

EAST LONDON WASTE AUTHORITY

Monday, 19 June 2006

Agenda Item 7. ELWA Constitution (Pages 1 - 121)

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THE EAST LONDON WASTE AUTHORITY CONSTITUTION

June 2006

Monday - Friday
9.00am - 5.00pm



ELWA/C2/03

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CONTENTS

<u>Part A - Summary and Explanation</u>	page A1
Introduction	page A2
A Brief Overview of ELWA	page A3
ELWA Meetings	page A5
Citizens' Rights	page A6
List of Members 2006/07	page A7
Appointed Officers and Senior Managers - Contacts	page A8
Organisational Structure [diagram]	page A9
<u>Part B - Articles – Meetings</u>	page B1
Article 1 - Authority Meetings	page B2
Article 2 - Access to Information	page B11
<u>Part C - Responsibility for Functions - ELWA's Scheme of Delegation</u>	page C1
Introduction	page C2
Section A - The Authority	page C5
Section B - All Appointed Officers	page C7
Section C - The Managing Director	page C9
Section D - The Finance Director	page C11
Section E - The Operations Director	page C12
Section F - The Technical Director	page C13
<u>Part D - Rules</u>	page D1
Overview of the Financial Regulatory Framework	page D2
Contracts Guidance Notes	page D4
Contracts Rules	page D11
Contracts Code of Practice	page D19
Financial Rules	page D29
Employment Rules	page D44
Conferences, Visits and Hospitality Rules	page D46
Land Acquisitions and Disposals Rules	page D51
<u>Part E - Codes and Protocols</u>	page E1
Members' Code of Conduct	page E2
Employees' Code of Conduct	page E3
<u>Part F - Members' Allowances Scheme</u>	page F1
<u>Part G - Authority Officers and the Management Structure</u>	page G1
<u>Part H - Review, Revision, Suspension, Interpretation and Publicity</u>	page H1

Part A

Summary and Explanation

ELWA'S CONSTITUTION

INTRODUCTION

This Constitution sets out how the East London Waste Authority (ELWA) operates, how decisions are made and the procedures that are followed to ensure that decisions are efficient, transparent and accountable to local people. Some of the processes are required by law, while others are a matter of local choice.

It aims to:

- explain how ELWA operates, how decisions are made and the procedures which are in place to ensure efficient, effective, transparent and accountable decision taking
- ensure that high standards of conduct are exercised by Members and officers
- ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions
- provide a means of improving the delivery of services to the community.

Where the Constitution permits ELWA to choose between different courses of action, ELWA will always choose the option which it thinks is closest to these aims.

The whole Constitution is a lengthy and comprehensive document so this Part gives a very brief overview of ELWA's operation, its make-up and citizens' rights.

The Constitution is then divided into other Parts that explain the elements in more detail.

A copy of the whole Constitution can be inspected at ELWA's offices, 1st Floor, Arden House, 198 Longbridge Road, Barking, IG11 8SY between 9.30 a.m. - 4.00 p.m. Monday to Friday (excluding Bank Holidays). Alternatively, the document can be found on ELWA's web site (www.eastlondonwaste.gov.uk).

A BRIEF OVERVIEW OF ELWA

The Authority

ELWA was established on 1 January 1986 as a Statutory Waste Disposal Authority (WDA) by the Waste Regulation and Disposal (Authorities) Order 1985. ELWA began to carry out its functions on 1 April 1986, following the abolition of the Greater London Council.

ELWA is responsible for waste disposal in its area, which covers the four constituent London Borough Councils of Barking & Dagenham, Havering, Newham and Redbridge. The boroughs have a combined population of approximately 900,000 people living in over 340,000 households. ELWA receives around 500,000 tonnes of waste each year from the councils and their residents.

The principal legislation which governs ELWA's duties and activities is the Environmental Protection Act 1990 (the "EPA").

Members

ELWA is comprised of eight Members, with two Members appointed annually from each of the Councils. These Members are councillors within their respective Boroughs. Although the eight Members of ELWA are appointed by the Councils they are required, when representing ELWA, to act in the interests of ELWA - as a WDA - and its residents and not of their respective Councils or political affiliations.

All ELWA members:

- (i) are, collectively, the ultimate policy-makers and those responsible for strategic and corporate management functions of ELWA as a WDA;
- (ii) participate in the governance and management of ELWA;
- (iii) are available to represent ELWA on other bodies; and
- (iv) have a duty to maintain the highest standards of conduct and ethics and follow a Code of Conduct.

Members have rights of access to such documents, information, land and buildings of ELWA as are necessary to enable them to carry out their functions.

Members will not make public information that is confidential or exempt without the prior consent of ELWA, or divulge information given in confidence to anyone other than an individual entitled to know it. For these purposes, "confidential" and "exempt" information is defined in Article 2 (Access to Information) in Part B of the Constitution.

Members are entitled to receive allowances for their work on ELWA in accordance with their respective Council's Members' Allowances Scheme. Details of each Scheme are available from the respective Councils.

Officers

Currently, ELWA has no direct employees but instead discharges its duties and functions through agency or secondment arrangements with the constituent

Councils. Under these arrangements, ELWA has four 'Appointed Officers' (one from each Council) who are, in effect, ELWA's Chief Officers. The Appointed Officer positions are:

- Managing Director (Barking & Dagenham)
- Finance Director (Redbridge)
- Technical Director (Havering)
- Operations Director (Newham)

In addition to the Appointed Officers, there are a number of full and part-time staff who are employed via the Councils to implement and administer the day-to-day running of ELWA. The full-time posts include an Executive Director, a General Manager, an Office Manager and a Contract Manager. Other services such as financial, audit and legal support are provided to ELWA through designated officers employed by the Councils.

ELWA has also established a Management Board to maintain a general overview of the state of health of the Authority and its ability to deliver adequate waste disposal arrangements for East London.

The Management Board is made up of the following officers:

- Managing Director (Chair)
- Finance Director
- Operations Director
- Technical Director
- Executive Director
- General Manager

ELWA MEETINGS

The Local Government Act 2000 required most local authorities to introduce new political structures as part of a wide-ranging modernisation programme. Statutory WDAs are not covered by this legislation and as a 'single service' organisation, with waste disposal being the sole business, ELWA is better suited to the traditional system. Therefore, ELWA continues to operate on the same basis that it has since its inception, with decisions made either by the Authority at formal meetings or by ELWA's officers where they have been given authority to act.

In terms of Authority meetings, ELWA agrees a programme of meetings for the coming municipal year (May to April) approximately four months in advance. Occasionally it is necessary for additional meetings to be arranged during the year, mainly to consider issues that cannot reasonably wait until the next programmed meeting. Details of ELWA's programme of meetings is available on its website (www.eastlondonwaste.gov.uk) or by contacting the Office Manager on 020 8270 4964.

Authority meetings are open to the public, unless exempt or confidential matters are being discussed (see paragraph 10 of Article 2 of Part B for further details). Attendance by the public is encouraged.

CITIZENS' RIGHTS

Citizens have a number of rights in their dealings with local authorities and some are relevant to ELWA. For example, they have the right to:

- contact their local councillor about any matters of concern to them;
- obtain a copy of this Constitution;
- attend ELWA meetings (except when exempt or confidential matters are being discussed);
- see reports and background papers for formal Authority meetings (except in respect of exempt or confidential information) and any record of decisions made at these meetings;
- complain to ELWA about a related service they have received;
- complain to the Local Government Ombudsman if they think ELWA has not followed its procedures properly. (*However, they should only do this after using ELWA's own complaints procedure*);
- complain to the Standards Board for England if they have evidence which they think shows that an ELWA Member has not followed the Code of Conduct for Members; and
- inspect ELWA's accounts and make their views known to ELWA's external auditor.

ELWA welcomes participation by its citizens in its work. In doing so, citizens are asked to act responsibly and must not be violent, abusive or threatening to Members or staff. Also they must not wilfully harm anything owned by ELWA, its Members or staff. In the event of any such behaviour occurring, ELWA may withdraw services to the person concerned and/or pursue legal action against them.

**MEMBERS
2006/07**

Councillor to be advised	Chair and Councillor of the London Borough of Barking & Dagenham
Councillor to be advised	Vice-Chair and Councillor of the London Borough of Havering
Councillor to be advised	Councillor of the London Borough of Newham
Councillor to be advised	Councillor of the London Borough of Redbridge
Councillor to be advised	Councillor of the London Borough of Newham
Councillor to be advised	Councillor of the London Borough of Havering
Councillor to be advised	Councillor of the London Borough of Barking & Dagenham
Councillor to be advised	Councillor of the London Borough of Redbridge

APPOINTED OFFICERS AND SENIOR MANAGERS

Appointed Officers

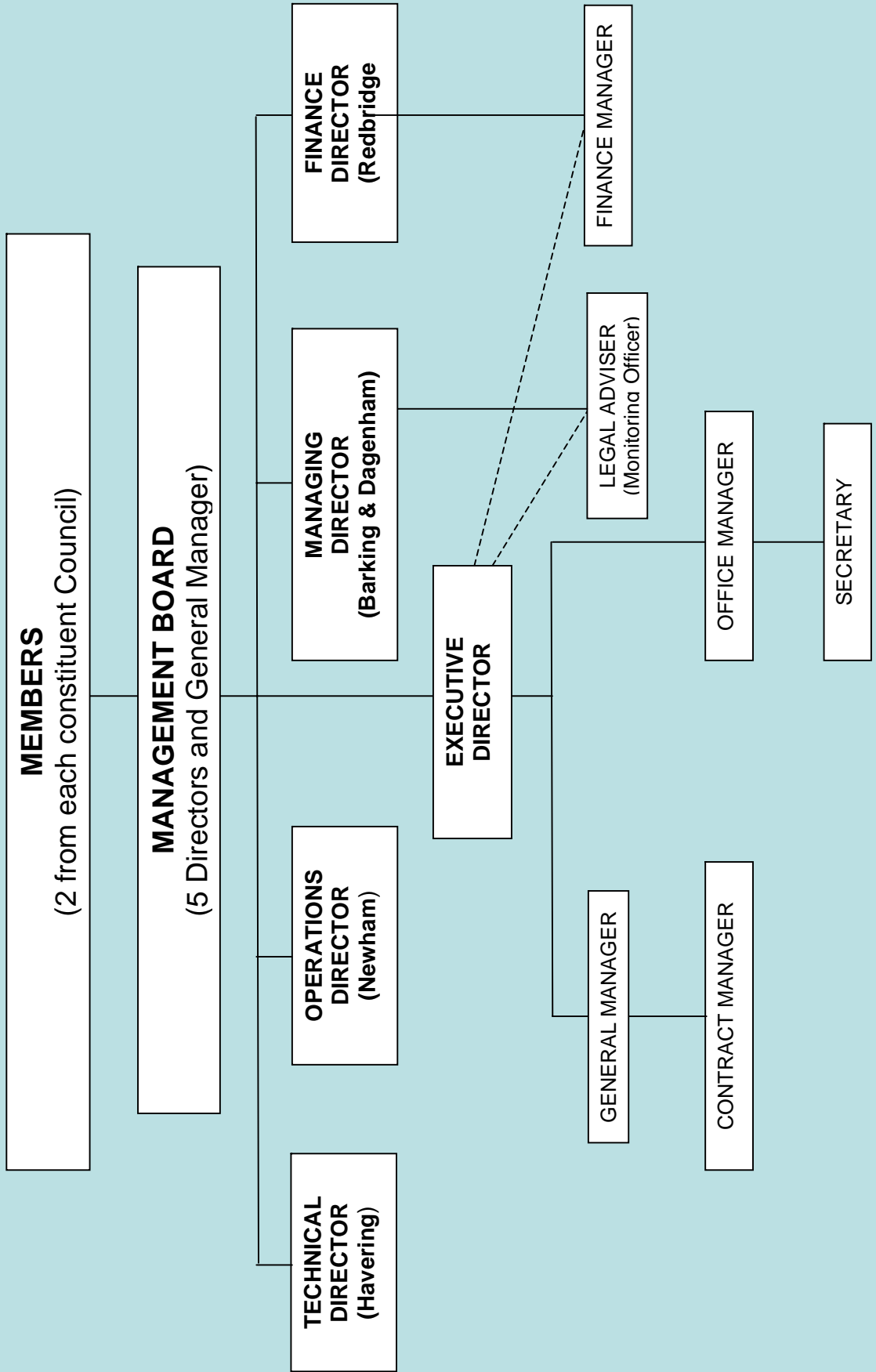
Robert Whiteman	Managing Director	Tel. 020 8227 2789 E-mail: rob.whiteman@lbbd.gov.uk
Geoff Pearce	Finance Director	Tel. 020 8708 3588 E-mail: geoff.pearce@redbridge.gov.uk
Cynthia Griffin	Technical Director	Tel. 01708 432059 E-mail: cynthia.griffin@havering.gov.uk
Shirley Clark	Operations Director	Tel. 020 8430 2011 E-mail: shirley.clark@newham.gov.uk

Senior Managers

Tony Jarvis	Executive Director	Tel. 020 8270 4965 E-mail: tony.jarvis@lbbd.gov.uk
John Wilson	General Manager	Tel. 020 8270 4997 E-mail: john.wilson@lbbd.gov.uk
Robin Hanton	Monitoring Officer	Tel. 020 8227 3201 E-mail: tony.jarvis@lbbd.gov.uk



ORGANISATION CHART



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Part B

Articles

Meetings

ARTICLE 1

AUTHORITY MEETINGS

1 Role

- 1.1 Authority meetings are the main decision-making forum for ELWA matters. At these meetings, the Authority sets its overall corporate direction, policy framework and financial limits, within which all ELWA's operations and policies are carried out.

2 Functions

- 2.1 There are certain matters which, by law, can only be carried out by the Authority. These are set out in Part C of the Constitution.
- 2.2 All local choice functions that the Authority has decided it should undertake itself rather than to delegate to Officers are also set out in Part C.

3 Membership

- 3.1 The eight Members of the Authority (two appointed by each of the constituent Councils).

4 Chair and Vice-Chair

- 4.1 The Chair and Vice-Chair are appointed at each Annual General Meeting of the Authority.
- 4.2 In the event of a casual vacancy occurring in either position, an appointment to fill the vacancy shall be made at the next ordinary meeting of the Authority.
- 4.3 The meetings are controlled by the Chair who is responsible for:
- (a) upholding and promoting the purposes of the Constitution, and interpreting it (with the assistance of the Managing Director).
 - (b) presiding over meetings of the Authority so that its business can be carried out efficiently and with regard to the rights of Members and the interests of the community.

5 Employee Support

- 5.1 The Managing Director is responsible for ensuring appropriate support for all Member meetings.

6 Accessibility

- 6.1 ELWA wishes to be as open as possible in its dealings and the press and public are encouraged to attend meetings. Occasionally there will be some matters which are legally restricted from the public eye, (for example, if discussing issues concerning a member of staff), but wherever possible issues are discussed in the open forum.

Further details of the types of matters that are considered in private are contained in Article 2.

7 Venues

- 7.1 Meetings are generally held at the Civic Centre, Dagenham but may, from time to time, be held at an alternative venue within one of the four constituent boroughs.
- 7.2 Public accessibility and appropriateness (particularly for people with limited mobility) are key factors in determining the suitability of venues for meetings.

8 Calendar and Timing of Meetings

- 8.1 Where possible, meetings are programmed in advance. A programme of meetings for the coming municipal year is agreed by ELWA approximately four months prior.
- 8.2 Meetings are usually held on Mondays, commencing at 1.00 p.m., and should last no longer than 3 hours.
- 8.3 If business has not been concluded by this time, the proceedings may be extended for a reasonable further period, with the agreement of at least 75% of the Members present. Any unfinished business will be referred to the next meeting.

9 Business at Ordinary Meetings

- 9.1 Ordinary meetings of the Authority will take place in accordance with the programme of meetings. The business carried out at Ordinary meetings may include the following:
- (a) elect a person to preside if the Chair and Vice-Chair are not present;
 - (b) receive apologies for absence from Members;
 - (c) approve the minutes of the last meeting;
 - (d) consider and set the Authority's overall priorities, plans, policy framework and related targets;
 - (e) set the annual Levy on the constituent Councils and the Authority's Capital and Revenue budgets. This includes:
 - the allocation of financial resources to different services and projects

- proposed contingency and reserve funds and borrowing limits; and
 - the control of its capital expenditure.
- (f) consider and approve issues relating to the Authority's integrated waste management service (IWMS) contract with ELWA Limited;
- (g) approve the Programme of Meetings and agree any changes;
- (h) make any changes to the appointment of representatives to outside bodies and partnerships;
- (i) agree any changes to the Constitution and associated Rules, Schemes, Codes and Protocols relating to the way in which the Authority operates;
- (j) oversee the management of the Authority, including holding all the component parts to account for their actions and performance;
- (k) receive and consider reports from officers as appropriate;
- (l) consider and approve appropriate statutory and non-statutory plans (e.g. the Best Value Performance Plan);
- (m) receive petitions (*see paragraph 24*);
- (n) consider motions;
- (o) deal with any other matters of significance or importance at the discretion of the Chair.

The order of business will be in accordance with the agenda for each meeting. However, at the discretion of the Chair the order may be varied at the meeting. Any matters which are exempt from publication will generally appear later on the agenda.

10 Annual General Meeting (AGM)

10.1 The AGM of the Authority will be held in May or June of each year.

10.2 At each AGM, the first business shall be the appointment of a Chair and Vice-Chair for the coming year from amongst the membership. Once appointed, the newly appointed Chair shall preside at the meeting.

10.3 To avoid any doubt, the person presiding at the commencement of the AGM shall be the preceding year's Chair or, in the absence of the Chair, the Vice-Chair or, in the absence of both, another Member chosen by those present.

10.4 Following the appointment of the Chair and Vice-Chair, the AGM will consider such other business as is included on the agenda.

11 Extraordinary General or Special Meetings

- 11.1 An Extraordinary General (otherwise known as “special”) Meeting of the Authority may be called at any time by the Chair.
- 11.2 Any two Members of the Authority may also, by signed requisition, request the Chair to call an Extraordinary General Meeting.
- 11.3 If the Chair refuses to call an Extraordinary General Meeting of the Authority after a requisition for that purpose or without so refusing, does not call such a meeting within seven days of the requisition being presented to him, then on that refusal or the expiry of those seven days, as the case may be, any two Members of the Authority may then call an Extraordinary General Meeting.
- 11.4 The arrangements for these meetings are the same as for ordinary meetings.

12 Informal Member Meetings

- 12.1 From time to time, the Authority may arrange and hold Informal Meetings of all Members.
- 12.2 These meetings are typically arranged in order that consideration can be given, in an all-Member forum, to one or more major issue affecting the Authority which requires deliberation prior to formal consideration being given at an Authority meeting.
- 12.3 Informal meetings do not have any decision-making powers and the provisions of the Local Government (Access to Information) Act 1985 do not apply. In all other respects, the arrangements for these meetings are the same as for ordinary meetings.

13 Quorum

- 13.1 A quorum is the number of Members needed to enable a meeting to proceed. If a meeting is not quorate, the business will be adjourned to the next ordinary meeting or, if necessary, to an Extraordinary (special) meeting.
- 13.2 An inquorate meeting can, if it feels there is any merit in doing so, discuss issues but strictly on an informal basis only. The minutes will make only brief reference to any such discussions.
- 13.3 Subject to paragraph 45 of Schedule 12 of the Local Government Act 1972, no business will be transacted at a meeting of the Authority unless at least four Members of the Authority are present and the Members present comprise representatives of at least three of the constituent Councils.

14 Agenda Papers

- 14.1 Unless otherwise stated in the Articles for particular meetings, agenda papers will be in the Managing Director's name and will indicate an appropriate contact for any queries.

- 14.2 Agendas, reports and minutes will generally be in an agreed corporate style, details of which are the responsibility of the Managing Director.
- 14.3 Notices of meetings and agendas will be circulated in advance having regard (where appropriate) to the requirements of the Local Government (Access to Information) Act 1985 or any subsequent legislation. In general, this means that the papers will be available at least five clear working days before a meeting.

15 Reports

- 15.1 Reports will provide reasoned options, where appropriate, ensuring that Members are made fully aware of all the implications and alternatives, and the advantages and disadvantages associated with each. Reports will also include, where appropriate, the views of other Members, Appointed Officers, constituent Council officers and/or experts (including outside representatives if relevant), together with the professional advice/recommendations of the appropriate lead officer.
- 15.2 Reports will be in the name of the appropriate lead officer but will include the author as the point of contact for further information or queries.
- 15.3 Late reports will generally not be allowed. If there are unavoidable, genuine circumstances, their consideration will be at the discretion of the Chair. The relevant lead officer will be required to justify the reason for special consideration in writing.
- 15.4 Background papers will be made available for public inspection in accordance with statutory requirements. This responsibility lies with the relevant lead officer.

16 Voting

- 16.1 Decision-making is determined by a majority of the Members present at the meeting.
- 16.2 Voting is generally by show of hands.
- 16.3 The Chair, or other person presiding, will have a second and casting vote where votes for and against a proposal are equal.
- 16.4 Any Member may ask for a vote to be recorded before it is taken provided they have the support of three other Members. Individual votes will then be taken by way of a roll call and recorded in the minutes. In this situation, Members will be asked to vote "for" or "against"; alternatively they may, if they wish, "abstain".

17 Minutes

- 17.1 Minutes will be concise but sufficiently detailed to enable each matter discussed to be clearly understood by a lay person.
- 17.2 Minutes will be circulated to Members with the agenda for the next meeting for confirmation as a correct record at that meeting.

- 17.3 Minutes of all meetings will generally be confirmed as a correct record at the next scheduled meeting. If appropriate, or if necessary, this may be done at an earlier special meeting. The minutes will be signed by the Chair, or other person presiding at the meeting, when they are confirmed.
- 17.4 Minutes will be made available for public inspection in accordance with statutory requirements.
- 17.5 The minutes will be the formal record of attendance at meetings by Members.

18 General Questions

- 18.1 Questions relating to any matter on the agenda or otherwise may be raised at the meeting at the appropriate stage, subject to the discretion of the Chair who will ensure that questions are appropriate and relevant. All Members will be given an equal and fair opportunity to ask questions.
- 18.2 Wherever possible, answers will be given at the meeting by the appropriate Member or officer. In the event that it is not possible to do so, a written response will be sent to the questioner, with copies to all Members, as soon as possible.

19 Conduct/Disturbance at Meetings

- 19.1 It is the responsibility of the Chair to keep order at meetings.
- 19.2 Members are expected to behave in a professional manner and to respect the ruling of the Chair.
- 19.3 If a Member persistently misconducts him or herself by behaving irregularly, offensively or improperly, or by disregarding the Chair and knowingly or deliberately obstructing the business, the Chair, or any other Member, may move that the Member no longer be heard. If seconded, the matter will be put to the vote and determined without discussion. The Member concerned cannot vote in these circumstances.
- 19.4 If the Member concerned continues his/her misconduct, the Chair may either move that the Member leaves the meeting or that the meeting be adjourned for a period which the Chair feels will be appropriate to contain the problem. Such motions must be seconded and determined as above.
- 19.5 If a member of the public interrupts a meeting, the Chair will ask them not to do so and warn them that if the interruption continues, the person will be required to leave. If the person continues to interrupt, the Chair can order him/her to leave the meeting. If necessary, the assistance of staff will be sought to escort the person off the premises.
- 19.6 Where there is a general disturbance in any part of the room where a meeting is being held, the Chair can, at his/her discretion, order that it be cleared. If the general disturbance is considered by the Chair to be such that the meeting cannot reasonably

continue, he/she shall adjourn the meeting for a certain period or until another day, whichever is felt to be most appropriate in the circumstances.

19.7 The Police will be called to assist in any situation, if necessary.

20 Members' Interests

20.1 Having regard to statutory requirements and Members' Codes of Conduct, if a Member has a personal interest in a matter for consideration (i.e. one which affects the Member more than most other people in the area) they must declare it and say what that interest is before any meeting where the issue is to be discussed or as soon as it comes to light. However, they can still take part in the meeting and vote unless the personal interest is also a prejudicial interest (see below).

20.2 A Member with a prejudicial interest in any matter (i.e. where a member of the public would view the personal interest as being so significant that it is likely to prejudice the Member's decision) must declare what the interest is (if they have not already done so) and withdraw from the meeting (by leaving the room).

20.3 The minutes will record the declaration and, if appropriate, that the Member left the meeting. A record will also be kept in a book provided for this purpose by the Managing Director for public inspection at ELWA's offices.

21 Speaking by the Public at Meetings

21.1 Members of the public will not normally be allowed to speak at meetings. However, members of the public may speak on a specific issue at the discretion of the Chair.

22 Press Briefings

22.1 ELWA wishes to conduct its business in an open and informative manner. Where considered appropriate, press briefings will be arranged through the Managing Director to explain particularly important or sensitive issues and to give an opportunity for questions to be asked.

23 Photography, Live Broadcasts and Tape Recordings of Proceedings

23.1 The Chair has discretion to allow photographs to be taken or for proceedings to be transmitted by television, video recording, radio broadcast or any other means, if this is felt to be appropriate.

24 Petitions

24.1 All petitions sent to the Authority which contain at least 50 signatories from separate households will be reported to the Authority.

24.2 Before a petition is presented to the Authority, the Managing Director will arrange an informal meeting to discuss the petition and appropriate action in response. The lead petitioners and appropriate Members will be invited to attend. The Managing Director

may attend the meeting himself and/or be represented by a relevant officer. The Managing Director will then prepare a report to accompany the submission of the petition to the Authority; this will set out the outcome of the informal meeting and detail any action which has been taken, or which is proposed, in response to the petition.

24.3 The lead signatory will be invited to speak at the Authority meeting for the purpose of introducing the petition should he/she wish - a maximum of five minutes will be allowed for this.

24.4 Petitions with fewer than 50 signatories will be accepted by the Managing Director but not reported to the Authority.

25 Urgent Action

25.1 In exceptional circumstances and where delay would be prejudicial to the interests of the Authority, Appointed Officers are authorised to take action which is not otherwise delegated to them subject to:-

- (a) consultation with the Chair and the Vice-Chair. Should either the Chair or Vice-Chair be unavailable, then consultation with the other shall be sufficient. In the event that the necessary decision cannot be obtained through this procedure within 24 hours, the matter may be dealt with provided that at least two other Members are consulted;
- (b) compliance with the Constitution and, in particular, relevant Rules where appropriate; and
- (c) the action taken being reported to the next appropriate meeting.

26 Inspection of Documents by Members

26.1 A Member of ELWA may inspect any document that is in the possession of, or under the control of, the Authority provided that either:

- (a) the Member can justify that it is reasonably necessary to perform his/her duties as a member of the Authority, or
- (b) the document contains material relating to any business to be transacted or which has been transacted at a meeting. They are not, however, entitled to inspect any document if it relates to a matter in which the Member is professionally interested or in which he/she has a direct or indirect financial interest in accordance with the statutory interpretation.

26.2 If the Managing Director is of the opinion that the document in question is not required to be open to inspection under the provisions of the Local Government (Access to Information) Act 1985 (exempt information not to be provided to Members), a Member will not be able to inspect the document.

26.3 This provision does not entitle the Managing Director to refuse a Member access to documents which they have a legal right to inspect.

27 Confidentiality

27.1 Where the contents of any document are expressed to be restricted from publication, Members and officers must respect such confidentiality.

28 Attendance at Meetings by Constituent Borough Councillors

28.1 A Councillor who is a member of a constituent Council but not appointed to ELWA may attend any meeting of the Authority but they cannot vote at that meeting. They may, however, take part in the discussion and may stay for the whole meeting unless asked to leave for specific reasons that will be explained by the Chair and recorded in the minutes.

28.2 Agenda papers for meetings will be circulated to any Councillor at their request subject to the conditions set out in paragraph 26 and to the restrictions around reports dealing with certain human resource issues (see "Protocol - Dealing with Human Resource Issues" at Appendix B).

29 Implementing Decisions

29.1 Decisions of the Authority can be acted upon after the meeting subject to any restriction placed at the time.

30 Requirement to Attend Meetings

30.1 If a Member fails to attend one of three consecutive meetings of the Authority, unless the failure was due to a reason approved by the Authority, the Authority will recommend to the relevant constituent Council that the Member be replaced and not considered for re-appointment by the Council to the Authority for a period of at least two years.

31 Sealing

31.1 The Common Seal of the Authority shall be kept in a safe place in the custody of the Managing Director or his/her nominated postholder.

31.2 The Seal shall be attested by the Managing Director or his/her nominated postholder and a register kept recording details of all documents sealed.

ARTICLE 2

ACCESS TO INFORMATION

1 Scope

1.1 These rules apply to all meetings of the Authority.

2 Additional Rights and Information

2.1 These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

3 Rights to Attend Meetings

3.1 Members of the public and press are welcome to attend all meetings, subject only to the exceptions set out later in this Article. The Authority will do all that it can to minimise such exceptions so that it can have an open debate in public on most issues.

4 Notice of Meetings

4.1 The Authority will give at least five clear days notice of any meeting by posting details of the meeting at ELWA's offices at Arden House, 198 Longbridge Road, Barking (known as "the designated offices") and, if the meeting is to be held at an alternative location, at the building where the meeting is to be held. If a meeting has to be called at short notice, details will be posted at the earliest opportunity - such instances should, however, be rare and only in cases of absolute urgency.

5 Access to Agenda and Reports before Meetings

5.1 The Authority will make copies of the agenda and reports of meetings open to the public available for inspection at the designated offices at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection at the time the item is added. Where reports are prepared after the notice of the meeting has been sent out, each report will be made available to the public as soon as it is completed and has been sent to Members.

6 Supply of Copies

6.1 On request, the Authority will supply copies of:

(a) any agenda and reports which are open to public inspection;

(b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and

- (c) any other documents open to public inspection and supplied to Members in connection with an item.

6.2 These papers will be available free of charge to any person at any meeting of the Authority to which the papers relate, or for a reasonable charge when requested at any other time.

7 Access to Minutes and Reports after Meetings

7.1 The Authority will make available copies of the following documents for six years after a meeting:

- (a) the minutes of the meeting or record of decisions taken, together with reasons, excluding any part of the minutes when the meeting was not open to the public which discloses exempt or confidential information (as defined in paragraph 10 below);
- (b) a summary of any proceedings not open to the public where the minutes open to inspection do not provide a reasonably fair coherent record;
- (c) the agenda for the meeting; and
- (d) reports related to items where the meeting was open to the public.

8 Background Papers

8.1 Every report will list those documents relating to the subject matter of the report, which, in the author's opinion, (a) disclose any facts or matters upon which the report, or part of it, was based and (b) have been relied upon to a material extent in preparing the report.

8.2 This will not include published works or those that disclose exempt or confidential information.

8.3 Background papers are available for public inspection for four years after the date of the meeting and copies may be requested for a reasonable charge from the Managing Director.

9 Summary of Public's Rights

9.1 The public has the right to attend meetings and to inspect and copy documents. Those rights are summarised as follows:-

9.2 Members of the public may -

- (a) attend meetings and speak with the permission of the Chair or in accordance with any special procedures for the meeting concerned (e.g. lead petitioner);
- (b) inspect agendas for each of the meetings;

- (c) inspect minutes of the meetings once they have been confirmed as a correct record;
- (d) inspect a list of background papers used to compile the reports attached to each agenda; and
- (e) make copies, or ask for copies of the whole or part of any such document open to inspection.

9.3 Members of the public may not, however -

- (a) have access to some documents which, by law, are exempt from publication (i.e. private and confidential reports).
- (b) stay at a meeting when private and confidential reports are being discussed - a resolution will be passed at the meeting requiring press and public to leave.
- (c) take photographs at meetings nor record or transmit the proceedings (unless the Chair chooses to allow these actions in which case this will be announced).

10 Exclusion of Access by the Public to Meetings

10.1 Confidential Information - The public has (legally) to be excluded from meetings whenever it is likely that confidential information will be disclosed.

Confidential information means information given to the Authority by a Government Department on terms which forbid its public disclosure or information which cannot, by Court Order, be publicly disclosed.

10.2 Exempt Information - The public may be excluded from meetings whenever it is likely that exempt information will be disclosed.

Exempt information means any of the paragraphs of Part I of Schedule 12A to the Local Government Act 1972 as detailed in Appendix A to this Part.

10.3 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in that Article.

11 Exclusion of Access by the Public to Reports

11.1 If the author thinks fit, the Authority may exclude access by the public to reports that in his/her opinion relate to items during which, in accordance with above, the meeting is likely not to be open to the public. Such reports will be marked "Not for Publication" and the agenda will explain the category of information likely to be disclosed.

APPENDIX A TO ARTICLE 2

Exempt Information

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals that the authority proposes:-
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

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APPENDIX B TO ARTICLE 2

**PROTOCOL
DEALING WITH HUMAN RESOURCE ISSUES**

When Members consider items about the people that are employed solely on behalf of the Authority (e.g. ELWA full-time employees), the Authority must be mindful of a number of matters:

- Employees have rights, on an individual basis, to be treated fairly. (This includes expecting the Authority to maintain confidentiality about an individual's personal and employment details).
- Information relating to employees is often confidential in nature and should not be available widely throughout the organisation (at Member or officer level). Only those who need to know should know.
- Members should have the opportunity to consider, debate and decide upon issues without managers/officers being present.
- A variety of decisions on Human Resource (HR) matters, including the fair treatment of people by their employer, are subject to external scrutiny.

For these reasons:

- Written information to Members on HR management and/or personal HR matters which address employee issues in respect of an individual, should be restricted to relevant Members and appropriate officers. This information should not be included as part of the usual circulation for a report.
- The meeting considering these matters should be conducted in private and those people who should not be in attendance should be asked to leave the meeting.

Guidelines:

If there is any doubt as to who should receive copies of the report and who should be allowed to remain at the meeting, the Managing Director should be consulted.

The Managing Director will have access to all reports and all meetings of Members about Human Resource matters.

The Managing Director may delegate some matters to an Appointed Officer, the relevant Borough Personnel Manager (from the employing Council) and/or Legal Officer, who will have access to appropriate reports and meetings.

Where there are any financial implications to be considered by the Authority, the Finance Director will have access to appropriate reports and meetings.

There may be meetings where it is appropriate to invite representatives of the Trades

Agenda Item 7 – Appendix A Cont'd

Unions and cognizance must be given to this. If there is any doubt, the Managing Director should be consulted.

Part C

Responsibility for Functions

The Authority's Scheme of Delegation

SCHEME OF DELEGATION

Introduction

1 Statutory Basis

- 1.1 The basis for delegation within the Authority is contained within Section 101 of the Local Government Act 1972.
- 1.2 Section 101 of the 1972 Act generally allows the Authority to arrange for its functions to be carried out at a formal meeting or by an employee. Section 100G(2) requires authorities to keep a list specifying those powers which are exercisable by employees and their respective titles in each case. Section 112 requires authorities to appoint such employees as they think necessary for the proper discharge of their functions.
- 1.3 The Local Government Act 2000 (the "LGA 2000") requires Councils to be clear within their Constitution who is responsible for functions and where decision-making lies. Although ELWA is not bound by the LGA 2000, it has agreed to follow the spirit of these provisions and this Scheme describes the Delegations within which ELWA will operate.

2 Framework

- 2.1 The Authority has agreed that the following principles should be applied to all decisions:
 - proportionality (the action must be proportional to the desired outcome);
 - due consultation and the taking of professional advice from employees;
 - respect for human rights*;
 - a presumption in favour of openness;
 - clarity of aims and desired outcomes; and
 - the options considered and the reasons for a particular choice will be explained when appropriate
- 2.2 Generally all decisions will also be consistent with relevant law, Contract Rules, Financial Rules, other relevant Rules, and any other requirements set out in this Constitution.

[* Decisions taken by the Authority, a Member or an employee acting as a tribunal or in a quasi-judicial manner, or determining/considering (other than for the purposes of giving advice) the civil rights and obligations, or the criminal responsibility, of any person, will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights].

3 Purpose of the Scheme

3.1 The purpose of the scheme is:-

- (a) To define those decisions to be taken by Members of the Authority at formal Authority meetings.
- (b) To identify that all other decisions will be taken by Appointed Officers (or nominated post holders as listed), either collectively or individually, and to define these accordingly.
- (c) To define the process by which decisions are monitored to ensure transparency and accountability.
- (d) To define 'Proper Officer' responsibilities.

4 Matters which cannot be delegated

4.1 Certain functions may not, by law, be delegated. As such, they must be dealt with by at formal Authority meetings (subject to the urgency provisions in paragraph 25 of Article 1). These are listed in Section A of this document.

5 Delegation to Appointed Officers

5.1 All matters not reserved to Member-level meetings are delegated to the Appointed Officers (or nominated post-holders) within the service areas assigned to them as set out in Sections B-F.

5.2 The Scheme does not define how each decision should be taken, nor does it attempt to list incidental matters that are a part of the Appointed Officers' everyday management functions.

5.3 The delegation of an authority to an Appointed Officer includes the exercise of that authority on his/her behalf by another employee under his/her supervision. Appointed Officers are responsible for maintaining a comprehensive list of nominated post-holders, which also identifies specific areas of responsibility. These lists are open to inspection by the public.

5.4 Delegations to Appointed Officers are split into two parts - powers that can be exercised by (i) all Appointed Officers, and (ii) individual Appointed Officers.

5.5 The Managing Director will clarify any delegation to officers if necessary.

6 Changes in Legislation

6.1 Any delegation or authority specified in this Scheme (including Proper Officer functions), by reference to any Act or any associated Regulations (e.g. a statutory instrument), includes references to any related re-enactment, consolidation, modification, variation or amendment.

7 Proper Officer Function

- 7.1 The concept of "Proper Officers" to perform certain tasks or carry out various formal or administrative functions differs from that of delegated powers. Delegated powers may involve the exercise of discretion or choice; the functions of a Proper Officer are generally prescribed by legislation.

8 Constitution

- 8.1 This Scheme forms part of the Authority's Constitution and should be read in conjunction with other Parts.

SECTION A - THE AUTHORITY

Generally, the Authority may exercise all, or any, of its duties or powers, irrespective of delegation to officers.

The following powers and functions are reserved to the Authority, either by law and/or statutory guidance (and cannot be delegated) or by local choice:

- adopting and changing the Constitution, or authorising the suspension of any of its Rules;
- approving the annual budget of the Authority;
- determining the annual levy on the constituent Councils;
- appointing representatives to outside bodies and partnerships;
- appointing the Head of Paid Service, the Monitoring Officer and the Chief Financial Officer;
- approving the appointments of all Appointed Officers (i.e. the Managing Director, the Finance Director, the Technical Director and the Operations Director);
- initial consideration of any policy or individual employment matters relating to officers of the Authority, where appropriate;
- promoting or opposing the making of local legislation or personal Bills;
- approving and adopting the annual Best Value Performance Plan;
- appointing Members to the following positions:
 - the Chair and Deputy Chair of the Authority
 - the 'A' Director of ELWA Limited
 - any other lead roles as may be considered appropriate by the Authority
- agreeing the Programme of Meetings;
- determining all major issues affecting the Authority, particularly strategic, financial, policy related and corporate management matters;
- agreeing procedures or arrangements relating to the way in which the Authority operates, including Financial Rules, the Scheme of Delegation, Contract Rules, the Protocol for Member-Employee Relations, Rules governing Conferences, Visits and Hospitality, the Code of Practice for Land Acquisitions and Disposals, and any other Rules;

- approving the annual statement of the Authority's accounts;
- setting Authority borrowing limits;
- approving attendance at meetings, visits and conferences where the total cost to the Authority is likely to exceed £1,000;
- determining compensation claims exceeding £5,000;
- approving the disposal of assets, write-offs and non-recurring virements above delegated authority thresholds;
- delegating functions to another local authority and accepting delegations from another local authority;
- confirming the making of any other statutory Plans and Strategies and, where necessary, their submission to the appropriate Government Department for approval;
- considering and making decisions on reports of the following:

the Head of Paid Service
the Monitoring Officer
the Chief Financial Officer
- receiving petitions (subject to the provisions of paragraph 24 of Part B, Article 1);
- receiving reports and recommendations from the Authority's External Auditors, the Ombudsman and Government or other Inspectorates and determining matters where required;
- resolving and determining any disputes of Appointed Officers in respect of any delegated authority;
- all other matters which, by law, must be reserved to the Authority;
- such other matters that the Authority may from time to time reserve to itself.

SECTION B - ALL APPOINTED OFFICERS

All Appointed Officers are authorised to exercise the following powers and duties of the Authority in respect of the services under their control:

- determining compensation claims up to £5,000;
- agreeing, in consultation with the Authority's authorised legal representative, financial settlements in Court actions where no alternative is available and the circumstances do not allow for prior consultation with Members;
- accepting tenders within the parameters of Part D of this Constitution;
- authorising contracts within the parameters of Part D of this Constitution;
- appointing employees [except for those appointments reserved to the Authority] in accordance with the directions of the Head of Paid Service and any appropriate legislation;
- managing employees and determining appropriate training, development and health safety and welfare for employees;
- collecting charges and fees;
- full responsibility for local health and safety issues;
- approving employees' travelling and other approved expenses;
- maintaining and securing buildings, land and premises;
- issuing of licences;
- disposing of assets with an estimated realisable value not exceeding £2,000, in consultation with Finance Director;
- appointing or authorising employees to implement legislation as appropriate;
- virements (non-recurring) up to £10,000 within approved budgets, in consultation with the Finance Director;
- full responsibility for observing the Authority's Financial Rules and monitoring financial performance;
- full responsibility for ensuring compliance with Employees' Codes of Conduct and other employment related codes and requirements;
- spending within approved budgets including the purchase of all equipment, goods, materials and services;

Agenda Item 7 – Appendix A Cont'd

- employing agency, contract and consultant staff in accordance with the relevant constituent Council's Standard Conditions of Contract; and
- full responsibility for observing all other aspects and Rules contained within the Authority's Constitution.

SECTION C - THE MANAGING DIRECTOR (and Head of Paid Service)

All matters relating to the overall administrative and legal arrangements of the Authority, other than those reserved to Authority meetings, including:

- Acting as Clerk, Secretary and Head of Paid Service to the Authority.
- Ensuring that there is a strategy and business plan for the Authority.
- Ensuring the effective governance of the Authority.
- Dealing with legal work on behalf of the Authority (including prosecutions, contracts and civil litigation) except insofar as it is arranged for such work to be dealt with elsewhere.
- Ensuring that the Constitution of ELWA is effectively implemented.
- Ensuring that effective support is provided to Members, as required.
- To Chair the ELWA Management Board.
- Authorised to sign on behalf of the Authority orders, letters, licences, notices, certificates or any other documents unless authority is specifically reserved to other Appointed Officers.
- Acting as the 'Authority Representative' for the purposes of the IWMS Contract.
- Sealing documents.
- Investigating disciplinary matters, with the involvement of an independent person, against the Monitoring Officer and the Chief Financial Officer in conjunction with the relevant Constituent Council.
- Authorised to agree minor changes to this Constitution and any of its Parts (e.g. the correction of typographical errors, minor amendments required by new legislation and other matters of a purely administrative nature).

Proper Officer Functions

(a) The Proper Officer in relation to:

(i) the following provisions in the Local Government Act 1972:

Section 96(2) - The Officer who shall record particulars of any disclosure made under Section 94 and of any notice given under Section 96(1) of the Act;

Sections 100B(7)(c), 100C(2) and 100F(2) in relation to Access to Information;

Section 225(1) - The Officer with whom a document of any description is to be deposited pursuant to the standing orders of either House of Parliament or to any enactment or instrument;

Section 229(5) - The Officer who shall certify a photographic copy of a document in the custody of the Authority, or of a document which has been destroyed while in the custody of the Authority, or of any part of any such document;

Section 234(1) - The Officer who shall sign any notice, order or other document which the local authority is authorised or required to make or issue;

Schedule 12, Part I, para. 4(2)(b) - The Officer who shall sign a summons to attend an Authority meeting;

Schedule 12, Part I, para. 4(3) - The Officer to whom a Member of the Authority shall give a notice in writing desiring summonses to attend meetings of the Authority to be sent to an address specified in the notice other than his/her place of residence;

Schedule 14, Part II, para. 25(7) - The Officer who shall certify a resolution of the Authority under this paragraph; and

(ii) the Local Authorities (Members Interests) Regulations 1992;

- (b) the Head of Paid Service under the Local Government and Housing Act 1989;
- (c) responsible for any other Proper Officer function for which no other authorities have been given;

SECTION D - THE FINANCE DIRECTOR (and Chief Financial Officer)

All matters relating to the overall financial arrangements of the Authority, other than those reserved to Member meetings, including:

- Acting as Chief Financial Officer to the Authority
- To be responsible to the Authority for the proper administration of its financial affairs.
- Authorised: -
 - To prepare and present the accounts of the Authority.
 - To keep a general fund for receipt and discharge of liabilities, and to keep accounts and receipts for such discharges.
 - To borrow in accordance with the requirements of the capital budget and borrowing limits.
 - To issue levies on constituent Councils of the Authority and take action required for their collection, within the terms of Clause 7 of the Waste Regulation and Disposal (Authorities) Order 1985.
 - To provide Audit services to the Authority.
 - To provide comprehensive financial advice to the Authority.
 - To write off losses up to the value of £5,000.
- To be a member of the ELWA Management Board.
- In conjunction with the Executive Director:
 - To prepare, present and monitor capital and revenue budgets.
 - To commission appropriate insurance's.
- Assisting the Managing Director, when required, to discharge his/her corporate responsibility as Head of Paid Service.

Proper Officer Functions

The Chief Financial Officer for the purposes of Section 73 of the Local Government Act 1985.

SECTION E - THE OPERATIONS DIRECTOR

All matters relating to the overall operational arrangements of the Authority, other than those reserved to Member meetings, including:

- Overseeing the collection of waste movement records and other records necessary for the efficient management of the IWMS Contract.
- Ensuring that adequate management information is available to the Management Board as all aspects of ELWA's activities.
- Overseeing the flow of waste within the Authority and ensuring the efficient disposal of all waste which is the responsibility of ELWA.
- In the event of an emergency, making provision for the initial deposit and disposal of waste from the Constituent Councils including reciprocal arrangements with other Waste Authorities.
- Providing personnel support to the core ELWA team.
- To be a member of the ELWA Management Board.

All matters relating to overall human resources functions of the Authority other than those reserved to Member meetings, including:

- determining standards and requirements for the proper functioning of the Authority as an employer in accordance with legislative obligations and requirements;
- instituting disciplinary, legal, civil, criminal or other proceedings in accordance with legislation and/or Authority policy and procedures.
- investigating ethical matters in relation to employees having regard to the Code of Conduct for Employees and other employment related codes or requirements;
- Assisting the Managing Director, when required, to discharge his/her corporate responsibility as Head of Paid Service.

SECTION F - THE TECHNICAL DIRECTOR

All matters relating to the overall technical arrangements of the Authority, other than those reserved to Member meetings, including:

- Leading for the Authority on the Aveley Methane Company and to ensure that the on-going environment management of Aveley I Landfill Site is maintained to a high standard, including to be a Director of Aveley Methane Limited.
- Leading on up dating the Integrated Waste Management Strategy and all waste plans covering all waste which is the responsibility of ELWA.
- Leading on the policy for matters relating to waste management, including recycling and disposal and to consult on matters concerning re-cycling and the sale of waste and alternative means of disposal and treatments.
- Leading on consultation on matters relating to waste disposal with other organisations and statutory bodies.
- Responsible for the environmental control and conclusion of restoration of other sites which are the responsibility of the East London Waste Authority, e.g. Hall Farm landfill site.
- To be a member of the ELWA Management Board.
- Assisting the Managing Director, when required, to discharge his/her corporate responsibility as Head of Paid Service;

Part D

Rules

OVERVIEW OF THE FINANCIAL REGULATORY FRAMEWORK

There are four elements:

(a) Contracts Guidance Notes

These notes explain the principles underpinning the Contracts Rules, why they are necessary and what they are seeking to achieve. They set the Rules in the wider context of procurement to enable purchasing decisions to fit in with the Authority's procurement policies and Best Value regime.

(b) Contracts Rules

These are mandatory rules specifying the minimum requirements for letting, managing and reporting contracts within the Authority. Breaking these rules is a serious disciplinary offence.

(c) Contracts Code of Practice

This section outlines detailed procedures that support the application of the Contracts Rules. Given the wide range of contracts that may be let, these procedures cannot be prescriptive in every detail; their application is however deemed to satisfy the requirements of the Contracts Rules.

(d) Financial Rules

These rules are mandatory. They specify a minimum regulatory framework for the financial administration of the Authority. They cover the financial stewardship of all of the Authority's assets and resources. This includes both capital and revenue expenditure and is not limited to contracts.

For the purposes of this Part D of the Constitution the following words shall have the following meanings:-

"Appointed Officers" means the Managing Director, the Finance Director, the Technical Director and the Operations Director, or their nominated postholder.

"Authority" means the East London Waste Authority, or a Committee with appropriate decision-making powers

"Budget" means a plan for the Revenue and Capital expenditure and income relating to activities of the Authority.

"Capital Programme" means the Capital Budget approved by the Authority for the forthcoming financial year together with the indicative programme of Capital Schemes for the subsequent two financial years.

"Capital Strategy" means the set of policies that determine the Authority's priorities and approach to Capital Investment.

"Code of Practice" is the Contracts Code of Practice approved by the Authority and set out in these Rules.

"Commissioning Officer" means the Appointed Director responsible for the contract, or their nominated postholder.

"Contract" shall include all contracts, agreements and orders for the carrying out of work, the provision of services and the supply of goods or materials to, for, or by the Authority, by the purchase, lease, rental or hire purchase. It shall not include contracts for the employment of staff, or for the sale, purchase, lease or licence of land or buildings.

"Financial year" means the Authority's accounting period which runs from 1 April to 31 March.

"Statement of Accounts" is the statutory report of the Final Accounts for each financial year as defined in the Accounts and Audit Regulations 1996.

"Three Year Financial Plan" means the Revenue Budget approved by the Authority for the forthcoming financial year together with indicative figures for the subsequent two financial years.

"Value" means, where known, the precise value, or where not known, the estimated value of work, services, goods or materials that constitute the contract as specified in the Contracts Guidance Notes.

CONTRACTS GUIDANCE NOTES

These notes are cross-referenced to each section of the Contracts Rules and should be read in conjunction with them.

1 Introduction

- 1.1 This section outlines the wider legal context of the Contracts Rules and specifies the type of transactions to which they are intended to be applied.

2 Agency Arrangements and Partnership Bodies

- 2.1 The term “partnership” is applied to a variety of contexts in both the public and private sector. This section is concerned with public sector partnerships in which the Authority participates as a constituent participant or lead authority within a separate organisation.
- 2.2 The Contracts Rules recognise that these partnerships are effectively separate legal entities with their own rules which may, on occasion, take precedence over the Authority’s rules when applied to the work of the partnership.

3 Contract Packaging and Tender Band Values

- 3.1 This section emphasises the duty of care of the Commissioning Officer to plan the contracting process in order that the Authority is able to procure the required services, works or supplies to the required quality, at the right time and at the best price. This duty exists irrespective of the type or value of contract and irrespective of whether a formal tender process is followed.
- 3.2 The manner in which this is achieved will vary with the nature of contract being let and the state of the marketplace. It is however possible to specify a number of basic questions that will need to be addressed for all contracting arrangements if this duty of care is to be met.
- Is this a one off purchase? Is the need for the purchase or related needs likely to recur in the commissioning department or elsewhere in the Authority? If so, could a better and/or more cost effective contract package be designed incorporating these areas? Alternatively, does a tendered contract already exist that may be tapped into? (e.g. via the constituent Councils).
 - Is the contract really required? Have any alternatives been considered?
 - When was the contract specification last reviewed? Is every aspect of the contract still required? What are the views of users?

- Could material benefits accrue from specifying longer contract durations? Is the contract suitable for developing a partnership arrangement over an extended timescale? Could such arrangements be extended to include neighbouring authorities?
- How does the proposed contracting framework allow continuous improvement to be demonstrated?
- For Capital contracts, is the duration and content of the contract consistent with the project's original design brief and business needs analysis?
- Is there any value in undertaking pre-tender soundings with potential contractors on how best to package the contract? If potential contracts exceed EEC thresholds, then legal advice should be sought before this option is adopted.

3.3 Having determined how to package the contract, the Commissioning Officer must then estimate the value of the contract and apply the rules specific to the relevant value band. The purchasing regime attached to each value band is discussed in more detail in the next section.

3.4 The estimate of value should be based on the total value of the contract, over the duration of the contract, even if this involves calculating value over more than one financial year.

3.5 Proposed contracts with an estimated value in excess of £50,000 should be reported to the Authority before tenders are invited.

4 Exceptions to Tendering Requirements

4.1 This section details the circumstances in which a formal tender process is not required. This section recognises that there is a cost attached to tendering that may not be recovered as a result of tendering small value contracts. This does not remove the responsibility of the Commissioning Officer to achieve good value for money on behalf of the Authority.

4.2 Using the "emergency" provision to waive the requirement to tender must only be used in exceptional circumstances. The "emergency" should be a serious event that could not have been foreseen. This waiver must not be used to avoid the administrative inconvenience of a tender process; urgency produced by poor procurement planning would not qualify for this waiver.

4.3 This issue is particularly relevant if the estimated contract value exceeds European thresholds. European law allows for only a very narrow range of circumstances to justify "emergency" action.

4.4 For Class A contracts (up to £10,000), the Commissioning Officer should firstly ensure that the planned purchases will not recur in the near future. Reasonable steps should then be taken to test the market. These efforts should be proportionate to the size of

the contract. For example, for items in excess of £1,000, it would be reasonable to secure telephone quotes. For small items of equipment, reference to brochures or catalogues may be sufficient. In any event, the Commissioning Officer is responsible for maintaining proper records showing how quotes have been obtained, who from and which officers were involved in the checking and selection process.

- 4.5 For Class B contracts there is a mandatory requirement to secure written quotes. The reason for choosing a particular supplier should also be documented. The presumption is that the goods or services being purchased are relatively straightforward items that do not require detailed design briefs or technical specifications (e.g. purchase of equipment or hire of agency staff). Should detailed specifications be required then a formal tender process should be considered since this offers the best control framework within which to consider alternatives or variations to the brief.
- 4.6 Again, the Commissioning Officer will retain a duty to package the contract in a manner that produces the best result for the Authority.

5 Format and Key Conditions of Contracts and Tenders

- 5.1 This section identifies key features of both tenders and contract specifications that are required to protect the Authority's interest and prevent any legal challenges to the tender process. If the Commissioning Officer is in any doubt as to the content of tender specifications or any aspect of contract documentation, he should consult the Managing Director and the Authority's legal adviser.
- 5.2 The precise form of each contract will clearly vary with the nature of the goods or services being purchased. Where practicable, constituent Council approved model forms of contract should be used. Under no circumstances should the supplier's form of contract be used by default; if the supplier's contract is to be considered then legal advice must be sought.
- 5.3 The need to include clauses within the contract specification concerned with financial security (e.g. liquidated damages) need to be assessed in the context of the nature of the contract and the risks and costs associated with any future breakdown of that contract. Additional financial security required during the tender process (e.g. performance bonds and bankers' guarantees) should not be applied automatically or indiscriminately. There is usually a cost associated with such provisions that is then built into the final tender price.
- 5.4 Contractors who present an unacceptable risk in terms of experience or financial standing should be excluded at shortlisting. An assessment of the standing or experience of the potential contractors will still then be required before any financial securities are specified.

6 Shortlisting of Suppliers to Tender

- 6.1 Deciding who to invite to tender, or perhaps more importantly who to exclude from tendering, can be fraught with difficulties and could be subject to legal challenge by

unsuccessful parties. The overriding objective should be to ensure that contractors are selected to tender on merit as a result of a demonstrably even handed and objective process.

- 6.2 Traditionally, there have been two basic methods for selecting potential tenderers: by shortlisting responses from an advertisement or by selecting from an approved list. A model set of criteria for assessing who to shortlist should be documented before any expressions of interest are sought. Criteria for admission to an approved list should be equally explicit.

Approved Lists - Approved lists may only be considered for contracts of a value below European thresholds. This is a traditional procurement route normally used in areas where there is a recurring activity or need to be met. The advantage of using an approved list is that it removes the need to advertise and vet contractors every time a contract is let. Selection of contractors in rotation from the lists also protects officers from any accusations of favouritism. In view of the relatively few number of contracts that the Authority is likely to let, approved lists held by the constituent Council of the Commissioning Officer shall be used for such purposes.

Advertisements - Contracts of a value that exceed European purchasing thresholds must be advertised. The current thresholds are (a) for works contracts £3.8m, (b) for supplies contracts £144,000. Advertisements must be placed in accordance with the Code of Practice to ensure that the market is properly tested. Ideally, the advertisement should give a reasonable description of the main elements of the contract together with a broad indication of the criteria to be used to assess the responses. The Commissioning Officer shall be responsible for ensuring that advertisements are placed in sufficient time to meet European journal (OJEC) publication deadlines and accord with legal and other requirements.

7 Tender Evaluation

- 7.1 Traditionally, contracts have been let to the contractor who submitted the lowest price following a competitive tender. However, in the wider context of Best Value, the Commissioning Officer has a duty to secure the most economically advantageous solution; this involves taking into account other factors that may “add value” to a tender (e.g. qualitative factors, innovative approaches with ancillary “spin off” benefits).
- 7.2 The Contracts Rules offer greater flexibility in considering factors other than price when awarding contracts. However, to maintain transparency and equity of treatment, it is crucial that the ground rules identified in the Rules are observed. In particular, if factors other than price are considered, then the evaluation model must be clearly documented before the tender process begins and must include factors that, as far as is practicable, are measurable or at least evidenced from within the tender returns.
- 7.3 Officers must be mindful that moving away from price as the basis of selection may leave them and the Authority open to criticism. It is essential therefore to proceed with caution and to leave a documented trail recording how all decisions have been reached. The whole process must be demonstrably fair and even handed.

- 7.4 It would be an advantage, wherever practicable, to include an independent input into the tender evaluation. For example, the evaluation could be completed or checked by staff who are not directly involved in the procurement process. Ideally, the same staff should not shortlist suppliers, evaluate tenders and subsequently manage the contracts.

8 Administration of the Tender Process

- 8.1 The overall credibility of the tender process requires the strict application of these Rules. They are designed to demonstrate that tenders have not been changed or interfered with in a corrupt manner that gives any particular contractor an unfair advantage.
- 8.2 On a number of occasions in the past, tenders have been received late and contractors have then made strenuous requests for them to be considered. Ensuring the tender arrives on time is the contractor's responsibility. This includes a responsibility for the performance of agents acting on behalf of the contractor (e.g. the postal services or couriers). The starting point must always be that these requests will not normally be considered and that the tender is rejected.
- 8.3 This decision may be reviewed if exceptional circumstances prevail for which the Authority must accept some responsibility, for example if Authority or constituent Council staff have inadvertently misdirected the tender. To minimise the chance of such an occurrence clear instructions should be given to tenderers as to the delivery address of tenders including, wherever practicable, the provision to tenderers of an addressed envelope. In any event, the Managing Director should be consulted in all cases where the administration of the tender process is brought into question.
- 8.4 If there is more than one stage to the tender process, for example an initial bid and a "best and final" offer, then the rules outlined in this section must be applied to each stage of the process.

9 Alterations and Negotiation of Tenders

- 9.1 The introduction of factors other than price into tender evaluations will broaden the scope for post tender negotiations as qualitative factors and different approaches are explored and clarified with all tenderers. This section provides basic ground rules to protect officers from accusations of malpractice.
- 9.2 While not seeking to constrain innovative approaches, it is again important that officers should proceed with caution. For example, if contracts have been let within European "restricted" procedures, then the scope for changing tender specifications is extremely limited. European rules effectively prohibit post-tender negotiations.
- 9.3 In any event, the contract specification must not be so radically transformed in post tender negotiations that the authority is left vulnerable to the charge that it has tendered on one basis and let the contract on a different basis.

9.4 If fundamental changes to contract specifications are sought then officers must consider re-tendering the contract. In all such cases the Authority's legal adviser shall be consulted prior to any changes being made.

10 Acceptance of Tenders and Award of Contracts

10.1 These Rules give Commissioning Officers the responsibility in most cases for formally accepting tenders and awarding contracts. The Authority will assume this responsibility if any of the following conditions apply:

- (i) the contract value exceeds £30,000
- (ii) the contract is proposed to be awarded to a contractor who has not submitted the lowest price
- (iii) the Authority has chosen in advance to become involved in awarding the contract (e.g. when notified of plans to let the contract)
- (iv) in cases where normal tendering procedures will not be followed (e.g. when it is proposed to extend an existing contract or to suspend Rules).

11 Contract Instructions and Certification

11.1 These Rules place a responsibility on the Commissioning Officer to operate within approved financial estimates requiring Authority approval if they are to be exceeded by material amounts.

11.2 This places considerable emphasis on accurate financial forecasting and obliges cost overruns to be reported at the earliest reasonable opportunity. The documentation required to underpin variations also serves as a source of information when reporting projected overspends.

12 Sub-Contractors

12.1 There are two kinds of subcontractor. A Nominated subcontractor is specified by the Authority as part of the overall contract documentation. If nominated subcontractors are recruited from the private sector then the Contracts Rules will apply as they would for the main contractor.

12.2 A domestic subcontractor is chosen by the main contractor. This subcontractor should be subject to the same technical and financial vetting as the main contractor. The Commissioning Officer should always retain, within the contract documentation, the requirement to be notified of the proposed use of such subcontractors and the right to veto their use.

13 Reporting and Review of Contracts

13.1 The purpose of these Rules is to reinforce the accountability of Commissioning Officers by ensuring Members receive adequate information when awarding,

extending or reviewing contracts. These reporting mechanisms assist Members in monitoring the application of schemes of delegation in so far as they apply to contracts.

- 13.2 Applied in a systematic way, this level of reporting should allow lessons to be learnt from both good and poor contracting arrangements.
- 13.3 All such reports must be reported as confidential items to protect the confidentiality of the tender process.

14 Action by Members

- 14.1 This section reflects the legal position of Members of the Authority in relation to contracts of any kind.

CONTRACTS RULES

1 Introduction

- 1.1 These Rules are to be interpreted subject to United Kingdom and European Economic Community legislation, regulations, orders and directives. European law in particular prohibits discrimination on grounds of national standards or in support of the promotion of local economic interests. These EEC Treaty provisions apply to all contracts including those below the EEC purchasing thresholds.
- 1.2 Officers will refer to the Managing Director any questions relating to the interpretation of the Rules.
- 1.3 These Rules should be applied in accordance with the Code of Practice.

2 Agency Arrangements and Partnerships

- 2.1 When the Authority acts as an agent, any instructions or requirements issued to the Authority under the agency agreement take precedence over these Rules, subject to the overriding requirements of Rule 1.1.
- 2.2 When a body or person acts on the Authority's behalf then it shall be a term of the agreement that these Rules and the Constitution of the Authority shall prevail.
- 2.3 Subject to the prior agreement of the Authority, when the Authority participates in a Partnership, the Standing Orders and Financial Regulations of the Partnership may take precedence over these Rules. In these cases, the Partnership Board would assume the powers and responsibilities of the Authority

3 Contract Packaging and Tender Band Values

- 3.1 The Commissioning Officer must ensure that orders for goods and services are aggregated into packages both in respect of content and timescales that are the most economically advantageous to the Authority.
- 3.2 The following shall be the financial classifications referred to in these Rules together with a summary of the relevant tendering requirements.

Class A contracts of value not exceeding £10,000.

No formal tender – duty to secure reasonable value for money

Class B contracts of value exceeding £10,000 but not exceeding £50,000

Three documented quotes

Class C contracts of value exceeding £50,000

Formal tender process

- 3.3 In cases where a number of contracts may be reasonably anticipated, every practical effort should be made to accommodate them into one contract with a view to maximising the Authority's purchasing potential. Similarly a contract, ordinarily treated as a single contract, must not be divided into more than one contract in order to reduce the value to below any of the contract thresholds within these Rules or to otherwise circumvent the requirements of these Rules or any relevant EC and/or UK legislation.
- 3.4 Contracts that form part or the whole of a capital project must be packaged in a manner consistent with the requirements of the Authority's policies for selecting and controlling capital projects.
- 3.5 The threshold over which the European Community Directives for contracts shall come into effect is set out in the Code of Practice. This is reviewed periodically.
- 3.6 Proposed contracts with a value in excess of £50,000 should be reported to the Authority before any procurement process begins to give Members the opportunity to decide the nature of their involvement in the subsequent evaluation and award of the contract.

4 Exceptions to Tendering Requirements

4.1 It shall not be necessary to invite tenders for:

- (a) Class A contracts (under £10,000).
- (b) Class B (£10,000 to £50,000) contracts in cases where three documented quotations have been secured in accordance with the Contracts Code of Practice. Quotations must not be secured by staff with a direct responsibility for managing the subsequent contract.
- (c) the supply of goods and services from public purchasing bodies which have already completed a tender process in accordance with EEC procedures where appropriate.
- (d) the supply of goods, services or the execution of works of a specialist or proprietary nature and the appropriate Commissioning Officer considers, subject to EEC legal requirements, that no satisfactory alternative is available. The Commissioning Officer should retain a record of all such decisions and should report them to the Authority, for information, at the next available meeting.

Furthermore, the tender process may be waived:

- (e) by direction of the Authority, subject to any EEC legal requirements.
- (f) in an emergency by the appropriate Commissioning Officer in accordance with the requirements of the Urgent Action procedure set out in paragraph 25.1 of Article 1 of

the Constitution and subject to any EEC legal requirements. The matter must then be reported to the next available meeting of the Authority

- 4.2 In the case of contracts which exceed the European Community thresholds, abridged or accelerated procedures may only be used in limited circumstances. The legal advice of the Managing Director should be sought in all such cases.
- 4.3 These exceptions and waivers outlined above refer to the tender process. Rules that refer to issues other than the tender process must be observed unless they are also waived by the Authority.
- 4.4 The Authority must be notified of all plans to tender or extend contracts of a value in excess of £50,000 or tenders where authority to negotiate is required before invitations to tender are issued.
- 4.5 The Authority must approve any proposed extensions to a Class C contract where that extension has not been provided for as an option within the terms of the original tendered contract. There is virtually no scope for such extensions in respect of contracts that have a value in excess of European purchasing thresholds. In these cases, legal advice must always be sought.

5 Format and Key Conditions of Contracts and Tenders

- 5.1 All contracts shall be in a form approved by the Managing Director. For smaller value purchases, the general terms and conditions of the Commissioning Officer's Council shall normally apply. If the contractor's form of contract is to be considered, the Authority's legal adviser must be consulted.
- 5.2 Contracts for the provision of work or services valued in excess of £50,000 must be under seal in accordance with the Code of Practice.
- 5.3 The Commissioning Officer responsible for a contract shall ensure that the most appropriate measures of financial management and security are employed in connection with such contract in accordance with the Code of Practice.
- 5.4 Every contract for the carrying out of work or the provision of services shall require the contractor to take out and maintain during the duration of the contract Employers Liability, Third Party Liability and, where appropriate, Road Traffic Liability, insurance policies (or similar insurance policies).
- 5.5 The policies shall provide cover for such sum(s) as the Finance Director shall specify in respect of injury or death and/or damage to property arising out of one incident, the number of incidents to be unlimited to any one year.
- 5.6 Such insurance policies shall contain endorsements sufficient to indemnify the Authority against any loss, damage or injury to persons or property arising from the contractor's operations in connection with the contract.

- 5.7 Every contract shall contain a condition permitting the Authority to cancel the contract and recover from the contractor the amount of any loss resulting from such cancellation, should the contractor, his servant or agent:
- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Authority contract (even if the Contractor does not know what has been done); or
 - (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or
 - (c) commit any fraud in connection with this or any other Authority contract whether alone or in conjunction with Authority members, contractors or employees.
- 5.8 Any clause limiting the Contractor's liability shall not apply to this clause.

6 Shortlisting of Suppliers to Tender

- 6.1 Before starting the procurement process reasonable timescales must be planned for the invitation, return and evaluation of tenders. These timescales must be adequate to promote effective competition. In respect of contracts in excess of EEC thresholds, statutory timescales will apply.
- 6.2 Subject to Rule 3, no Class C contract shall be made unless competitive tenders have been obtained by one of the following methods:-
- (a) For contracts below European thresholds by selection of tenderers from an approved list or advertisement.
 - (b) For contracts above European thresholds selection of tenderers *only* in response to an advertisement.
- 6.3 If the Commissioning Officer wishes to select tenderers for a Class C other than by approved list or advertisement, the reason should be documented and a report made to the Authority for prior approval and legal clearance.

Approved Lists

- 6.4 Approved lists of tenderers are compiled, maintained, used and revised by the constituent Councils for goods and services that are regularly used. For goods and services required by the Authority that fit into this category the appropriate Commissioning Officer shall use the relevant approved list held by his/her Council for the purpose of selecting tenderers, in accordance with any arrangements laid down by the respective Council.

Advertisement

- 6.5 Contracts should be advertised in accordance with the Code of Practice.

- 6.6 All contracts in excess of European thresholds must also be advertised in OJEC in accordance with statutory provisions and timescales.

Shortlisting

- 6.7 Irrespective of how the tenderers are selected, invitations to tender shall be sent to not less than four persons or, if fewer than four are available, then to all persons available.
- 6.8 If a shortlist of potential tenderers has to be drawn up from a larger response, then the criteria and reasons for short-listing must be documented. That documentation must be retained and kept available for inspection by the Commissioning Officer for a minimum of six years after the conclusion of the contract period.
- 6.9 The Commissioning Officer must ensure the short-listing process is demonstrably even handed in respect of all contractors. For contracts in excess of EEC thresholds, legal advice should be sought before any company is excluded from the shortlist.

7 Tender Evaluation

- 7.1 Before tendering any works or services for a Class C contract, the Commissioning Officer must decide the criteria and associated weighting on which selection will be made. This must be documented before the start of the selection process.
- 7.2 All contractors invited to tender must be informed of the selection criteria to be used. The overriding criteria should normally be either price or the most economically advantageous solution. This should be made explicit in both the Invitation to Tender and any advertisement. Any sub criteria must be documented in the Invitation to Tender. Non-commercial considerations must not feature in these criteria. No contractor shall be informed of the weightings attached to each criteria.
- 7.3 A full documented record must be made of the selection process recording relevant scores for each contractor and a clear statement as to how the final decision was reached. This record must be retained and kept available for inspection.
- 7.4 The selection process must be demonstrably fair to all participants; no contractor should be given information from which an unfair advantage may be gained over rival tenderers who do not have access to that information. Accordingly, if a contractor requests additional information then the response to such a request should be circulated to all other contractors involved in the tender process, subject to the maintaining by the Authority of any confidentiality issues that may be appropriate.

8 Administration of the Tender Process

- 8.1 Tenders will be opened in accordance with the Code of Practice as soon as possible after the date and time specified for the receipt of tenders. Tenders for Class C contracts should be returned to the Managing Director for receipt and opening.
- 8.2 Tenders received after the specified date and time shall not normally be considered. If the Commissioning Officer wishes to consider such tenders, in liaison with the Managing Director and/or Finance Director, he must be satisfied that:-

- (a) the delay was caused by exceptional circumstances for which the tenderer was not primarily responsible; and
 - (b) he can demonstrate that the tender process has not been compromised as a result
- 8.3 All tenders shall be opened in the presence of the appropriate Commissioning Officer and witnessed in writing by at least one other officer who must have no responsibility or involvement in the contract. Specimen documentation to record tender invitations and outcomes is contained in the Code of Practice.
- 8.4 All tender related documentation must be stored in a secure location by the Commissioning Officer and shall be kept available for inspection.
- 8.5 If any Officer or Member has any connection past or present, direct or indirect, with any potential tenderer, then that connection should be declared to the Managing Director and registered in accordance with the Codes of Conduct for both Officers and Members. The Officer or Member should then be precluded from participating in any aspect of the procurement process.

9 Alterations and Negotiation of Tenders

- 9.1 The appropriate Commissioning Officer may only allow alteration of a tender in accordance with the Code of Practice
- 9.2 No negotiations, other than those relating to a received tender, may be conducted without the prior approval of the Authority. The results of all negotiations shall be reported to the Authority.
- 9.3 All negotiations shall be conducted in accordance with the Code of Practice. Negotiations must be conducted by or in the presence of at least two officers, one of whom must be technically qualified, on premises determined by the Commissioning Officer and a detailed contemporaneous written record kept.

10 Acceptance of Tenders and Award of Contracts

- 10.1 The Authority will formally award the following categories of contract after receiving a report on the tender outcome by the Commissioning Officer
- (a) Contracts with a value in excess of £50,000
 - (b) Contracts for which the lowest price tender is not being recommended for acceptance
- 10.2 For all other contracts, in the absence of any direction to the contrary from the Authority, tenders may be accepted by the appropriate Commissioning Officer.
- 10.3 The Commissioning Officer may only accept or recommend acceptance of tenders where the necessary financial approval for a scheme as a whole has been made in the Authority's estimates.

- 10.4 A tender other than the lowest if the payment is to be made by the Authority, or the highest if payment is to be received by the Authority, may only be accepted by the Authority after receiving a written justification by the Commissioning Officer.
- 10.5 The appropriate Commissioning Officer shall notify the tenderers of the outcome as soon as practicable. If requested, the Commissioning Officer may advise unsuccessful tenderers of the main reasons for their non-selection (e.g. not the lowest tender or the winning tenderer could demonstrate more experience) but details of prices submitted must remain confidential. The Authority's legal adviser should be consulted before any feedback is given.

11 Contract Instructions and Certification

- 11.1 All instructions and certifications to contractors will be in accordance with the form and conditions of contract in use, in writing and signed by the appropriate Commissioning Officer.
- 11.2 Before extra work is undertaken and/or any extra costs incurred, a Commissioning Officer shall ensure that such work or costs does not exceed the necessary financial approval in the Authority's estimates.
- 11.3 Before extra work is undertaken and/or any extra costs incurred which would exceed either the budget or the contract sum by 5% or £10,000, whichever is the smaller, the prior approval of the Authority shall be sought by the Commissioning Officer. In cases of urgency, a Commissioning Officer may take immediate action, in consultation with the Finance Director, but must report this action and the reason for it to the next meeting of the Authority.

12 Sub-Contractors

- 12.1 Where a sub-contractor or supplier is to be nominated, these Rules will apply in their entirety to the selection and use of that sub-contractor.
- 12.2 No contractor shall enter into any sub-contract without the written consent of the appropriate Commissioning Officer.

13 Reporting and Review of Contracts

- 13.1 All reports to the Authority either requesting or notifying the award of a new contract or the extension of an existing contract must include the following information:-
- (a) the estimated or actual value of the contract
 - (b) the duration of the contract
 - (c) the method(s) used to evaluate the tenders
 - (d) the date the contract was last formally tendered

(e) where applicable, the identity of the contractor(s) used since the contract was last tendered

13.2 Final accounts for Class C contracts must be reported to the Authority in accordance with the Code of Practice

14 Action by Members

14.1 No Member shall enter either orally or in writing into any contract on the Authority's behalf.

CONTRACTS CODE OF PRACTICE

1 Introduction

- 1.1 This Contract's Code of Practice is to be read in conjunction with the Contracts Rules and associated guidance notes. It is subject to all applicable United Kingdom and European Community legislation, orders and directives.
- 1.2 For ease of use, in all subsequent paragraphs of this Code, the paragraph number will relate directly to the relevant Contracts Rule.
- 1.3 The exclusion from the Rules of the employment of staff relates solely to those staff employed directly by the constituent Councils on the Authority's behalf. In contrast, the employment of agency staff and consultants will normally fall within the remit of the Rules.

2 Agency Arrangements and Partnership Bodies

- 2.1 From time to time it may be considered to be in the Authority's interests to enter into agency arrangements or public sector partnerships. In such circumstances, the Managing Director shall decide on the matter, where appropriate in consultation with the Finance Director and the Authority's legal adviser, except where the value of the arrangement exceeds £50,000 in which case the matter will be decided by the Authority.
- 2.2 The Managing Director shall also be responsible for approving any terms proposed under agency arrangements or partnerships which take precedence over the Authority's Constitution and its Rules.

3 Contract Packaging and Tender Band Values

- 3.1 There will be occasions when the assessment of the potential value of a contract is of necessity a "best estimate". If it transpires that the value was underestimated to such an extent that the incorrect procurement route was followed, then this should be reported retrospectively to the Authority.
- 3.2 The Authority's policy on controlling the Capital Programme is relevant in this context in so far as it will require the contract to be packaged in a manner consistent with the original project brief and associated objectives.
- 3.3 The European Community directives only come into play when the total value of a contract is above the relevant threshold. The current thresholds are (a) for works contracts £3.6m, (b) for supplies contracts £144,000. The Managing Director can advise on this issue as required.

4 Exceptions to Tendering Requirements

- 4.1 (a) Given the wide range of types of minor purchases that may fall within category A, no prescriptive rules will apply though officers may usefully refer to the guidelines on this issue.
- (b) All quotations should be on letter headed notepaper from the companies concerned and should include a point of contact at the company. In this context, faxes would be acceptable if they can be clearly identified as originating from a particular company.
- 4.2 Quotations must be dated and include sufficient detail to demonstrate that the quotations are being sought on a comparable basis for the same goods or services.
- 4.3 The officer requesting the quotations should sign and date them on receipt. They should then be stored in a secure location and be made available for inspection.

5 Format and Key Conditions of Contracts and Tenders

- 5.1 All contracts entered into by the Authority must include appropriate clauses to deal with:
- (a) European Community Standards or other international equivalent;
 - (b) Health and Safety at Work;
 - (c) Arbitration;
 - (d) Contract Monitoring;
 - (e) Default;
 - (f) Compliance with requirements of appropriate technical and professional bodies; and
 - (g) Race Relations.
- 5.2 Every invitation to tender must clearly indicate the character, shape, disposition and amount of the work or state the quality, quantity and description of the services, goods or materials to be supplied. The invitation must also contain a clear reference to the conditions of contract.
- 5.3 All tenders must indicate the contract period with the earliest and latest dates for commencement and the latest date for completion. Provision must be made in the tender document for commencement and completion to be stated by the tenderer within the range of dates shown.
- 5.4 Contracts for works or services with a value exceeding £50,000 should be sealed. In cases of doubt, the Managing Director should be consulted.

- 5.5 The main advantage of sealing is the increased length of the limitation period for taking legal action. Sealing procedures also enable a general legal check on contract forms, insurance, etc.
- 5.6 Commissioning Officers are required to employ the most appropriate means of financial management and security in connection with contracts including:-
- (a) financial and technical vetting (e.g. credit scoring, site visits etc.) either through an approved list or separate tendering procedures;
 - (b) contingency sums, retention and maintenance periods;
 - (c) liquidated damages;
 - (d) a bond or parent company guarantee;
 - (e) set off clauses
- 5.7 The above arrangements should be applied in accordance with the type and size of the contract and contractor involved. When standard form contracts include arrangements for (b) and (c), officers must consider the appropriate levels and instruct accordingly.
- 5.8 Commissioning Officers must give consideration to the issue of Bonds and/or parent company guarantees where:
- (a) the contract is of a considerable size and/or the Authority is uncertain about the credentials of a particular contractor or his capacity to sustain the contract; or
 - (b) there is a substantial parent company whose guarantee would be helpful.
- 5.9 Commissioning Officers should ensure that tender documents include information as to the contract requirements in respect of financial management and security.
- 5.10 Commissioning Officers should ensure that all tender documents and official orders for work or services include the following information:-
- (a) contract requirements in respect of insurance including the sum required by the Finance Director; and
 - (b) contractor's duty to provide evidence of his insurance to the Authority's officers when requested.
- 5.11 In particular, before any Class C contract for work or services is approved for signature/sealing on behalf of the Authority, officers should see:-
- (a) appropriate insurance policies covering the contractor against the risks referred to in Rule 5 to the sum required by the Finance Director; or

- (b) where policies have previously been examined, or where otherwise appropriate in the officer's discretion, cover notes to the same effect as in (a) above; and
- (c) evidence that the policy(s) contain a clause indemnifying the Authority as principal against claims.

5.12 In respect of Class A or B contracts for works or services, officers should undertake the procedures set out in paragraph 4.3 above wherever appropriate.

5.13 In respect of all financial management and security arrangements referred to above, Commissioning Officers should consult the Finance Director, the Managing Director and the Authority's legal adviser, who may from time to time give guidance on individual or general questions of financial management and security.

6 Short-listing of Suppliers to Tender

Shortlisting

6.1 The basis for both short-listing and rejecting tenderers should be documented. These decisions must be based on factors that relate explicitly to the contractor's ability to deliver the contract. If any other issues are to be considered, then the Managing Director and/or the Authority's legal adviser should be consulted before any final decisions are notified to the potential tenderers, and full details of these other issues similarly documented.

Approved Lists

6.2 Approved Lists of tenderers are used by the constituent Councils for goods and services that are regularly required, subject to contract value thresholds. These lists are maintained by officers or agents of the constituent Councils in accordance with rules contained within the respective Councils' Constitutions.

6.3 Where goods or services are required by the Authority and the Commissioning Officer is satisfied that it is in the Authority's best interests, the relevant approved list maintained by his/her Council shall be used for the purpose of selecting tenderers. If in doubt, the Commissioning Officer should seek appropriate advice from the Managing Director and/or the Authority's legal adviser.

Advertisements

6.4 If tender invitations are being sought through an advertisement rather than an approved list, an advertisement should be published in at least two newspapers or journals, preferably and where appropriate at least one locally, that might be read by persons undertaking such contracts. The advertisement is to clearly describe the purpose of the contract and the nature of the works envisaged. An appropriate period, not less than ten days, should be allowed for response. A copy of the advertisement may also be sent direct to persons known who may be interested. Contracts that fall within EC tendering thresholds must be advertised in the European Journal (OJEC).

- 6.5 All invitations to tender should be preceded by a preliminary enquiry, by an officer knowledgeable of the contract requirements, to ascertain the contractor's interest and availability to tender. A written record of all such enquiries must be kept. Enquiries shall be made of contractors who are within the appropriate category and financial limits.
- 6.6 On the date indicated in the preliminary enquiry, all tender documents should be despatched to the tenderers replying in the affirmative.

7 Tender Evaluation

- 7.1 The detailed model used for evaluating tenders must be documented before the tender process begins. It must not be changed during the tender process. The model must be consistent with the broad indications of the factors to be used that is publicised in the documentation issued to contractors when they are invited to tender.
- 7.2 The factors used in the evaluation process must be capable of being evidenced or assessed during the tender process, either from the documentation submitted by contractors or from their presentations.
- 7.3 The tender evaluation must be documented and witnessed by at least one officer who is independent of the tender process. This document must be retained and kept available for inspection.

8 Administration of the Tender Process

- 8.1 Where an invitation to tender is required, every notice of such invitation shall state that no tender will be received except in a PLAIN SEALED envelope which shall bear the word "Tender" followed by the subject to which it relates and the date and time by which it should be returned, but shall not bear any name or mark indicating the identity of the sender.
- 8.2 Tenders for contracts in excess of £50,000 should be returned to the Authority's designated offices for receipt and opening. In this context, the Managing Director will assume the responsibilities of the Commissioning Officer for administering the tender process.
- 8.3 All tenders must be opened at the same time and as soon as practicable after the closing time and date of the tender. Subject to the provisions of Rule 8.2, any tender received after the stipulated closing time and date will not be considered and should be returned to the tenderer with a letter recording this fact.
- 8.4 Tenders shall be opened, recorded and witnessed by two officers, neither of whom shall have any involvement in the selection of contractors invited to tender or the subsequent tender evaluation. The Commissioning Officer will ensure that the officers opening the tenders are completely independent; they should not be employed in the same work area as that being addressed by the tender process.

- 8.5 A written record of the tenders invited, received, opened and retained and signed by the officers present, must be kept together with a note of any qualifications that a tenderer may have made that are immediately apparent.
- 8.6 All tender documents considered must be retained on file and should be kept available for future reference or inspection.
- 8.7 The tenderer who submitted the most favourable tender received shall be notified that their tender is under consideration. The unsuccessful tenderers shall be notified as soon as practicable.
- 8.8 The Commissioning Officer shall invalidate and note the reason why any tender which has not been properly completed in all respects and, in particular:
- (a) where it appears that the tenderer has broken the relevant Contracts Rules or Code of Practice;
 - (b) where a tender offer is subject to any qualification, amendment or alteration which has not previously been approved by the Commissioning Officer;
 - (c) any amendment to the tender price is received after the tenders have been opened, subject to paragraph 9 below;
 - (d) any tender from which the tender price has for some reason either been omitted or is otherwise not ascertainable;
 - (e) where a tenderer elects to withdraw for whatever reason;
 - (f) any tender received where there is evidence to suggest that the tenderers have been in collusion when submitting their tenders.

9 Alterations and Negotiation of Tenders

Negotiation

- 9.1 In cases where tenders exceed budgetary provision, there may be a need for post tender negotiations.
- 9.2 Even if price is not to be the sole determinant of supplier selection, there may be a justifiable need to discuss the qualitative aspects of the tender submission. For example, the tender process may require the submission and discussion of method statements or may provide for alternative methods of service delivery to be considered.
- 9.3 This all adds considerably to the scope for post tender negotiations. In order to safeguard both Members and officers in all cases when tenders are being negotiated, the following procedures shall be adopted:-

- (a) negotiation should take place on premises determined by the Commissioning Officer in normal working hours;
 - (b) meetings with contractors should be attended by at least two Authority representatives of whom at least one should be technically qualified;
 - (c) minutes of meetings should be recorded and signed by all attendees; and
 - (d) negotiations should be based on, or clearly derived from, the original tender specification.
- 9.4 European legislation is restrictive in the extent to which tenders may be changed during a period of negotiation. Indeed post tender negotiations are substantially prohibited for contracts in excess of European thresholds let under restricted procedures.
- 9.5 Under no circumstances should negotiations fundamentally change the scope or content of the original tender. It is not acceptable to tender on one basis and award the contract on a different basis.
- 9.6 Where alternative specifications or conditions are allowed for within the tender documentation and such alternatives are submitted by tenderers, officers shall conduct any necessary negotiations in confidence in order to establish, so far as it may be possible, common criteria between tenders in order to ascertain the most advantageous offer for the Authority.
- 9.7 In doing so, officers shall ensure that all tenderers have equal opportunity to consider the alternatives and are given the chance to make their offers in the light of such alternatives. Officers shall further ensure that no tenderer be given an opportunity to obtain an unfair advantage over competitors.
- 9.8 Where the lowest tender received and under consideration exceeds the necessary provision made in the Authority's estimates, officers may negotiate. Such negotiating shall be with the lowest tenderer on the basis of an amended design and/or specification. If the negotiations are unsuccessful, negotiations may proceed with the second lowest tenderer and, if these are unsuccessful, so on to the third and subsequent tenderers. Should all negotiations fail, new tenders shall be invited using redrafted tender documents to coincide with the amended design and/or specification.
- 9.9 Where negotiations relate to matters other than to a received tender (as described above), then prior approval of the Authority must be obtained.
- 9.10 The same principles shall apply with appropriate adjustments where the Authority is selling goods or services.

Adjustment of Errors

- 9.11 In all cases, tenders and the priced bills of quantities (where appropriate) supporting the lowest tender under consideration, shall be examined by the Commissioning

Officer. If errors are detected, the tenderer shall be given details of the errors and offered one of the alternatives described below:

(a) Alternative 1

Subject to (b) below, if the examination reveals errors or a discrepancy between the prices in the bill and the tender figure, the tenderer shall be asked to confirm whether he/she stands by the tender price or withdraws the offer. If the lowest tender is withdrawn the priced bill of the second lowest tender shall be examined. Where the second lowest tender reveals errors or discrepancies the tenderer shall be given a similar opportunity to confirm or withdraw and so on to the third and subsequent tenders.

(b) Alternative 2

At the Commissioning Officer's discretion, a tenderer may be given the opportunity to amend or correct genuine errors. Should the tenderer elect to amend the tender by the correction of the errors and as a result the tender is no longer the lowest, the second lowest tender shall be examined so that it can be considered for acceptance and so on to the third and subsequent tenders.

9.12 Any amendments correcting an error shall be made in writing by the tenderer and attached to the contract documentation.

9.13 If the tenderer elects not to amend the tender offer, an endorsement shall be added to the contract documents indicating that all rates or prices (excluding preliminaries, contingencies, prime cost and provisional sums) inserted by the tenderer shall be considered as adjusted in the same proportion as the corrected total of priced items exceeds or falls short of the original total for such items.

9.14 The endorsement shall be signed by the parties and form a part of the Contract.

Allocation and Award of Contracts to More Than One Contractor

9.15 In cases where it is intended that more than one contractor will be used on identical work, the following steps should be followed:

(a) the results of the tender process shall be reported to the Authority;

(b) the additional costs of using contractors at prices other than the lowest tender should be identified together with the implications of giving the work solely to the lowest tenderer;

(c) the Authority shall consider whether (i) the tender prices should be paid, (ii) officers should negotiate with the tenderers, or (iii) the work should simply be awarded to the lowest tenderer;

(d) the results of any subsequent negotiations should be reported back to the Authority before any contractual commitments are made.

10 Acceptance of Tenders and Award of Contracts

- 10.1 Full details should be reported to the Authority of all Class C contracts. The Authority will formally award all contracts in excess of £50,000. All reports relating to the acceptance of tenders shall be treated as Exempt Information under Part 1 of Schedule 12A of the Local Government Act 1972. No more than the contract sum and lowest tenderer shall be minuted or reported in the open.
- 10.2 Where the lowest tenderer originally received elects to withdraw the tender (for whatever reason), this must be confirmed in writing by the tenderer or failing this, by the Commissioning Officer. The second lowest original tender now becomes the lowest and can be dealt with as if it was the lowest originally received.
- 10.3 All acceptances of tenders must be in writing.

11 Contract Instructions and Certification

- 11.1 No officer shall sign any contractual document that is not in a previously approved format except with the prior approval of the Managing Director.

12 Sub-Contractors

- 12.1 The selection of a nominated sub-contractor must be done in accordance with Contracts Rules, in the same way as the selection of the main contractor. Officers must ensure that the conditions of contract appertaining to the main contractor are also enforced by the main contractor against the nominated sub-contractor.
- 12.2 Where a main contractor wishes to use a domestic sub-contractor, approval must first be sought from the Commissioning Officer and such approval must be given in writing. Care should be taken to ensure that any such domestic sub-contractor(s) are suitable in all respects and therefore are preferably chosen from an Approved List. Commissioning Officers may, at their discretion, require similar references as those for contractors applying for inclusion on an approved list prior to agreeing for them to be nominated by the main contractor as a domestic sub-contractor. Further domestic sub-contractors must, in all respects, comply to the same conditions as the main contractor.

13 Reporting and Review of Contracts

- 13.1 Reports to the Authority in respect of a new contract or extension of an existing contract shall include, as a minimum, information as set out in Rule 13.1.
- 13.2 Final Accounts for contracts in excess of £50,000, or indeed any other final account that the Authority may wish to see reported, must include the following details as a minimum requirement:
- An overview of the objectives of the contract and the extent to which they had been met

- Planned start and finish dates
- Actual start and finish dates
- Reasons for any difference
- Contract sum
- Actual contract cost
- Reasons for any difference

14 Action by Members

14.1 Under no circumstances should Members enter into any contract on the Authority's behalf.

FINANCIAL RULES

INDEX

1 General Approach

- 1.1 Corporate Framework
- 1.2 Rights of External Bodies

2 Main Responsibilities of the Finance Director

- 2.1 Proper Administration of the Authority's Financial Affairs
- 2.2 Financial Advice
- 2.3 Accounting
- 2.4 Providing Information and Financial Returns to Statutory External Bodies
- 2.5 Internal Audit and Control

3 Planning and Budgeting

- 3.1 Three Year Financial Plan – Strategy and Resource Targets
- 3.2 Annual Revenue and Capital Budget
- 3.3 Capital Programme Spending Of Budgets

4 Spending Of Budgets

- 4.1 Amendment of Approved Budgets
- 4.2 Spending of Revenue Budgets
- 4.3 Approval to Apply Budgets within the Capital Programme
- 4.4 Treatment of Unspent Budgets
- 4.5 Action of Overspent Capital and Revenue Budgets

5 Review and Reporting of Performance

- 5.1 Review of Performance
- 5.2 Reporting of Performance

6 Other Financial Standing Orders

- 6.1 Review of Financial Limits
- 6.2 Payment of Invoices, VAT payments, wages, salaries, pensions and allowances
- 6.3 Collection of Income
- 6.4 Review of Charges
- 6.5 Custody of Assets
- 6.6 Write offs
- 6.7 Banking and Cash handling

6.8 Insurance and Risk Management

6.9 Treasury Management

6.10 Financial Irregularities

7 External Arrangements

7.1 Partnerships and External Funding

1. GENERAL APPROACH

1.1. Corporate Framework

1.1.1. In approving the Financial Standing Orders, the Authority has sought to provide a strong corporate framework for conducting the financial affairs of the Authority, incorporating appropriate controls and providing those responsible for delivering services with financial responsibility and flexibility within their Service Area. All financial and accounting procedures of the Authority will take place in accordance with these Financial Standing Orders.

1.2. Rights of External Bodies

1.2.1. The Finance Director will be the first contact within the Authority for the External Auditor who has rights of access to all documents and information necessary for audit purposes.

1.2.2. The Authority may, from time to time, be subject to audit, inspection or investigation of its financial systems by other external bodies such as HM Customs and Excise and the Inland Revenue who have statutory rights of access to financial records. The Finance Director will be the principal contact within the Authority on such matters.

2. MAIN RESPONSIBILITIES OF THE FINANCE DIRECTOR

2.1. Proper Administration of the Authority's Financial Affairs

2.1.1. The Finance Director is the Authority's Chief Financial Officer responsible for the proper administration of the Authority's financial affairs under Section 73 of the Local Government Act 1985.

2.1.2. The Finance Director has a duty under Section 114(2) of the Local Government Finance Act 1988 to make a report if it appears that the Authority is about to or has already carried out either:-

- a) a decision which involves or would involve the Authority in incurring expenditure which is unlawful; OR
- b) a course of action which if pursued would be unlawful and likely to cause a loss or deficiency to the Authority.

2.1.3. The Finance Director has a duty under Section 114(3) of the Local Government Finance Act 1988 to make a report (in consultation with the Managing Director and the Monitoring Officer) to every Member where it appears that the expenditure incurred or likely to be incurred in a financial year exceeds resources available to meet the expenditure. It is the duty of Appointed Officers to notify the Finance Director of any situations that might be considered:-

- a) unlawful and/or
- b) might exceed available resources in light of the above responsibilities.

2.1.4. In discharging this responsibility, the Finance Director will ensure that arrangements for financial and accounting matters and the security of financial assets are efficient and effective.

2.1.5. The Finance Director can require Appointed Officers to provide any timely and relevant information that to enable him/her to carry out his/her functions and to give proper advice.

2.1.6. All financial systems, procedures, records and controls and changes to them must be agreed in advance with the Finance Director, who may issue formal instructions or guidance from time to time.

2.2. Financial Advice

2.2.1. The Finance Director will advise the Authority on any matter containing financial implications. Such advice may be included in the reports of other Officers.

2.2.2. Officers will ensure that the Finance Director has the opportunity to comment on all proposals containing financial implications at the earliest practical stage before the dispatch of a report and in any event no less than three working days before the dispatch of a report.

2.2.3. Appointed Officers carrying out functions under delegated powers must ensure that they seek and receive such financial and legal advice as may be necessary on the consequences of a course of action before taking a decision on such action.

2.2.4. The Finance Director is responsible for advising Appointed Officers where relevant on the financial implications of guidance and relevant legislation issued by appropriate bodies as it applies.

2.2.5. The Finance Director is responsible for advising Appointed Officers on relevant taxation issues (including other funds such as the Pension Fund) and liaising, negotiating and where necessary taking appropriate action to promote and protect the Authority's financial position.

2.3. Accounting

2.3.1. The Finance Director will determine the format and maintain the Authority's principal accounting records and will be the Authority's adviser on all accounting and financial matters. Appointed Officers are responsible for making sure that financial records are maintained in a manner determined in advance by the Finance Director.

2.3.2. The Finance Director will ensure that the Authority's accounting records are kept in accordance with appropriate accounting standards and mandatory guidance and that the Statement of Accounts is prepared in line with the Code of Practice on Local

Authority Accounting in the United Kingdom: A Statement of Recommended Practice.

- 2.3.3. The Finance Director will ensure that the Authority's Annual Statement of Accounts is prepared and made available in accordance with the statutory timetable:-
- a) the Finance Director shall issue procedures and a timetable for the closure of the accounts in accordance with good accounting practice;
 - b) Appointed Officers are responsible for making sure that the timetable referred to in (a) above is complied with; and
 - c) the Authority is responsible for approving the draft Annual Statement of Accounts by the statutory date following the end of the financial year on 31 March.

2.4. Providing Information and Financial Returns to Statutory External Bodies

2.4.1. The Finance Director will make arrangements for completing the Authority's tax returns and other statutory financial returns and providing relevant information to external bodies on the financial activities of the Authority as a whole.

2.5. Internal Audit and Control

2.5.1. The Accounts and Audit Regulations 1996 require the Authority to maintain an adequate and effective internal audit. The Finance Director will commission on behalf of the Authority a suitable internal audit of its accounting records and control systems.

2.5.2. The Finance Director or their representative shall have access to all documents and records in the possession of the Authority and shall be afforded all facilities and co-operation by Members; Appointed Officers and members of their staff, who shall provide whatever information and explanation are deemed necessary. This will include liaising with the Chief Financial Officers within the constituent Councils in respect of all documents and records in the possession of the Councils that relate to the Authority's business.

3. PLANNING AND BUDGETING

3.1. Three Year Financial Plan – Strategy and Resource Targets

3.1.1. The Finance Director, in conjunction with Appointed Officers, will produce a Three Year Financial Plan and report to the Authority each year on the financial prospects for the current financial year and forecasts for future financial years.

3.1.2. The Authority, with the advice of the Managing Director and the Finance Director will agree a Revenue and Capital Budget Strategy, including Budget priorities for the forthcoming financial year, which will be published by 30 November each year.

3.1.3. The Authority will make arrangements to consult on the proposed Revenue and Capital Budget Strategy. This will include obtaining the views of the constituent Councils.

3.2. Annual Revenue and Capital Budget

3.2.1. The Finance Director, in consultation with Appointed Officers, will prepare a detailed proposed Budget of Revenue and Capital expenditure and income for the forthcoming financial year.

3.2.2. The Finance Director, in conjunction with Appointed Officers, will present to the Authority for decision:-

- a) a statement of the projected Revenue and Capital Out-turn for the current financial year compared with the approved Budget. This, if agreed by the Authority, will be the amended Budget for the rest of the current financial year; and
- b) a proposed Revenue and Capital Budget for the next financial year.

3.2.3. The Authority will:-

- a) consider the Revenue and Capital Budgets that are proposed for the Authority's services;
- b) consider the results of the consultation with the constituent Councils as described in 3.1.3 above;
- c) consider funding for the constituent Councils for services provided by them on behalf of the Authority, the need for Central Reserves and Contingencies, the Level of Balances and the grants available from the Government;
- d) consider the method of apportionment of the Authority's levy on the constituent Councils; and
- e) after taking the above matters into account, approve the Revenue and Capital Budget for the forthcoming financial year and the method of levy apportionment. The Authority must give its decision not later than 15 February preceding the year in which the levy is to be issued.

3.3. Capital Programme

3.3.1. Further to Financial Standing Order 3.1 as set out above, the Authority will approve a Capital Programme taking account of guidance on the Capital Budget for the next financial year, the Three Year Financial Strategy of the Authority, capital financing and expenditure authorisations available and the revenue implications involved.

3.3.2. Appointed Officers will implement and keep under review the Authority's agreed Capital Programme for services under their control, covering schemes in progress,

schemes commencing in the current and forthcoming financial years and the revenue implications of those schemes.

- 3.3.3. The Authority may approve the inclusion of any new scheme or delete or amend any scheme in the Capital Programme providing that it accords with the Capital Budget and can be funded from resources available to the Authority, including those funded from grants.

4. SPENDING OF BUDGETS

4.1. Amendment of Approved Budgets

4.1.1. The approved Revenue Budget may be amended by:-

- a) the Authority authorising virements within Revenue Budgets or transfers to or from the Contingency and/or Reserves; and
- b) the Appointed Officers in accordance with delegated powers (see Part C - Scheme of Delegation).

4.1.2. In making amendments to the approved Revenue Budget, the Authority and Appointed Officers must:-

- a) have regard to the Financial Plan approved by the Authority; and
- b) be satisfied that an amendment to the Revenue Budget can be offset by additional income, contingency funds, balances or savings elsewhere within the Budget.

4.1.3. Any proposed changes to Revenue Budgets under Financial Standing Order 4.1.2 as set out above should be subject to the advice of the Finance Director.

4.2. Spending of Revenue Budgets

4.2.1. A Revenue Budget approved by the Authority may be spent without further reference to the Authority.

4.2.2. No power is delegated to any Appointed Officer to spend above the Approved Estimate for their service area unless or until the Authority has approved in advance the spending.

4.2.3. Appointed Officers may, in consultation with the Finance Director, transfer any Revenue Budget within their control for any lawful purpose relating to the areas for which they are responsible providing that:-

- a) the transfer is within the Estimate approved by the Authority;
- b) the reason for the transfer accords with the policies and strategies of the Authority;

- c) no commitment to a higher overall level of expenditure in future financial years is entered into;
- d) the amount in question does not exceed £10,000 at any one occasion; and
- e) no other service or Appointed Officer is affected.

4.2.4. Any transfer of Budget not falling within the criteria detailed in Financial Standing Order 4.2.3 above will require the prior approval of the Authority.

4.2.5. Where the above criteria 4.2.3 (a-e) apply in relation to Budget Transfers between Budgets controlled by two or more Appointed Officers the approval of the Finance Director will be required provided that the transfer is agreed by both Appointed Officers concerned. In the event that the transfer is not agreed by the respective Budget holders, the approval of the Authority will be required.

4.2.6. Any proposed changes to Revenue Budgets should be fully discussed with the Finance Director.

4.3. Approval to Apply the Budgets within the Capital Programme

4.3.1. Subject to 4.3.2 below, the approval of the Authority will be required before expenditure is incurred for each individual Scheme included in the Capital Programme. The Authority will be provided with:-

- a) an estimate of the cost of the Scheme;
- b) an estimate of any consequential expenditure or income, whether capital or revenue; and
- c) if the Scheme is part of a larger Scheme, an estimate of the cost and any other information as may be necessary to permit full consideration of the proposal.

4.3.2. Capital Schemes which are included in the Capital Programme may be progressed by the relevant Appointed Officer before receiving the approval of the Authority, provided that expenditure on each Scheme in any one financial year does not exceed £50,000.

4.3.3. No power is delegated to any Appointed Officer to incur expenditure on any Scheme or provision not included in the Capital Programme, or, subject to 4.1.2 above, to spend above the approved amount unless or until prior approval has been given by the Authority.

4.3.4. Capital Budgets may not be transferred to other Schemes without the prior approval of the Authority.

4.4. Treatment of Unspent Budgets

- 4.4.1. An Appointed Officer must apply to the Authority in order to earmark any unspent resources or savings for a planned purpose in a future financial year.
- 4.4.2. Any unspent resources at the end of the financial year can be carried forward to the following financial year provided it is earmarked for a specified purpose.
- 4.4.3. The Authority may agree the use of any under spending in any one financial year to be used in the following financial year for a purpose consistent with the Authority's Three Year Financial Plan, subject to the advice of the Finance Director as to the overall financial position of the Authority.
- 4.5. Action on Overspent Capital and Revenue Budgets
 - 4.5.1. Where it appears that an approved Revenue Budget may or will overspend by £10,000 or 5% of the Gross Budget for the service concerned (whichever is the smaller) or an approved Capital Scheme will overspend by any amount, then the responsible Appointed Officer will notify the Finance Director and the Authority and will immediately take steps to investigate the reason and to rectify the situation.
 - 4.5.2. Where it appears that no action by Officers can prevent an overspend of the total Service Budget for the service, the Appointed Officer will make a report to the Authority to this effect within 3 months from the first notification of the overspend.

5. REVIEW AND REPORTING OF PERFORMANCE

5.1. Review of Performance

- 5.1.1. The Authority will ensure that the approved Budget is implemented and will receive reports from Appointed Officers to enable it to do so.
- 5.1.2. Appointed Officers will be responsible for the performance of services under their control against financial and non-financial performance targets including performance against the Budget, and will undertake an ongoing review of performance against these targets.
- 5.1.3. Appointed Officers will ensure that they have access to such financial or non-financial information as they may reasonably require to undertake their service responsibilities and will consult the Finance Director accordingly.
- 5.1.4. The Finance Director will support and advise Appointed Officers in ensuring that financial management information is adequate for management purposes.
- 5.1.5. Appointed Officers, with the assistance of the Finance Director, will be responsible for monitoring the overall spending of their service areas and reporting to the Authority on any significant variances.

5.2. Reporting of Performance

- 5.2.1. The Finance Director, in conjunction with each Appointed Officer, will prepare and present to each meeting of the Authority a report detailing actual and forecast performance against the targets set in Financial Standing Order 5.1.2 above.
- 5.2.2. Expenditure in these reports should include all known financial commitments entered into by the Authority, which specifically includes goods and services awaiting a supplier's invoice.
- 5.2.3. The Finance Director will be responsible for monitoring and reporting the overall spending of the Authority.

6. OTHER FINANCIAL STANDING ORDERS

6.1. Review of Financial Limits

- 6.1.1. The financial limits in these Financial Standing Orders will be reviewed periodically by the Finance Director with due consultation. The prior approval of the Authority will be required for any amendments.

6.2. Payment of Invoices, VAT Payments, Wages, Salaries, Pensions and Allowances

- 6.2.1. Invoices for payment will be properly completed, certified and paid in accordance with procedures and guidance issued by the Finance Director. The Finance Director will make available up-to date guidance on the proper treatment and accounting for VAT which includes a timetable for preparation and submission of the claim that ensures VAT payments are fully and promptly recovered from Customs and Excise. It is the duty of Appointed Officers to comply with these procedures and time-scales and to notify the Finance Director if there are or may be any problems.

- 6.2.2. It is the responsibility of Appointed Officers to ensure that proper procedures in respect of financial implications has been established within their Service Area and is operating effectively. The registers of nominated postholders shall identify staff authorised to act on an Appointed Officer's behalf in respect of payments, income collection and placing orders, together with the limits of their authority.

- 6.2.3. The Finance Director will maintain records of all persons authorised to initiate financial transactions on his/her behalf.

- 6.2.4. It is the duty of Appointed Officers to give required details for a new signatory to the Finance Director and to promptly notify any changes.

6.3. Collection of Income

- 6.3.1. Appointed Officers will seek prompt collection of all monies due to the Authority in accordance with arrangements approved by the Finance Director.

6.4. Review of Charges

- 6.4.1. Appointed Officers will review charges for goods and services no less than once a year in consultation with the Finance Director and, except where authority has been delegated, will submit proposals to the Authority for approval. In setting charges, the base position should be that full cost recovery is achieved and that a subsidised service should only be offered where to do so would actively promote an Authority policy objective.

6.5. Custody of Assets

- 6.5.1. Appointed Officers will be responsible for the safe custody of all Authority assets under their control.
- 6.5.2. Appointed Officers will ensure that a physical check which adequately documents all assets with a total estimated value over £2,000 is undertaken at least annually, and will provide the Finance Director as soon as is reasonably practicable with details of any anomalies.
- 6.5.3. Appointed Officers will provide such information as may be required by the Finance Director as to the value of stock holdings at the end of the financial year.
- 6.5.4. Appointed Officers will be responsible for maintaining an inventory of furniture, plant, other equipment, tools and other individual items of over £500 and all computer equipment, in a form approved by the Finance Director.
- 6.5.5. Appointed Officers, in consultation with the Finance Director, are authorised to dispose of surplus, damaged or scrap stocks, materials or equipment on the best possible terms provided that the estimated realisable value does not exceed £2,000.
- 6.5.6. The disposing of assets with an estimated realisable value in excess of £2,000 shall be subject to the approval of the Authority.

6.6. Write - Offs

- 6.6.1. The Authority is responsible for approving procedures for writing off losses.
- 6.6.2. The Finance Director may write off losses up to the value of £5,000 for any one item in respect of:-
 - a) losses arising when property of the Authority is lost, stolen, damaged or destroyed and the loss is not recoverable from insurance or other sources;
 - b) losses upon disposal of stock at a price less than the book value at the time of disposal; and
 - c) money due to the Authority which has become irrecoverable or is thought no longer cost effective to recover. Provided in each case that proper steps have been taken to mitigate the loss and to prevent a recurrence.

6.6.3. The Finance Director will keep records of all such write-offs.

6.6.4. Any write-offs exceeding £5,000 must be approved in advance by the Authority.

6.7. Banking and Cash Handling

- 6.7.1. The Finance Director will be responsible for all arrangements relating to the operation of the Authority's bank accounts.

- 6.7.2. Appointed Officers will ensure that the collection and banking of monies is undertaken in accordance with any instructions issued by the Finance Director.
- 6.7.3. Petty Cash imprest accounts will be operated in accordance with instructions issued by the Finance Director.
- 6.7.4. Appointed Officers must inform the Finance Director when £50,000 or more cash is expected to be received as he/she needs to know about this to enable him/her to carry out this function.
- 6.8. Insurance and Risk Management
- 6.8.1. The Finance Director is responsible for preparing the Authority's Risk Management Policy, promoting it throughout the Authority and advising the Authority on appropriate insurance cover. The Authority is responsible for approving the Risk Management Policy. Appointed Officers are responsible for promoting and implementing this policy.
- 6.8.2. Appointed Officers will keep under review all risks within the areas under their control. They must make every effort to reduce the risks.
- 6.8.3. Appointed Officers will notify the Finance Director annually in accordance with the Risk Management Policy and any guidelines issued by him/her, of all risks and assets as required under 6.5.4 above indicating their cost or value, and of any material changes in these risks or assets as they arise. The Finance Director will then make appropriate arrangements for insurance cover, payments and administration.
- 6.8.4. Appointed Officers will notify the Finance Director immediately of any event that may give rise to an insurance claim, and will provide estimates and any other information required for the settlement of the claim.
- 6.8.5. Appointed Officers should notify the Finance Director immediately of any acquisitions, enhancements or disposals over £2,000.
- 6.9. Treasury Management
- 6.9.1. The Authority has adopted the key recommendations of CIPFA's Code for Treasury Management in Public Services (the Code) as described in Section 4 of that Code.
- 6.9.2. Accordingly, the Authority will adopt and maintain, as the cornerstones for effective treasury management:-
- a) A Treasury Management Policy Statement, stating the purposes and objectives of its treasury management activities (see Appendix A); and

- b) Suitable Treasury Management Practices setting out the manner in which the organisation will seek to achieve those policies and objectives, and prescribing how it will manage and control those activities.

6.9.3. All money in the hands of the Authority is aggregated for the purposes of Treasury Management and is under the control of the Finance Director.

6.9.4. The Authority has responsibility for the implementation, amendment and monitoring of its treasury management policies. The Finance Director has delegated responsibility for the implementation, amendment and monitoring of the Treasury Management Practices and the execution and administration of treasury management decisions and will act in accordance with the Authority's Treasury Management Policy Statement and Treasury Management Practices and, if he/she is a CIPFA member, CIPFA's Standard of Professional Practice on Treasury Management.

6.9.5. The Finance Director shall report to the Authority on its Treasury Management Policies, practices and activities, including as a minimum, an Annual Strategy and Plan in advance of the year, and an annual report after its close, in the form prescribed in the Treasury Management Practices.

6.10. Financial Irregularities

6.10.1. The Finance Director is responsible for the development and maintenance of an Anti-Fraud and Anti-Corruption Policy, which will be approved by the Authority. Appointed Officers are responsible for promoting and implementing the Policy.

6.10.2. The Finance Director shall be notified immediately of any suspected irregularity relating to both private and Authority funds, including cash, stores, property and any material weakness which has been identified in any system or control. In all cases involving an Authority employee, the Head of Paid Services shall also be notified immediately.

6.10.3. The relevant Appointed Officer, in consultation with the Finance Director and, where relevant, the Head of Paid Services, will take such action as deemed appropriate.

6.10.4. The relevant Appointed Officer shall consult with the Managing Director, the Finance Director and, where relevant, the Head of Paid Services in advance for all cases that are going to be or may be formally reported to the Police. The Chair and Vice-Chair of the Authority shall also be advised in such cases.

6.10.5. Any action taken will not override the constituent Councils' disciplinary procedures or Whistleblowing Schemes.

7. EXTERNAL ARRANGEMENTS

7.1. Partnerships and External Funding

Agenda Item 7 – Appendix A Cont'd

- 7.1.1. The Authority is responsible for approving the frameworks when entering partnership arrangements. The Managing Director shall act as lead officer for the Authority in respect of any proposed partnership arrangements.
- 7.1.2. The Monitoring Officer is responsible for promoting and maintaining the same high standards of conduct with regard to administration in partnerships that apply throughout the authority. He/she must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies.
- 7.1.3. The Finance Director must ensure that the accounting arrangements that are to be adopted relating to partnerships and joint ventures are satisfactory, and must ensure that the financial risks have been fully appraised before contracts and other relationships are entered into with external bodies.
- 7.1.4. Appointed Officers are responsible for ensuring that any negotiations are in accordance with the Contract Standing Orders in relation to contracts with external bodies.

APPENDIX 'A'
Financial Rules

TREASURY MANAGEMENT POLICY STATEMENT

- 1 The Authority defines the policies and objectives of its treasury management activities as the:
 - management of the organisation's cash flows, its banking, money market and capital market transactions;
 - effective control of the risks associated with those activities;
 - pursuit of optimum performance consistent with those risks.
- 2 The Authority regards the successful identification, monitoring and control of risk to be the prime criteria by which the effectiveness of its treasury management activities will be measured. Accordingly, the analysis and reporting of treasury management activities will focus on their risk implications for the organisation.
- 3 The Authority acknowledges that effective treasury management will provide support towards the achievement of its business and service objectives. It is therefore committed to the principles of achieving best value in treasury management, and to employing suitable performance measurement techniques, within the context of effective risk management.

EMPLOYMENT RULES

1 Introduction

- 1.1 Under arrangements with the constituent Councils, all of ELWA's officers are employed through the Councils. These positions may be full or part time dedicated posts, full or part time secondments or form part of a constituent Council officer's duties, depending on the Authority's requirements at the time.

2 Appointment of Appointed Officers - Managing Director, Finance Director, Technical Director and Operations Director

- 2.1 ELWA's four Appointed Officers are each Chief Officers within their respective Councils.

Managing Director - Chief Executive, Barking & Dagenham Council
Finance Director - Director of Finance & Personnel, Redbridge Council
Technical Director - Public Realm Group Director, Havering Council
Operations Director - Head of Public Realm, Newham Council

- 2.2 Where a constituent Council appoints an officer whose duties shall include acting as an Appointed Officer to the Authority, the Authority must approve the appointment of the officer as an Appointed Officer to the Authority in all cases where the officer is a relevant Chief Officer of the respective Council (e.g. the Chief Finance Officer (or equivalent) of Redbridge Council as Finance Director of the Authority).
- 2.3 Any proposed variation to this arrangement by a constituent Council must be approved in advance by the Authority.

3 Appointment of Head of Paid Service, the Monitoring Officer and the Chief Financial Officer

- 3.1 The Authority shall make appointments to the positions of Head of Paid Service, Monitoring Officer and Chief Financial Officer.

4 Recruitment, Selection and Appointment of Other Officers

- 4.1 The Head of Paid Service will be responsible, in consultation with the employing constituent Council, for all appointments to dedicated and secondment positions including making any necessary arrangements in respect of job evaluations and specifications, the placing of advertisements etc.. The recruitment and selection policies of the respective employing Council shall be applied for the all such appointments, unless otherwise agreed.
- 4.2 The relevant Appointed Officer will be responsible, in consultation with the Head of Paid Service and the employing Council, for all appointments to posts where work on behalf of the Authority will form part of the post holders duties.

5 Disciplinary Action and Dismissal

- 5.1 The employing constituent Councils have disciplinary procedures in place, which all Appointed Officers must apply. These procedures will apply so long as any National Terms and Conditions of Service or Local Agreements do not override them.
- 5.2 The Authority will not be involved in the disciplinary action against or dismissal of any employee except where the Head of Paid Service considers such involvement is necessary for any investigation or inquiry into alleged misconduct. Any involvement will also be in consultation with the respective Council.
- 5.3 The constituent Council's disciplinary, capability and related procedures allow a right of appeal in respect of disciplinary action and dismissal.
- 5.4 The Head of Paid Service, the Monitoring Officer and the Chief Financial Officer are legally protected due to their statutory position. They may be suspended whilst an investigation takes place into alleged misconduct pertinent to their statutory role. That suspension will be on full pay and last no longer than two months.
- 5.5 No other disciplinary action may be taken in respect of any of those statutory officers except in accordance with a recommendation in a report made by a designated independent person.

CONFERENCES, VISITS AND HOSPITALITY RULES

1 Introduction

- 1.1 The way that Members and staff are expected to behave are set out in the constituent Councils' agreed Codes of Conduct. The key principles behind these Codes include the need to act with integrity, and, in particular, not to do anything which could call into question the validity of an action. The public's perception of the way that Members and staff act is very important and these rules should ensure appropriate, reasonable and accountable actions when Members and staff are involved in certain events. It is particularly important that actions are transparent and therefore the rules do require certain registers and records to be kept for possible inspection or scrutiny.
- 1.2 Although these rules refer to expenses and allowances, any claims for reimbursement are submitted to the respective constituent Councils and must be in accordance with the individual schemes operated by the Councils. Any expenses met by the constituent Councils in respect of Members or staff attendance at an event can be reclaimed from ELWA.

2 Meetings, Visits and Conferences

- 2.1 The rules apply to the following meetings, conferences and visits involving attendance by Members and/or staff:
 - Conferences relating to a particular profession or service usually held outside the ELWA area;
 - Visits outside the ELWA area to explore policy or service initiatives, or to develop partnership relations; and
 - Discretionary meetings and conferences usually held within or near the ELWA area to address specific issues, or to return hospitality received.
- 2.2 In the rest of the rules, any of these will be referred to as "the event".
- 2.3 If the total cost is likely to exceed £3,000, the event must be approved by the Authority - in advance where possible.
- 2.4 Where a programme of events is involved the approval of the Authority should be obtained at the beginning of the year.
- 2.5 In exceptional cases where timescales prevent prior approval, the Managing Director has authority, in consultation with the Chair and Vice-Chair, to approve the event but must submit a report to the Authority at the earliest opportunity.

- 2.6 The relevance of the event and the expected benefits of attendance must be explained in the report. The names of those planning to attend should also be given with appropriate justification.
- 2.7 Numbers attending must be kept to a minimum and attendance limited to those who have a relevant interest.
- 2.8 If a Member or staff wish to attend any event in a private capacity, that capacity should be made clear from the beginning to all involved. If the potential exists for a conflict of interest between private involvement and official duties, the Managing Director should be notified before the event takes place.
- 2.9 Attendance at events by spouses and partners is generally not allowed as this can create the wrong impression, particularly when attendance and allowances are being claimed. However, it is recognised that there may, rarely, be exceptional occasions when such attendance is appropriate or where special circumstances apply and such circumstances must be agreed by the Authority.
- 2.10 When reasonable grounds for special attendance by spouses/partners do exist, the Managing Director should maintain a record of this, together with details of any additional costs.
- 2.11 Additional costs will be recovered from the individuals concerned as soon as possible. The calculation is not always easy but the objective should be to demonstrate that spouses or partners have not been paid for or subsidised by the Authority. Where any doubt exists the matter should be discussed with the Finance Director.
- 2.12 The Managing Director shall also keep a separate register of the details of attendance on visits abroad where any part of the event is funded by the Authority. Any reciprocal arrangements are recorded in the same register.

3 Expenses

- 3.1 Incidental expenses should be kept to a minimum.
- 3.2 Any expenses not directly related to the event should normally be paid for personally by the Member or staff concerned. In any event, the reimbursement of expenses will be in accordance with the arrangements set out within the respective constituent Council schemes. Any expenses paid through the constituent Councils in respect of Members or staff attendance at an event can be reclaimed from ELWA.

4 Choice of Venue

- 4.1 When the location of an event is discretionary, constituent Council premises and facilities should be used. Any exceptions to this must be approved by the Managing Director. The need to “get away” is not an acceptable reason for using private locations.

Agenda Item 7 – Appendix A Cont'd

- 4.2 Official meetings between Members, Members and staff, or staff must take place in appropriate Council premises, (i.e. administrative accommodation), unless unavoidable (for example, at the invitation of an independent third party).

5 Working Lunches and Out of Hours Meetings

- 5.1 Discretionary meetings between Members and/or staff should be arranged, where possible, during normal working hours. Out of hours and lunch hour meetings should be exceptional.
- 5.2 Food should only be provided where no reasonable alternative is available. When food is provided or funded by the Authority, the relevant Appointed Officer should authorise it and record the justification. The Authority should not be seen to be unnecessarily subsidising meals. The amount and standard of provision should be kept to a reasonable level.

6 Accommodation

- 6.1 An event should be organised to minimise the extent of overnight stay.
- 6.2 Where practical, accommodation should not exceed a three star rating (or its equivalent when foreign travel is involved). Anything in excess should be justified in writing by the relevant Appointed Officer (for example, where alternative accommodation is not available or additional travel costs would be incurred).

7 Travel Arrangements

- 7.1 The choice of travel should be made with a view to keeping the cost of the visit as low as possible. People should share vehicles and travel together where practical. However, cheaper methods of transport should not be considered if this results in an additional overnight stay and greater overall cost.
- 7.2 First class or club class travel is not normally provided for Members or staff, but in exceptional circumstances the Managing Director may approve it. In the case of either Members or staff, specific justification must be documented.

8 Allowances

- 8.1 Subsistence should be seen as a reimbursement rather than as an allowance. Expenditure should be documented with supporting receipts where possible. Where possible, one individual should be nominated to keep all receipts relating to a particular event.
- 8.2 Where meals and accommodation are paid for by the Authority or others, subsistence cannot additionally be claimed.
- 8.3 In cases where staff organise petty cash advances for a group event, they should inform accompanying Members and staff at the beginning.
- 8.4 Travel claims should only be submitted by those Members or staff who provided the transport or paid for the tickets.

9 Employee Overtime

9.1 Overtime will only be paid for approved duties, and only for time reasonably spent outside of normal office hours. For example travelling to and from the venue, or for work linked to the event. Alternatively, time off in lieu, rather than overtime, may be granted.

10 Financial Issues

10.1 The funding of events should be finalised as far as possible in advance. This should allow most bills to be paid in advance and minimise the amount of cash that needs to be carried.

10.2 When a cash advance is sought, the intended use should be clearly documented. Both receipts and unspent cash must be returned at the end of the visit with a list of all expenditure.

11 Review Arrangements

11.1 At the end of each event requiring Authority authorisation, a further report should be made to the Authority giving:

- a brief summary of the event and the benefits of attendance
- the full costs (including a comparison with the original estimates)
- where relevant, the value of attending in the future.

12 Hospitality and Gifts Received

12.1 If gifts are offered to Members or staff in a personal capacity, they should not be accepted if they have anything more than a token value (for example pens, calendars and diaries). Any significant gifts received in an official capacity should be reported to the Monitoring Officer with a recommendation for their disposal, and recorded in a gifts and hospitality register. If considered appropriate, the Monitoring Officer will advise that the matter be reported to the Authority for consideration.

12.2 Decisions on whether to accept hospitality should be made by the following tests of reasonableness:

- the scale and type of hospitality should not bring into question the motive of the person or organisation offering it. If it gives the appearance that it might be intended to influence judgement, or could be viewed as such, the hospitality should not be accepted.
- the proposed hospitality should be limited to Members or staff who have a relevant interest.

- the hospitality should be directly linked to Authority business and/or the well being of the local community.

12.3 All hospitality and gifts received by Members and staff must be recorded in a register held by the Monitoring Officer, which is available for inspection to the public.

12.4 The Monitoring Officer must be advised in writing of anything received by Members over the value of £25.

12.5 Where hospitality received includes meals and accommodation, subsistence must not be claimed.

13 Hospitality and Gifts Given

13.1 The approval of the Authority should be sought before any gifts are purchased with a value over £100. The value and purpose should be clear. The recipient should be clearly associated with Authority business.

13.2 The provision of hospitality to visitors should follow similar tests of reasonableness to those discussed in section 12 above. All participants should have a link to the event. Whenever possible, constituent Council facilities (e.g. Butler Court in Barking & Dagenham) should be used.

13.3 The level of hospitality provided should be on a scale relevant to the normal conduct of Authority business. Existing subsistence allowances offer a reasonable guide in respect of hospitality funded by the Authority. It is accepted that there might be a need for some flexibility in respect of schemes funded by the European Union where the nature of the scheme presumes a reciprocal level of funding for “networking” and other forms of international co-operation. For these activities the level of hospitality given should be similar to that normally received but remain at a reasonable level.

13.4 A financial ceiling for such expenditure should be agreed in advance by the Authority.

13.5 All hospitality given by Members and staff must be recorded in a register held by the Monitoring Officer, which is available for public inspection.

14 Fees Received

14.1 Where Members or staff receive a fee for speaking or otherwise assisting at an event as a representative of the Authority, it should be credited to an Authority budget. The Finance Director should decide which budget is most appropriate.

15 Records and Registers

15.1 It is essential that records and registers are kept up to date and accessible for inspection or scrutiny if necessary.

15.2 The Monitoring Officer is responsible for ensuring that all records/authorisations/justifications etc. relating to events are kept on one file and that staff are aware of this and where to find the hospitality registers.

LAND ACQUISITIONS AND DISPOSALS RULES

1 Background

- 1.1 The acquisition and disposal of land by local authorities is controlled by statute, and was the subject of reports by the Audit Commission (1980) and the Commission for Local Administration (1995). These reports highlighted the various pressures that can influence local authorities, and their Members and employees, in dealing with land, and set out guidelines to encourage best practice.
- 1.2 The guidelines placed emphasis on adopting procedures that are transparent and consistent and therefore fair and proper. These Rules embody those guidelines.

2 Application

- 2.1 The Rules apply to all relevant land acquisitions and disposals except where any provision is waived by the Authority, or by urgent action under rule 25 of the General Rules for Meetings (*Article 1 of Part B of the Constitution*). The reason for any such waiver shall be set out in the appropriate minutes of the Committee.
- 2.2 References to land in the Rules include any property constructed on land. The terms "acquisition" and "disposal" apply to any relevant interest in land, including freehold, leasehold, easements, options, etc.
- 2.3 All proposals for change of use of Authority land must in the first instance be submitted for valuation and development opportunity advice, prior to submission to the Committee for any land use decision. The seeking of this advice is the responsibility of the Managing Director who will appoint the Head of Asset Strategy and Capital Delivery of the London Borough of Barking and Dagenham to act on the Authority's behalf.

3 Control by Members

- 3.1 The Audit Commission recommends the appointment of a land management committee, and that no land disposal shall take place except on the recommendation of the committee after due consideration of reports from the Authority's valuer, legal adviser and Finance Director. However, in view of the limited land holdings of the Authority all land management decisions will be dealt with at Authority meetings.
- 3.2 Land is a valuable resource, which by its management or disposal may achieve a variety of corporate objectives. The use of the land must, therefore, be determined corporately.
- 3.3 Decisions as to disposal and acquisition are to be taken in accordance with the Scheme of Delegation. The provision of finance for land acquisitions is subject to the Authority's Capital Programme procedures.

4 Employee Responsibilities

- 4.1 The Managing Director is responsible for seeking professional advice to the Authority on valuation and land matters, and for supplying or procuring valuation services to implement land sales or purchases. These services may include surveying, security, ground investigations, valuation and negotiation. No other officer shall initiate these activities, nor make any contact with another party during active negotiations, in relation to a land transaction.
- 4.2 The Commission for Local Administration advises that where the Authority's Valuer considers that a proposed disposal is not in the best interests of the Authority having regard to the state of the market, the condition of the property and its future potential, the effects of disposal on retained property, or for any other reason, the Valuer should make this clear in a report giving the reasons in full.
- 4.3 The Managing Director is responsible for compliance with statutory requirements in land transactions and for securing the most advantageous price, commensurate with achieving corporate objectives, in any transaction.
- 4.4 Employees proposing the release of any Authority land as surplus to requirements, must give adequate notice to the Managing Director, and shall identify budgetary provision for the interim management of the surplus land, pending decision as to its future use.

5 Statutory Responsibilities

- 5.1 On disposal of land, the Authority may not sell at a consideration less than the best that can reasonably be obtained, except for short leasehold disposals, or with the general or specific Government consent.
- 5.2 The price payable by the Authority on the acquisition of land is not so closely prescribed by statute. However, the Authority is bound by its overall fiduciary duties, and would be acting unlawfully if it did not have clear and supportable reasons for purchases above market value.
- 5.3 The Managing Director is responsible, on advice from the Authority's appointed legal adviser where appropriate, for ensuring that the Authority's statutory obligations regarding the price to be paid or received for land transactions are met, and for ensuring the validity of any valuation advice received from private sector contractors.
- 5.4 Terms for a transaction shall not be finalised unless supported by a current written recommendation from an appropriately qualified valuation surveyor. The recommendation relied upon and any relevant supporting information shall be deposited and retained by the Managing Director.

6 Land Disposal Procedures

- 6.1 The method used to dispose of land shall be the most effective method to secure the best terms reasonably available, as determined by the Managing Director in the light of appropriate advice.
- 6.2 Where land is to be disposed of by:
- Auction - a current written valuation shall be obtained, and the sale shall be subject to a reserve price of not less than that valuation;
 - Public Tender - the Authority's Contracts Rules relating to tenders for contracts shall apply; and
 - Tenderers shall be provided with information about any criteria to be used in evaluating the bids.
- 6.3 Land may also be disposed of by informal tender, or competition, including where specific prospective purchasers are invited to tender. In this case, the application of the Contracts Rules will not be appropriate, but participants shall be informed in advance of the procedures and the criteria for assessing proposals on a like for like basis.
- 6.4 Disposal by private treaty (negotiation) may be appropriate in order to respond to development proposals from the private sector, or where the end use for the land is of importance to the Authority's policies and objectives. However, it is a disadvantage that this method is less capable than others of demonstrating fairness, and that the best price reasonably obtainable has been secured (particularly if negotiations are restricted to a single party). This method must, therefore, be used with caution and only in exceptional circumstances, and shall require the prior approval of the Committee. The progress of negotiations shall be recorded in writing and retained by the Managing Director.

7 General

- 7.1 Any proposal to buy land for a price greater than, or to sell land for a price less than, a written recommendation obtained in compliance with paragraph 5.4, shall be accompanied by a report which establishes:
- the difference between the proposed price and the written recommendation;
 - all relevant factors affecting the price to be paid which should be taken into account by Members in reaching their decision;
 - the advice of the Authority's legal adviser on the legal justification for such action; and
 - the advice of the Finance Director.

- 7.2 Where land is to be occupied by an organisation on concessionary terms, the preferred process in following the requirement of paragraph 7.1 is to identify and account separately for the financial concession.

Part E

Codes of Conduct for Members And Employees

MEMBERS' CODE OF CONDUCT

The Local Government Act 2000 imposes a duty on all Councils to adopt a Code of Conduct for their Members. Although Councils may produce their own Code of Conduct, the Code must include the mandatory provisions of the Local Authorities (Model Code of Conduct) (England) Order 2001 (“the Model Code”).

Each of ELWA’s four constituent Councils have adopted the mandatory provisions of the Model Code. Redbridge Council have additionally extended the mandatory provisions to include local provisions. ELWA is not required to adopt a Code of Conduct for its Members as it is not included in the list of authorities required to do so by the Local Government Act 2000. However, the Members of the four constituent Councils who are appointed to serve as Members of ELWA, are bound by their respective Council Codes when acting in their official capacity on ELWA. All councillors are required, on accepting office as a local councillor, to declare that they will be guided by the Code.

Any breach or alleged breach by a Member of the Code of Conduct arising from activities in that Member’s capacity as a Member of ELWA will be referred by the Managing Director to that Member’s constituent borough for action in accordance with its Code of Conduct.

Full copies of each Council’s Members’ Code of Conduct are available from the respective Council. The contact officers are:

Barking & Dagenham - Nina Clark, Assistant Chief Executive (Democracy & Partnerships)
(tel. 020 8227 2114)

Havering - Christine Dooley, Assistant Chief Executive, Legal & Democratic Services
(tel. 01708 432484)

Newham - Martin Gibbs, Member Services Manager (Cabinet & Statutory)
(tel. 020 8430 6396)

Redbridge – Heidi Chottin, Borough Solicitor and Secretary, (tel. 020 8708 2201)

EMPLOYEES' CODE OF CONDUCT

ELWA does not have any direct employees. All employees that work on behalf of ELWA are employed by one or other of the constituent Councils under arrangements that exist between ELWA and the Councils. As such, all employees that work on behalf of ELWA are required to conduct themselves in a manner that would not breach their respective Council's Code of Conduct.

Any breach or alleged breach by an employee of the Code of Conduct arising from activities on behalf of ELWA will be referred by the Head of Paid Service to that employee's constituent Council for action in accordance with that Council's Code of Conduct.

Full copies of each Council's Employees' Code of Conduct are available from the respective Council. The contact officers are:

Barking & Dagenham - Christine Shepherd Head of Human Resources,
(tel. 020 8227 2130)

Havering - Christine Dooley, Assistant Chief Executive, Legal & Democratic Services
(tel. 01708 432484)

Newham - Jacqui Douglas, Senior Human Resources Officer
(tel. 020 8430 2000 Ext. 23064)

Redbridge - Tony Robbins, Employment Relations Manager,
(tel: 020 8708 3416)

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Part F

Members' Allowances Scheme

MEMBERS' ALLOWANCES SCHEME

Under the Local Authorities (Members' Allowances) Regulations 1991, ELWA is classified as a "secondary authority" and, as such, is not allowed to pay basic, special responsibility or attendance allowances to Members of the Authority. These allowances may be paid however by Councils that appoints representatives to "secondary authorities".

Each of ELWA's four constituent Councils has implemented a Members' Allowances Scheme (or similar). Under these schemes, Councillors that are appointed as Members of the Authority may receive a Special Responsibility Allowance for their role on the Authority but such a decision is entirely at the discretion of the respective Council. Any payments made under these arrangements cannot be reclaimed from the Authority.

Sections 174 and 175 of the Local Government Act 1972 do allow the Authority to pay travelling and subsistence allowances and attendance allowances for conferences and 'outside' meetings in connection with approved duties. For administrative purposes however, Members are required to submit any such claims through their respective Councils, in accordance with the Members' Allowances Scheme for their Council. Payments made by the Councils in this respect can be reclaimed from the Authority.

Part G

**Authority Officers
and
The Management Structure**

THE MANAGEMENT STRUCTURE

1 Terminology

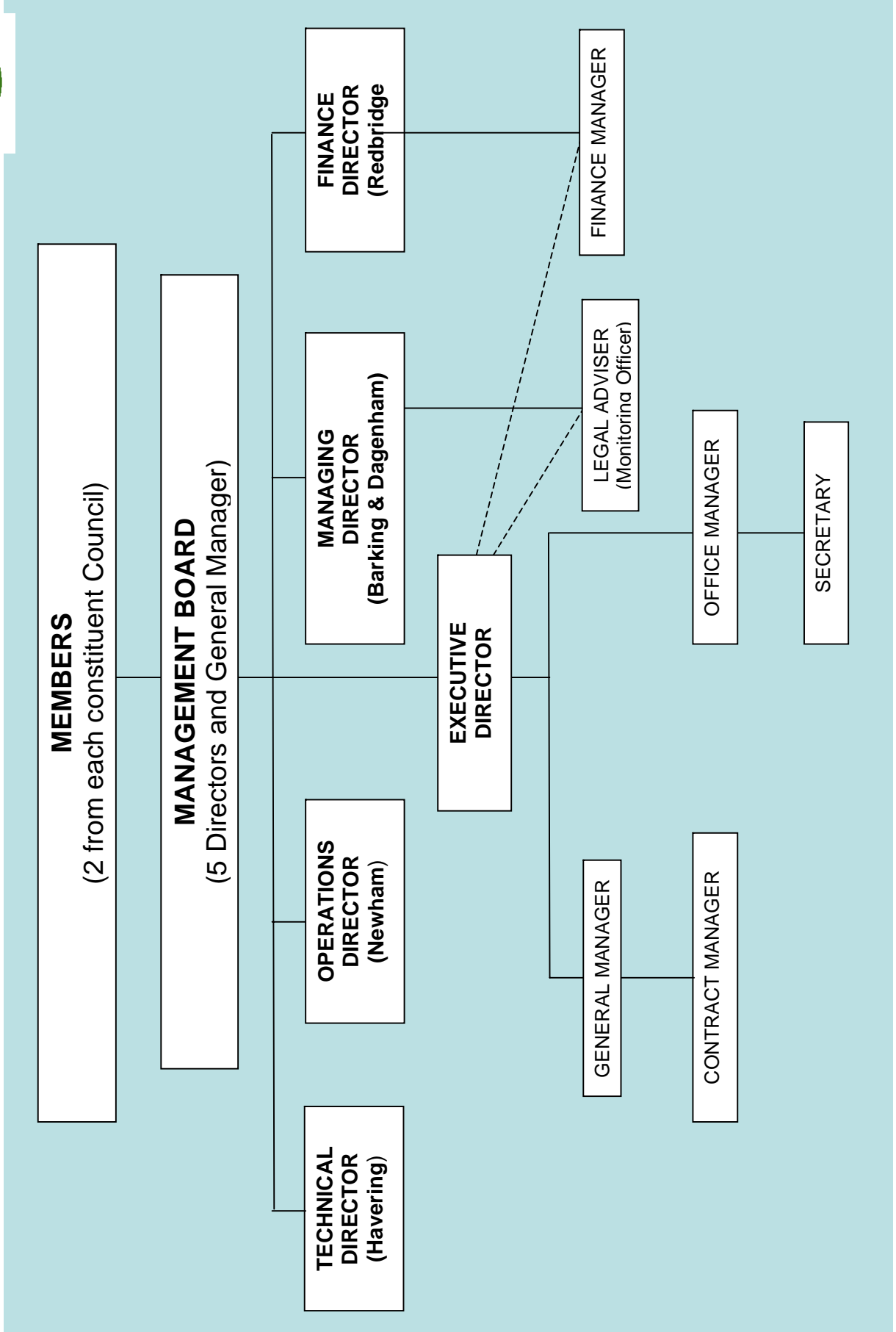
- 1.1 At present, the Authority has no direct employees but instead employs staff via its constituent Councils, under agency or secondment arrangements. The use of the word 'employees' means all staff engaged on behalf of the Authority to carry out its functions. As well as those employed on a long term, full-time basis this also includes those engaged under short term, agency or similar arrangements.

2 Introduction

- 2.1 The Authority has four 'Appointed Officers', who are responsible for the various functions and services that the Authority either delivers or arranges delivery of. The Appointed Officers (the Managing Director, the Finance Director, the Technical Director and the Operations Director) are each Chief Officers within their respective employing Councils.
- 2.2 In addition to the Appointed Officers, the Authority also has an Executive Director who has the lead executive role in the management, administration and delivery of the Authority's services as well as providing strategic direction to the Authority, in conjunction with the ELWA Management Board. The Executive Director is also responsible for managing the relationship with the Authority's integrated waste management service contractor, Shanks.east london (the trading name of ELWA Limited). The Executive Director works full-time for the Authority.
- 2.3 The Authority's Managing Director has overall responsibility for the management of the organisation. The Managing Director is supported in this corporate responsibility by the Finance Director, the Technical Director, the Operations Director and the Executive Director.



ORGANISATION CHART



3 Management Structure

3.1 Senior Officers

The following officers form the Authority's Management Board:

<u>Post</u>	<u>Main Areas of Responsibility</u>
Managing Director (and Head of Paid Service)	Overall corporate management, administrative and legal responsibility.
Finance Director (and Chief Financial Officer)	Financial and audit responsibility
Technical Director	Technical responsibility (including waste policy)
Operations Director	Operational responsibility (including personnel support).
Executive Director	Day-to-day management responsibility (including IWMS Contract management)
General Manager	Day-to-day operational responsibility (including IWMS Contract management)

3.2 Statutory Officers

(i) The Head of Paid Service

The Head of Paid Service is a statutory position with a specific responsibility for:

- (a) determining and publicising a description of the overall structure of the Authority which shows the management structure and the deployment of employees; and
- (b) reporting to the Authority on the manner in which the discharge of the Authority's functions is co-ordinated, the number and grade of employees required for the discharge of functions, and the organisation of employees.

(ii) The Monitoring Officer

The Monitoring Officer is also a statutory position with specific responsibility for the following. The Authority has appointed its Legal Adviser as Monitoring Officer.

- (a) Maintaining the Constitution - The Monitoring Officer has to maintain an up to date version of the Constitution and ensure that it is widely available for consultation by Members, employees and the public.

- (b) Ensuring lawfulness and fairness of decision making - After consulting with the Head of Paid Service and Chief Financial Officer (assuming it is reasonably practical and appropriate to do so), the Monitoring Officer must report to the Authority if he/she considers that any proposal, decision or omission is unlawful, or if any decision or omission is maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) Register of Interests - The Monitoring Officer is responsible for establishing and maintaining a register of interests of Members of the Authority.
- (d) Proper Officer for access to information - The Monitoring Officer ensures that Authority decisions, together with the reasons for those decisions and relevant reports and background papers, are made publicly available as soon as possible.
- (e) Providing advice - The Monitoring Officer provides advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity, budget and policy framework issues.
- (f) Whistle blowing - The Monitoring Officer is responsible for whistle blowing and investigations into ethical matters in relation to Members having due regard to Codes of Conduct and any other requirements or duties imposed on Members.

(iii) The Chief Financial Officer

The Chief Financial Officer is also a statutory position with specific responsibility for:

- (a) Ensuring lawfulness and financial prudence of decision making - After consulting with the Head of Paid Service and the Monitoring Officer (assuming it is reasonably practical and appropriate to do so), the Chief Financial Officer must report to the Authority and the Authority's external auditor if he/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 Authority is about to enter an item of account unlawfully.
- (b) The administration of financial affairs - The Chief Financial Officer is responsible for the administration of the financial affairs of the Authority.
- (c) Contributing to corporate management - The Chief Financial Officer contributes to the corporate management of the Authority, in particular through the provision of professional financial advice.
- (d) Providing advice - The Chief Financial Officer provides advice on the scope of powers and authority to take decisions, maladministration, financial

impropriety and probity, budget and policy framework issues to all Members, and supports and advises Members and employees in their respective roles.

- (e) Giving financial information - The Chief Financial Officer provides financial information to the media, members of the public and the community as and when necessary.

3.3 Corporate Management

In addition to the individual responsibilities of officers the Authority has established a Management Board to maintain a general overview of the state of health of the Authority and its ability to deliver adequate waste disposal arrangements for East London.

The Management Board generally meets monthly and is responsible for:

- Ensuring the strategies and policies of the Authority are consistently applied across the ELWA area;
- Working with Members to listen and take forward their ideas and policies for waste disposal;
- Providing leadership and direction for the Authority;
- Providing advice on forward planning and ensuring that policies, plans and programmes are in place in order to achieve outcomes;
- Maximising the efficient use of Authority resources – its people, finance, information and assets; and.
- Creating a working environment where the Authority's requirements are clearly communicated, where employees are committed to work positively on behalf of the Community and strive to continually improve performance.

The Management Board comprises the following

Managing Director (Chair)
Finance Director
Operations Director
Technical Director
Executive Director
General Manager
Legal Adviser?

Although the Management Board has no separate powers, the individual members of the Management Board may, at meetings of the Board, exercise powers that have been delegated to them (see the Authority's Scheme of Delegation at Part C of this Constitution).

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Part H

Review, Revision, Suspension, Interpretation and Publication

REVIEW, REVISION, SUSPENSION, INTERPRETATION AND PUBLICATION

1. Monitoring and Reviewing the Constitution

- 1.1 The Authority's Monitoring Officer is responsible for monitoring and reviewing the operation of the Constitution to ensure that its aims and principles are given full effect.

A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution and to make recommendations to the Authority on ways in which it could be amended in order to achieve its purpose. In order to do this, the Monitoring Officer may:

- undertake an audit trail of a sample of decisions;
- record and analyse issues raised with him/her by Members, employees, the public and other relevant stakeholders;
- compare practices in the authority with those in other comparable authorities, or national examples of best practice.

2. Changes

- 2.1 Significant changes to the Constitution will only be approved by the Authority after consideration of the proposal by the Monitoring Officer.
- 2.2 Subject to any minor administrative amendments or changes required by new legislation, for which the Managing Director has delegated authority to implement, the Constitution will be reconsidered after the first year of its introduction and then every three years to see if any changes are required in the light of experience.

3. Suspension

- 3.1 **Limit to suspension** - The Articles of this Constitution may not be suspended except by the Authority in exceptional circumstances and if lawful to do so.
- 3.2 **Procedure to suspend** - A motion to suspend any part of the Constitution may not be moved without notice.

4. Interpretation

- 4.1 Any reference to a statute, statutory instrument, regulation or directive shall be deemed to automatically include a reference to any subsequent amendment, modification or re-enactment in respect of them.

- 4.2 The ruling of the Chair of the Authority as to the construction or application of this Constitution or as to any proceedings of the Authority shall not be challenged at any meeting of the Authority. Such interpretation will have regard to the purposes of this Constitution and to the law.

5. Publication

The Monitoring Officer is responsible for:

- (a) giving a printed copy of this Constitution to each Member of the Authority on their appointment; and
- (b) ensuring that copies are available for inspection at the Authority's offices and other appropriate locations, including the Authority's web-site (www.eastlondonwaste.gov.uk). Copies can be purchased by members of the local press and the public on payment of a reasonable fee.

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