1 Executive Summary

1.1 This report seeks approval from Cabinet to establish an Internal Control Commission which will investigate the causes and solutions of the series of internal control failings in the Council.

2 Recommendations

2.1 For the reasons set out in the report, Cabinet is recommended to agree:

2.1.1 the establishment of an Internal Control Commission with the terms of reference as set out an Appendix 1;

2.1.2 that the Commission should have an independent Chair for which an appointment process should begin immediately with the final decision to be taken by the Mayor;

2.1.3 that the work of the Commission should commence immediately upon the appointment of its Chair and members and should then report within six months;

2.1.4 to delegate to the Interim Chief Executive, in consultation with the
Mayor and Cabinet Member for Finance, the arrangements for the recruitment of the Commission Chair and other members and of the Commission and the arrangements for supporting and resourcing the Commission.

3 Background

3.1 Cabinet will already be aware of a series of significant internal control failures in recent years including:

3.1.1 the 2018 London Stadium decision making processes;

3.1.2 the 2017/18 RMS £8.78M overspend and the impact of the Keep Newham Moving Programme on highways expenditure;

3.1.3 the 2014 East Ham Campus redevelopment programme; and

3.1.4 earlier concerns in reports about services back in time to 2006, for example issues in the Housing Needs Service that raised similar concerns (at that time rather than currently).

3.2 These issues were considered at an Extraordinary meeting of Council on 22nd January 2019. At that meeting, Council noted that the Mayor and Cabinet would receive a report on the establishment of an Internal Control Commission at their meeting on 5th February 2019.

4 Key Considerations & Proposals

4.1 The purpose of the Commission will be to investigate the causes and solutions of the series of internal control failings in the Council, of which the mismanagement of RMS in delivering the highways planned and responsive maintenance service is a particular recent and significant example.

4.2 The Commission will be tasked to address the following:

4.2.1 an assessment of the Council’s existing Internal Control environment and to ensure lessons are learned from previous internal control failures and reviews;

4.2.2 an assessment of how the Council’s internal control environment failed to prevent the matters arising in the RMS investigations;

4.2.3 recommending a model of best practice of Internal Control for the Council to adopt and implement;

4.2.4 to develop an Action Plan for the Council to reach this model of best practice.

4.3 These tasks form the basis for the draft terms of reference set out in Appendix 1. The Chair and Commissioners will be asked to agree the final terms of
reference at their first meeting.

4.4 The Commission will decide on the detail of its own work programme but this is expected to include taking evidence from the Overview and Scrutiny Chair and members, Audit Board Chair and members and other councillors and officers.

4.5 It will also listen to submissions from external experts as to best practice in relation to internal controls in local government, other parts of the public sector and more broadly.

4.6 An independent chair will be appointed for the Commission together with up to four additional members. The Mayor will appoint the chair of the Commission from a short list of suitably qualified and experienced candidates, with advice being provided by the Interim Chief Executive. Other members will be appointed by the Mayor in consultation with the independent Chair.

4.7 The Commission’s work will build on the work already undertaken by the Mayor and her administration in changing the culture and governance of the authority. It is important that the Commission provides recommendations that reflect the reality of the Council’s position as a local authority facing increasing financial restriction due to austerity. Further, the Council is keen to maximise the use of technology to improve its governance and simplify processes and “bureaucracy” and the work of the Commission should reflect this. Finally, as noted in the terms of reference, the Council has not lacked procedures and processes; its issue is non-compliance and a failure to deal with non-compliance. Therefore the Commission is not charged with simply adding new procedures or processes but with establishing the framework for practical and cultural shift to compliance and value for money in everything it does.

5 Policy Implications & Corporate Priorities

5.1 Ensuring that strong internal control systems are in place and operating effectively is key to securing value for money and effective delivery of Council priorities.

5.2 As the Council faces an increasingly uncertain future with the outcome of the national Brexit negotiations unknown and Government direction on vital funding decisions such as the Fair Funding Review still unannounced, an effective internal control system is vital. It will be needed to help the London Borough of Newham navigate its way through the next few years and safeguard the resources the people of Newham have entrusted to the council.

6 Alternatives considered

6.1 The Cabinet could choose not to establish a Commission or to undertake the work/reviews through internal resources. However, it is considered that an independent Commission with an independent Chair is the best way to address the concerns arising from recent internal control failures in an open and transparent way and ensure that solutions are recommended and actioned to address such failings.
7 Consultation
7.1 Mayor Rokhsana Fiaz. Date: 25th January 2019
7.2 Councillor Terry Paul: Cabinet Member for Finance. Date: 25th January 2019

8 Implications

8.1 Financial Implications
8.1.1 The full financial implications will be established once the full details of the Commission, appointment of members and support arrangements have been agreed. At this stage, it is estimated that the cost of establishing and running the Commission will be in the order of £100,000. Provision has been included within the proposed 2019/2020 budget set out elsewhere on the agenda for this meeting.

8.2 Legal Implications
8.2.1 An effective system of internal control is essential for ensuring the legality of the Council’s activities large or small. Non-compliance leaves the Council at risk of financial loss, service failure, fraud and legal action. The Council has a duty under s.3 of the Local Government Act 1999 to provide best value and continuous improvement when discharging its functions. The Council owes a fiduciary duty to taxpayers, which means it must use its resources to their best advantage. The work of the Commission will help strengthen compliance with these duties.
8.2.2 The Council has power under s.1 of the Localism Act 2011 (the general power of competence) to undertake the review and engage the services of the Commission. The Commission’s recommendations will be required to be implemented by the Council or Cabinet.

8.3 Equalities Implications
8.3.1 There are no equalities implications arising from the decision to establish the Commission. The work of the Commission on improving the Council’s internal control framework will benefit all groups. The Commission will need to ensure that its work enables participation by all groups. The Commission will need to ensure that it considers evidence from all groups with an interest in its work.

8.4 Other Implications relevant to this report:
8.4.1 None

9 Background Information used in the preparation of this report
9.1 Report to Council 22nd January 2019
The Impact of Keep Newham Moving on RMS Highways Maintenance Leading to £8.78m Overspend – Weaknesses in Controls and Lessons to be Learned
Appendix 1

London Borough of Newham

Internal Controls Review

Terms of Reference

1. Introduction

1.1. The Mayor and Cabinet of the London Borough of Newham appoints this Internal Control Commission to provide it with expert and independent guidance on how to remedy long standing failings in the Council’s internal controls.

2. Membership

2.1. The Commission will comprise

2.1.1. INDEPENDENT PERSON (Chair)

2.1.2. The Commission will consist of up to four additional members.

2.2. The Commission will be supported by the Council and the Council lead officers will be the Interim Executive Director for Financial Sustainability and the Interim Assistant Chief Executive.

2.3. The Commission will have access to support and documentation from the Council and, with the Council’s agreement, engage additional external expert support as is necessary to complete the Review.

3. Background

3.1. This section is intended to provide a summary of the background only and is not determinative of the subject matter of the Review. Newham has suffered a number of major financial and service failures in recent years including:

3.1.1. An overspend of £8.78M in the Council’s Repairs & Maintenance Service Highways budget arising from financial mismanagement and
failure to follow correct procedures. Further failings led to false declaration of overtime and poor practice.

3.1.2. The loss of the Council’s approximately £52M investment in the Olympic Stadium, an investment that a subsequent review by Peter Oldham QC found to be based on a flawed decision.

3.1.3. The East Ham Campus project in 2013/14 which resulted in statutory reports by the Director of Finance and Director of Law & Governance arising from the ultra vires decisions made.

3.1.4. Independent investigations into services’ failures to follow procurement and other rules dating as far back as 2006, where the findings of the investigations are very similar in theme and nature to the current findings about RMS.

3.1.5. Significant levels of non-compliance with procurement requirements with the consequential risk that services delivered to the Council or to residents directly do not provide value for money.

3.1.6. Approaches to member and officer governance have been framed by a scheme of delegation and an approach to urgency of decision making that has not facilitated public scrutiny.

3.2. It is the view of the Mayor and the statutory officers of the Council that there are underlying patterns, behaviours and themes to these individual failings that need to be addressed at a fundamental level. These themes are:

3.2.1. Newham’s failing is not a lack of governance policies and procedures, there is a culture of acceptability of non-compliance and failure by omission. It is very likely that all policies could be improved, simplified and designed as a single system of control but without cultural change, things are unlikely to fundamentally and sustainably alter.

3.2.2. A failure to learn from past failings and any past successes and this needs to be embedded into the Council. There is a lack of consequence when systems and processes are not adhered to which weakens any system control.
3.2.3. The Council is reactive not proactive in internal control; the Council has failed to identify and prevent the known service failings and losses at both member and officer level whether through effective due diligence, scrutiny, monitoring or review of projects or services. In particular, the RMS failings only arose after whistleblowing allegations were raised and investigated by Internal Audit.

3.3. The Commission may consider these are relevant lines of enquiry but is no way restrained to only consider them.

4. Outcomes

4.1. To undertake a review of the Council’s Internal Control policies, processes, system and framework and provide the following:

4.1.1. An assessment of the Council’s existing Internal Control environment and to ensure lessons are learned from previous internal control failures and reviews;

4.1.2. An assessment of how the Council’s internal control environment failed to prevent the matters arising in the RMS investigations;

4.1.3. A model of best practice of Internal Control for the Council to adopt and implement which balances compliance and adherence to the new system and ensures that the Council is able to operate effectively and in a non-burdensome way;


4.2. The Independent Chair will present the report to the Mayor & Cabinet and Full Council.

4.3. It is vital that the recommendations of the Commission and the Action Plan reflect:

4.3.1. the context and realities of local government, including the effects of austerity;

4.3.2. the Council’s wish to maximise technology and digitisation in improving its internal control systems;
4.3.3. the Council’s wish not to introduce additional controls or “bureaucracy” or layering one set of controls upon another without demonstrating the added value of such controls;

4.3.4. the need to tackle behaviours as well as processes.

4.4. The following matters are noted to be out of scope of this Review:

4.4.1. Reconsideration of the findings of past investigations

4.4.2. Investigation into any current or future allegations against individuals or organisations.

4.4.3. If the Commission considers that matters coming into its knowledge require investigation, they should be passed to the Council’s Interim Chief Executive or Head of Assurance.

5. **Evidence, Publicity & Access to Information**

5.1. The Council intends to publish the report of the Commission when finalised and all documentation and other records held by the Commission is held on behalf of the Council.

5.2. It is recognised and accepted that there is a public interest in providing public access to the Commission’s report and the following:

5.2.1. agenda and minutes of Commission meetings;

5.2.2. evidence considered by the Commission

5.3. It is also recognised that by the nature of the work of the Commission that it is likely to consider evidence that is confidential or would otherwise be exempt from public disclosure under the Freedom of Information Act 2000 (or other information governance or access to information legislation).

5.4. Any decision in respect of disclosure of documentation will be made by the Council solely and in accordance with any relevant information governance legislation. In particular it is noted:

5.4.1. as the report is intended for future publication, it is considered that the exemption under s.22 of the Act applies during the period of the review;
5.4.2. legally privileged information may arise in respect of legal advice on

4.1.2.

5.5. For the avoidance of doubt, the work of the Commission is a Council commissioned review, where required, supported by independent expert advice. It does not form a decision-making body of the Council and, as such, is not subject to the Council’s Access to Information Rules under the Local Government Act 1972 and related legislation.

5.6. It is a matter for the Commission whether or when it meets in public or in private taking into account the nature of the evidence it is considering and taking advice from the Council’s Monitoring Officer or his nominee.

5.7. Members statutory and/or common law access to Council held information will apply (but noting this does not necessarily provide for public access).

6. Time Frame

6.1. The following time frame is anticipated. Notice should be provided if any of these target dates are likely to change.

<table>
<thead>
<tr>
<th>1. Appointment of members of the Commission and finalisation of Terms of Reference (including support needs)</th>
<th>28 February 2019</th>
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<tbody>
<tr>
<td>2. Meetings start to gather evidence</td>
<td>30 April 2019</td>
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<tr>
<td>4. Final Report</td>
<td>31 July 2019</td>
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