

Southend-on-Sea Borough Council

Agenda
Item No.

27

Corporate Director for Corporate Services

to
Council

on
22nd October 2015

Report prepared by: John Williams,
Head of Legal & Democratic Services

Changes to the Constitution

Part 1 Public Agenda Item

1. Purpose of Report

To recommend minor changes to the Constitution

2. Recommendations

- (a) That the **Specific Delegations to Chief Officers** in section 4 of Part 3 Schedule 3 of the Constitution be amended as set out in **Appendix 1**.
- (b) That the **Special Schemes of Delegation** in section 5 of Part 3 Schedule 3 of the Constitution be amended as set out in **Appendix 2**.
- (c) That the **Contracts Procedure Rules** in Part 4(g) of the Constitution be amended as set out in **Appendix 3**.

3. Background

3.1 The following changes are needed to the Specific Delegations to Chief Officers in section 4 of Part 3 Schedule 3 of the Constitution as set out in **Appendix 1**:

- (a) Sections 4.7 and 4.8 need to be amended to reflect the current roles of the Head of Adult Services & Housing and the Joint Associate Director of Integrated Care Commissioning (formerly the Head of Procurement Commissioning & Housing).
- (b) In Section 4.10(c) reference to “street scheme” should be changed to “Environmental Care”.

- 3.2 Changes are needed to two sections of the Special Schemes of Delegation in section 5 of Part 3 Schedule 3 of the Constitution as set out in **Appendix 2**:
- (a) Section 5.6 Public Protection. The proposed changes reflect a new definition of Public Protection and changes in job titles.
 - (b) 5.7 Planning. The proposed changes reflect several changes in job titles and new types of application
- 3.3 A few minor changes are needed to Contracts Procedure Rules in Part 4(g) of the Constitution for the purposes of consistency and accuracy. In addition, a new Appendix B will provide a more detailed set of requirements for opening tenders. Details of these proposals are set out in **Appendix 3**.

4. Corporate Implications

4.1 Contribution to Council's Vision & Corporate Priorities

Becoming an excellent and high performing organisation

4.2 Financial Implications

None

4.3 Legal Implications

Amending the Constitution is a function reserved to the Council and the changes are required for the efficient administration of the Council.

4.4 People Implications

None

4.5 Property Implications

None

4.6 Consultation

Internal consultation

4.7 Equalities and Diversity Implications

None

4.8 Risk Assessment

N/A

4.9 Value for Money

N/A

4.10 Community Safety Implications

None

4.11 Environmental Impact

None

5. Background Papers

None

6. Appendices

Appendix 1 – Proposed changes to section 4 of Part 3 Schedule 3 of the Constitution

Appendix 2 – Proposed changes to section 5 of Part 3 Schedule 3 of the Constitution

Appendix 3 – Proposed changes to Part 4(g) of the Constitution

**Part 3 Schedule 3 – Section 4.
Specific Delegation to Chief Officers**

4.7 The Corporate Director for People and / or the Head of Adult Services & Housing

- To act as the Director of Adult Services and to discharge all responsibilities and duties relating to that role.
- To take all necessary action, to ensure that the Council's powers and duties are properly and effectively discharged in adult protection and adult care cases.
- To appoint Approved Mental Health Professionals under the Mental Health Act 1983.
- To discharge the Council's functions (including but not limited to determining all consents, permissions and licences and taking enforcement action) in relation to:
 - Social care and health
 - Social services for adults
 - Mental health
 - Community development
- To act as "the Responsible Person" (on behalf of the Chief Executive and Town Clerk) pursuant to the Local Authority Social Services and NHS Complaints (England) Regulations 2009 re Adult Statutory Social Services complaints.
- To act as a Receiver under the terms of an order issued by the Court of Protection.
- See also Section 5.9 for Special Scheme of Delegation for Adult Statutory Social Services Complaints.

Housing

- To discharge the Council's housing functions (including but not limited to determining all consents, permissions and licences and taking enforcement action) in relation to:
 - The management and administration of Council dwellings, subject to the management agreement with South Essex Homes.
 - Providing housing assistance, including but not limited to the provision of advice, and homelessness decisions.
 - The allocation of housing.
 - Taking any steps open to the Council in relation to privately owned dwellings, including but not limited to enforcing standards dealing with grants and dealing with energy performance certificate / notices.
- See also Section 5.4 for Special Scheme of Delegation for Private Sector Housing.

4.8 The Corporate Director for People and / or the Head of Procurement Commissioning & Housing Joint Associate Director of Integrated Care Commissioning

- To manage the Council's Corporate Procurement and Commissioning Function.
- To manage Commissioning, Workforce Development and Performance in the Department for People.
- ~~To discharge the Council's housing functions (including but not limited to determining all consents, permissions and licences and taking enforcement action) in relation to:~~
 - ~~The management and administration of Council dwellings, subject to the management agreement with South Essex Homes.~~
 - ~~Providing housing assistance, including but not limited to the provision of advice, and homelessness decisions.~~
 - ~~The allocation of housing.~~
 - ~~Taking any steps open to the Council in relation to privately owned dwellings, including but not limited to enforcing standards dealing with grants and dealing with energy performance certificate / notices.~~
- ~~See also Section 5.4 for Special Scheme of Delegation for Private Sector Housing.~~

4.10 The Corporate Director for Place and / or the Head of Public Protection

- To discharge the Council's functions (including but not limited to determining all consents, permissions and licences, and taking enforcement action) in relation to:
 - (c) Waste management and ~~street scene~~ Environmental Care which include:

**Part 3 Schedule 3 – Section 5
Special Schemes of Delegation**

5.6 Public Protection (including Regulatory Services, and Waste Management, Environmental Care and Community Safety)

- (a) The Group Managers for ~~both~~ Regulatory Services, ~~and~~ Waste Management and ~~Street-scene~~ Environmental Care and Community Safety may exercise all the powers of the Corporate Director for Place and the Head of Public Protection in respect of functions within their remit as defined in 4.10 above.
- (b) The following Officers may serve notices and take appropriate action (including but not limited to works in default) under ~~Regulatory Services~~ legislation within their area of responsibility, subject to being authorised in that regard by their Chief Officer pursuant to 3.2(h):
- ~~Team Leader(s)~~ Regulatory Services Manager(s)
 - Regulatory Services Officer(s)
 - ~~Senior Waste Management Officer~~
 - ~~Team Leader Waste Management~~
 - ~~Waste Management Officer(s)~~
 - ~~Senior Environmental Care Officer~~
 - ~~Team Leader Environmental Care~~
 - Service Manager, Waste Management
 - Waste and Contracts Officer(s)
 - Environmental Care Co-ordinator(s)
 - Environmental Care Officer(s)
 - Enforcement Officer(s)
 - Animal Warden
 - ~~Senior Pest Control Officer~~
 - ~~Energy Officer~~
 - Sustainability Officer
 - Anti-Social Behaviour Team Leader
 - Anti-Social Case Worker(s)
 - CCTV Team Leader
 - Community Safety Officer
 - Any other duly appointed and trained contracted staff

5.7 Planning

5.7.1 Subject to the **Committee Referral Procedure** in ~~sub-paragraph 3~~ 5.7.4 below, approval or refusal of all applications made under The Town and Country Planning Act 1990, The Planning (Listed Buildings and Conservation Areas) Act 1990 and The Planning (Hazardous Substances) Act 1990 and associated Regulations and Orders is delegated to each of the following officers ("**the Relevant Officer(s)**"):

- The Corporate Director for Place;
- The Head of Planning and Transport; and
- The Group Manager (~~Development~~ Planning and Building Control)

provided that:

- (a) In the case of an approval the proposals do not conflict materially with a policy of the current Development Plan;
- (b) In the case of refusals the proposals are materially in conflict with a policy of the current Development Plan;
- (c) Consultations, neighbour notification and publicity have been carried out in accordance with statutory requirements and Council Policies;
- (d) The decision would not conflict with a material planning objection in principle from a statutory consultee received within the statutory consultation period;
- (e) In all cases the Relevant Officer considers it prudent to exercise delegated authority, failing which he / she shall report the application to the Development Control Committee for decision;
- (f) Lists of delegated decisions shall be circulated to members of the Development Control Committee, provided at meetings of the Committee and made available for inspection in the Department;
- (g) All applications submitted by or on behalf of the Council, any member of the Council or any serving officer of the Council (other than applications submitted by or on behalf of the Council that do not involve "significant development" as defined at (h) below and to which there is no objection from a neighbour or statutory consultee) shall be submitted to the Development Control Committee for decision; and
- (h) In the case of applications that involve "significant development" (as defined below) the relevant officer shall consult with the Chairman of the Development Control Committee (or the Vice Chairman in the Chairman's absence) before making a determination.

For the purposes of this paragraph “significant development” means any scheme involving:

- (i) ~~More than~~ 10 dwellings or more; or
- (ii) 1000 sq metres or more of floor space; or
- (iii) A development site with an area of over 0.5 hectares.

5.7.2 Subject to the limitations set out in 5.7.1 above the approval or refusal of the following matters is delegated to the Planning Team Leaders in the Development Control Group:

- (a) “Householder” applications (as defined for the purposes of Form PS2 in the Government’s planning statistics);
- (b) Advertising consents;
- (c) Applications for prior approval for larger home extensions;
- (d) Applications for works to trees subject to TPO’s or in conservations areas;
- (e) Non-material amendments to planning permissions; and
- (f) Details reserved by condition.

~~sub paragraph 1 above, the approval or refusal of “Householder” applications (as defined for the purposes of Form PS2 in the government’s planning statistics) advertising consents and works to trees subject to TPO’s is delegated to the Area Planning Officers (“APO”) in the Development Control Group,~~

Provided also that:

- (a) In the case of an approval, not more than 5 different households have submitted material planning objections and the objections received have been taken into account in the delegated report; and
- (b) The application is not one where the case officer is the Planning Team Leader APO.

5.7.3 Subject to the limitations set out in 5.7.1 above, the approval or refusal of applications for “details reserved by condition” is also delegated to Senior Planners in the Development Control Group, providing the Senior Planner is not the case officer.

5.7.34 In all cases the powers delegated under ~~sub-paragraphs 1 and 2~~ **5.7.1 – 5.7.3** above ~~is~~ are subject to the following **Committee Referral Procedure** by elected Council Members:

- (a) Each Member shall receive a Weekly List of applications registered.
- (b) If, within 21 days of the "Week Ending Date" specified at the top of the Weekly List, a letter in hard copy signed by one elected Member is received by the Corporate Director for Place Enterprise, Tourism and the Environment, or the Head of Planning and Transport or an e-mail is received from the elected Member at ~~doeteservices@southend.gov.uk,~~ planningregistrationteam@southend.gov.uk requesting the application be determined by the Development Control Committee then the application shall be referred to the Development Control Committee.

PROVIDED THAT this Committee Referral Procedure shall not apply to applications for Lawful Development Certificates or applications for prior approval where there is no planning judgement to be exercised.

5.7.45 Authority is delegated to the Relevant Officers:

- (a) To issue Planning Contravention Notices under Section 171C of the Town and Country Planning Act 1990;
- (b) To determine the selection and detailed wording of conditions, reasons for conditions and reasons for refusal on delegated decisions; the detailed wording of conditions, reasons for conditions and reasons for refusal on decisions made by the Development Control Committee; and the detailed wording of enforcement and stop notices authorised by the Development Control Committee;
- (c) To deal with minor material and non-material amendments to schemes already approved, submitted informally or by application subject to such amendments not being materially in conflict with the provisions of the current Development Plan;
- (d) To comment on proposals to carry out works to or to fell trees in conservation areas and to deal with applications to carry out works to or to fell preserved trees, including requiring replacement trees where appropriate;
- (e) To grant or refuse Certificates of Lawful Use and Development under Sections 191 and 192 of the Town and Country Planning Act 1990;

- (f) To deal with applications for determination as to the need for prior consent for demolition and agricultural development and determination of applications for prior approval of all telecommunications development including, in consultation with the Chairman of the Development Control Committee or Vice Chairman, the grant or refusal of applications for prior approval;
- (g) ~~To, in the event of an appeal being made to the Secretary of State, approve settle the content of the Council's statement, of case in the event of an appeal being made to the Secretary of State. In particular relating to the requirement that the statement indicates This will include stating whether the Council would be prepared to grant planning permission or Listed Building Consent as appropriate for the development or the works the subject of the appeal;~~
- (h) To advertise applications which, if approved, would not be in accordance with the Development Plan currently in force;
- (i) To determine whether an application for planning permission would be likely to have significant effects on the environment, such that an applicant must then submit a statement under the Town & Country Planning (Environmental Impact Assessment) (England & Wales) Regulations or an appropriate assessment under the Habitats Regulations, to request any further information that might be required and to determine the scope of any such statement or assessment;
- (j) Under Part 8 of the Anti-Social Behaviour Act 2003 (and associated Regulations) ~~under that Act~~, to consider and determine complaints relating to "High Hedges"; to set and review fees for dealing with complaints; to issue, vary and withdraw remedial notices; to deal with appeals arising from determination of complaints; and
- (k) To comment on the planning aspects of licensing applications pursuant to the Licensing Act 2003.

5.7.56 Authority is delegated to the Relevant:

- (a) To give observations on minor development proposals in adjoining districts, on minor proposals by Essex County Council and on minor proposals by Crown developers;
- (b) To submit objections or other representations on planning grounds to the licensing authorities or the Traffic Commissioners, on applications for vehicle operators' licences, subject to an appropriate report subsequently being submitted to Development Control Committee;

- (c) To take all necessary action under Section 215 and 219 of the Town and Country Planning Act 1990 (the proper maintenance of land);
- (d) To issue Breach of Condition Notices under Section 187A of the Town & Country Planning Act provided that the Relevant Officer shall first consult with the Chairman (or in Chairman's absence the Vice Chairman) of the Development Control Committee;
- (e) To make Tree Preservation Orders and to confirm unopposed Tree Preservation Orders;
- (f) Under Section 171E to 171H of the Town and Country Planning Act 1990 and the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005, and in consultation with the Head of Legal & Democratic Services, to issue Temporary Stop Notices; and
- (g) With regards to the Community Infrastructure Levy ("CIL") under powers as set out in Part 11 of the Planning Act 2008 (as amended) and Community Infrastructure Levy Regulations 2010 (as amended) to:
 - Determine the extent of chargeable development and appropriate CIL charge.
 - Consider applications for exemptions from the CIL.
 - Consider adjustments for payment in kind provisions (where relevant).
 - Issue CIL liability notices and demand notices.
 - Instigate any enforcement action relating to the recovery of CIL such as, but not limited to, issuing of CIL stop notices and warning notices (including subsequent removal of any such notices).
 - Receive and consider appeals in relation to liability notices etc.
 - Make any other relevant decisions concerning CIL provided it is in accordance with the adopted CIL Governance Framework document.

5.7.67 Authority is delegated to each of the following officers to make applications for Grant Assistance to external bodies:

- Corporate Director for Place
- Head of Planning & Transport
- Group Manager Strategic Planning

- ~~(a) To determine applications for conservation area grant assistance which fall within the arrangement agreed between the Council and the Heritage Lottery Fund and in accordance with the Action Plan;~~
- ~~(b) To determine applications for window grants which fall within the "Window Grant Scheme" approved by the Council and for the time being in force; and~~
- ~~(c) To make applications for Grant assistance to external bodies.~~

Part 4(g) – Contracts Procedure Rules

2.1 Thresholds

The table below sets out the different financial thresholds.

	Total Contract Value (excl. VAT)	Lead Role	Procurement Process	Procurement System
Low Value	£1 to £1,000	Council Officer	Obtain 1 written or verbal quote quotation from a supplier who accepts Procurement Card and complete transaction	If appropriate, process Process Procurement Card transactions in accordance with procedures Otherwise, process as for <u>Minor below</u>
Minor	£1,001 to £4,999	Council Officer	Obtain a minimum of 1 written supplier quote that demonstrates best value	Create a <u>requisition purchase request</u> in Purchase to Pay (P2P), enter a spend justification and attach preferred supplier quote
Medium	£5,000 to £24,999	Council Officer	Obtain 3 written supplier quotes and evaluate to determine best value	Create a <u>requisition purchase request</u> in Purchase to Pay (P2P), enter a spend justification and attach preferred supplier quote
Major	Threshold (a) £25,000 to £74,999 Threshold (b) £75,000 to 172,513	Procurement Advisor	Threshold (a) and (b) Contact procurement and seek support to develop specification or tender document, advertise, evaluate and award contract Threshold (b) required to issue a tender	Council's website, Contracts Finder / e-Procurement to advertise and award contract. Create a <u>requisition purchase request</u> in P2P, enter a spend justification and reference contract in P2P
OJEU Contract	£172,514 and over unless: (a) social care, health education £625K and over (b) works £4,322M and over	Procurement Advisor	Contact procurement and follow EU Procurement Rules for Service, Supplies and Works Contracts	Council's website, Contracts Finder / e-Procurement and OJEU to advertise and award contract. Create a <u>requisition purchase request</u> in P2P, enter a spend justification and reference contract in P2P

7.4 Signing of Non-disclosure agreements and Letters of Intent (LOI)

Non-disclosure agreements can only be signed by approved signatories detailed within 7.3 (b) or by the Group Manager Procurement. In addition, it is the Council's policy not to enter into discussions with suppliers based on Letters of Intent (LOI).

7.6 Record Keeping Process for Contracts of £75,000 and above

Procurement Advisors shall record and retain:

- Contracting decision and reasons (including route to market)
- Any exemption together with the reasons for it
- The Award Criteria
- Tender and Quotation documents sent and received from bidders
- Pre-tender market research
- Clarification and post-tender negotiation (incl. minutes)
- Copies of the contract documents (original contracts see 7.3 (c))
- Post-contract evaluation and monitoring
- Communications with bidders and with the successful contractor throughout the period of the contract.

Full guidance is contained within the [Appendix 4 of Procurement Toolkit Record-keeping and Retention and Disposal Guidance](#).

7.7 Record Retention Process for Contracts of £75,000 and above

The Central Procurement Team shall retain:

- Successful contract files for twelve (12) years after the end of the contract for all sealed contracts
- Successful contract files for six (6) years after the end of the contract for all other contracts
- Unsuccessful contract files for two (2) years Documents which relate to unsuccessful Candidates may be electronically scanned after twelve months from award of contract, provided there is no dispute about the award
- An electronic copy and the original of the contract (unless executed under seal when the original will be held by Head of Legal and Democratic Services – see 7.3 (c)).

Full guidance is contained within the [Appendix 4 of Procurement Toolkit Record-keeping and Retention and Disposal Guidance](#).

8.10 Exception Request Approval Process for Each Procurement Threshold

	Total Contract Value (excl. VAT)	Exception Approval Process
Low Minor Value	£1 to £4,999	Officers must request Exception approval by email to the Group Manager of Procurement
Medium Contract	£5,000 to £24,999	Officers must request Exception approval by email to the Group Manager of Procurement
Major	Threshold (a) £25,000 to £74,999	Officers must request Exception approval by email from their Head of Service and the Group Manager of Procurement

Major	Threshold (b) £75,000 to 172,513	Officers must complete a Tender Exception Request Form and submit to both their Head of Service and Group Manager of Procurement for approval
OJEU	£172,514 (£625k Social Care) (£4.322M Works)	Officers must seek cabinet approval. [Note it is not lawful to avoid compliance with the UK Public Contract Regulations 2015 - advice must obtained from the Group Manager of Procurement]

Any Exception request made against any of the CPR's must be sought in advance of any contractual agreement. Exception requests cannot be made or granted retrospectively.

An Exception relating to the publishing of an advert for any Contract Opportunity over £25,000 (as detailed in EU Procurement Regulations) will only normally be permitted in relation to the areas of procurement detailed in Exemptions Section 2.2.

It is not lawful for Officers or members to avoid compliance with the UK Public Contract Regulations 2015. Therefore, approval of any Exception Requests equal to or over the relevant EU Threshold is not permitted without advice being obtained from the Group Manager of Procurement and before seeking to apply any such exceptions.

All Exception requests to these Rules will be reported to the Audit Committee on a bi-annual basis.

Note the Procurement Review Board is not involved in approval of exceptions, but will undertake a strategic role in scrutinising and monitoring procurement activity.

See **Appendix A** for further details on the exceptions request process.

Appendix A

Exceptions from Tendering Requirements in Contracts Procedure Rules (CPR's) (sections 8.9 and 8.10)

The following exceptions from tendering requirements may be applied following the prior approval Tender Exception Request Form.

The Exceptions from having to Tender are:

1. For the purchase of supplies, works or services which is prevented by Legislation.
2. If the supply of goods or materials to be acquired constitutes an extension of an existing supply contract. The extension can only be granted if all ~~three~~ of the following criteria are met:
 - The increase to the quantity of goods and materials was not envisaged at the time the original contract was awarded
 - The extension is based upon comparable terms and conditions as the original contract
 - The extension has a value less than 50% total value than the original contract requirement
 - The extension does not breach the threshold of the EU Regulations.

Tender Opening Procedures

1. Opening of Tenders received via E-Procurement

Where the Council uses an electronic tendering system that releases submissions for opening at a predetermined date and time then pre-qualification questionnaires (PQQ) and tenders submitted through that system may be accessed and opened by a member of the Corporate Procurement Team through that system.

Where a member of the Corporate Procurement Team is authorised to release any of the documents detailed above that officer must not have been a part of the project team charged with the delivery of that procurement or any part thereof.

For the avoidance of doubt: PQQ and Tender Documents, as well as all other supporting information must not be opened before the stipulated deadline for submission has passed. This is the case both for submissions received by the Council via any e-procurement system and any received in hard copy.

2. Opening of Tenders received in hard copy

2.1 Outline of Responsibilities

No officer involved in any way with the drawing up of the specification and the tender documents may participate in the receipt of the tender, in its custody pending opening or in the tender opening process.

All tenders shall be returned to the Customer Service Centre on the Ground Floor of the Civic Centre or the Post Room of the Civic Centre where they will be receipted and annotated with the date and time of receipt by the staff at either location, who will then contact the correct team to organize collection. The individual charged with collection of the Tenders must ensure that all items to be collected are stamped and the time of delivery clearly marked.

All Tenders should:

- Bear the corporate reply label or addressed to Southend-on-Sea Borough Council Customer Services Centre
- Be sealed and marked "Tender"
- Be annotated with the subject to which the tender relates
- Not indicate the identity of the sender.

2.2 Opening of Hard Copy Tenders

Tenders must be opened in a secure and confidential environment, with openers being undistracted.

Forms used as tender opening records must be prescribed or approved by a Senior Procurement Advisor.

Each of the following must be stamped and initialled by both designated openers:

- Any cover letter bearing a signature

- Any other page bearing a signature that is not certification of any kind pertaining to insurance, quality assurance, health and safety and so on
- Any page bearing a cost that may be applied to the resulting contract(s)
- All Tender Forms including Contract Variation, Bona fide Tender, Tender Form and Freedom of Information.

Date stamping and initialling priced pages of tender documents is an important authentication if correction of errors is to be admitted according to Council's Financial Procedure Rules.

The opening of tenders and recording of their details shall be subject to the following regulations:

- They must not be opened before the deadline for submission stipulated in the tender documents
- They must be opened at one time by not less than two persons designated for the purpose by the appropriate Corporate Director or Head of Service
- No Officer or Member of the Council may be present at the opening of tenders if they have a material interest in relation to the subject or result of the tender. Factors that can be suggestive of a material interest and would preclude attendance at a tender opening include, but are not limited to a connection to a possible tenderer through family, friends or other business associates.

Additionally any corrective amendments by tenderers to their tender prices must be initialled by both designated openers and annotated in the tender opening record.

3. Late Tenders (either Electronic or Hardcopy Tenders)

Any tender received by the Council after the relevant deadline for submission has passed will not be evaluated by the Council. For the avoidance of doubt: once the deadline has passed, any tender delivered later than the deadline (regardless of its proximity to the deadline) must not be included in the evaluation process.

Only in instances where due to unforeseen circumstances a pre confirmed extension to a deadline has been made available to all Tenderers, can submissions be accepted after the deadline stipulated in the tender documents. Any such extension cannot be granted for the benefit of a single tenderer. The granted extension must be fully justifiable and meet the full challenge of any audit of the process. The closer to the deadline that an extension is granted the stronger the justification will be required to be. Any revised deadline stipulated as part of an agreed extension will itself be subject to the same level of finality detailed in the paragraph above and any tender received by the Council after the revised deadline for submission has passed will not be evaluated by the Council.

The entire process of opening late tenders is detailed in the Procurement Toolkit. However, late tenders must not be opened before electronic, scanned or photographic evidence confirming their lateness has been forwarded to the Group Manager of Procurement. Only after the written approval to open the late tender has been provided by the Group Manager of Procurement can that tender be opened by a Procurement Advisor with no connection to the Tender Process in question. The opening of any Late Tender must be documented using a Late Tender Form. Both evidence of approval to open a late tender and the accompanying Late Tender Form must be saved in the corresponding Tender Project File.

4. Alterations / Corrections to either Electronic or Hardcopy Tenders

The Tenderer may not amend or request amendment to their tender after the date and time fixed for the receipt of tenders.

However, if the Council encounters an error in a tender consisting of incomplete or incorrect information then the Council may at its discretion request the Tenderer concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency.

In determining whether such an error has been made in relation to a received tender submission Council Officers must assess this in direct relation to the information contained in that submission or to the tender documentation issued by the Council. The error relating to the specific tender must be clear, self-evident and obvious. Under no circumstances will an issue shown up as a result of cross referencing against any other tender submission be accepted as such an error.

All action undertaken in relation to seeking alteration or correction information must be based on an unbiased and objective assessment of the entire tender process it is being applied to. The action itself must be taken in a manner that treats all participating tenderers fairly. Any communication issued in relation to the action must ensure the validity and effectiveness of the procurement.

Key factors in assessing if alteration or correction information will be sought in relation to an error accepted by the Council will include but not be limited to:

- Number of Tenders returned in relation to the project
- If any of the other Tenderers made the same error
- If other Tenderers did make the same error what proportion of the overall returns does this represent
- Clarity of the information issued by the Council
- If the error is a complete omission of required information
- The strict time period in which the Tenderer will be required to respond.

Subjective information including the identity of the company or stakeholder preference must not be used as a basis to seek alteration or correction information.

Under no circumstance must any Council Officer use this clause to unfairly assist a tenderer to gain a more favourable tender score at the expense of the other competing tenderers or the Council's good reputation.

The Corporate Director or Head of Service must maintain a record / audit trail of any action taken and justification for that action taken in relation to errors found in any tender.

5. Training

It is the responsibility of the Corporate Director or Head of Service of each department or establishment involved in the tendering process to ensure that all relevant members of staff are trained in the correct procedures, and issued with the Contract Procedure Rules and the Tender Opening Procedure guidance available.