

Shaping the *future*
of our borough



WBC Commercial Protocol

11th October 2023

Glossary

Term	Definition
Commercial Activity	An activity or activities that seek payment from another person or entity for goods, services, leases, licences, or other benefits provided, whether those activities are for profit or otherwise. The commercial activity may be provided by the council directly or by any other entity in which it has an interest. For example, limited companies with shares, companies limited by guarantee, charitable trusts and so forth.
Commercial Assets	<p>Commercial assets are, for the purposes of this protocol likely to be tangible assets but for completeness intangible assets are also included:</p> <ul style="list-style-type: none"> • Tangible commercial assets are physical assets that can be seen and touched. They include buildings, land, equipment, and inventory. • Intangible commercial assets are assets that cannot be seen or touched but have value. They include intellectual property, such as patents, trademarks, and copyrights.
Best Value	<p>From statutory guidance, Best Value authorities are under a general Duty of Best Value to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency, and effectiveness.”</p> <p>Under the Duty of Best Value, therefore, authorities should consider overall value, including economic, environmental, and social value, when reviewing service provision.</p>
WBC Companies Governance Framework	Is a practical guide for members and officers, and staff and board members of

	companies in which the council have an interest.
Fees and Charges	Sums levied for a range of council services, whether on a level set by statute, on a cost recovery only basis or at a level set within the council's discretion. These services are contained within the Commercial Activities definition.
MTFS Guiding Principles 2024/25	See Appendix B
Policies	Notwithstanding the strategic context, the council may wish to apply certain policy considerations to the application of this Protocol. For example, prioritisation of one or more of the financial, environmental, social or local economic impact areas.
Subsidy Control Act 2022	Is an Act that allows local authorities to give subsidies that are tailored to their local needs, and that drive economic growth while minimising distortion to UK competition and protecting our international obligations.

1. Purpose

- 1.1 The primary purpose of this Protocol is to ensure that commercial activities and use of commercial assets are demonstrably aligned to the Council's prevailing strategic priorities. At the time of writing, these strategic priorities may be found in the council's Working for All Strategy, the MTFS Guiding Principles 2025/25, the emerging Asset management Strategy (within which the disposals strategy will be found) and in the Improvement and Recovery Programme.
- 1.2 Many commercial activities and assets will link to other Council strategies. Where this is the case, those links will be clear and auditable.
- 1.3 It is very important to note that adopting a commercial approach does **not** mean that every activity with which the Council is involved should be concerned with making a profit. That is not the Council's core purpose. However, taking a commercial approach **does** mean understanding the full costs of delivering a service or activity, the risks involved, and the impacts created - both good and bad.
- 1.4 Implementation of this Protocol will allow the Council to demonstrate it is fulfilling its Best Value duty (as it applies to the scope of this Protocol) in the follow terms:
 - Having arrangements in place to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency, and effectiveness
 - Consideration of economic, environmental, and social value impacts
- 1.5 Continuous improvement will be demonstrated through the historic performance of commercial activities and assets through information such as business plans and periodic strategic reviews, which will test commercial activities and assets against alternative delivery models and uses.

2. Scope

- 2.1 The impacts and risks evaluation matrix in Appendix A will allow officers to determine whether or not a particular activity or asset is in the scope of the Commercial Protocol.
- 2.2 At this stage, this Protocol does not include procurement or contract management. However, future iterations of this Protocol will include both areas of activity, being a very significant area of the council's spend and service delivery. It will be a requirement of this Protocol that the [Sourcing Playbook](#) approach will be followed for procurement and the [Good Practice Contract Management Framework](#) published by the national Audit Office, or a similar model, will form the basis of the council's contract management approach.
- 2.3 In common with the requirements of the WBC Companies Governance Framework, this Protocol, where it applies, requires a 'comply or explain' approach. This allows

deviations from the Protocol where this can be justified as being in the interests of the Borough Council. Any deviations must be approved in advance by the Strategic Director, Corporate Resources and recorded for audit purposes. This record will also include the date of a review to ensure the deviation is still justified or that it is no longer appropriate or required. The reviews will also be recorded and reported to the Commercial Board.

- 2.4 All relevant commercial activities and assets will be reviewed against this Protocol on an annual basis to ensure they continue to comply with its requirements. Where an annual business plan is produced, the requirements of this Protocol will be considered as part of the business planning process.
- 2.5 Similarly, whenever the Council is carrying out delivery model assessments, the requirements of this Protocol must be followed if a commercial activity or asset is intrinsic to service delivery.
- 2.6 This Protocol also applies to asset disposals. The flow chart in Appendix D reflects the requirements of this Protocol as it applies to asset disposals.

3. Principles

- 3.1 Whilst evaluation of impacts and of risk are of critical importance, there are additional principles that the Council wishes to apply to commercial activity. These are:
 - (i) **A focus on core purpose and supporting the Council's priority outcomes:** Commercial activities must demonstrably contribute to improved outcomes for the people and communities the Council serves. Commercial investments or activities outside Woking, which cannot demonstrate a direct contribution to delivering the Council's strategies, will be avoided
 - (ii) **Compliance:** commercial activities must be consistent with statutory duties and the council's policies, strategies and constitutional requirements
 - (iii) **Commercial discipline:** commercial activities must demonstrate robust governance, performance management, financial performance and appropriate controls
 - (iv) **Governance and structures:** proportionate governance and structures to provide oversight of commercial activities and assets, and to support good, evidence-based decision making
 - (v) **Learning and risk management:** we will achieve a sensible balance of risk and opportunity across the Council's commercial portfolio, assess and manage performance robustly, and capture learning from commercial activities and assets
 - (vi) **Training and development:** specific training and development needs of both officers and members must be frequently reviewed to make sure appropriate

levels of competency are maintained for both groups to carry out their duties effectively

- (vii) **Sustainability:** at the outset, commercial activities need to demonstrate they are sustainable for the full period during which they are likely to be pursued.
- (viii) **Commercial activities and assets will be required to evaluate and forecast impacts** in the following areas:
 - a. Financial impacts for the Borough Council such as
 - i. Any investment required
 - ii. Revenue costs and returns over time
 - iii. Movement in net asset value over time (where applicable) and
 - iv. Impact on the local economy and local businesses
 - b. Environmental impacts such as
 - i. Net carbon dioxide emissions reduction / increase
 - ii. Changes to the natural environment through land use / enhancement including changes to biodiversity and habitats
 - iii. Changes to flood risks and
 - iv. Air quality impacts
 - c. Social impacts such as
 - i. Clear, demonstrable links to the delivery and support of the Council's core purpose and contribution to improved outcomes
 - ii. The number of individuals and communities in Woking impacted
 - iii. The number and magnitude of the impacts
 - iv. Equality, diversity and inclusion
 - d. Benefits to the local economy such as
 - i. Employment
 - ii. Skills and work-related training
 - iii. Transport
 - iv. Digital inclusion
- (ix) **Any new commercial activities or investment in assets, within the scope of this Protocol, will be required to produce a business case** and follow the HM Treasury Guide to Developing the Project Business Case, often referred to as the [five case model](#). This requires the following areas to be addressed, proportional to the scale of risks and impacts:
 - a. Provides strategic fit and is supported by a compelling case for change. This dimension of the five cases focuses on business planning and is the 'strategic case' section within the Project Business Case.

- b. Will maximise public value to society through the selection of the optimal combination of components, products and related activities. This dimension of the five cases focuses on options appraisal and the identification of the preferred option and is the 'economic case' section within the Project Business Case.
 - c. Is commercially viable and attractive to the supply side. This dimension of the five cases focuses on the development and procurement of the potential Deal and is the 'commercial case' section within the Project Business Case.
 - d. Is affordable and is fundable over time. This dimension of the five cases focuses on the whole life costs of the proposed Deal and is the 'financial case' section within the Project Business Case.
 - e. Can be delivered successfully by the organisation and its partners. This dimension of the five cases focuses on the implementation arrangements for the proposal and is the 'management case' section within the Project Business Case.
- (x) Decision making that flows from the implementation of this Protocol will be carried out in accordance with the council's Constitution. The Strategic Director, Corporate Resources has a duty to ensure that the requirements of this Protocol, the Companies Governance Framework and wider constitutional and legal requirements (as far as they apply to activity under her/his leadership) are observed. In practice, the Strategic Director, Corporate Resources will advise colleagues where requirements are not being observed or where there are concerns, with a view to resolving them.
 - (xi) The Commercial and Finance Governance Board holds the Strategic Director, Corporate Resources, to account for the delivery of this Protocol and acts as the gatekeeper for any commercial matters that will be taken to the Executive or full Council for decision or any other report. This includes procurement and contract management decisions and reports. This will ensure that the quality, depth and robustness of matters put in front of the Executive or full Council is sufficient to comply with both Public Law principles and the specific requirements of the council's constitution.
 - (xii) The Commercial and Finance Governance Board will have a rolling programme of work to provide assurance that all commercial activities are being managed in line with this Protocol.

3.2 Fees and Charges

3.21 Please refer to Appendix B, MTFs Guiding Principles 2024/25 and Appendix D, Fees and Charges Flowchart

3.21 As a minimum, in respect of all fees and charges levied for services provided by the council, the actual full costs of service provision need to be ascertained including fixed and variable costs, contribution to corporate overheads etc.

- 3.22 Taking the forecast revenues, a profit and loss (net) position can then be established for each service provided.
- 3.22 Taking the net position, whether positive or negative, the true costs of service delivery can be established and, when considered alongside the corporate strategic, environmental, social and financial impacts, a value for money position can be established.
- 3.23 As set out in paragraph 1.3, there is no expectation that all services or activities for which a fee or charge is levied will return a net profit. What is required is that the net costs of delivery are clearly understood, alongside the risks and impacts, and that this position demonstrably supports the Council's key strategic objectives and policies.

3.3 Council owned companies

- 3.31 Notwithstanding the requirement to follow the Companies Governance Framework, it is essential that the separation between the council and any companies it owns (in whole or in part) is understood and respected.
- 3.32 In practice, this means that the role of the council as client, shareholder and lender are managed separately and to avoid any conflicts of interest. See the Companies Governance Framework for more information.
- 3.33 Any proposed investment or effective subsidy of a council owned or part owned company *must* be cleared with Legal for implications arising from the council's obligations under the Subsidy Control Act 2022, and monitored thereafter. Periodic reports on Subsidy Control matters will be made to the Commercial and Finance Governance Board.

4. Objectives

- 4.1 The overall objective of this Protocol is to ensure and to demonstrate, transparently and openly, that the Borough Council's commercial activities and assets are aligned to its core strategic aims. This supported by the following enabling objectives:
- (i) That the strategic fit of commercial activities and assets is reviewed annually or whenever a significant change is proposed (see WBC Companies' Governance Framework section on Strategic Review)
 - (ii) To maintain a register of all commercial activities and assets to which this Protocol applies
 - (iii) To create and deliver a workplan of commercial Protocol reviews for all existing commercial activities and assets
 - (iv) To create a review process along with a process for addressing any non-compliance or shortfalls with the principles above

5. Risks and impacts

- 5.1 All commercial activities that are delivered by entities other than the council but in the council's ownership or control (eg limited companies etc) must comply with the WBC Companies' Governance Framework requirements on risk and, in the case of commercial activities or assets that are entirely within the Council (that is to say are not a separate legal entity), the council's Risk Management and Policy Framework must also be followed.
- 5.2 The approach to commercial risks must be balanced against potential opportunities and reward with an emphasis on being risk aware, not risk averse. Risks need to be managed continuously from the earliest conception of an idea for a project or opportunity and for all the time they are live. The Strategic Director, Corporate Resources will be responsible for overseeing the management of commercial risks.
- 5.3 In the case of novel commercial activities and assets, where performance or benchmark information is not available, a higher level of risk awareness is required.
- 5.4 The overall balance of risks across the portfolio of the Council's commercial activities and assets must also be considered in aggregate as well as individually. This is to ensure that exposure to common risks among the commercial activities and assets is understood and appropriately managed.
- 5.5 Similarly, the impacts of the commercial activities and assets should be considered in aggregate as well as individually. By doing so, the overall contribution to delivering the Council's strategic objectives can be understood.
- 5.6 The Strategic Director, Corporate Resources will report on aggregated risks and impacts on a quarterly basis to the commercial board.

6. Review

- 6.1 This Protocol will be kept under regular review every twelve months. The next review is due in September 2024.

7. Policies

- 7.1 The application of this Protocol will be carried out in accordance with any specific policies in place at the relevant time.
- 7.2 Policies will be appended to this Protocol.

Appendix A

Impacts and risks evaluation

Impacts and risk evaluation for:	Critical	Significant	Important	Not significant	Marginal
How important is this commercial activity or asset for the Council to achieve its strategic objectives?					
What financial impacts does this commercial activity or asset bring the Borough Council?					
What environmental impacts does this commercial activity or asset bring the Borough?					
What social impacts does this commercial activity or asset have on the Borough?					
To what extent does this commercial activity or asset impact the local economy?					
To how much risk does this commercial activity or asset expose the Borough Council?					

The full requirements of the Commercial Protocol will apply, on a comply or explain basis, to any commercial activity or asset that has either one or more critical or significant impacts or risks, or more than two important impacts or risks.

Those that have less than two important impacts or risks and no critical or significant risks, will be reviewed annually or when any significant change occurs.

Appendix B

The Guiding Principles

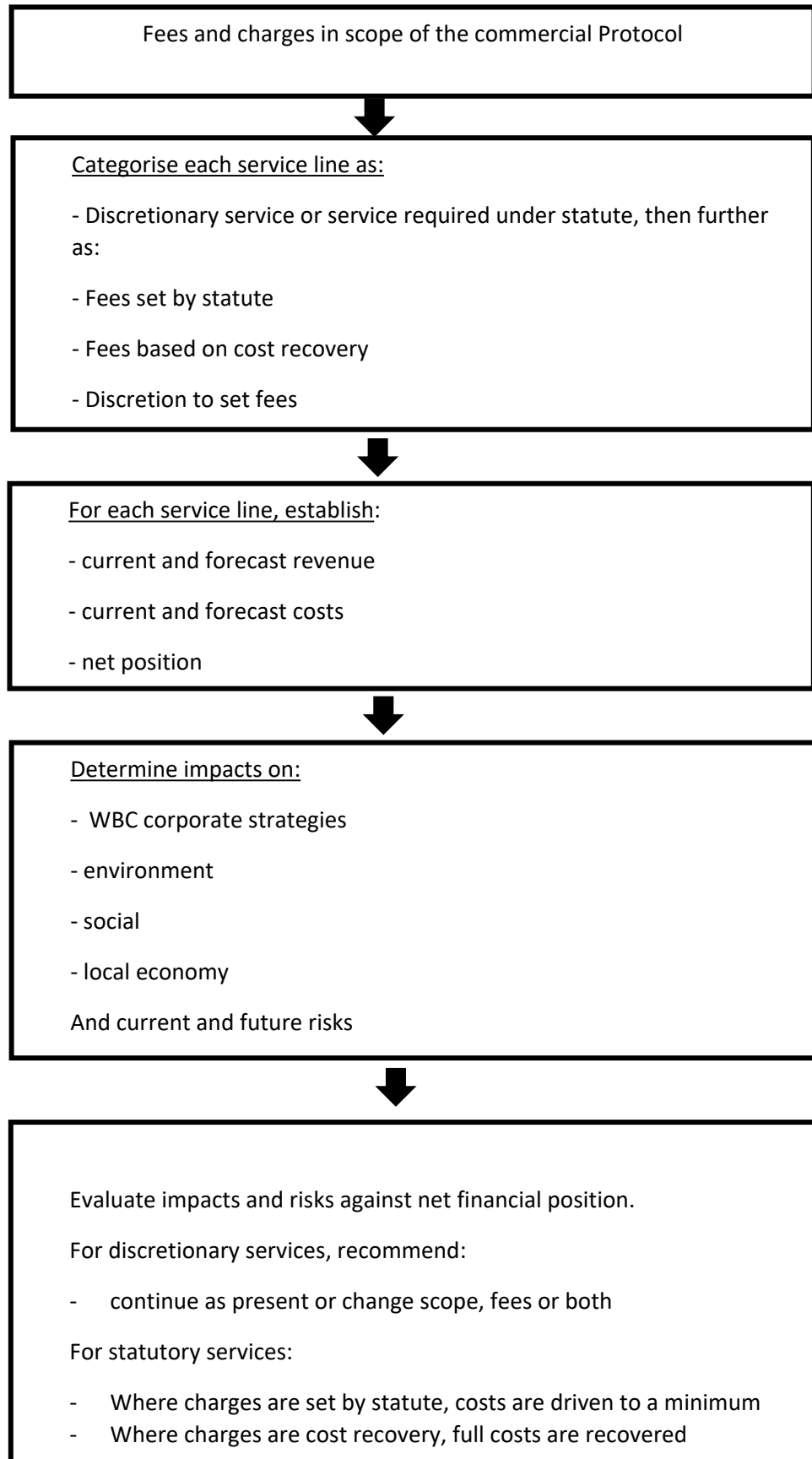
In undertaking its financial operations over the period of the MTFs the Council is recommended to adopt the following Guiding Principles ('The Principles'). The Principles are based on sound management and professional practice. They are presented as *Guiding* Principles because there may be occasions where – after careful consideration - the exigencies of strategic or operational management may necessitate from time to time a departure from the Principles.

No.	Guiding Principles
1	Fees & Charges will be reviewed annually and adjusted for inflation, comparability, and competitiveness.
2	As a compassionate Council, in setting charges, the impact on vulnerable groups will be considered carefully.
3	Service level spend will be benchmarked regularly with a suitable peer group and proposals to align with the benchmark will be brought forward.
4	The Council will adopt a policy of Digital First in service delivery but as a compassionate Council will be mindful of the risks of <i>digital exclusion</i> in doing so.
5	A rolling programme of Service Reviews launched as part of the <i>Budget Gateway</i> process will continue within the timeframe of the MTFs and will be used to ensure that operating models, organisational design and cost footprints are subject to regular review and adjustment across the Council.
6	Service developments, savings and investment will be brought forward on the basis of business cases that must demonstrate feasibility, deliverability, and appropriate financial pay back and other investment appraisal techniques.
7	The Council will consult with residents and other stakeholders in the Borough in forming budget proposals
8	Where business cases are prepared for decision a proactive approach will operate encompassing review in depth prior to such presentation; this will include rigorous application of investment appraisal techniques, peer review and use of the Scrutiny function to achieve searching review and challenge before business cases are adopted.
9	The Council will welcome approaches from regional and other partners for joint working and joint management initiatives.

10	The Council presently has a <i>negative</i> balance on the General Fund of £1.180 billion (7 June 2023 estimate). The Council will seek to rebalance the General Fund through (a) its own endeavours generally (b) a programme of property rationalisation and (c) with support to be sought from Government. In the long term the Council will seek to reach for Unearmarked Reserves at a level of 5% of Net Expenditure (i.e. £0.8m based on current core funding of £16m).
11	Given the financial position of the Council and the need to maintain key statutory services the Council will seek to maximise receipts from all funding streams including Council Tax and income over the period of the MTFS.
12	Growth in service budgets must be funded from (a) grants or other contributions, (b) realistic estimates of commercial income or fees and charges (c) or revenue savings. No other growth will be adopted into the Budget within the period of the MTFS.
13	Council will develop enhanced means of assessing and managing risks at both strategic and operational levels and these will be used to inform the annual Budget process.
14	The Council will seek to make Value for Money decisions and be mindful of its obligations to obtain best value for the 'public purse' generally.

Appendix D

Fees and charges flow diagram



Appendix C

Asset disposals flow diagram

