

Internal Audit – Assurance Report Review of Land Transactions

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Version Control

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V1.0	16/05/2023	Draft report to Head of Audit & Risk for review
V1.1	18/05/2023	Amends made by Head of Audit and Risk
V1.2	22/05/2023	Further amends by Head of Audit and Risk
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V1.4	30/05/2023	Final amendments in response to queries
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1. Background

- 1.1. In July 2017, Internal Audit began work on a review of the Council's arrangements for asset disposals and purchased. This review was part of the 2017/18 Internal Audit plan.
- 1.2. As work progressed, concerns around one specific site were identified, and the review scope was focused onto these issues. After a report on those issues was produced, the scope of the planned review was updated, with further sites/transactions identified for review after matters were raised following the departure of the former Leader of the Council, Cllr Michael Jones, and the suspension of senior officers.
- 1.3. As part of the initial programme of work, seven specific transactions/sites were examined, and detailed reports produced by Internal Audit for each. These sites were related to transactions which occurred under the leadership of Cllr Jones.
- 1.4. The reports were issued to the Chief Executive, Executive Director Place (Deputy Chief Executive), acting Monitoring Officer and Section 151 Officer. Having considered the findings of the reports, five of the sites were referred to the police for investigation by the Acting Chief Executive during 2018.
- 1.5. The Police then progressed their investigations, with the announcement from the Crown Prosecution Service and Cheshire Police in November 2021 that no further action would be taken. Details of the specific sites reviewed by Internal Audit, the concerns raised around them, and the current position in relation to these sites is provided in Appendix A.
- 1.6. The detailed, site-specific reviews initially carried out by Internal Audit identified serious control weaknesses in the Council's arrangements for managing the purchase and disposal of land assets. Given the nature of the police investigations it was not appropriate for Internal Audit to undertake further work on the specific sites or to issue the detailed reports outside of the initial distribution list as described above.
- 1.7. It was, however, vital that action was taken to mitigate the control weaknesses to ensure that the risk of further issues arising was addressed as a priority. To facilitate this, Internal Audit produced a Consolidated Findings Report that highlighted the weaknesses identified without identifying the specific sites that they were related to, thus safeguarding the integrity of the police investigations.
- 1.8. This report was published as final in August 2018. Actions arising from it were agreed and responsibility for ensuring

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their implementation was allocated to the Executive Director Place (Deputy Chief Executive).

- 1.9. Audit and Governance Committee were made aware of this work being carried out as part of the regular updates to the Committee on the Internal Audit plan. The Land Transaction concerns, and the actions in train to undertake required improvements were included within the Annual Governance Statements, approved by the Audit and Governance Committee, from 2016/17 onwards.
- 1.10. This included proposed actions to address the issues and updates on the latest position provided at both draft and final stages of subsequent Statements. These updates included confirmation that “The service has responded positively to the Consolidated Findings report produced by Internal Audit and significant progress has been reported to Corporate Leadership Team”.
- 1.11. Detailed follow up of progress against the implementation of the actions was also undertaken by Internal Audit during 2020 to seek assurance that the previously identified issues had been addressed and the overall control environment was sufficiently robust to mitigate the associated risks.
- 1.12. The final report published in November 2020 concluded that, overall, substantial progress had been made in addressing the risks identified in the initial audit report. A Satisfactory Assurance Opinion was provided.
- 1.13. Audit and Governance Committee received an update on this follow up work as part of the regular updates to the Committee on the Internal Audit plan.
- 1.14. In November 2021, the Crown Prosecution Service confirmed that they would take no further action on the site-specific land transaction referrals, and Cheshire Police announced that they would be taking no further action.
- 1.15. The Council’s previous External Auditors, Grant Thornton identified the referral to Cheshire Police as one of the items qualifying their Value for Money (VFM) opinion for a previous year of accounts. The external audit was qualified for two years relating to these and other governance issues, and Grant Thornton formally concluded that the council had inadequate arrangements in its leadership and governance.
- 1.16. In January 2023, following completion of its responsibilities in relation to the CoreFit issue, Grant Thornton published a Report in the Public Interest on the

impact of the Council's culture and governance arrangements during 2014 – 2018.

- 1.17. Although the report dealt with the CoreFit issue as an exemplar of the failings identified, it recommended that:

“The Council should, as planned, return to the other specific matters investigated by Internal Audit (see paragraphs 4.2 and 5.6), following the Core Fit issue, and determine if there are further actions to be taken particularly in light of this report.”¹

- 1.18. Internal Audit has therefore undertaken additional work to seek assurance that appropriate controls are in place to mitigate the identified risks in relation to the sale and purchase of land.

2. Scope of Review and Risks Covered

- 2.1. This review sought assurance as to the effectiveness and operation of the policies, systems and procedures currently in place to manage and mitigate the following identified key risks, as agreed in the Terms of Reference for the Review, set out at Appendix C:

¹ <https://www.cheshireeast.gov.uk/pdf/council-and-democracy/council-finance-and-governance/public-interest-jan2023/cheshire-east-council-final-17-january-2023.pdf>

Risk 1: There are insufficient strategy, guidance and procedures relating to land purchases and sales leading to unauthorised, incorrect, or unplanned decisions being taken resulting in financial losses or missed opportunities.

Risk 2: Weak/ineffective arrangements in place for the valuation of land leading to land being valued incorrectly resulting in a financial loss or a potential missed transaction.

Risk 3: Inadequate arrangements are in place for recording the transactions relating to the purchase, sale and value of land in the accounts leading to errors or misstatements in the financial statements.

- 2.2. Testing was undertaken on transactions generated in the 2020/21, 2021/21, and 2022/23 financial years; 4 transactions were subject to testing from a total of 18 which represents a 22% sample. An update on the latest position for each of the sites subject to detailed review in 2017 was also completed, and reported upon in Appendix A.

3. Key Findings and Recommended Actions

- 3.1. Full details of the findings are set out below for each of the identified risks.

Risk 1: There are insufficient strategy, guidance and procedures relating to land purchases and sales leading to unauthorised, incorrect, or unplanned decisions being taken resulting in financial losses or missed opportunities.

3.2. The Council's Constitution sets out that the Finance Sub-Committee has responsibility for:

- property transactions, including buying, selling and appropriation of land and property (including compulsory purchase where required)
- it also has responsibility for approving property transactions in excess of £2m.

3.3. Review of the agendas and minutes of the Finance Sub-Committee confirmed that they receive regular reports relating to the appropriation and selling of land and property, and the potential pipeline of further activity. Reports have been considered by the Finance Sub-Committee to date as follows

- In December 2021, covering 1st April 2020 to 30th September 2021.
- In June 2022, covering 1st April 2020 to 31st March 2022.
- In January 2023, covering 1st April 2022 to 30th September 2022.

3.4. The Constitution also sets out the following:

- The Economy and Growth Committee's responsibilities include "development and delivery of the Council's estates, land and physical assets policies".
- The Head of Estates is responsible for maintaining and regular reporting of an Asset Management Strategy.
- The Council's Asset Management Strategy sets out the vision, core values and objectives that form the context for the preparation of the Corporate Asset Management Plan and Service Asset Management Plans.

3.5. Review of the agendas and minutes of the Economy and Growth Committee confirmed that they receive regular reports in relation to matters associated with the development and delivery of the Council's estates, land and physical assets policies.

3.6. This included items such as consideration and approval to dispose of public space land, and progress updates in relation to ongoing matters including the Gypsy and Traveller site, Handforth Garden Village and the Royal Arcade.

3.7. In January 2023, the Committee received and approved the proposed Asset Management Plan 2022-2025. This was presented by the Head of Estates and included a paper setting out achievements during the period of the

previous plan. The previous Plan ran from 2015 to 2020 and production of the current plan was delayed as a result of the Covid-19 pandemic.

- 3.8. Although there is clearly a gap between the two plans, Economy and Growth Committee had received a report in November 2021 that set out the Council's Asset Management Plan Principles. The report provided context and increased the Committee's understanding of the process and approvals required in producing and adopting the new Plan.
- 3.9. The current plan covers three years rather than the normal five years to allow realignment with the normal cycle of planning, and to synchronise with the Carbon Management Strategy and the Corporate Plan. It is also linked to the Medium-Term Financial Strategy and this shorter period will provide an early opportunity to review and reconsider the Council's Land and Property needs in as the current economic situation evolves.
- 3.10. The Asset Management Plan identifies the key strategic policy and resource influences affecting the Council and sets out parameters for asset management over the medium term. Implementation of the Asset Management Plan is supported by regular reporting on progress.
- 3.11. The plan seeks to demonstrate efficient use of assets and that property is effectively managed and for purposes

which align with the corporate plan. The plan will be used to:

- help guide decisions making about capital investment decisions in Council property to support the Council objectives
- help identify land and property which is surplus to requirement for current purposes and help guide decisions about the future use of the land or property
- support decisions on acquisitions and disposals
- indicate where reviews will be required to ensure best use of assets in the future

- 3.12. Whilst the Asset Management Plan sets out the strategy for managing land and other physical assets, it is important that this is underpinned by good governance and robust management arrangements. This has not always been the case and was one of the reasons that the historic issues arose.
- 3.13. Since the detailed Internal Audit reviews in 2017 and the production of the Consolidated Findings Report, follow up work confirmed that significant progress had been made in implementing an effective system of control and governance in this area.
- 3.14. Key changes implemented in response to the audit report included the establishment of the Asset Management

Board and Capital Programme Board, the development of procedures and a supporting checklist to formalise and ensure consistency in the application of processes followed in acquiring and disposing of land.

- 3.15. The current review has identified that these improvements in governance and control have continued and that there is a clear focus on transparency and effectiveness of decision making within the service.
- 3.16. The detailed follow up review undertaken in 2020 identified that these checklists were being used as an 'aide memoir' rather than a formal and documented part of the process. This has been revisited as part of this review, and since then, the Atrium document management system has been replaced with a bespoke case management system; "Concerto".
- 3.17. The Concerto system has been designed by the service and is based upon the previous checklists. This ensures that the appropriate steps are followed during acquisitions and disposals and that the relevant information is held securely in an accessible format.
- 3.18. At the time of the review, work was continuing to populate the system with current transactions and a target of 31 May 2023 had been set for the completion of this work. All new work is recorded on the system as it arises.

3.19. The system also facilitates management control of the work being undertaken within the service via a monthly highlight report. This report identifies all live cases, the responsible officer, targets, and outstanding actions and provides a structured overview for the service.

3.20. Further development of the system is also underway to include lease agreements. This will allow easier monitoring and produce automated reminders when milestones in the lease agreement are reached.

3.21. Historic transactions have not been transferred to the Concerto system and remain on secure network folders. A review of a sample of historic transactions identified that the folders were clearly organised and contained all the required documentation to support both the transaction and the associated decision-making process.

3.22. In addition to the structure imposed by the case management system, officers commented positively about the Officer Decision Record (ODR) process. They felt that it clearly sets out the information and documentation required to make informed and evidenced decisions and that this also provides a welcome additional robustness that was not always present.

3.23. Whilst it is clearly important to have operational procedures in place it is also vital that there is appropriate oversight and reporting of matters to senior management.

- 3.24. This function is undertaken primarily by Assets Board along with Capital Programme Board. Assets Board meets on a monthly basis and is chaired by the Executive Director, Place (currently chaired by the Director of Growth and Enterprise as Acting ED, Place). Membership includes representatives from across the Council including Estates, Children and Families, Legal Services, Finance, Regeneration, Housing, Cultural Economy, and Environment and Communities. It receives regular update reports on work in progress within the Estates service such as the disposals programme, pipeline projects, budget and associated financial pressures.
- 3.25. As part of the Internal Audit review, the February 2023 Assets Board was attended and it is pleasing to report that it was a well-managed meeting with constructive contributions from all parties, that provided robust challenge to the positions reported, with risks and mitigations discussed at length.
- 3.26. Testing was undertaken on a sample of 4 out of 18 (22%) transactions from the 2020/21, 2021/22, and 2022/23 financial years to ensure that each had followed the expected process and that all required approvals were in place and supported by appropriate evidence.
- 3.27. Each of the transactions were found to have been undertaken correctly and in accordance with agreed procedures.

Risk 2: Weak/ineffective arrangements in place for the valuation of land leading to land being valued incorrectly resulting in a financial loss or a potential missed transaction.

- 3.28. The Asset Management Strategy sets out clearly the requirement for the Council to meet its statutory responsibility under section 123 of the Local Government Act 1972 to achieve best price/consideration.
- 3.29. Weakness relating to the valuation of land and property identified in the 2017 reviews were found to have been addressed during the 2020 Internal Audit follow up work through the development of procedures and checklists to ensure that officers were acutely aware of the need to obtain appropriate valuations and that these are included within decision making processes.
- 3.30. This has continued through the development of the Concerto system as described earlier in this report.
- 3.31. All of the transactions tested as part of this review were found to have been subject to appropriate valuation processes.

Risk 3: Inadequate arrangements are in place for recording the transactions relating to the purchase, sale and value of land in the accounts leading to errors or misstatements in the financial statements.

- 3.32. The Concerto system forms a record of all current assets along with transactions that are in progress. This is supported by a SharePoint site that facilitates the sharing of documentation between the various services involved in land and property transactions such as Legal Services, Property Services and Finance.
- 3.33. With regards to the recording of transactions in the accounts, a senior finance officer sits on Assets Board to ensure that there is appropriate knowledge and engagement on current and planned transactions. This is achieved through regular review of the Disposals Programme and updates from individual projects where the acquisition of assets is required.
- 3.34. Processes are in place for the coding of transactions which is overseen by Finance to minimise the risk of monies/costs being allocated inappropriately.
- 3.35. It was noted during the review that the SharePoint site had been unavailable for a short period following migration to an updated version and that during this period, services were reliant on Legal Services emailing Completion Memos. This issue was resolved during the audit, and the normal arrangements have recommenced. Work is underway to ensure that the SharePoint site is updated with any documentation produced during this period.

4. Conclusion and Opinion

- 4.1. The review has concluded that the current arrangements in place to manage the acquisition and disposal of the Council's land and property assets are operating effectively and are appropriate to manage the risks associated with these operations.
- 4.2. There has been a continued improvement in the control environment since the last Internal Audit review was undertaken in 2020 and there is a drive within the management structure to continue in this positive trajectory.
- 4.3. It should be noted however, that in recent years the volume of transactions undertaken has been lower than was the case during the period that the historic issues arose. Whilst it is recognised that the controls in place now are significantly stronger than at that time, there remains a risk that an increase in demand on the service could lead to an erosion of these controls.
- 4.4. It should also be acknowledged that although there were significant control deficiencies at the time of the historic issues, they were also failures to follow due process and the Council's Constitution.
- 4.5. The culture of the Council at that time indicates collective behaviour that anticipated desired outcomes. The desire to achieve an anticipated outcome resulted in the

acceptance of behaviour which modified safeguards to achieve that which had been anticipated.

- 4.6. Where systematic management override of control at a senior level within an organisation takes place, either from Officers or Members, this reflects poorly on the culture and often the only way for concerns to be raised is through a robust whistleblowing process.
- 4.7. As recognised in the Public Interest Report, significant steps have been taken by Cheshire East to create a positive and inclusive culture within the organisation where colleagues treat each other with respect and individuals feel empowered to call out negative behaviour. This is supported by an established whistleblowing policy that is in line with best practice and subject to regular review.
- 4.8. The current culture actively discourages deviation from due process through clear behavioural values, and this has been evident from discussion with officers as part of this audit review.
- 4.9. It is clear from the work undertaken that the management of land and property assets is now subject to far more stringent controls and monitoring, which, coupled with the organisational changes brought about by the cultural improvements would make it far more difficult for events to unfold in the manner they did.

4.10. The combination of these factors provides assurance that the same behaviours, and bypass of controls are less likely to occur and, if these behaviours reoccur, they are more likely to be identified and challenged.

4.11. However, that possibility should not be dismissed, and it should be recognised that regardless of how robust a control environment is within an organisation, the opportunity for senior managers to facilitate the override of control, for whatever reason, remains a risk.

4.12. As such it is essential that Cheshire East continues to operate an effective whistleblowing process that signposts whistleblowers to appropriate contacts outside of the Council should they feel unable to raise their concerns internally.

4.13. Internal Audit use a formal opinion system, details of which are given in Appendix B. Based upon the findings and actions raised, a **Good Assurance** opinion has been given.

Good Assurance

Controls are in place to mitigate against the risks identified in the terms of Reference. Testing has shown that controls are working effectively and consistently to ensure that key risks are well managed.

Appendix B – Audit Opinion and Priority Rating for Individual Findings

Audit Opinion

An overall opinion on the control environment will be given on completion of the audit work. This opinion relates **only** to those risks identified or systems tested. Where the audit opinion given is either limited or no assurance, consideration will be given to including those areas in the Annual Governance Statement.

There are four possible opinions: good assurance, satisfactory assurance, limited assurance, and no assurance.

The following table explains the various assurance levels in terms of the controls in place and how testing has shown them to be operating. It also gives an indication as to the priority rating of recommendations you might expect at each assurance level, although please note this is for guidance only as the final opinion lies at the discretion of the Auditor.

Assurance Level	Explanation
Good Assurance	Controls are in place to mitigate against the risks identified in the terms of Reference. Testing has shown that controls are working effectively and consistently to ensure that key risks are well managed. No high-level recommendations have been made although there may be a small number at medium level. Some changes in the control environment may be beneficial to enhance performance and realise best practice.
Satisfactory Assurance	Controls are adequate to address the risks identified in the terms of reference. Testing has shown that there are some inconsistencies in the application of the controls, and attention is needed to improve the effectiveness of these controls. Recommendations will normally be no higher than medium level.
Limited Assurance	Controls are either not designed to mitigate the risks identified in the terms of reference, or testing has shown there to be significant non-application of controls. There are likely to be a number of high priority recommendations and/or a large number at the medium level. Attention is needed to improve the quality and effectiveness of the control environment in order to ensure key risks can be managed well.
No Assurance	There is an absence of controls to mitigate against the risks identified in the terms of reference. The majority of recommendations made are high priority, and key risks are not being properly managed. Urgent attention is required by management to improve the control environment. This area may be considered for inclusion in the organisation's Annual Governance Statement. It may also be appropriate for this area to be included in the sections/directorate Risk Register, and for the action plan to address these fundamental weaknesses to become part of the Service Delivery Plan.

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Appendix C - Terms of Reference: Land Transactions Assurance Review

1. Background

1.1. During a planned audit review of the Council's arrangements for asset disposals and purchases which began in July 2017 as part of the 2017/18 Internal Audit plan, a report into specific issues around one specific site was produced. Further transactions were then identified for detailed review, and the scope of the planned work was updated after matters were raised following the departure of the former Leader, and the suspension of senior officers. Having made referrals to Cheshire Police in 2018, investigations were progressed by them.

1.2. As a result of the Internal Audit findings, and subsequent referrals, a consolidated report was issued, highlighting the main control issues which were identified within the individual reports. This was published as final in August 2018, Actions arising from this report were agreed and responsibility for ensuring that they were implemented was allocated to the Executive Director Place (Deputy Chief Executive). The Audit and Governance Committee received an update on this work as part of the regular updates to the Committee on the Internal Audit plan.

1.3. The Land Transaction concerns were included within the Annual Governance Statement from 2016/17 onwards. Detailed follow up of progress against the implementation of the actions was also undertaken by Internal Audit, and this concluded that overall, substantial progress had been made in addressing the risks identified in the initial audit report.

1.4. Further work was undertaken by Internal Audit to seek assurance that the previously identified issues had been addressed and the overall control environment was sufficiently robust to mitigate the associated risks. The final report was published in November 2020 with satisfactory assurance provided. The Audit and Governance Committee received an update on this work as part of the regular updates to the Committee on the Internal Audit plan.

1.5. In November 2021, the Crown Prosecution Service confirmed that they would take no further action on the land transaction referrals, and Cheshire Police announced that they would be taking no further action.

1.6. The Council's previous External Auditors, Grant Thornton identified the referral to Cheshire Police as one of the items qualifying their Value for Money

Appendix C - Terms of Reference: Land Transactions Assurance Review

(VFM) opinion for a previous year of accounts. The external audit was qualified for two years relating to these and other governance issues, and Grant Thornton formally concluded that the Council had inadequate arrangements in its leadership and governance.

- 1.7. Grant Thornton have endorsed the completion of this piece of assurance work as a recommendation of their Public Interest Report.

2. Objective

- 2.1. To undertake a review of recent land transactions (acquisitions and disposals) and provide assurance that the findings and implemented actions from previous Internal Audit work, and changes made by the service have been complied with. This review will also provide assurance on whether the processes now in operation would detect or deter non-compliance.

3. Scope

- 3.1. The review will cover the effectiveness and operation of the policies, systems and procedures put in place following the previous audit reviews. Testing of current procedures will be focused on transactions

generated within the 2020/21 and 2021/22 financial years.

- 3.2. The review will provide assurance on the effectiveness of arrangements to manage the following risks:

- 3.2.1. **Risk 1:** There are insufficient strategy, guidance and procedures relating to land purchases and sales leading to unauthorised, incorrect, or unplanned decisions being taken resulting in financial losses or missed opportunities.

- 3.2.2. **Risk 2:** Weak/ineffective arrangements in place for the valuation of land leading to land being valued incorrectly resulting in a financial loss or a potential missed transaction.

- 3.2.3. **Risk 3:** Inadequate arrangements are in place for recording the transactions relating to the purchase, sale and value of land in the accounts leading to errors or misstatements in the financial statements.

- 3.3. Finally, the review will identify the latest position in relation to sites previously subject to review by Internal Audit.

Appendix C - Terms of Reference: Land Transactions Assurance Review

4. Approach and Deliverables

4.1. The review will need to be conducted in such a way as to comply with the Public Sector Internal Audit Standards and ensure conclusions are evidence based.

4.2. Principal activities are expected to include a review of available documentation in relation to the transaction, discussion with relevant individuals (where possible to do so) and testing of compliance with the controls in place at the time of the transaction and testing against the current control environment.

4.3. The results of the review will be presented in a report, including:

4.3.1. the findings of this review

4.3.2. levels of assurance provided by the controls in operation (at the time, and currently); this will include the outcome of testing to establish any areas where controls were overridden by management, or where management's approach and attitude to management controls was non-compliant, as well as

reviewing the effectiveness of the design of the controls.

4.3.3. recommended actions for management to consider in further improving the control environment.

4.4. The outcome of this report will be considered in the public domain in order to meet the requirements of the Public Interest Report recommendation that

The Council should, as planned, return to the other specific matters investigated by Internal Audit (see paragraphs 4.2 and 5.6 of the public interest report), following the Core Fit issue, and determine if there are further actions to be taken particularly in light of this report

4.5. Careful consideration will be needed in the drafting of this report to provide a balance between transparency between issues being identified and meeting the Council's statutory requirements for example under the Data Protection Act 2018 and the General Data Protection Regulations.

Appendix C - Terms of Reference: Land Transactions Assurance Review

5. Timescales

5.1. The intention is to complete the review fieldwork, produce the report and agree any management actions, for the report to then be considered the Audit and Governance Committee.

6. Agreement, management responses and points of contact

6.1. The Council's Chief Executive, Executive Director of Place, Director of Governance and Compliance, and Director of Finance and Customer Services provided agreement to this brief, following consultation with Grant Thornton.

6.2. Management responses for any actions identified in the internal report, and to any recommendations arising from the external auditor's work will be

provided by the relevant CLT member in agreement with the Chief Executive.

6.3. The point of contact for the review will be the Head of Audit and Risk and the review will be undertaken by the acting Internal Audit Manager.

Declaration:

Staff within the Internal Audit function have appropriate regard to the services' Code of Ethics, which is consistent with the requirements of the Public Sector Internal Audit Standards.

In order to ensure that the independency of Internal Audit is continually maintained, those involved in conducting this review confirm that there are no potential conflicts of interest in carrying out this assurance work, and that no operational roles have been held in relation to this area over the last 12 months.