



OVERVIEW AND SCRUTINY COMMITTEE

Notice of a Meeting, to be held in the Council Chamber - Ashford Borough Council on Tuesday, 28th August, 2018 at 7.00 pm.

The Members of the Overview and Scrutiny Committee are:-

Councillor Chilton (Chairman)
Councillor Michael (Vice-Chairman)

Cllrs. Burgess, Krause, Bartlett, Martin, Miss Martin, Feacey, Knowles, Farrell, Dehnel and Buchanan

Agenda

Page Nos..

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| <p>1. Apologies/Substitutes</p> <p>To receive Notification of Substitutes in accordance with Procedure Rule 1.2 (iii)</p> <p>2. Declarations of Interest</p> <p>To declare any interests which fall under the following categories, as explained on the attached document:</p> <ul style="list-style-type: none">a) Disclosable Pecuniary Interests (DPI)b) Other Significant Interestsc) Voluntary Announcements of Other Interests <p>See Agenda Item 2 for further details</p> <p>3. Minutes of the previous Meeting</p> <p>To approve the Minutes of the Meeting of this Committee held on the 24th July 2018</p> <p>4. Future Reviews and Report Tracker and Topic Selection Flowchart</p> <p>5. Exclusion of the Public</p> | <p>1 - 2</p> <p>3 - 8</p> <p>9 - 18</p> |
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That Pursuant to Section 100A(4) of the Local Government Act 1972, as amended, the public be excluded from the meeting during consideration of this item as it is likely that in view of the nature of the business to be transacted or the nature of the proceedings that if members of the public were present there would be disclosure of exempt information hereinafter specified by reference to Paragraph 3 of Schedule 12A of the Act, where in the circumstances the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

6. **A Better Choice for Property Limited - update report**

19 - 54

At the Overview & Scrutiny Committee meeting on 24 July 2018, Members asked that its scheduled August meeting receive a report on the current position on recent issues raised and recommendations made regarding A Better Choice for Property Limited Company (Prop Co). In addition it was indicated that further issues and questions would be raised with Officers prior to the August meeting so they could also be discussed.

Declarations of Interest (see also “Advice to Members” below)

- (a) **Disclosable Pecuniary Interests (DPI)** under the Localism Act 2011, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares a DPI in relation to any item will need to leave the meeting for that item (unless a relevant Dispensation has been granted).

- (b) **Other Significant Interests (OSI)** under the Kent Code of Conduct as adopted by the Council on 19 July 2012, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares an OSI in relation to any item will need to leave the meeting before the debate and vote on that item (unless a relevant Dispensation has been granted). However, prior to leaving, the Member may address the Committee in the same way that a member of the public may do so.

- (c) **Voluntary Announcements of Other Interests** not required to be disclosed under (a) and (b), i.e. announcements made for transparency reasons alone, such as:

- Membership of outside bodies that have made representations on agenda items, or
- Where a Member knows a person involved, but does not have a close association with that person, or
- Where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position.

[Note: an effect on the financial position of a Member, relative, close associate, employer, etc; OR an application made by a Member, relative, close associate, employer, etc, would both probably constitute either an OSI or in some cases a DPI].

Advice to Members on Declarations of Interest:

- (a) Government Guidance on DPI is available in DCLG’s Guide for Councillors, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5962/2193362.pdf
- (b) The Kent Code of Conduct was adopted by the Full Council on 19 July 2012, and a copy can be found in the Constitution at <http://www.ashford.gov.uk/part-5---codes-and-protocols>
- (c) If any Councillor has any doubt about the existence or nature of any DPI or OSI which he/she may have in any item on this agenda, he/she should seek advice from the Corporate Director (Law and Governance) and Monitoring Officer or from other Solicitors in Legal and Democratic Services as early as possible, and in advance of the Meeting.

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Overview and Scrutiny Committee

Minutes of a Meeting of the Overview and Scrutiny Committee held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **24th July 2018**.

Present:

Cllr. Chilton (Chairman);

Cllr. Michael (Vice-Chairman)

Cllrs. Bartlett, Buchanan, Dehnel, Farrell, Miss. Martin, Mrs. Martin, Mrs. Webb.

In accordance with Procedure Rule 1.2 (iii) Cllr. Mrs. Webb attended as Substitute Member for Cllr. Burgess.

Apologies:

Cllrs. Burgess, Knowles, Krause.

Also Present:

Strategic Lead for the Chilmington Community Management Organisation (CMO) Project, Chilmington Community Management Organisation Project Manager, Planning Policy Manager, Head of Corporate Policy, Economic Development & Communications, Senior Policy & Scrutiny Officer, Member Services Officer.

118 Declarations of Interest

Cllr. Feacey made a Voluntary Announcement since he was Chairman of Ashford Volunteer Bureau.

Cllr. Dehnel made a Voluntary Announcement since he was a Member of Kingsnorth Parish Council.

119 Minutes

Resolved:

That the Minutes of the Meeting of this Committee held on the 26th June 2018 be approved and confirmed as a correct record.

Cllr. Mrs. Martin requested it be noted that her agenda was received by post in plenty of time and she wanted to express her thanks to the Member Services Team.

120 Chilmington Management Organisation Report

The CMO Strategic Lead introduced this item and explained that the report was brought before the Committee following a request made at the Budget Scrutiny Task Group. The Committee wanted to review the planned Chilmington (Green) Community Management Organisation (CMO) model in comparison to a 'traditional' resident management company (private companies created by housing developers), and the wider application of the CMO model.

The Council's key objective when forming the CMO was to deliver long-term stewardship in the form of an independent and not for profit organisation, which would serve the interests of residents, the developers and the Council. The idea was unique to Ashford in that the CMO was designed as a resident focussed management operation, as opposed to 'traditional' style Private Management Companies (PMCos). The governance arrangements included residents, local authorities, developers, nominated trustees, alongside nominations from the voluntary and community and Housing Association sectors and would have continued support from the Local Authority. Ultimately, it was a Trust intended for control by the residents. Negotiations had taken place over the last 4 years and were a just a few weeks away from finalisation. The Section 106 agreement had been signed in 2016.

PMCos were typically implemented for managing apartment blocks with communal areas and amenities, and service charges were collected from residents towards ongoing fees and costs. Increasingly PMCo's were being used by developers for managing larger housing developments. Better ones operated to a code of practice approved by Government, but this was not mandatory and the government were seeking to ensure residential freeholders had similar rights implemented. There was also a motion by government to cap service charge payments, which ABC had already included as part of the CMO arrangement.

The CMO Strategic Lead went on to explain that this model would not be suitable for all developments in the Borough; it was geared more towards large-scale housing areas.

The report was then opened up to the Committee and the following points/questions were raised:

- A Member asked about the relationship between the CMO and Parish Councils, and would there be any overlap between the two. The CMO Strategic Lead explained that it was assumed that a new Parish Council would be created at Chilmington Green and would sit alongside the CMO. Discussions would need to take place between all stakeholders to ascertain rights and responsibilities of each. A Parish Council representative would be allocated a non-voting position on the CMO Board and usual conflict of interest rules would apply to any Members undertaking a dual role. There would be up to 10 positions available initially on the Trustees Board with 50% rights apportioned between developers and non-developers' nominated directors. The Council and the developers had put contractual safeguard measures in place to ensure that the Trust undertook its responsibilities and the framework operated effectively.

These measures were designed to ensure commitment to the CMO, that it operated effectively and that matters of key interest to the Council and developers were respected. In cases of voting 'deadlock' (five vs five), the contractual arrangements stipulated that the Board should convene again to try to reach a conclusion. If no resolution were achieved then as a last resort, a formal dispute resolution route would be taken.

- Members went onto speak about PMCos under performing and the consequences for residents, but welcomed the CMO and its new approach. The CMO Strategic Lead acknowledged that some PMCos had come under criticism for the way they operated, and confusion sometimes arose as to why residents paid both Council Tax and a Service Charge. In some instances, monies were collected from residents, but the work was not undertaken well, or not at all and this resulted in PMCos now having to issue refunds. It was explained that this concern was discussed during the negotiations and the Developer was aware that there would be consequences if they did not fulfil their part of the agreement. A legal document had been put into place that clearly stipulated what the funds collected by the CMO were to be spent on, and this included mainly landscaping and public realm activities. The CMO would have other income however, and any anticipated surplus funds would be managed accordingly.
- A Member requested that the sum total of grant received from the Developer be emailed confidentially to the Committee.
- The CMO Strategic Lead spoke about the CMO's intention to register as a charity since this would ensure further safeguards as funds and assets would have even greater protection
- The Policy Manager explained to the Committee that the Planning Policy for governance of public community spaces and facilities was contained within the Local Plan and the Chilmington Green Area Action Plan. The Council's default position was not to adopt these spaces and facilities, since the burden could then fall to tax payers in the future and the emerging Local Plan Policy gave specific preference to community stewardship models. The Chairman enquired as to whether the Council could set up a trading company with the objective of managing communal spaces and other areas that would not be adopted by authorities in new developments, and it was confirmed that this was theoretically possible.
- Members agreed that it would be useful to create a database containing details of all PMCos in Ashford.
- It was confirmed that the Trust would be subject to periodic audit reviews. The Trust would also be subject to any legislation or code of practice changes implemented by Government. The Committee agreed that a handbook designed to offer residents with guidance on establishing and maintaining a PMCo would be helpful.

- A Member said that it was a shame that Portfolio Holders could not be present at the meeting since a good debate had taken place.

Recommendations:

- That
- i) Where developments are granted planning permission within which a management company will be established, planning conditions should be stipulated which require that the Local Planning Authority be notified of the management company's formation and registration with Companies House. Developers must also detail how residents will be involved in the management of the company and their rights, and the Local Planning Authority should approve this;
 - ii) Where developments are granted planning permission within which a management company will be established, planning conditions should be stipulated which require the developer to supply prospective occupiers of new dwellings with comprehensive information on the management arrangements for the development, including such information as:
 - The Right to Manage (for leaseholders)
 - Residents' rights under a management company
 - Challenging a management company's mechanisms
 - Challenging service charge levels
 - The process for changing a management company
 - iii) The Council produce a 'Resident Trustee Pack' for occupiers of existing and new developments with a management company, including such information as:
 - The Right to Manage (for leaseholders)
 - Resident's right under a management company
 - Challenging a management company's mechanisms
 - Challenging service charge levels
 - The process for changing a management company
 - iv) The Council establish and maintain a record of all Management Companies operating in the borough and the assets that these companies maintain.
 - v) The Council lobby central Government to introduce a legal requirement for resident Management Companies to register with the relevant local planning authority

121 Future Reviews and Report Tracker and Topic Selection

The Chairman introduced this item and explained that there was only one item for August listed on the Tracker; a Better Choice for Property Limited. He asked the Committee if they wished to proceed with the meeting, advising that it would be necessary to define the scope of this meeting in order to give Officers sufficient time to gather any required information and reports. The Committee felt that there had been some confusion (following the recent Cabinet meeting), regarding the aims of the Property Company as recorded in the original business plan and therefore a review of the company's business objectives would be helpful. Members also felt that recent changes to the directorship of the Company raised questions about the role of Council in ratifying decisions of the Trading and Enterprise Board. A Member advised that he would send through additional areas of concern by email to the Senior Policy and Scrutiny Officer.

A Member advised that the Company's Annual General Meeting was scheduled to take place in August and considered whether the O&S Committee should meet prior to that meeting. The Senior Policy and Scrutiny Officer advised that since Cabinet would not be meeting in August, and Council would not meet until October, any recommendations from the Committee would not be considered until September at the earliest. Members determined that there was no need to bring forward the Overview & Scrutiny Committee from the original date (28th August).

Resolved:

That the report be received and noted.

Queries concerning these Minutes? Please contact Member Services:
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Overview and Scrutiny Committee

Report Tracker – 28 August 2018

Report Title	Date due to O&S	Reporting Service	Scope of what is to be scrutinised
A Better Choice for Property Ltd	28 August 2018	Finance and IT; Corporate Property and Projects	The findings of the company's auditors; the history of the company business plan changes; the governance of the company and TEB and their independence of Cabinet/Council following the change in directorship; and the Committee's previous recommendations to Cabinet.
Quarter 1 2018/19 performance	25 September 2018	Corporate Policy, Economic Development and Communications	Information and analysis of performance against key performance indicators for the council for quarter 1 of 2018/19.
Scrutiny of the draft 2019/20 budget (Medium Term Financial Plan)	25 September 2018	Finance and IT	A summary of the Budget Scrutiny process and summary of the Medium Term Financial Plan will be presented to the Committee for Members to identify any overarching budgetary risks for consideration by the Budget Scrutiny Task Group.
Update on Implementation of Air Quality Strategy	25 September 2018	Corporate Policy, Economic Development and Communications	An update on the implementation of the council's Air Quality Strategy arising from the adopted Air Quality recommendations.
Housing Statement	23 October 2018	Housing/ Corporate Policy, Economic Development and Communications	An overview of the council's Housing Statement (reported to the Committee in October 2017) following consultation.
Quarter 2 2018/19 performance	23 October 2018	Corporate Policy, Economic Development and Communications	Information and analysis of performance against key performance indicators for the council for quarter 2 of 2018/19.
Kent Fire and Rescue Service	27 November 2018		Kent Fire and Rescue Service to be asked to attend and present on their capacity and resources in light of a lack of voluntary support.

Universal Credit roll-out progress	22 January 2019	Finance and IT	An update for Members on the early impacts and outputs of the wider Universal Credit roll-out in the borough.
Budget Scrutiny Task Group - Final report	22 January 2019	Corporate Policy, Economic Development and Communications/ Finance and IT	Presentation of the findings of the Budget Scrutiny Task Group for discussion and approval by the Committee.
Community Safety Partnership and Safeguarding updates	26 February 2019	Community Safety and Wellbeing/ Housing	Annual updates to the Committee on the work of the Community Safety Partnership and the council's work on safeguarding adults and children at risk.
Quarter 3 2018/19 performance	26 February 2019	Corporate Policy, Economic Development and Communications	Information and analysis of performance against key performance indicators for the council for quarter 3 of 2018/19.
Town centre framework	26 March 2019	Corporate Policy, Economic Development and Communications	Following discussions raised during scrutiny of the 2018/19 draft budget, the Committee has requested a report on the town centre placemaking framework
Void properties	23 April 2019	Housing	Following discussions raised during scrutiny of the 2018/19 draft budget, the Committee has requested a report on work undertaken to address void properties in the PSL sector.
Broadband provision and planning	23 April 2019	Corporate Policy, Economic Development and Communications/ Planning and Development	Following discussions raised during scrutiny of the 2018/19 draft budget, the Committee has requested a report on the council's work on delivering high-speed broadband to new and existing properties within the borough.
Overview and Scrutiny Annual Report and 2019/20 Work Programme	28 May 2019	Corporate Policy, Economic Development and Communications	The council's Constitution requires the O&S Committee to make an annual report to full Council. This report will summarise the Committee's work over the past year and detail its work programme for 2019/20.
Quarter 4 2018/19 performance	28 May 2019	Corporate Policy, Economic Development and Communications	Information and analysis of performance against key performance indicators for the council for quarter 4 of 2018/19.

Items for future consideration

Community Toilet Scheme performance		Environment and Land Management	The Committee would like an overview of the performance of the Community Toilet Scheme.
Aspire performance		Environment and Land Management	The Committee would like an overview of the performance and development of Aspire Landscape Management.
Staff Resources – Legal & Democratic and Planning & Development		Legal and Democratic; Planning and Development	Requested to be considered by the Budget Scrutiny Task Group
Future plans for public transport		Community Safety and Wellbeing	Requested by the Vice-Chairman in regard to the use of low emission and fit for purpose buses in Ashford
Ashford Waste Water Treatment Works		Community Safety and Wellbeing	Requested by the Leader in regard to odours impacting on the quality of residents' lives in Kennington/Little Burton Farm

Recommendation Tracker

Report				
Findings of the Air Quality Task Group – Cabinet minute 330/2/18 refers				
Recommendations	Accepted/ Rejected	Response	Implementation responsibility	Status
That the recommendations within the attached report be adopted as the basis for an Air Quality Strategy for the Borough.	Accepted	An action plan and strategy encompassing the agreed recommendations is currently in preparation and will shortly be submitted to Management Team for approval. An update report will be presented to the Overview and Scrutiny Committee in September 2018	Management Team	Ongoing
Report				
Commercial Investment – Cabinet minute 38/6/18 refers				
Recommendations	Accepted/ Rejected	Response	Implementation responsibility	Status
Financial Reports including Red Book valuations are prepared annually in accordance with UK GAAP for management purposes. The output to include normal commercial property metrics and risk registers, such as estimated rental value and covenant strength of tenants.		Cabinet considered this recommendation at its meeting of 14 June 2018 and advised that it was minded not to adopt at this stage to allow for further examination of implications and costs, before consideration is given to whether they can be adopted. <i>An update paper will be presented to the Cabinet at its meeting of 13 September 2018</i>		

<p>A framework document should be prepared setting out social value yield and return targets for the Council's Property Strategy.</p>		<p>Cabinet considered this recommendation at its meeting of 14 June 2018 and advised that it was minded not to adopt at this stage to allow for further examination of implications and costs, before consideration is given to whether they can be adopted.</p> <p><i>An update paper will be presented to the Cabinet at its meeting of 13 September 2018</i></p>		
<p>A clear list of investment and social worth objectives to be included for each investment and reported on annually.</p>		<p>Cabinet considered this recommendation at its meeting of 14 June 2018 and advised that it was minded not to adopt at this stage to allow for further examination of implications and costs, before consideration is given to whether they can be adopted.</p> <p><i>An update paper will be presented to the Cabinet at its meeting of 13 September 2018</i></p>		

Page 13

Report

A Better Choice for Property Ltd – Cabinet minute 99/7/18 refers

Recommendations	Accepted/ Rejected	Response	Implementation responsibility	Status
<p>The six monthly updates to TEB should include a table setting out affordable social rented property, local needs housing and specific accommodation for vulnerable people provided by the property company</p>		<p>Cabinet considered this recommendation at its meeting of 12 July 2018 and noted that none of these elements were provided by the property company and that this was not the purpose for setting it up. Cabinet resolved that it would note the recommendation for further examination and report back to the Chairman of the Overview and Scrutiny Committee in due course.</p>		

<p>TEB's right to appoint or remove Directors of the company is no longer subject to approval by the Leader.</p>		<p>Cabinet considered this recommendation at its meeting of 12 July 2018 and resolved that it would note the recommendation for further examination and report back to the Chairman of the Overview and Scrutiny Committee in due course.</p>		
<p>An experienced non-executive Director be appointed to the property company to minimise the risk of governance failings</p>		<p>Cabinet considered this recommendation at its meeting of 12 July 2018 and resolved that it would note the recommendation for further examination and report back to the Chairman of the Overview and Scrutiny Committee in due course.</p>		
<p>A firm be appointed to carry out a review of the tax affairs of the property company and address whether the UK Corporate Interest Restriction rules apply to the property company as it is 'grouped' with the council and whether the Criminal Finances Act 2017 could apply to councillors.</p>		<p>Cabinet considered this recommendation at its meeting of 12 July 2018 and resolved that it would note the recommendation for further examination and report back to the Chairman of the Overview and Scrutiny Committee in due course.</p>		
<p>The financial regulations of the company are changed to ensure that a Director can no longer act singularly to purchase property.</p>		<p>Cabinet considered this recommendation at its meeting of 12 July 2018 and resolved that it would note the recommendation for further examination and report back to the Chairman of the Overview and Scrutiny Committee in due course.</p>		

Report

Kent Savers

Recommendations	Accepted/ Rejected	Response	Implementation responsibility	Status
The Cabinet instruct officers to work with Kent Savers to establish a working relationship and identify ways in which the council and Kent Savers can work together with particular reference to homelessness prevention and relief.				
The council contribute a subordinated loan of £10,000 to Kent Savers to support their work.				
<i>Additional recommendation by Management Team:</i> The Cabinet actively promote Kent Savers to residents and council staff.				

Report

Chilmington Management Organisation

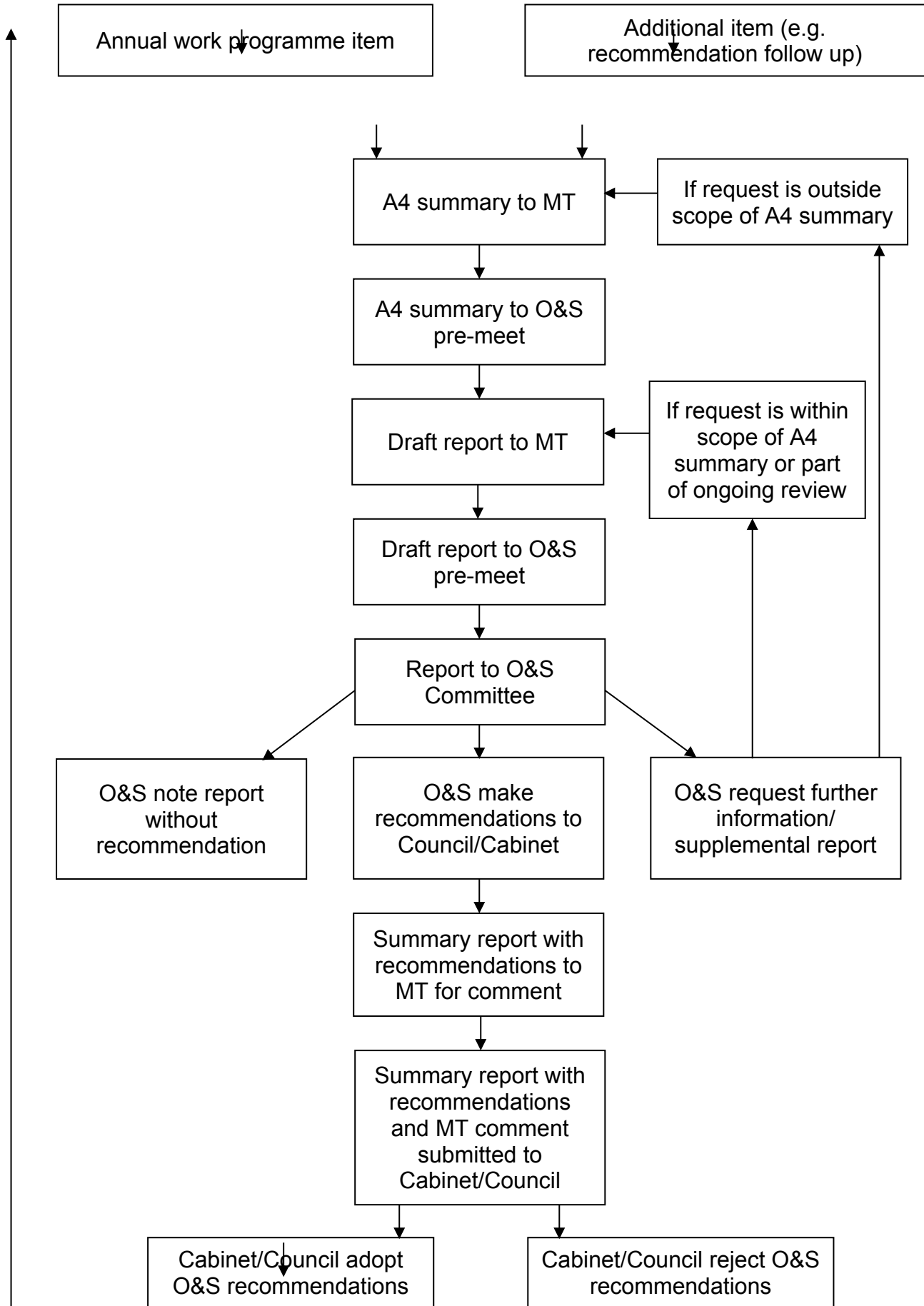
Recommendations	Accepted/ Rejected	Response	Implementation responsibility	Status
Where development are granted planning permission within which a management company will be established, planning conditions should be stipulated which will require that the local planning authority be notified of the management company's formation and registration with Companies House. Developers must also detail how residents will be involved in the management of the company and their rights, and the Local Planning Authority should approve this				

<p>Where developments are granted planning permission within which a management company will be established, planning conditions should be stipulated which require the developer to supply prospective occupiers of new dwellings with comprehensive information on the management arrangements for the development, including such information as:</p> <ul style="list-style-type: none"> • The Right to Manage (for leaseholders) • Residents' rights under a management company • Challenging a management company's mechanisms • Challenging service charge levels • The process for changing a management company 				
<p>The Council produce a 'Resident Trustee Pack' for occupiers of existing and new developments with a management company, including such information as:</p> <ul style="list-style-type: none"> • The Right to Manage (for leaseholders) • Resident's right under a management company • Challenging a management company's mechanisms • Challenging service charge levels • The process for changing a management company 				
<p>The Council establish and maintain a record of all Management Companies operating in the borough and the assets that these companies maintain</p>				

The Council lobby central Government to introduce a legal requirement for resident Management Companies to register with the relevant local planning authority				
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O&S Reporting flowchart

O&S Tracker records Committee forward plan and recommendations made



Recommendations referred to via O&S Tracker for assignment and updating

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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