‘CALL IN’ OF DECISIONS OF THE CABINET

This form is to be used for the ‘calling in’ of decisions of the above bodies, in accordance with the procedure set out in Part 4 Section H.2 of the Constitution.

TITLE OF MEETING	Cabinet

DATE OF MEETING	Tuesday 10th November 2026

MINUTE No. AND TITLE OF ITEM	13. Approval to extend current Highways and Street Lighting Contracts and approval of the procurement strategy for a future combined Highways and Street Lighting Contract

1. Reason for Call-In/Is it claimed to be outside the policy or budget framework?

Outside the Policy or Budget Framework?

No

Reasons for call-in:

Reason 1 - Failure to Act on Previously Agreed Timetables and Lack of Substantive Justification

- Cabinet has already utilised the pre-existing contractual extension allowances built into both original tenders, exercising the two year extension to the Highways Maintenance contract (July 2024) taking it to its maximum seven-year term in June 2027, and two prior extensions to the Street Lighting contract (January 2023 and July 2025), taking it also to June 2027, expressly to align both expiry dates for a joint competitive tender. This decision is now making further extensions beyond the official contract expiry dates in June 2027, without properly evidencing the reasons this is necessary.
- The Cabinet report in July 2024 to extend the Highways and Maintenance contract states that ‘At the end of the extended contract in June 2027, a new procurement will have had to take place looking at options for procuring a new Highways contract. Such an exercise is likely to take up to 18month [sic] so it is something that would ideally need to have started at the beginning of the 2026 calendar year.’ No evidence has been provided that this work took place, and it is clear that the council’s view in July 2024 was that there was sufficient time and known deadlines to undertake a full, competitive tender by June 2027.

- 9.18 of the report states that an extension to June 2028 will allow consolidation of two existing contracts, but no evidence is presented that a contract extension is necessary in order to achieve consolidation. The dates the contracts were ending were known well in advance, and one of the main reasons given for the extension of the Street Lighting contract in July 2025 to June 2027 was to allow 'the highways and street lighting contracts to be let in parallel timelines' under a joint competitive tender. The same argument should not be used again for further extensions.
- The extensions to the contracts rely on two further reasons, one being the phrase 'economic uncertainty', a term which is not defined in terms of any metrics, and is completely unevidenced.
- The report states at 9.7 that the council intends to award a new contract through a competitive tender process by June 2028, but there is no evidence presented that economic conditions are expected to be more benign by this date.
- Both the July 2024 decision to extend the Highways Maintenance contract and the July 2025 decision to extend the Street Lighting contract also cited 'uncertainties within the market' as grounds for extending within the contract; further evidencing that a further extension of the contract provides no guarantee, or even likelihood, of more benign market conditions. Contracts cannot simply be extended *ad infinitum* on the basis of market conditions, or unevidenced changing future conditions. The use of market conditions to justify previous decisions discredits this as reasoning for these further extensions.
- The second reason, allowing time for a review of the long-term procurement strategy, does not constitute a valid reason for a contract extension: under Procurement Regulations, allowing time to review a long-term procurement strategy does not justify bypassing open competition and internal administrative delays do not satisfy statutory procurement modification gateways.
- The final expiry dates of these contracts have been known for seven and eight years respectively, so more time due to unforeseen circumstances cannot credibly be claimed.
- Under Article 12.02 of the Constitution, Cabinet decisions must be proportionate, supported by professional advice, and based on clear, evidenced rationale with reasons given. Presenting a general reasoning of "economic uncertainty" without any evidence from market-testing (despite indicating some market engagement in September), zero benchmark metrics, and indeed no evidentiary documentation whatsoever, falls far short of that standard and would therefore be in breach of the constitution.

Reason 2 - Non-compliance with Public Contract Regulations

- The extension to the Highways Contract is asserted to be in compliance with Public Contracts Regulations (PCR 2015), Regulation

72(1)(b), but nothing in the Cabinet report evidences compliance with the conditions set out in said clause.

- The council has made two decisions relating to this contract, the first an uplift to the current contract, and second an extension to the current contract beyond the original contract scope that both fall outside the cited regulation. Regulation 72(1)(b) applies only to 'additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement'. Neither an uplift in costs, nor a simple extension, constitute 'additional works' under this clause.
- Regulation 72(1)(b)(i) and (ii) are specifically stated as the legal reasons that this is permissible, but the council has provided no evidence that changing contractors cannot be done for technical or economic reasons, nor would cause significant inconvenience or substantial duplication of costs. Given there are many companies in the market that can offer these services, this legal test cannot be based on assumptions. It must be evidence-based for contract law, but this has not been presented to Cabinet.

- The extension to the Street Lighting Maintenance Contract is asserted to be in compliance with Public Contracts Regulations (PCR 2015), Regulation 72(5)(a) and (b) - the De Minimis Gateway - but this contract does not satisfy this criterion.
    - This contract was originally agreed on a £12m spend across the 8 year term. The council's previous two extensions increased the contract value initially to £20m and then further to £22.8m. To qualify under the de minimis gateway, a modification must sit below the statutory UK procurement threshold and below a value of 10% for services or 15% for works of the original £12m contract value (therefore £1.2m or £1.8m respectively). As this proposed extension is valued at £2m, it breaches both thresholds, and given the works provided would be considered a services contract (in accordance with Regulation 4(1) of PCR around mixed contracts) as this was initially contracted primarily as a maintenance contract, the lower threshold would apply.
- In failing to meet the criteria set out in the Cabinet report, these contract modifications would be breaching Regulation 72(9) by failing to run a new procurement procedure and exposing the Council to an ineffectiveness challenge under Regulation 99.

Reason 3 - Use of Exempt Information / Lack of Public Oversight

- The report states that the "Draft Procurement Strategy – Highways and Street Lighting Term Maintenance Contract" has been attached as an exempt paper, based on Schedule 12A of the Local Government Act 1972, in that it contains information relating to the financial or business affairs of any person (including the authority holding that information). However this deprives members and residents of the information

needed to scrutinise and assess this decision, and why a change of direction has been made compared to previous Cabinet decisions.

- The council's constitution sets out that decision making should take "a presumption in favour of openness". Exempting the entire document, suggests that every word of every paragraph has information relating to financial or business affairs. This is almost certainly not the case, and therefore this document should have been published with the relevant information redacted, to ensure compliance with a presumption in favour of openness.
- There is also no indication presented suggesting that information which may have altered arguments relating to Reason 1 - Lack of evidence for decision being taken, was included in the exempt papers, as this was not referenced. However, indications were given at Cabinet under questioning that market testing was carried out at some point and there is a reference to some soft testing. If this was included in exempt papers, then these decisions should be reviewed and scrutinised by the OSC. If this information was presented in neither the public nor exempt papers, then this forms a crucial lack of evidence submitted to the Cabinet for the decision being made.

2. Variation of Action Proposed

Overview and Scrutiny Committee is asked to refer the decision back to Cabinet for reconsideration with the following recommendations:

- Cabinet should obtain and publish independent legal advice from a contract law specialist detailing how each contract (including both the in-contract ceiling rise and the 12-month extension to 30 June 2028 for Highways Maintenance, and the further extension for Street Lighting) meets the specific legal tests in PCR 2015 Regulation 72 against the arguments set out in this call-in, confirming that there is no credible basis for ambiguity or legal challenge, and if it is unable to do so then formally reject this decision to protect the council against legal challenge.
- Review the exempt papers against the Schedule 12A public interest test and publish a redacted version (including the Draft Procurement Strategy, detailed costings, and commercial risk assessment) with only genuinely sensitive commercial information blacked out, in line with the recent decision notice of the Cabinet held on Friday, 13th November, 2026.
- Publish details of market testing and the evidence that this extension option scores highest on substantive metrics compared with other options, and provides clear and significant best value for money for the council against an open tender. Where this is unevidenced, Cabinet should approve an immediate open tender process for a combined Highways and Street Lighting Contract.

Overview and Scrutiny Committee is further asked to recommend to Cabinet:

- That the council provides senior officer training on:
    - Writing Cabinet Reports with sufficient detail for Cabinet to provide an informed and reasoned decision with all alternative options considered and for the public to be assured of the same, including detailing clear evidence basis in all Cabinet Reports and alongside Cabinet Recommendations;
    - The fact that that contract extensions beyond the scope of the original contract should be used only as an absolute exception, only where they provide very clear value for money to the council, and should be rigorously tested and evidenced in public against open tender before being put forward as a preferred option;
    - The prioritisation of public interest when separating information in a report, and a reporting hierarchy of public publication, followed by redaction, followed by exemption;
- That the council agrees that vague terms such as “economic uncertainty” or “market conditions” without robust evidence to back this up, are not permissible reasons for contracts to be awarded/not-awarded/extended/renewed/replaced, and this will not be used for future Cabinet decisions.
- That the council agrees that a failure to carry out either procurement exercises or market testing with sufficient advance timing to allow for open tender/procurement, regardless of resourcing issues, is not a legally-acceptable reason for contracts to be awarded/not-awarded/extended/renewed/replaced except in very specific circumstances - for example an existing contract has been curtailed by the collapse of a contract provider.

Signed:

Councillor Luke Cawley-Harrison

Countersigned:

1. Councillor Tony Powell

2. Councillor Karolina Braun

3. Councillor Imad Ahmed

4. Councillor Dawn Barnes

Date Submitted: 17/11/2026

Date Received :
(to be completed by the Democratic Services Manager)

Notes:

1. Please send this form to:

   Ayshe Simsek(on behalf of the Proper Officer)
   Acting Democratic Services and Scrutiny Manager
   5th Floor
   River Park House
   225 High Road, Wood Green, London N22 8HQ
   Tel: 8489 2920
   Fax: 020 8881 5218

   This form must be received by the Acting Democratic Services and Scrutiny Manager by 10.00 a.m. on the fifth working day following publication of the minutes.

2. The proper officer will forward all timely and proper call-in requests to the Chair of the Overview and Scrutiny Committee and notify the decision taker and the relevant Director.

3. A decision will be implemented after the expiry of ten working days following the Chair of Overview and Scrutiny Committee's receipt of a call-in request, unless a meeting of the Overview and Scrutiny Committee takes place during the 10 day period.

4. If a call-in request claims that a decision is contrary to the policy or budget framework, the Proper Officer will forward the call-in requests to the Monitoring Officer and /or Chief Financial Officer for a report to be prepared for the Overview and Scrutiny Committee advising whether the decision does fall outside the policy or budget framework.

- The extension is claimed to be permitted under Public Contracts Regulations 2105, Reg 72 (5) (a) & (b), stating that a contract can be modified “where the value of the modification is below both of the following values:—
    - (a)the relevant threshold mentioned in regulation 5, and
    - (b)10% of the initial contract value for service and supply contracts and 15% of the initial contract value for works contracts, provided that the modification does not alter the overall nature of the contract or framework agreement.