

REPORT OF Service Improvement Officer

To: Audit & Governance Committee

Subject: Non Compliance with Procedure Rules and Waivers

Date: 28th July 2020

Reference:

PURPOSE OF REPORT: To provide an update on any matters of non-compliance with the Contract and Financial Procedure Rules and on the Waivers approved by the Head of Paid Service and Section 151 Officer.

1. INTRODUCTION

The Section 151 Officer is responsible for the overall financial arrangements of the Council. Under the Financial Procedure Rules (FPR) and Contract Procedure Rules (CPR) he and the Head of Paid Service are able to authorise waivers when, as may happen from time to time, it is not possible or practical to follow the FPR or CPR. Those waivers approved since June 2019 are reported on.

2. REPORT

The process for waiving the Contract and Financial Procedure Rules was introduced in February 2011. It enables any of the rules to be waived provided the reason meets one of the four clear principles. The process was adopted in line with several other Councils.

The FPR (and similarly the CPR) state: "Where officers consider that the Financial Procedure Rules cannot be followed then reasoned, considered and sensible solutions to everyday problems that may arise shall be applied.

If the answer to one or more of the following questions is 'Yes', the waiving of the Financial Procedure Rules may be considered: If the Financial Procedure Rules were to be followed to the letter.....

- **Life or Death** – Is there a significant chance that the life or health of officers, members or the public will be put at real risk?
- **Increased Costs/Loss of Income** - Will the Council incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council)?
- **Limited Markets** – Would the Council be wasting its time obtaining quotations as supply of the product or service is demonstrably restricted to one or few businesses (or a select list is recommended by Central Government)?
- **Embarrassment** – Would the Council be criticised for failing to act promptly?"

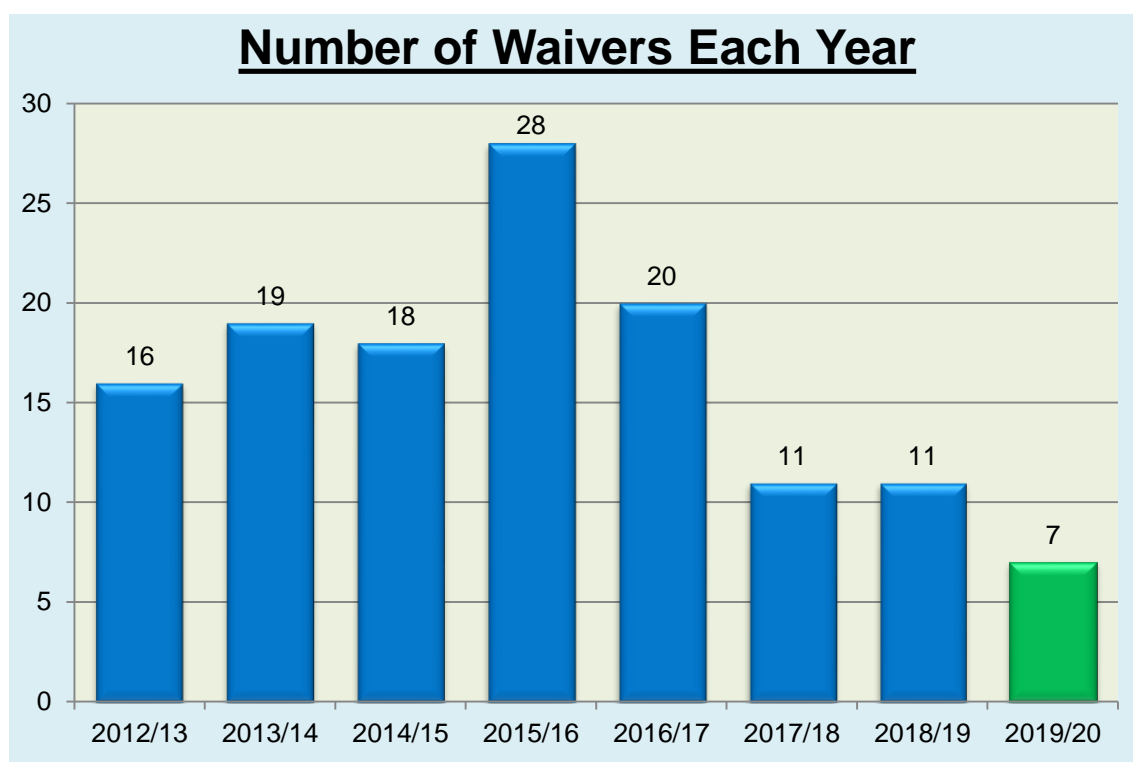
There is a comprehensive procedure for obtaining a waiver which includes a standardised application form, the support of the relevant Senior Manager, challenge and verification by the Governance Team and final approval by either the Section 151 Officer or Head of Paid Service. See Appendix A for an overview of the waiver process.

The waivers approved up to June 2019 (up to waiver number 132) were reported to this Committee in July 2019. Those approved since then are set out in Appendix B (2019-20 Waivers, numbered 133 - 139).

We analysed the waiver data for the past 8 years to determine whether there were any trends/areas for concern.

The following graph shows that for the first 3 years there was a typical annual pattern, but this changed in 2015/16, with an overall increase of 10 waivers in 2015/16 over the previous year, but 8 of these waivers related directly to the Transforming Torridge Programme. The subsequent reduction of the number of waivers confirms that waiver activity in 2015/16 was distorted by the Transforming Torridge Programme.

The lower numbers of waivers approved in the past 3 years indicates that instances of non compliance with the procedure rules are being minimised and the waiver process is being utilised only when necessary.

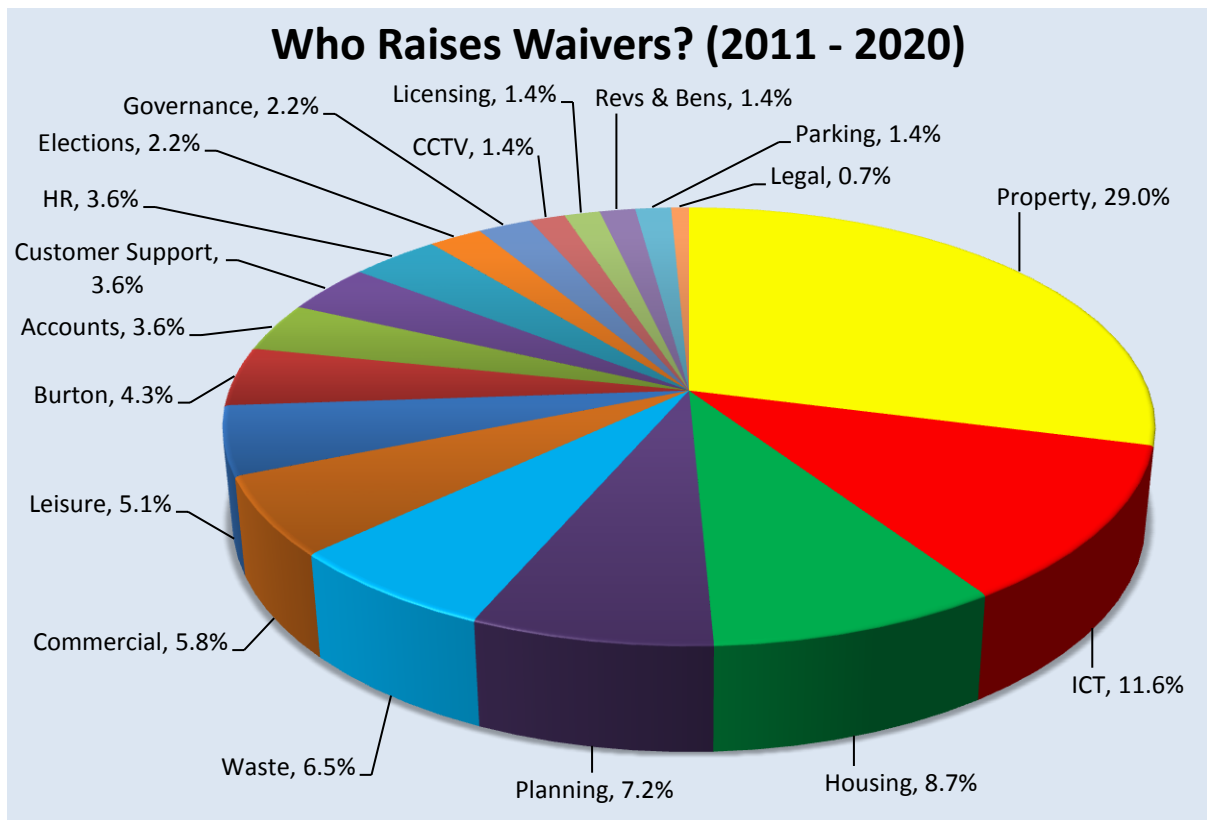


Focusing on 2019/20, the 7 waivers were raised for the following reasons:

Reason for Waiver	Number
Future High Street Fund Submission Support	2
Maintenance of Holsworthy Pool	1
Remedial works at the Bideford BMX slope	1
Caddsdwn Telecommunications Replacement	1
Occupational Health Provision	1
Homelessness Prevention Service	1
Total	7

The following chart shows that the services which have raised the most waivers are the Property Team (29% of all waivers raised), IT (11.6%), Housing (8.7%), Planning (7.2%), and Waste (6.5%). As the Property Team manages the majority of the Council's external contracts, the IT Team have moved the Council on to common IT platforms, Housing allocate grant monies, Planning have been commissioning

surveys as part of the Local Plan, and there has been major changes to the delivery of the Council's Waste & Recycling Services, this is as should be expected.



Waiver requests are reviewed independently and challenged before being passed for approval. In addition to this process, we also review waivers to the FPR/CPR on a quarterly basis and report on any areas of concern to the Head of Paid Service and Section 151 Officer.

3. IMPLICATIONS

Legal Implications

None

Financial Implications

As set out above and in appendix B

Human Resources Implications

Agency appointments as set out in the report

Sustainability Implications

None

Equality/Diversity

None

Risk Management

Adequate controls are in place to ensure efficient application of the Financial and Contract Procedure Rules.

Compliance with Policies and Strategies

This report complies with the FPR and CPR as set out in the Constitution.

Ward Member and Leader Member Views

Councillor Philip Hackett, Chair of Audit & Governance Committee, commented “Waivers are independently scrutinised and also come under scrutiny from respective Lead Members to ensure they were raised for legitimate business reasons, as set out in the Financial Procedure Rules. I am satisfied that in all instances the Council has tried to achieve a best value approach.”

4. CONCLUSIONS

The Council’s arrangements allow for efficient approval of waivers for all of the Procedure Rules provided they meet at least one of the four stipulated criteria. The Governance Team maintains a record of waiver requests together with any transactions which are required to be noted and any matters of non-compliance with the Procedure Rules.

5. RECOMMENDATIONS

Committee are asked to note that since June 2019 there were:

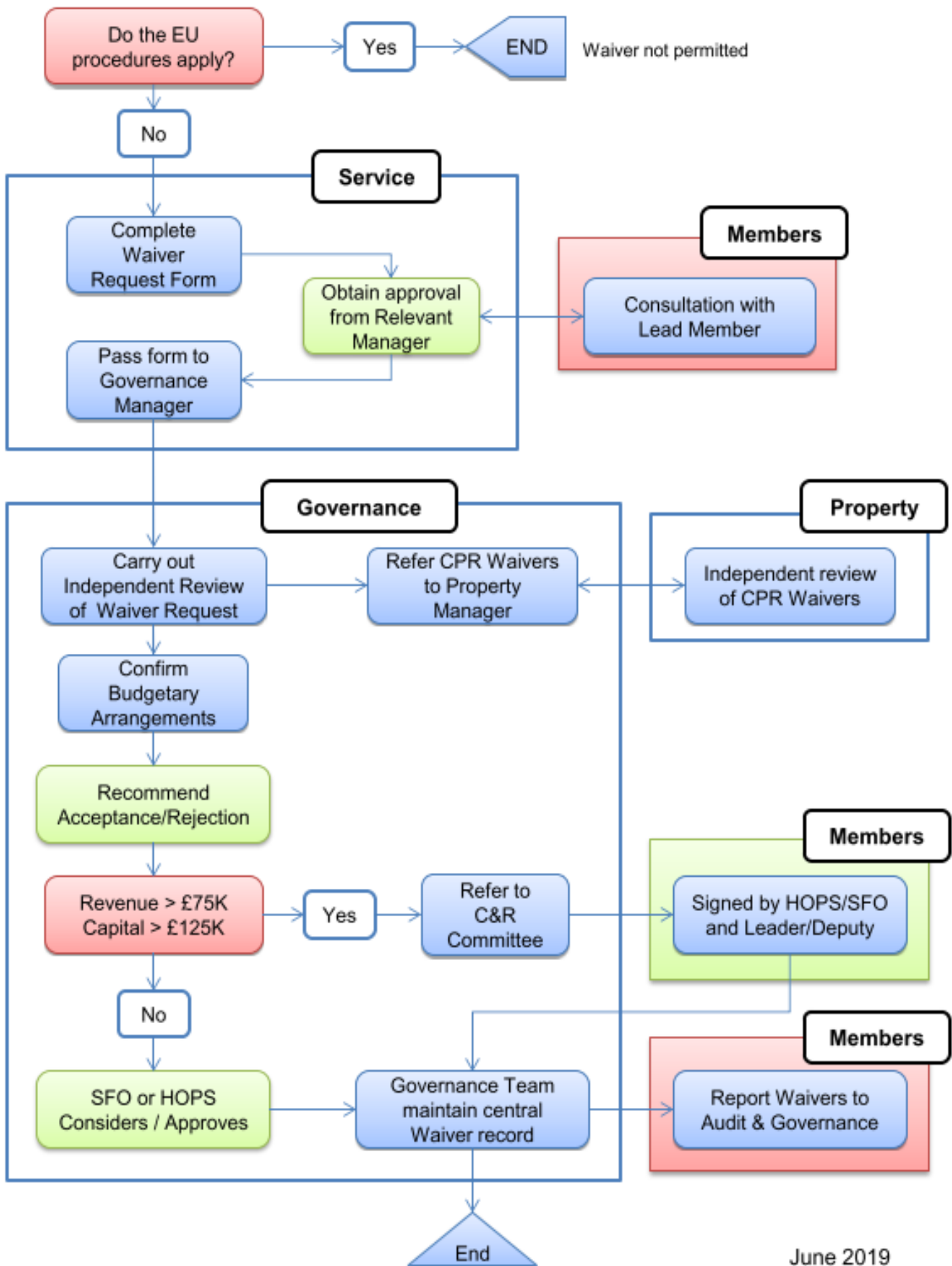
- 7 waivers approved by the Head of Paid Service and Section 151 Officer

SUPPORTING INFORMATION

Consultations:	Steve Hearse David Heyes Cllr Philip Hackett
Contact Officer:	Chris Dobbs
Background Papers:	Waiver records

Appendix A

FPR & CPR Waiver Process



APPENDIX B - WAIVERS OF FINANCIAL AND CONTRACT PROCEDURE RULES - 2019/20

A précis of the details of each waiver request received are listed below together with dates of approval.

No.	FPR or CPR?	Applicant	Reason	Which Rule?	Report to Committee	Date approved or note if rejected			
						Senior Manager	Property Manager	Governance Team	HOPS or Section 151 Officer
133		Holsworthy Leisure Centre- Pool Water Filter <p>The main pool filter assembly at Holsworthy has not benefitted from significant investment in recent years as the filter has approached the end of serviceable life. There is now a significant risk of the pool water filter system failing at the Holsworthy site which would involve shutting the pool for many weeks whilst a replacement is procured. Under the terms of the Leisure Contract with 1610, TDC are responsible for the replacement of major items of plant and equipment. The Authority wish to avoid a lengthy unscheduled pool closure or negative publicity and therefore require a filter replacement in a planned manner.</p> <p>Commercial suppliers of specialist pool filter equipment are not readily available in the south west, the authority have approached five suppliers, and have two responses to requests for quote. The remaining suppliers have declined to quote or have not responded. Of the two that responded the quote value was within £150 for identical work specifications at circa £36k.</p> <p>RG Pools maintain the existing pool equipment and have knowledge of the plant and facility. They would provide a shift working routine to complete the job in the shortest timeframe and keep disruption to a minimum. RG are seen as the most effective supplier from the two quotes received.</p> <p>There will be other attendance costs associated with the enabling work and making good to the building fabric on completion that can only be fully detailed following the main plant replacement works. We estimate an overall project cost of £45k will be involved with these total works.</p> <p>This option reduces the risk of extended pool closure and the financial compensation that the operating contractor 1610 Ltd could claim for in loss of income while work is carried out (although the Authority would seek recovery costs from the contractor for premature failure of the filter and challenge any compensation claims).</p> <p>Supply chain issues require the import of filters from Europe, lead times vary between 6 & 8 weeks during normal demand periods. Time to carry out the works is estimated between 1 & 2 weeks. Notification will be required to the operator and local schools using the facility.</p> <p>Delay in placing an order to obtain a third quote increases the risk of pool filter failure, shut down of the facility, loss of reputation and compensation claims. If water quality cannot be maintained those using the pool may be put at risk. Action is required to mitigate all risks.</p>	Increased Cost/Limited Markets/Embarrassment	5.1.8	N/A	SH 17/7/19	n/a	CD 17/7/19	JW 17/7/19

No.	FPR or CPR?	Applicant	Reason	Which Rule?	Report to Committee	Date approved or note if rejected			
						Senior Manager	Property Manager	Governance Team	HOPS or Section 151 Officer
134	<p><i>Pollyfield, Bideford BMX Slope Remediation</i> The area of the BMX slope to be remediated is approx.150 m long. The objective of the works is to improve the stabilisation of the BMX track slopes by the addition of material to the slope. This project has been designed and an ECC3 contract put together by Red Rock Geo Ltd.</p> <p>The contract was then issued to five previously approached local groundwork's contractors via the ProContract procurement portal. Three contractors namely: - Wedgewood Groundworks Ltd, NJ Lucket Ltd and LJ Developments did not submit a tender. The winning tenderer was JCC Ltd (£49,125) and SEL Clarke (£101,869.60) the unsuccessful contractor.</p> <p>The works are planned to start at the end of the busy summer holiday period 2019 to avoid the worst of the holiday traffic. The construction phase will be 5 weeks.</p>								
	F	Mike Berriman	Embarrassment	5.1.8	N/A	SH 17/7/19	n/a	CD 17/7/19	JW 17/7/19
135	<p><i>Caddsdwn Telecommunication System Replacement</i> Cost -£17,000 to replace old telephony system with modern fit for purpose system utilising SIP technology. Tight timescale - November 2019 (coincides with Caddsdwn Blue launch date).</p> <p>Risk/Embarrassment/Loss of income: There is a risk of failure of telephony at Caddsdwn which is currently using a legacy and unsupported DASS2 telephony system. It is not possible to repair this system should it fail. Caddsdwn could lose tenants (Loss of income) and find it hard to get new ones (Embarrassment).</p> <p>Enhancements in technology, SIP, offers free local, national and UK mobiles (service offering at business centre can be wrapped into a single per user cost). Other companies could supply a solution; however, using the same company that the Council use for their main telephony system means having one coherent solution, no extra integration costs associated with selecting a different supplier. Only one company contact for support and lowers the security risk of having to allow 2 different companies access to each other systems for DR. Allows for future redundancy by leverage investments already made by the Council, utilising the WAN connection for phone DR for Caddsdwn and for RBH.</p>								
	F	Mike Ford	Increased Costs/Loss of Income/Embarrassment	5.1.8	N/A	DH 20/9/19	n/a	JWa 20/9/19	JW 20/9/19

No.	FPR or CPR?	Applicant	Reason	Which Rule?	Report to Committee	Date approved or note if rejected			
						Head of Service	Property Manager	Internal Audit	HOPS Section 151 Officer
136	<p><i>Young Persons Homelessness Prevention Service</i></p> <p>The Young Persons Homelessness Prevention Service (Streetwise) is jointly funded by Devon County Council (£20k per annum) and Torridge District Council (£10k per annum), with Torridge District Council acting as the commissioning body. Grant funding from DCC is agreed on a year by year basis, but has been longstanding and there is no reason to believe that funding will be withdrawn.</p> <p>The Council last went out to tender jointly with North Devon Council in 2016 for a Streetwise Project covering northern Devon. The successful tender was received from Encompass Southwest, although a tender from Young Devon was also considered. North Devon Council brought their service in house in April 2018 whilst Torridge continued to commission Encompass Southwest. The Council sought to go out to tender for the service for 2020/21 and, knowing that there is a limited market, informal expressions of interest were invited from the two recognised providers. Encompass Southwest expressed their interest, but the Chief Executive of Young Devon has confirmed that they will not submit a tender. Given that it has been demonstrably proven that the market is restricted to just Encompass Southwest a waiver is being sought for a 2 year period (1 year contract with a 12 month run on). Cllr Clarke has been consulted and is supportive of this request.</p> <p>Encompass Southwest have indicated that running costs for 2020/21 will rise to £32k per annum, and this is considered to be reasonable given that there has been no uplift in funding for several years. We are waiting hear whether DCC will fund or part fund this increase.</p>								
	F	Helen Page	Limited Markets	5.1.7	N/A	SH 16/1/20	n/a	CD 16/1/20	JW 16/1/20

No.	FPR or CPR?	Applicant	Reason	Which Rule?	Report to Committee	Date approved or note if rejected				
						Head of Service	Property & Procurement Manager	Internal Audit	HOPS Section 151 Officer	
137			<p><i>Architectural Work for Bideford Future High Street</i></p> <p>The Future High Street Fund is a £1billion fund from the Ministry of Housing, Communities and Local Government (MHCLG) designed to regenerate town centres. Bideford is part of the final 101 towns applying for £5 to £10million pounds of investment to bring forward transformational projects. The fund focuses on the acquisition of land and the introduction of improved residential and work spaces within the heart of the town.</p> <p>Isaac's Yard is an exciting project which aims to bring together sites on Mill Street, Cooper Street, Queen Street and Bridgeland Street with a view to creating a flexible, mixed-use space at their heart in the space currently occupied by Heard's Garage.</p> <p>Stantec were procured following a competitive tender process to deliver much of the background information required to make both an outline application for capital funding in March 2020 and detailed application in June 2020. As lead consultant the services to be provided include evidence gathering, urban design, economics and strategic fit. In addition, to be able to deliver a bid of sufficient quality and detail, a range of additional pieces of work are required including some architectural designs to compliment the masterplanning work being delivered by Stantec. This work is beyond that capability of Stantec as an organisation but as lead consultants they have been instrumental in recommending the services of a partner company, Hilton Barnfield, who are both capable and able to complete the work within the very tight timescale required. Hilton Barfield have put forward a fee proposal for the architectural work (value £14,960) that is attached to this document for reference.</p> <p>We would propose that (given the time pressure associated procuring the work by written tender and that, after scrutiny, we are happy that the Hilton Barnfield proposal appears to be good value for money and that they are a credible organisation) the sum of £14,960 is added to the original Stantec commission and that Stantec procure the services of Hilton Barnfield on our behalf.</p> <p>The original Stantec commission value was £59,691</p> <p>The Hilton Barnfield commission will add £14,960 to that sum giving a contract total of value of £74,651</p>							
	F	Chris Fuller	Embarrassment / Increased Cost/ Loss of Income	5.1.7	N/ A	SK 24/2/20	n/a	CD 26/2/20	SH 26/2/20	

No.	FPR or CPR?	Applicant	Reason	Which Rule?	Report to Committee	Date approved or note if rejected			
						Head of Service	Property & Procurement Manager	Internal Audit	HOPS Section 151 Officer
138	<p>Occupational Health Provision Since 01 April 2014 our occupational health provider has been Torridge Occupational Medical Services (TOMS). This arrangement was put into place following the local NHS service being retracted. Research continues to show that there are a very limited number of providers that cover the Bideford area, and other providers would either require staff to travel further afield for appointments, e.g. Exeter or Plymouth, or the provider would have to come on site, which could impact on confidentiality for staff. It is essential to our recruitment process and the ongoing management of staff wellbeing, including sickness absence management, that we have access to a local provider, who can provide an efficient service.</p> <p>The service provided by TOMS over the past 6 years has been excellent, with the team having a good understanding of the roles at the Council, enabling them to provide in depth consultations and advice. As such, we would like to request that this contract be extended for a further three years, until 31 March 2023. Our current budget for occupational health provision is £12,000pa.</p>								
	F	Sarah Ayres	Limited Markets	5.1.7	N/A	SH 2/3/2020	n/a	CD 3/3/2020	DH 3/3/2020
139	<p>Future High Street Fund – Submission Partner Appointment of Igloo (FHSF consultancy). This is an incredibly specialist piece of work. This is the only organisation which fits with the environmental and community ethos of our FHSF efforts and will enable us to develop the project design, find funding partners and deliver a project on this scale. They are able to add the skills and connections that we need and are able to begin now – critically important given the tight timeframes we are working to. This body will provide huge added weight to our deliverability score for the application whilst also be able to open up routes to significant investment in the scheme through their FCA approved investment arm, hugely increasing the chances of a successful funding bid.</p> <p>Igloo was the UKs first Retail Estate B-Corp, establishing their business objectives as being for social good rather than uniquely profit and has over 20 years experience of delivering community-focussed regeneration developments. They operate under a 6-stage working model, focussed on Community, Welbeing, Nature, Climate, Place, and Circular, aligning with our own climate emergency declaration. They are currently delivering mixed-use projects for Newcastle City Council and Sunderland City Council with town centre regeneration developments. The Phasing and community aspects of the Newcastle project have particular resonances with our own, whilst the Sunderland schemem is, in part, for FHSF submission, as such they are familiar with the fund requirements</p> <p>Total commission = £17,500</p>								
	F	Chris Fuller	Limited Markets	5.1.7	N/A	SK 5/5/2020	n/a	CD 5/5/2020	SH 5/5/2020