation and the second “with cut and retaining walls”. The options are based on brief discussions with the Engineer on site and not a detailed design. Indicative costs are between £1.4m and £1.55m but they would be reviewed when more detailed information became available.
- 25     On the same day the Waste and Recycling Manager advised the Head of Environmental Services with regard to the transfer loading options. Option 1 was to accept the tender which although higher than expected was within budget and would allow the rolling out of services as planned on 3 October. Option 2 was to build a Transfer Station at Lyme Green Depot which would not be operational until

December. Option 3 was to transfer load from the North to the South whilst option 2 is delivered. The cost of option 3 was estimated at between £38,000 - £41,000 per week (this was subsequently revised to £34,000 - £36,000 which would result in a £272,000 overspend on the 2011/12 budget). The estimated total cost if the transfer station was operational by the end of December 2011 being £456,000 to £492,000. Costs were provided by Finance (Principal Accountant) based on information provided by the Strategic Fleet Manager and the Waste Operations Manager. The Waste and Recycling Manager recommended option 1.

- 26     **17 August** - the Head of Environmental Services advised the Strategic Director of the options. At this stage the Strategic Director became aware that, in accordance with estimates provided by Finance, the Council run Waste Transfer Station was the cheaper option with savings increasing as recyclate collected increases.
  
- 27     **By 22 August** the Head of Property Development and Projects had received formal fee quotations from the external consultants for the initial scoping meetings and topographical surveys. It is noted that approximately £44,000 of the capital budget would need to be used to develop the design proposals.
  
- 28     **24 August** – In order to protect the Council against the costs associated with transfer load from the North to the South the Strategic Director instructs Officers to obtain 3 written quotations for an interim contract for bulking facilities for the co-mingled dry recyclates from 3 October until the bulking station is built at Lyme Green. Further mitigation against the risk of excessive transfer load is taken when the Strategic Director asks Procurement to ask the waste bulking contractor to extend the tender offer until 3 October. **On 30 August** the waste bulking contractor refused to extend the bid beyond 90 days and the existing submission therefore expires on **15 September**.
  
- 29     **6 September** - following advice from Procurement a letter is sent to the waste bulking contractor seeking a price for bulking and waste transfer facility services on a four, six or eight month contract (a full EU compliant tender exercise has only identified the waste bulking contractor as willing to provide the service).
  
- 30     **7 September** – The “Project Design Team” consisting of officers from Asset Management Services, Waste Management and consultants meet and the Lead Consultant updated the group on the 2 design options proposed, one at low level and the other option to the higher level. The topographical studies have been completed, ground investigation surveys commenced. Discussions were held with regard to the planning approval requirements and the likelihood that the lower level building was likely to be the more favourable option. As planning approval is critical the Professional Services and Framework Manager was instructed to meet with the Principal Planning Officer to ascertain the requirements and review the associated timescales. The critical activity dates were reviewed and a revised target date of March 2012 was agreed. Construction is now clearly after the planning process.

- 31 The group agreed that the option to utilise the former highways maintenance contractor was no longer a viable option and that all works would now be procured through the North West Construction Hub Framework without a fully detailed design. Works could commence in the next 2 weeks to put together the tender documents which would include preliminaries, profit & overheads, with the contractor to start on a target cost basis.
- 32 **9 September** - The Head of Property Development and Projects seeks the steering groups view on the final scope of works to be undertaken, the minutes of the Project design team and the revised programme are included as are the feasibility studies described at 16 August. The e-mail which clearly indicates that the overall costs are far in excess of current budget is forwarded to the Strategic Director Places and Head of Services Environmental Services.
- 33 Four minutes later the Strategic Director for Places instructs the Head of Environmental Services to accelerate the “project”. The Head of Environmental Services agrees to look at the proposed changes. At this stage the Council is still exposed to the transfer load costs, the EU tender is fast expiring and the quotation from the waste bulking contractor for the bulking and waste transfer station facility services has not been received.
- 34 **12 September**- the Organisational Change Manager acknowledges the revised programme and asks the Head of Property Development and Projects about the process for monitoring progress against the plan and in particular whether there is a Project Board in place for overseeing the project and to provide direction given the potential impact of delays/issues.
- 35 **13 September** – In response to the Organisational Change Manager’s enquiry the Head of Property Development and Projects indicates that the Client, Waste Management, is updated as and when required and there are no additional arrangements in place to monitor progress or report the details to a wider audience.
- 36 **13 September** – the waste bulking contractor quotes for interim bulking and waste transfer facility services on a four, six or eight month contract. The quote exceeds the figure quoted in June but is within budget using the estimated annual tonnage of 16,000 tonnes. The information is forwarded to The Strategic Director Places by the Waste and Recycling Manager.
- 37 **13 September** 16.51 p.m. – the Professional Services and Framework Manager sets out his thoughts on having the Waste Transfer building in place for Christmas and forwards these to the Head of Property Development and Projects . This includes preparing the foundations for the prefabricated building with the main contractor on site on 17 October at the latest. A clear site will be required in the location of the proposed building which means removal of all former highways materials. The highways element of the works (resurfacing of internal roads) would need to be completed after Christmas.

- 38 He refers to variations to the usual procurement process and risk including:
- Instructing a contractor from the North West Construction Hub (NWCH) without competition.
  - Placing a direct order for the prefabricated building (later disregarded as this would breach EU Regulations).
  - work starting without planning approval, which could lead to adverse publicity and additional costs if planners and or highways insist on additional works.
- 39 **13 September** 17.05 p.m. – The Head of Property Development and Projects forwards the email to the Assets Manager highlighting the key issues and decision requirements.
- 40 **13 September** 18.19 p.m. - The Assets Manger forwards the email to the Strategic Director asking whether he wants the planning issues discussed with the Head of Planning and Housing.
- 41 **13 September** 18.23 p.m. - The Strategic Director replies “Yes lets get on with it. We do need to ensure we sign everything off as we go as you know some people choose to watch our every move”. The Strategic Director has confirmed that this refers to ensuring due process is followed.
- 42 **13 September** - The Asset Manager instructs the Head of Property Development and Projects to take control of delivery from this point. On **14 September** Waste, Corporate Improvement, Highways, Planning and Legal are informed of the decision to accelerate the programme for project completion by the end of December 2011. A meeting is called and the Head of Service Environmental Services adds “please come along with the notion that this is a shared responsibility to deliver”.
- 43 **14 September 2011** - A Delegated Decision is taken by the Strategic Director in order to waive the requirement for an additional tendering exercise on the basis that only one company can provide the service and to award a contract to the waste bulking contractor. The record of the decision indicates that it will take between 6 – 8 months to deal with the construction and secure the relevant licences and planning permission.

Extract from the Delegated Decision 14 September

“Under the Council’s Finance and Contract Procedure Rules there is the capacity to waive the requirement for competition in circumstances where only one company can provide the service, however this is subject to the contract value not exceeding EU thresholds. The award of Contact to the waste bulking contractor does exceed thresholds however the Council has performed a compliant tendering exercise for a three year term. Given the substantial amendment to the term of the contract and the potential impact on the cost it was advised that the contract should be retendered.



It is however apparent that due to the geographical and immediate requirements of the Council there are no other companies able to tender and no significant risk of a challenge to this award of contract.

There are no alternatives to this offer in order to begin collection of recycle on schedule for 3 October. ...it is now too late to arrange haulage and personnel to transfer load material to our south transfer station at an estimated cost of approx £35k per week.

Delaying role out on 3 of October is now no longer an option as bins are being delivered to residents which cannot be collected without the change over of vehicles and use of a transfer station from 3 October.”

44 The Decision was signed off by the Director of Finance and Business Services and the Borough Solicitor on **15 September** following endorsement by Officers from Procurement, Finance and Legal (Senior Lawyer)

45 **14 September 2011** – The Head of Planning and Housing sends an e-mail to the Head of Property Development and Projects stating:

“I would urge you against doing anything that obviously requires consent without permission (like a building) its just a really bad example and bad press

However there maybe things we can do by way of preparatory works. Please discuss this with (Principal Planning Officer)”.

46 **15 September 2011** – The Professional Services & Framework Manager meets with the Principal Planning Officer to discuss the scheme & planning application.

47 **16 September** – The Organisational Change Manager notes the risks and attaches the Corporate Risk Log template for the Head of Property Development and Projects to formally record and manage the risks

48 **21 September** the Risk Log indicates that a number of risks are identified by the “steering group”. Including:

- No project sponsor/Project Board in place and hence the Project Manager is identified as the Head of Property Development and Projects with the Head of Environmental Services as the project sponsor.
- The budget is identified as £650,000 with full project costs of £1.5m. The project manager is to talk to the Asset Manager re bridging the funding gap
- Planning issues - development is within the green belt and there needs to be documented evidence to support a certificate of lawful development (it is understood that there was insufficient evidence to support an application). Need to justify special circumstances to justify the building, need to start some ground preparation work

before planning is formally considered. Information relating to the planning application was to be forwarded to the Principal Planning Officer.

- 49     **29 September 2011** – The Principal Planning Officer informs the Head of Property Development and Projects of a discussion with the Development Management and Building Control Manager regarding the timescales in place and states:

Extract from E-Mail

“I have previously raised my concerns over the timescales proposed with (the Professional Services and Framework Manager) when we have discussed the application. .... I note that you have only provided for 8 weeks for the whole process but the size of the building means this is a major application which has a statutory determination of 13 weeks.

In addition now that we have now been provided with, and had a chance to consider, the photomontages and plan of the building we are of the view that in planning policy terms it would be considered “inappropriate development” in the green belt (as defined in PPG2). As such, there is a statutory requirement for us to refer the application to the Secretary of State to allow them to call in the application for their own determination. This means that after going to Committee (should permission be granted) there is a 21 day delay before any decision notice can be issued.

I can discuss further tomorrow”.

- 50     The risk log is updated following a meeting of the “steering group” on 30 September and, furthermore, it is understood that the Principal Planning Officer provided a copy of the Statement of Community Engagement.
- 51     **29 September** discussions are held between the Professional Services and Framework Manager and the main contractor which indicates the building will be operable by 20 January 2012.
- 52     **3 October** the silver bin collection is rolled out and the interim contract for bulking of recycle commences.
- 53     **4 October** A Delegated Decision, which is described as a key decision, is taken by the Assets Manager to grant approval of the direct appointment, without competition, of the main contractor from the existing NWCH Medium Value Framework to undertake the formal construction project works as part of a phased procurement approach to provide a new Waste Transfer Station at Lyme Green, Macclesfield
- 54     Under the terms of the Framework Agreement the Council is required to undertake a mini competition. However, a mini competition will delay the project by 3 weeks a delay that, despite the interim contract for bulk and Waste Transfer Facilities Services being in place will, according to the Delegated Decision notice, attract

transfer load costs of £35,000 a week. (the interim contract would reduce this figure by approximately £25,000 per week).

- 55 The programme of works requires extensive ground works to be undertaken to reduce overall ground levels, form retaining walls, a new concrete base and foundations, together with general upgrading and access improvements to the site entrance roads and infrastructure. A large element of civil work needs to be completed prior to delivery and installation of the structural framed building.
- 56 The preferred project programme forecasts an accelerated 22 week project programme with a target completion date for the new building by January 2012.
- 57 The decision notice indicates a 32 week programme (completion date end of March) had been established by the team allowing more time to procure the project works through well established route, ensuring formal statutory consents/approvals, together with tendering the appointment and award of the contract to the main contractor, who would then take responsibility for any sub-contract works package. However, the additional project costs together with the costs of the interim service delivery were high.
- 58 The work programme attached to the DD clearly indicates that the planning application runs concurrently with Construction.
- 59 **5 October** - The risk log is updated to reflect the advice from the Principal Planning Officer whereby it is noted that the planning application will need supporting surveys and documents. The Programme of Works is to be reviewed by the Professional Services and Framework Manager to reflect the discussions with Planning. A copy of the Log is sent to The Head of Service Environmental Services.
- 60 **6 October** – A letter of intent is sent to the main contractor regarding Lyme Green Waste Transfer Station (the Works) by the Professional Services and Framework Manager.

“As a NWCH Constructor Partner and further to discussions we confirm it is our intention, subject to agreement of a number of matters, to enter into an NEC Option C form of contract with you for the construction of the works.

It is necessary that certain activities be undertaken, prior to the execution of the intended contract and you are therefore hereby authorised, until notified by us to the contrary, to proceed with the mobilisation, procurement and execution of the scheme, up to a maximum amount of £500,000 plus VAT”

The extent of authorisation included:

- Placement of orders for the waste storage building and precast concrete units
- Review against budget
- Developing the agreed maximum price for the contract

- Commencement of site works on 17 October 2011

The authorisation was to expire on 7<sup>th</sup> November 2011.

61 **7 October** – The Head of Property Development and Projects issues an alternative project programme to members of the “steering group” including the Head of Service Environmental Services which includes sufficient time within the programme (to seek the necessary statutory approvals including SoS approvals) prior to commencement of major site works. This results in a revised target date of May 2012. The e-mail requests clear guidance and direction, including approval at the Director level to confirm the acceptable way forward and in particular;

- Obtaining satisfactory planning approval prior to commencement of major site works
- Reaching satisfactory agreement on the funding shortfall

The e-mail notes that the Main Contractor is due to commence mobilisation works on **Monday 10 October 2011**

62 **7 October** – The Head of Environmental Services sends an e-mail to the Head of Planning asking him to confirm “the planning situation and what your advice to [assumed reference to Strategic Director] was”

63 **7 October** – in response to the e-mail the Head of Planning & Housing states “My advice has been that once the application is submitted we will “fast track” it through registration and deal with it promptly thereafter. It will need to go to Committee – ideally strategic planning board but potentially another will suffice if that avoids delay.

We will have to refer the application to the secretary of state as it is over 1000sqm in area. However we intend smoothing the way for that and I’d be amazed if they took issue with it.

A timescale of 8 weeks is realistic for the planning application itself although we’ll aim to do it in 6/7. The SoS is the only real uncertainty at this stage.

64 **10 October 2011** – The Professional Services & Framework Manager sends the Copy DD of the 4<sup>th</sup> October to the Head of Service Environmental Services for sharing with the Strategic Director together with the accelerated work programme and the programme showing nothing happening until planning is determined.

65 **12 October** the Head of Environmental Services asks the “steering group” whether they are ready to share the latest programme including the planning period with the Strategic Director/Lyme Green residents/trade unions/elected members. (a meeting with residents has already been agreed in September with the Ward Member after concerns raised by residents).

- 66     **21 October** The Professional Services and Framework Manager distributes the final iteration of the work programme to the steering group and the Strategic Director. This clearly indicates that construction (mass excavation and construction of retaining walls/floor slab) will be completed prior to any decision on planning (9 weeks) and that the erection of the Prefabricated Waste Transfer Structure will commence after the planning decision. It doesn't allow for any review by the Secretary of State.
- 67     **24 October** – starting date on site for the main contractor in accordance with the work programme.
- 68     **27 October** – public meeting – From late September the Ward Member has been in conversation with the Assets Manager and Head of Service Environmental Services regarding local concerns about the proposal to locate a Waste Transfer Station at Lyme Green Depot. The Waste and Recycling Manager, Assets Manager and Head of Planning and Housing, together with the Ward Member attend a public meeting to communicate the Council's plans. At the meeting it is made clear to the public that clearing and levelling of the site was necessary and was being undertaken irrespective of whether the proposed development went ahead. An assurance was given that work on the proposed development had not started except for some sub soil bore holes.
- 69     **3 November** An e-mail is sent by the Professional Services & Framework Manager increasing the overall commitment to £750,000 to cover the operations necessary to remain on site, the placement of sub-contract orders, and the formation and execution of contract documentation. The period of authorisation is extended to 30 November 2011.
- 70     **7 November** - The Principal Regeneration Officer (Env. Protection) sends the Principal Planning Officer pictures of excavators at Lyme Green Depot taken on Friday 4 November following a site visit associated with the Planning Application. These are forwarded to the Enforcement Officer (minerals and waste) for information.
- 71     **8 November** – The Principal Planning Officer forwards comments received by the Principal Regeneration Officer (Env. Protection) regarding the draft noise assessment to the Professional Services and Framework Manager. She notes that the development appears to have already started on site (as of last week) and comments "As per previous discussions on this, I do not recommend that you carry on undertaking development on the site without planning permission, however if you wish to do so this is done entirely at your own risk".
- 72     **10 November** 2011- Following complaints regarding apparent pile driving at Lyme Green Depot from Sutton Parish Council, the Asset Manager states in an e-mail:
- “My apologies for the delay in responding to you.

I can categorically assure you that there are no pile driving operations being undertaken on the site. The situation remains as described at the public meeting on 27th October. Work has continued in order to clear an accumulation of materials on the site to facilitate the new arrangements in respect of the operation of the Council's Highways Contract. Indeed, I understand that activity on the site, and the resultant vehicle movements, has now started to reduce. [The Waste & Recycling Manager] has asked that I extend an offer to you to visit the site to alleviate any concerns you may have.

The Council continues to follow due process in terms of the proposed transfer station and, again, I can assure you that the Council will only proceed once all required permissions are in place.”

- 73     **14 November** – Interim valuation number 1 for the main contractor to the value of £166,457 for works executed up to and including 31/10/11 the majority of which relates to bulk excavation and advance payment for the Prefabricated Building.
- 74     **16 November** the Planning Application is received which is registered on 24 November (arrangements have been made for payment of the planning fee on 15 November). The application notes that building, work or change of use has already started.
- 75     **18 November** a complaint is received by the Enforcement Officer Minerals and Waste regarding “a huge hole” that has been “excavated so that the new building could be set down in the ground”.
- 76     **22 November** Site visit by the Enforcement Officer Minerals and Waste who informs the operator that there is no current Planning Permission.
- 77     **22 November** it is reported that ready mix concrete has been delivered to the site and have been offloaded into excavated footings. A request to the Head of Planning and Housing is made to investigate from a planning enforcement point of view by Sutton Parish Council. The Head of Planning and Housing agrees to establish the current situation.
- 78     **22 November** The Ward Member raises concerns with the Strategic Director.
- 79     **23 November** – Standing down instruction for the main contractor work ceased and operatives left site.
- 80     **24 November** – The Enforcement Officer Minerals and Waste refers the issue to the Development Management and Building Control Manager reporting footings with concrete poured. (once the planning application is deemed valid enforcement action has to be put on hold until such time as a decision is made).
- 81     **24 November** – The Head of Planning responds to Sutton Parish Council stating:

"I'm sorry for the delay in coming back to you - I needed to liaise with a number of parties to establish the position on site.

Site clearance works were authorised following the recent changeover arrangements with the Council's Highways Contractor and in anticipation of the proposed development in the new year, should planning permission be granted. The opportunity to remove surplus soil materials, former highway materials, road scarifying material, poorly compacted fill in order to level out the site was taken in the knowledge that the Depot site was relatively quiet in terms of activity and that it would be more difficult to carry out the work over the busy winter period.

Unfortunately, problems were encountered with poor ground conditions and large areas of soft spots due to poor compaction of surplus road materials over many years. Additional measures are required to stabilise the ground and ensure safety of the site. These additional works are essential to the operational safety of the site and stability of adjacent structures and boundaries and will be on-going until the 9 December.

On completion of the required stabilisation works, all such activity on the site will cease pending the outcome of the Council's planning application for the proposed waste transfer station. The Council cannot and will not establish a waste transfer station at Lyme Green without a valid planning permission being in place."

- 82     **24 November** – further instruction for the main contractor to recommence works in connection with retaining walls which recommence on 25/11/11 with works scheduled up to 9/12/11.
- 83     **28 November** – Report to Cabinet 2011/12 for the Mid Year Review of Performance that provides summary and detailed information about the financial and non financial performance during the first half of 2011/12. The Waste Transfer Station is shown at Annex 2 Appendix 1 under new Starts for 2011-12. The total approved budget is £650k as at 30 Sept 2011.
- 84     **29 November** – The Strategic Director Places instructs the Head of Planning to stop the works following receipt of photos of the work.
- 85     **30 November** – the main contractor is instructed to cease all construction works and demobilise from site.
- 86     **5 December** - Interim valuation number 2 for £538,033, £371,576 paid (£538033 net of previous payment £166,457) for works executed up to and including 30/11/11. Indicates soft spots encountered on site.
- 87     **19/21 December** – revised plans submitted

88     **5 January 2012** – The item relating to the planning application is withdrawn from the Strategic Planning Board.

89     **18 January 2012** – Strategic Planning Board application deferred to enable the Officers to provide the following:

- Further information with respect to alternative sites
- Further information with respect to the access to the site and highway safety
- Further information with respect to noise levels and mitigation measures

And to allow the applicant to reconsider the design of the building.

90     **19 January 2012** Interim valuation number 3 for £594,877 Certificate number 3 shows that £56,844 paid (£594,877 net of previous payment £538,033)

91     **6 February 2012** – Report to Cabinet regarding the review of financial and non financial performance for Quarter 3. Annex 2 provides projections of service financial performance for the 2011 – 12. It focuses on the key financial pressures which the Council's services are facing, and areas of high financial risk to the Council, and highlights significant changes to forecasts since the mid year review.

Annex 2 Appendix 1 shows the Materials Transfer Facility with a total approved budget of £650k, actual expenditure is shown as £191k and forecast expenditure as £650k.

Analysis of the payment certificates clearly indicates that:

£166,457 issued at 14/11/11

£371,576 issued at 6/12/11

£56,844 issued at 24/01/12

This is because the report was based on information to mid November and not, as implied 31 December.

92     **17 February** the planning application is withdrawn.

93     Various public statements have been made with regard to the Lyme Green development leading to an apology to both residents and Councillors, and a commitment to "diligently examine all possible site options". Furthermore, a statement has been made with regard to this review and to publishing a summary of the report at a date to be confirmed.



## Appendix B

## Terms of Reference

**Title of review:** Waste Transfer Building

**Department:** Chief Executive

**Service:**

**Date:** 13/02/12

**Status:** Final

**Background to proposed review**

Works associated with the construction and operation of a Waste Transfer Station at Lyme Green Highways Depot and the related, partially retrospective, planning application has attracted significant public and member interest together with adverse publicity.

It is, therefore, necessary to determine whether there are any significant internal control, risk management or governance issues that have given rise to the situation, and to provide public assurance that these issues have been, or are being addressed.

**Objective of review**

To provide an independent and objective opinion to the organisation on management's compliance with established policies, procedures, laws and regulations particularly with regard to the use of assets and resources entrusted to it.

**Identified risks**

Adequate control has not been maintained resulting in financial and operational failure.

*Controls are designed to provide 'reasonable assurance' not certainty. Systems are susceptible to:*

*Human error and poor judgement*

*Collusion to circumvent controls*

*Senior management being able to override controls*

**Scope of review**

Review, appraisal and reporting of the adequacy of the systems of managerial, financial and operational control and their effectiveness in practice, including:

The relevance of established policies, plans and procedures, the extent of compliance with these, and the financial impact (the extent to which assets are accounted for and safeguarded from losses of all kinds)

The appropriateness of organisational, personnel and supervision arrangements

*Auditors cannot be expected to review, appraise and assess managerial and professional decisions in fields of activity outside their direct sphere of competence – including certain planning, construction, contaminated land and waste management aspects. If the Council requires independent review in these areas, the services of other review agencies with appropriate qualifications and experience should be employed.*

**Approach to the review & deliverables**

Review available documentation

Interview appropriate staff members

Report issued to Chief Executive which will form the basis of a report to the Audit and Governance Committee.

The deadline for the draft report is 22 Feb 2012

*The next Audit & Governance Committee is 27 March 2012*

**Timing of the review & days available**

See above re deliverables.

**Audit Manager:** Jon Robinson

**Lead Auditor:**

## APPENDIX C

**2011 – 14 Capital Planning Process****Stage 1**  
**August September**

Services provide outline proposals signed off by Director/  
Head of Service, Finance Lead and Portfolio Holder

**Stage 2**  
**September**

Outline capital proposals reviewed by Efficiency Group  
and Capital Asset Group against available resources

**Stage 3**  
**Sept - Nov**

Services develop detailed business cases

Challenge Phase

-Capital Appraisal and Monitoring Group initially assess schemes for technical viability.  
-Capital Asset Group review schemes and assess impact on affordability  
- Agree final list for review at Efficiency Group Challenge Sessions

-Services to review schemes and action feedback from the Asset Group  
- List of accepted / rejected schemes  
- Clarify links to revenue proposals  
- Consultation & Engagement

Draft Capital Programme

**Stage 3**  
**December to February**

- Capital Funding announcements –
- Refinement

Publish Draft Capital Programme

Formal Consultation

Refinement

Full Capital Programme to Cabinet/Council

## APPENDIX 2

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>The Business Case/ Capital Planning Process</b>					
1	<p>A partially completed Capital Appraisal Form was submitted by the Waste and Recycling Manager and allowed to progress through the challenge process.</p> <p>The capital appraisal form does not allow all relevant financial and non financial aspects of a proposed scheme to be recorded such as the outcome of options appraisals/feasibility studies.</p>	<p>Inadequate evidence to support effective decision making.</p> <p>Inadequate information to inform the prioritisation against other capital proposals.</p> <p>There could be insufficient scheme appraisal skills and/or insufficient capacity within the relevant Teams.</p>	<p>The arrangements with regard to business cases must be strengthened to ensure they provide the Council with the evidence to support decision making and provide assurance to other stakeholders that it has acted responsibly.</p>	<p>The role of the Capital Asset Group (CAG) in supervising and managing the appraisal of capital proposals will be strengthened, and the role of the Capital Appraisal and Monitoring Group (CAMG) sub-group reinvigorated, in accordance with the Council's Capital Strategy which states that :_</p> <p><i>‘ Any proposals with capital implications will require a strong business case, including the justification for the project and details of costs and available funding ...[they] will</i></p>	<p>Chair of the Capital Asset Group</p> <p>August 2012 – February 2013.</p>

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
				<p><i>receive an initial assessment by the Capital Appraisal and Monitoring Group (CAMG) who will assess the viability of the scheme and provide guidance on technical, legal and planning issues</i></p> <p><i>...professional expertise from engineering , Planning Legal and Procurement will be drawn on as required and external consultancy services will be procured for feasibility studies, option appraisals etc where internal resources and/or expertise are not available</i></p> <p>The format and content of capital appraisal</p>	

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
				<p>forms will be reviewed to ensure that all relevant financial and non-financial information and the outcome of option appraisals and feasibility studies are included, and can be challenged.</p> <p>The process for post-implementation review of major schemes will be strengthened to ensure on-going monitoring of the robustness of the capital appraisal, planning and delivery processes and the extent to which they are adding value to the delivery of the Council's objectives.</p>	

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	<p><b>S151 Officer Response:</b></p> <p>Corporate Management Team must drive compliance with procedures and processes and there needs to be consequence for non-compliance. The Corporate Support Teams need to accelerate the positive approach to compliance by improving processes and providing guidance and training. This will ensure that non-compliance is prevented as far as possible. In this environment non-compliance becomes the absolute exception and can be dealt with through the assessment of performance against competencies and, if appropriate, the officer code of conduct.</p> <p>As an immediate measure, the 2012/15 Capital Programme should be sophisticated to identify what stage the Business Case had reached for each capital scheme at the point the Budget was set. This would then require an additional layer of decision making to approve the final business case before a scheme can go ahead and expenditure is authorised. Responsibility for this approach should be taken on by the Capital Asset Group.</p> <p>It is advisable for Corporate Management Team to examine the skills and capacity to deliver the Capital Programme in the relevant Teams.</p> <p><b>Corporate Services Response:</b></p> <p>Significant improvements have been made to the Capital planning and monitoring process for 2012/15, which include:</p> <ul style="list-style-type: none"> <li>• A more integrated approach to the development of Business Planning proposals by considering both capital and revenue consequences of proposed Service policies and initiatives.</li> <li>• Better guidance through a dedicated Centranet site.</li> <li>• Update and sophistication of the Business Planning proposal forms.</li> <li>• An improvement in the Member/Management challenge of the draft Capital Programme.</li> </ul> <p>Further plans for improvement in this area include:</p>				



	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	<ul style="list-style-type: none"> <li>• A move to a five year planning approach which provides a much more sophisticated view of the capital investment requirements, capital receipts profile and income streams by modelling the key milestones of proposed major schemes.</li> <li>• Particular improvement initiatives are taking place in the Children &amp; Families Services and in Places and Organisational Capacity, which will be become a standard approach.</li> <li>• The Capital team in Finance has now been established and this will better enable the improvement in the partnership with Assets, Legal and Planning.</li> </ul>				

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>The Business Case/ Capital Planning Process</b>					
2	<p>The construction costs of £650,000 were taken directly from the cost of the Pym's Lane Waste Transfer site and were not directly attributable to the location. Detailed planning/technical considerations were not, at this stage, taken into account when determining the cost, location or the optimal design for the building.</p> <p>The Capital Appraisal and Monitoring Group (CAMG) which was responsible for assessing the viability of the scheme and providing guidance on all relevant financial and non financial aspects of the proposed project,</p>	<p>Capital expenditure was approved without fully understanding whether building a Waste Service Transfer Station was the most suitable option, or whether the proposed scheme was viable, affordable and achievable.</p> <p>There could be insufficient scheme appraisal skills and/or insufficient capacity within the relevant Teams.</p>	<p>The Capital Planning Process must involve close scrutiny of detailed business cases that include all relevant financial and non financial aspects of a proposed scheme in order to ensure that the best possible solution is selected for a given set of circumstances.</p>	<p>The role of the Capital Appraisal and Monitoring Group (CAMG) will be strengthened as described above.</p> <p>The membership of the CAMG will be reviewed to ensure that all necessary professional and technical officers are available to inform the scrutiny and challenge of proposals before they are considered for inclusion in the draft capital programme. The role of the group will be extended to include scrutiny of revised estimates/costings</p>	<p>Chair of the Capital Appraisal and Monitoring Group</p> <p>August 2012 – February 2013</p>

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	did not, in effect, meet during the Capital Planning Process.			when significant variations arise during planning or implementation.	
<p><b>S151 Officer Response:</b></p> <p>The professional and technical officers that will form the core of Capital Appraisal and Monitoring Group (CAMG) must be included in Programme Boards and Project Groups at an early stage. Early involvement in the development of proposals will prevent abortive work and will ensure that there is a consistent quality of proposals considered by the CAMG.</p> <p>One of the aims of the 2013/16 Business Planning process should be to limit the delivery programme to fewer, more strategic, initiatives that have significant positive financial and service impact. This will better enable the Council to deliver as planned.</p> <p>It is advisable for Corporate Management Team to examine the skills and capacity to deliver the Capital Programme in the relevant Teams.</p>					

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Project Management</b>					
3	The Council does not have a formal project management framework	<p>Inconsistent approach to programme/project management, which leads to over elaboration in some areas of operation and poor practice in other areas.</p> <p>Poor control of the delivery of programmes/projects, which can lead to overruns, overspends and non-delivery of planned outcomes.</p>	The Council's Project Management Arrangements must be reviewed and strengthened to ensure that objectives are met, constraints are identified, tolerances defined and benefits realised.	<p>The Lead Member is currently reviewing the Council's project management arrangements with a view to using a single preferred framework which:</p> <ul style="list-style-type: none"> <li>• Is mandated across the Council</li> <li>• focuses on compliance</li> <li>• is proportionate in terms of risk and capacity</li> </ul> <p>Once agreed, a training programme will be commissioned to support the implementation of the new framework and to ensure it is fully embedded across the</p>	Lead Member to review & make recommendations to Cabinet Date to be confirmed.

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
				Council.	

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Project Management</b>					
4	<p>Officers involved in the project did not use the Council's standard suite of documents which are available for use in managing and reporting progress.</p> <p>Governance arrangements tended to be informal and seem confused when compared to those described in the Council's Project Health Check document.</p> <p>Formal records of who was asked to do what, when and how well it was done, in order to provide an audit trail, have not been maintained. Regular written project progress</p>	<p>The audit trail is blurred it is difficult, therefore, to demonstrate that a considered, disciplined and proportionate approach was taken in managing the project.</p> <p>There is insufficient evidence to suggest that agreement had been reached with regard to the scope, key milestones, communication and governance arrangements, key links and dependencies and roles and responsibilities at the project initiation stage.</p> <p>It is unclear how risk appetite was</p>	<p>Arrangements must ensure there is sufficient evidence to support decision making and provide assurance to other stakeholders that the Council has acted responsibly.</p>	<p>As agreed at action point 3. The review will also look at the use of a gateway approval process to ensure that each project or potential project has been properly evaluated, scoped, planned and delivered at key points in the project lifecycle.</p>	<p>As agreed at action point 3</p>

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	reports have not been produced for Senior Management. There is no project plan, reliance being placed on the work programme, which tended to be a stage plan and concerned itself with milestones connected with Construction only.	established/approved and issues resolved. Where actions have been taken to address risks/issues and determine tolerance in terms of cost, quality and time it is unclear that decisions were arrived at with the full knowledge of all the relevant factors or a realisation of the full implications.			
<p><b>S151 Officer Response:</b></p> <p>The management decision making mechanisms, segregation of duties and controls should be examined in the relevant Teams. Any identified gaps and weaknesses should be addressed through a Directorate action plan.</p> <p>It is advisable for the Strategic Director Places and Organisational Capacity to examine the skills and capacity to deliver against the Capital Programme in the relevant Teams.</p> <p><b>The Places and Organisational Capacity Directorate has put the following arrangements in place (from January 2012):</b></p> <ul style="list-style-type: none"> <li>• A monthly Performance Board which monitors major capital programmes and projects within the Development Service. All managers attend. An exception reporting system highlights issues and enables performance to be tracked. Project plans are linked to cashflow.</li> <li>• Enhanced project and programme management arrangements linked to monthly Performance Board reporting including</li> </ul>					

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	<p>Project risk/grading process to reinforce monitoring process and the use of flow charts to assist the process</p> <ul style="list-style-type: none"> <li>• Project Management training for all key project and programme managers across the Development Service.</li> <li>• Introduction of the Planning Pre-Application Service which formalises all up front planning advice. All development projects delivered through the Development Service are instructed to go through the formal pre-application process projects have a Project Sponsor and Project Manager with structured reporting arrangements in line with the scale of the project, and budget approval through the budget holder.</li> <li>• Monthly Project Manager reports to project sponsors are in place.</li> <li>• All projects delivered through the asset service on behalf of other departments require confirmation of budget approval from the sponsoring department at all stages of project development and implementation.</li> <li>• Management has requested Internal Audit to review the arrangements during 2012/13.</li> </ul>				



	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Planning</b>					
5	<p>The Planning Application is of a scale and nature to fall within paragraphs 5.5 – 5.9 of the Council's own Statement of Community Involvement which concerns pre application advice.</p> <p>In this instance the Council failed to undertake appropriate consultation and hence failed to follow its own advice.</p> <p>Pre application advice from the Head of Planning and Housing included a commitment to "fast track" the planning application, once submitted, through registration and deal</p>	<p>Local confidence in the planning process has been undermined</p> <p>The benefit of Pre-application discussions in terms of ensuring a better understanding of the existing, and potential objectives and constraints to a development are not realised.</p>	All projects that require planning permission should use the Councils pre-application advice system.	<p>All development projects leads will be instructed to obtain formal pre application advice in order to ensure a consistent level of service between external applications and our own planning applications and to reduce the risk of abortive costs.</p> <p>Evidence that the pre-application advice process has been completed will be an essential pre-requisite for consideration of relevant schemes by the CAMG.</p>	<p>Compliance will be monitored through the Capital Asset Group who are responsible for overseeing the management and monitoring of the capital programme.</p> <p>August 2012 onwards.</p>

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	with it promptly thereafter				

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Planning</b>					
6	<p>The steering/project group tasked with providing a new Waste Transfer Station at Lyme Green proceeded with the task, with the consent of its Director, even though the timetable involved the commencement of development without planning permission.</p> <p>Planning Officers advised against this course of action both prior to and during the works. The Council submitted a partially retrospective planning application. Works ceased after objections from Planning Officers and after complaints from local residents.</p>	<p>Commencing development without permission has undermined local confidence in the planning process and contributed to the suspicion that the application was receiving favourable treatment in terms of procedure and substance and that permission was a fait accompli</p> <p>Project officers deemed commencing development without planning permission as tolerable because it was unlikely that adverse consequences would arise. The risk management arrangements are,</p>	The Council, as a regulatory authority, should not undertake development without planning permission	<p>As action Point 5.</p> <p>Further advice is being sought with regard to whether organisational structures best deliver the Council's often conflicting demands of planning enforcement, service delivery and development.</p>	<p>To be confirmed.</p> <p>Date to be confirmed.</p>

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	The Planning Application was deferred by the Strategic Planning Board on 18 January 2012 and withdrawn on 17 February 2012.	<p>therefore, flawed because the Council should not breach relevant Rules and Regulations even if adverse consequences are unlikely.</p> <p>Failure to comply with Rules, Regulations, Policies and Procedures can result in uneconomical, inefficient and ineffective use of resources and assets and interests that are not safeguarded.</p>			
<p><b>The Places and Organisational Capacity Directorate has put the following arrangements in place (from January 2012):</b></p> <p>The introduction of a gateway process (flow chart) within the Places and Organisational Capacity Directorate will make this issue very clear to Project Managers to avoid any repeat.</p> <p>This issue has been brought to the attention of Project Managers and sponsors.</p>					

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Compliance with European Directives</b>					
7	<p>In order to obtain short term waste transfer capacity a Delegated Decision (DD) was taken by the Strategic Director of Places on 14 September 2011 to award a six month contract to a waste bulking contractor. The estimated value of the contract, at £240,000 was above the threshold for which a compliant EU procurement exercise should have been taken.</p> <p>In taking the decision the Strategic Director did not comply with EU Regulations seeing this as tolerable in all the circumstances</p>	<p>The arrangements for approving this decision are flawed because a DD can only waive the Council's internal rules.</p> <p>Failure to comply with Rules, Regulations Policies and Procedures can result in uneconomical, inefficient and ineffective use of resources and assets and interests that are not safeguarded.</p> <p>A challenge to the decision is available to ANY supplier who felt they would wish to undertake the contract (not just those involved) should they feel the regulations have not been complied with. Essentially</p>	The Council's Governance Arrangements must be strengthened to ensure that it complies with EU and National Legislation	<p>A fundamental review of the application of DD's will be undertaken the results of which will be reported to the Audit and Governance Committee. As an interim measure arrangements have been put in place for all DD's to be considered at CMT with relevant officers including Legal Finance and Procurement advisers attending so that issues can be fully discussed.</p> <p>Training will be provided to officers focusing on the proper application of the Council's Finance and</p>	<p>The Director of Finance and Business Services in conjunction with the Lead Member.</p> <p>October 2012.</p>

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	<p>because a fully compliant EU procurement exercise had been undertaken to award the contract for a three year period and only one provider (the waste bulking contractor) was able to respond due to the necessity of having a facility in the area and the need for the appropriate permits as a result it was unlikely that adverse consequences (challenge via the civil courts) would arise.</p> <p>The waste bulking contractor was appointed on an interim 4 month contract, commencing on 3 October 2011, with the option to extend to 6 or 8 months.</p>	<p>legal action can be taken up to 3 months from the date of the alleged breach although the Court can determine a longer period where it considers the circumstances warrant it.</p>		<p>Contract Procedure Rules.</p> <p>In accordance with the Council's Constitution After consulting with the Head of Paid Service and the S151 Officer, the Monitoring Officer will report to the full Council, (or to the Cabinet in relation to an executive function), if she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission would give rise to a finding of maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.</p>	

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
				In accordance with the Council's Constitution After consulting with the Head of Paid Service and the Monitoring Officer, the Director of Finance and Business Services will report to the full Council (or to the Cabinet in relation to an executive function) and the Council's external auditor if she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.	

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	<p><b>S151 Officer Response:</b></p> <p>The main focus of improvement for the Corporate Management Team should be on prevention and guidance on the use of the process. Delegated Decisions for the waiver of Contract Procedure Rules should be exceptional and therefore limited in numbers.</p> <p>Each member of the Corporate Management Team should review the Delegated Decisions made in their Service areas to ensure that lessons are learnt, which will assist with the prevention of such decisions in the future.</p> <p><b>Corporate Services Response:</b></p> <p>Significant improvements have already been made to the Delegated Decision process over the course of the last year or so, including the following:</p> <ul style="list-style-type: none"> <li>• Joint sign off meetings (weekly where diary permits) between the Borough Treasurer &amp; Head of Assets/Director of Finance and Business Services and the Borough Solicitor, which commenced on the 1<sup>st</sup> April 2011.</li> <li>• The issue of guidance to managers through the Borough Treasurer &amp; Head of Assets weekly update, the Procurement bulletins (Bulletin No 17 May 2011) and through Centranet.</li> <li>• Changes to the Delegated Decision template to include better visibility of Procurement, Legal and Finance sign off and advice.</li> </ul> <p>The Director of Finance and Business Services and the Borough Solicitor continue to monitor the process and strive to reduce the number of decisions through proactive initiatives such as:</p> <ul style="list-style-type: none"> <li>• A Procurement improvement action plan agreed by Corporate Management Team.</li> <li>• The update of the Council's Finance and Contract Procedure rules, which has now been completed.</li> <li>• The provision of a Procurement Knowledge Map, which continues to be added to and developed.</li> </ul>				



	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	<ul style="list-style-type: none"> <li>• Joint meetings between the Procurement and Legal Teams.</li> <li>• The development of the three-year Procurement Plan and the Contracts Register.</li> <li>• A training, development and communications programme for Service Managers and officers with procurement and budget responsibilities.</li> <li>• Specific networking initiatives for Procurement Advisors.</li> </ul>				

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Compliance with Finance and Contract Procedure Rules</b>					
8	<p>The main contractor for construction and related works at Lyme Green Depot and the purchase of the building was appointed via a DD taken by the Asset Manager on 4 October 2011. The DD was counter-signed by the Director of Finance and Business Services and the Borough Solicitor on 5 October 2011 on the basis of the necessity to make an urgent appointment of a contractor Framework agreement without a further mini competition.</p> <p>When the DD was taken the value of the works, based on feasibility costs that were received</p>	<p>The arrangements for appointing the main contractor via a DD are flawed because the Asset Manager only had authority to incur expenditure in accordance with the estimates that make up the budget that was suggested by Cabinet and approved by Council.</p> <p>Despite having an approved budget of £650,000 the DD was used by the project team as the basis for agreeing works to the value of £1.5m.</p> <p>The lack of information provided on the budget implications and the urgency with which the</p>	The Council's Governance Arrangements must be strengthened to ensure that Finance and Contract Procedure Rules are complied with.	As per Action Point 7:	As per Action Point 7

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	<p>on 16 August 2011 and discussion with the main contractor, was approximately £1,500,000. The approved capital budget for the scheme was £650,000.</p> <p>The target cost of the works placed with the main contractor were agreed prior to commencement on site (24 October 2011) and after the Delegated Decision was taken (4 October 2011).</p> <p>As at Mid-May total costs of the incomplete Lyme Green WTS are estimated at £810,000. The full extent of the costs associated with this scheme cannot be established until a decision is taken by the</p>	<p>decision was presented to advisory and signing statutory officers led to the decision being signed off on the wrong basis.</p> <p>The evidence suggests that the officers that requested the decision did not have sufficient understanding of the parameters of the Delegated Decision making process.</p>			

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	Council with regard to the site.				
<p><b>S151 Officer Response:</b></p> <p>In addition to the response in Action Point 7 above, as part of the fundamental review of the Delegated Decision making process it is advisable to introduce an additional layer of decision making, including Members, to improve transparency and to better protect advisory and statutory officers.</p> <p>The Capital Asset Group needs to improve the challenge of approved capital schemes in the lead up to the quarterly financial performance reports to Cabinet to ensure that adverse budget implications are captured before commitments are made.</p>					

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Compliance with Finance and Contract Procedure Rules</b>					
9	<p>The DD does not state the value of the works to be awarded directly to the main contractor.</p> <p>Alternative options considered in arriving at the decision included an earlier iteration of the programme that was reviewed by the “team” (completion date end of March) allowing more time to procure the project works through well established routes, ensuring formal statutory consents/approvals, together with tendering the appointment and award of the contract to the main contractor. However, the additional project costs together</p>	<p>Inadequate information to support effective decision making. Poor challenge/scrutiny of the decision.</p> <p>The information regarding additional costs is misleading because an interim contract for Bulk and Waste Transfer Facilities Services with the waste bulking contractor was already in place (DD taken 14 September 2011).</p> <p>Furthermore, the interim contract, which was within budget, would allow the 32 week programme to be implemented because, with extensions, it would expire in June 2012.</p>	<p>The Council’s Governance Arrangements must be strengthened to ensure that Finance and Contract Procedure Rules are complied with.</p>	As per Action Point 7	As per Action Point 7

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	<p>with the costs of the interim service delivery were considered too expensive.</p> <p><i>Waste and Recycling Services would put interim arrangements in place ....by utilising the existing established facilities set up in the South. The service would inevitably incur additional costs with increased transportation and staffing inefficiencies,...current estimates suggested increased costs of £35,000.</i></p>				

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<p><b>S151 Officer Response:</b></p> <p>In addition to the response in Action Points 7 and 8 above, as part of the fundamental review of the Delegated Decision making process it is advisable to introduce a requirement to make reference to previous related decisions. This discipline is already required for Committee reports.</p> <p>The S151 response in Action Point 4 is also relevant against this Action Point.</p>					

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Compliance with Finance and Contract Procedure Rules</b>					
10	<p>Despite the DD being described as a KEY Decision on the face of the document there has been no advance publicity arrangements (it did not appear in the forward plan) or special urgency procedures applied.</p> <p>Despite having an approved budget of £650,000 the DD was used by the Project Team as the basis for agreeing works to the value of £1.5m.</p> <p>It has also been used as a basis for undertaking a large element of civil works (extensive ground works to be undertaken</p>	<p>Scrutiny arrangements with regard to the DD have been compromised because Members of the public and Councillors are unable to consider the implications of the decision or seek to influence the decision by making contact with the decision-maker.</p> <p>The DD process is flawed because it has been used as a basis by the project team to proceed without the necessary approvals being in place.</p>	<p>The Council's Governance Arrangements must be strengthened to ensure that Finance and Contract Procedure Rules are complied with.</p>	<p>As per Action Point 7.</p> <p>The DD process was established to record officer decisions to waive Finance and Contract Procedure Rules in specific circumstances. Officers do not take key decisions under this process. There is no mechanism for such decisions to go on the Forward Plan or to be called in. Accordingly the Template is being reviewed and this aspect made clear.</p>	<p>As per Action Point 7.</p>



	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	to reduce overall ground levels, form retaining Walls, a new concrete base and foundations), prior to obtaining planning approval.				
<p><b>S151 Officer Response:</b></p> <p>In addition to the response in Action Points 7, 8 and 9 above, as part of the fundamental review of the Delegated Decision making process the question related to whether the decision is a Key Decision or not will be removed. This has already been agreed with the Borough Solicitor.</p> <p>The S151 response in Action Point 4 is also relevant against this Action Point.</p> <p>The Corporate Governance Group is currently reviewing internal policy, its communication across the Council and the associated compliance framework. The Group is also reviewing and revising the Constitution and the associated schemes of delegation. This work will be accelerated and given a higher profile. High priority aspects of the Governance Framework will be identified and the Group will work through the Constitution Committee and the Audit &amp; Governance Committee to bring about the recommended improvements and changes.</p>					

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Compliance with Finance and Contract Procedure Rules</b>					
11	The DD was taken on the basis of the Finance and Contract Procedure Rule exemption that, subject to EU rules (below £3.9M for “works”), the requirement for competition may be waived in an emergency or if in the interest of efficiency of the service.	In accordance with the guidance within the Councils Procurement Knowledge Map a Delegated Decision will not be approved where there has been a lack of planning to procure a service in good time.	The Council’s Governance Arrangements must be strengthened to ensure that Finance and Contract Procedure Rules are complied with.	As per Action Point 7.	As per Action Point 7.
<p><b>S151 Officer Response:</b></p> <p>The S151 response in Action Points 7, 8, 9 and 10 above are relevant against this Action Point.</p> <p>The S151 response in Action Point 4 is also relevant against this Action Point.</p> <p><b>Corporate Services Response:</b></p> <p>The Corporate Services response in Action Point 1 is relevant against this Action Point.</p>					

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Compliance with Finance and Contract Procedure Rules</b>					
12	<p>The appointment of the main contractor was confirmed by a Letter of Intent that was issued on 6 October 2011 by the Professional Services and Framework Manager.</p> <p>The letter authorised the company to commence work up to a value of £500,000 (subsequently extended to £750,000). In accordance with the Asset Management scheme of delegation (dated 1 July 2010) the Professional Services and Framework Manager is only authorised to incur expenditure of up to £250,000 in any one</p>	<p>The method of appointment fails to comply with the Finance and Contract Procedure Rules Contract which state that contracts/agreements over £10,000 also require sign off by the Borough Solicitor.</p> <p>The Councils Schemes of Financial Delegation (also know as schemes of delegation) are ineffective because the Officer has exceeded his authority.</p>	<p>The Council's Governance Arrangements must be strengthened to ensure that Finance and Contract Procedure Rules are complied with.</p>	<p>In addition to Action Point 7.</p> <p>An immediate review of the local schemes of delegation and financial scheme of delegations will be undertaken for the relevant Service(s). Actions necessary to ensure Compliance with the Council's Constitution being the responsibility of CMT members.</p>	<p>As per Action Point 7.</p> <p>Chair of the Corporate Governance Group.</p> <p>With immediate effect.</p>

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	transaction.				
<p><b>S151 Officer Response:</b></p> <p>The S151 response in Action Point 4 is also relevant against this Action Point.</p> <p>In addition an immediate review of the local schemes of delegation and financial schemes of delegation should be undertaken for the relevant Services. The review should be undertaken by the Corporate Governance Group as part of its current work programme as an area of high priority. Assistance will also be provided for any training and development needs, particularly with regard to Procurement and Contract procedures.</p>					

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Compliance with Finance and Contract Procedure Rules</b>					
13	The target cost of the works placed with the main contractor were agreed prior to commencement on site (24 October 2011) and after the Delegated Decision was taken (4 October 2011). No formally executed contract exists.	The “agreement” at £1.59m required a contract under seal in order to comply with Finance and Contract Procedure Rules.	The Council’s Governance Arrangements must be strengthened to ensure that Finance and Contract Procedure Rules are complied with	In addition to Action point 7:  The final account will be agreed.  Appropriate entries/disclosures will be made in the Statement of Accounts for the expenditure incurred at Lyme Green in 2011/12.	The Director of Finance and Business Services.  June 2012.
<b>S151 Officer Response:</b>  The S151 response in Action Point 12 above is also relevant against this Action Point.					

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Compliance with Finance and Contract Procedure Rules</b>					
14	<p>A number of consultants have been engaged to provide various design, construction and quantity surveying services for the Waste Transfer Project.</p> <p>Analysis of five Consultants out of seven employed indicates that all have been appointed directly with no competition by Officers within Asset Management Services. This is despite the fee proposals/ official orders and actual costs being over £10,000 in three cases. In one further case actual costs incurred exceed £10,000 whilst the order value is below</p>	<p>Failure to comply with Finance and Contract Procedure Rules which state that for expenditure over £10,000 the advice of the Borough Solicitor must be sought to agree an appropriate form of contract or written agreement which must be signed by the successful third party and on behalf of the Council by the Borough Solicitor and/or one of his/her authorised signatories, or by two of his/her authorised signatories.</p>	<p>The Council's Governance Arrangements must be strengthened to ensure that Finance and Contract Procedure Rules are complied with</p>	<p>As per Action Point 7.</p>	<p>As per Action Point 7.</p>

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	this.				
<p><b>S151 Officer Response:</b></p> <p>The S151 response in Action Point 12 above is also relevant against this Action Point.</p>					

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Compliance with Finance and Contract Procedure Rules</b>					
15	<p>Where project outcomes or costs alter significantly from those set out in the original appraisal a revised Business Case Template must be completed and submitted to the officer Capital Asset Group. It would then be necessary to scrutinise the proposal and address any shortfall in budget in accordance with approved procedures.</p> <p>A revised Business Case Template was never submitted to the Capital Asset Group by the Waste and Recycling Manager, and arrangements were not</p>	Finance and Contract Procedure Rules have not been complied which increases the risk that the works no longer represent value for money.	The Council's Governance Arrangements must be strengthened to ensure that Finance and Contract Procedure Rules are complied with	As per Action Point 7	As per Action Point 7.



	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	made to seek approval for the full value of the scheme.				
<p><b>S151 Officer Response:</b></p> <p>The Strategic Director Places and Organisational Capacity must drive compliance with procedures and processes and there needs to be consequence for non-compliance. The Corporate Support Teams need to accelerate the positive approach to compliance by improving processes and providing guidance and training. This will ensure that non-compliance is prevented as far as possible. In this environment non-compliance becomes the absolute exception and can be dealt with through the assessment of performance against competencies and, if appropriate, the officer code of conduct.</p> <p>The S151 response in Action Point 4 is also relevant against this Action Point.</p> <p><b>Corporate Services Response:</b></p> <p>In addition to the Corporate Services response in Action Point 1 above the following improvements are also being made to the Capital monitoring process:</p> <ul style="list-style-type: none"> <li>• A request to project managers to provide further details for each Capital scheme which can be used in-year to profile expenditure, measure performance and milestones and monitor any revenue implications.</li> <li>• Better commitment reporting leading up to the quarterly performance report, which means not just relying on the actual expenditure in the Oracle (Financial Management) system.</li> <li>• The Capital Assets Group will take on a stronger role in the monitoring of the Capital Programme by signing off the quarterly position.</li> </ul>					

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<b>Compliance with Finance and Contract Procedure Rule</b>					
16	Progress on individual schemes within the Capital Programme is monitored by the project leads and service accountants. Quarterly Highlight Reports, completed by the named budget holder, in this case the Waste and Recycling Officer, and co-ordinated by Finance are used to write progress reports to Cabinet. The Waste Transfer Station Highlight Reports for Q1 completed in July 2011, Q2 completed in October 2011 and Q3 completed in November 2011 all indicate that cost is on track with the estimated total cost of the scheme being	The monitoring of this capital scheme is flawed because committed expenditure is not reported to Cabinet or fully approved.	The Council's Arrangements for monitoring capital expenditure must be strengthened to ensure that approval is obtained for the full value of a scheme prior to expenditure being incurred and that reports used to monitor expenditure are accurate and timely.	Processes for regular monitoring and reporting on the progress of the capital programme will be reviewed and compliance with Section 11 of the Council's Capital Strategy reinforced. This requires that :-  <i>'Progress on individual schemes within the Capital Programme will be monitored monthly by project leads and service accountants who will provide regular reports to the Capital Appraisal and Monitoring Group (CAMG)'</i>	Chair of CAG  August 2012.

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
	<p>reported as £650,000. There are no issues for decision contained within the Highlight Reports.</p> <p>On 28 November 2011 Cabinet received a report on the mid year review of the Councils financial and non financial performance. The report showed the Waste Transfer Station Schemes approved budget was £650,000, there was no actual expenditure at this date and no request was made for a supplementary capital estimate or virement despite the value of the agreed target costs (construction) being £1.59m.</p>				

	Finding	Implication	Recommended Action	Management Action	Responsibility/ Target Date
<p><b>S151 Officer Response:</b></p> <p>The S151 response in Action Point 15 above is also relevant against this Action Point.</p> <p><b>Corporate Services Response:</b></p> <p>The Corporate Services response in Action Point 15 above is also relevant against this Action Point.</p>					