



Notice is hereby given that a **MEETING** of the **COUNCIL OF THE BOROUGH OF GOSPORT** will be held in the **TOWN HALL, GOSPORT** on **WEDNESDAY** the **FOURTEENTH DAY** of **JULY 2010** at **6.00 PM** AND **ALL MEMBERS OF THE COUNCIL ARE HEREBY SUMMONED TO ATTEND TO CONSIDER AND RESOLVE THE FOLLOWING BUSINESS –**

1. To receive apologies from Members for their inability to attend the Meeting.
2. To confirm the Minutes of the Annual and Adjourned Annual Meetings of the Council held on 19 May 2010 (copies herewith).
3. To consider any Mayor's Communications.
4. To receive Deputations in accordance with Standing Order No 3.5 and to answer Public Questions pursuant to Standing Order No 3.6, such questions to be answered orally during a time not exceeding 15 minutes.

**(NOTE: Standing Order No 3.5 requires that notice of a Deputation should be received by the Borough Solicitor NOT LATER THAN 12 O'CLOCK NOON ON MONDAY, 12 JULY 2010 and likewise Standing Order No 3.6 requires that notice of a Public Question should be received by the Borough Solicitor NOT LATER THAN 12 O'CLOCK NOON ON MONDAY, 12 JULY 2010).**

5. Questions (if any) pursuant to Standing Order No 3.4.

**(NOTE: Members are reminded that Standing Order No 3.4 requires that Notice of Question pursuant to that Standing Order must be received by the Borough Solicitor NOT LATER THAN 12 O'CLOCK NOON ON TUESDAY, 13 JULY 2010).**

6. To receive the following Part II minutes of the Boards of the Council:

- Policy and Organisation Board: 30 June 2010
- Community and Environment Board: 14 June 2010
- Housing Board: 16 June 2010

7. Rowner Compulsory Purchase Order

To consider the report of the Chief Executive (report to follow).

8. Petition Schemes

To consider the report of the Borough Solicitor (copy herewith).

9. Independent Remuneration Panel

To consider the report of the Borough Solicitor (copy herewith).

10. Review of Contract Standing Orders

To consider the report of the Deputy Chief Executive and Borough Treasurer (copy herewith).

**IAN LYCETT  
CHIEF EXECUTIVE**

**TOWN HALL  
GOSPORT**

06 July 2010

**FIRE PRECAUTIONS**

(To be read from the Chair if members of the public are present)

**In the event of the fire alarm (single continuous sound) being activated, please leave the Council Chamber and Public Gallery immediately.**

**Proceed downstairs by way of the main stairs or as directed by GBC staff, follow any of the emergency exit signs. People with disability or mobility issues please identify yourself to GBC staff who will assist in your evacuation of the building.**

**MEMBERS ARE REQUESTED TO NOTE THAT:**

**(1) IF THE COUNCIL WISHES TO CONTINUE ITS BUSINESS BEYOND 9.30PM THEN THE MAYOR MUST MOVE SUCH A PROPOSITION IN ACCORDANCE WITH STANDING ORDER 4.11.18**

**(2) MOBILE PHONES SHOULD BE SWITCHED OFF FOR THE DURATION OF THE MEETING**

**A MEETING OF THE POLICY AND ORGANISATION BOARD  
WAS HELD ON 30 JUNE 2010**

The Mayor (Councillor Allen) (ex-officio); Councillors Beavis (P), Burgess (P), Carter, C R (P), Chegwyn (P), Mrs Forder (P), Hook (Chairman) (P), Lane (P), Langdon (P), Philpott (P) and Wright (P).

**PART II**

**11. BUILDING CONTROL PARTNERSHIP – ANNUAL UPDATE AND REVIEW**

Consideration was given to a report of the Head of Building Control which updated the Board on the progress and financial out turn of the Building Control Partnership in the financial year ending March 2010. The report also requested confirmation of the continuation of the Partnership under the terms of the current legal agreement.

The meeting expressed its thanks to the Head of Building Control for an excellent report and how well the Partnership was working.

RESOLVED: That:

- a) the contents of the annual update and review report be noted; and
- b) support be confirmed for the continuation of the Building Control Partnership under the terms of the existing Legal Agreement.

**12. LEASE OF PREMISES AT TORONTO PLACE**

Consideration was given to a report of the Director of Planning and Economic Development which sought authorisation for the grant of a 10 year lease to Motive8 for the Council's premises located at Toronto Place as shown on Plan 1 attached to the report.

RESOLVED: That:

- a) the Head of Property Services be authorised to agree terms for the Lease of the council's premises located at Toronto Place to Motiv8 as shown on Plan 1 attached to the Director's report; and
- b) the Borough Solicitor be authorised to enter into such legal documentation as is necessary to effect the grant of a 10 year lease to Motive8 for the Council's premises located at Toronto Place as shown on Plan 1 attached to the Director's report.

**13. SALE OF LAND ADJACENT TO UNIT 2 TORONTO PLACE**

Consideration was given to a report of the Director of Planning and Economic Development which sought consideration of a request by R K Body Repair Ltd to purchase the freehold interest of the land shown on Plan 1 attached to the report, for the consideration of £9,784.

RESOLVED: That:

- a) approval be given to the sale of the land adjacent to Unit 2 Toronto Place to R K Body Repair Ltd as shown on Plan 1 attached to the Director's report, for the consideration of £9,784; and
- b) the Borough Solicitor be authorised to enter into such legal documentation as is necessary to effect the above sale.

**14. LEASE OF LAND AND BUILDING FOR THE 12<sup>TH</sup> GOSPORT SCOUTS, ST LUKES ROAD**

Consideration was given to a cross reference from the Housing Board held on 16 June 2010 which sought approval to enter into a new lease with the 12<sup>th</sup> Gosport Scout Group for the use of the existing land and building plus additional land.

RESOLVED: That:

- a) the Head of Property Services be authorised to agree terms with 12<sup>th</sup> Gosport Scout Group to enter into a new lease for the use of the existing land and building plus additional land on St Luke's Road; and
- b) the Borough Solicitor be authorised to enter into such legal documentation as is necessary to effect the above decision in consultation with the Head of Property Services.

**15. SALE OF LAND ADJACENT TO NO 8 EWER COMMON**

**Note:** Councillor Hook declared a personal and prejudicial interest in this item, left the meeting room and took no further part in the discussion or voting thereon.

The Vice-Chairman chaired the meeting for this item.

Consideration was given to a cross reference from the Community and Environment Board held on 14 June 2010 which sought approval to the sale of land adjacent to No 8 Ewer Common.

Councillor Wright reported that this matter had been the subject of a Stage 3 Members Panel hearing and the original complainant needed to be advised of the actions taken by the council following the hearing. The meeting was informed that notices would have to be advertised concerning the sale of this land. Officers confirmed that they would also write to the original complainant.

RESOLVED: That:

- a) approval be given to the sale of land adjacent to No 8 Ewer Common as shown on Plan 1, attached to the Director's report, on terms to be agreed by the Council's Head of Property Services; and

- b) the Borough Solicitor be authorised to enter into such documentation as is necessary to effect the above decision in consultation with the Head of Property Services.

The Chairman returned to the meeting.

#### **16. LEASE OF NO 2 BATTERY TO THE HISTORIC DIVING SOCIETY**

Consideration was given to a cross reference from the Community and Environment Board held on 14 June 2010 which sought approval for the grant of a lease to the Historic Diving Society for No 2 Battery as shown on Plan 1 to the report.

RESOLVED: That:

- a) approval be given to the grant of a lease of council land at No 2 Battery to the Historic Diving Society as shown on Plan 1, attached to the Director's report, on terms to be agreed by the Council's Head of Property Services; and
- b) the Borough Solicitor be authorised to enter into such documentation as is necessary to effect the above decision in consultation with the Head of Property Services.

#### **17. LEE-ON-THE-SOLENT SKATE PARK EXTENSION AND UPGRADE**

Consideration was given to a cross reference from the Community and Environment Board held on 14 June 2010 concerning approval to use £32,000 of 'Other Sports' funding to extend and upgrade the Skate Park facility situated on the promenade at Lee-on-the-Solent.

RESOLVED: That approval be given to the use of £32,000 of 'Other Sports' funding to extend and upgrade the Skate Park facility situated on the promenade at Lee-on-the-Solent.

#### **18. ST VINCENT COLLEGE CAPITAL CONTRIBUTION FOR RELINING THE SWIMMING POOL**

Consideration was given to a cross reference from the Community and Environment Board held on 14 June seeking approval to the Council making a capital contribution of £22,000 towards the costs of relining the swimming pool at St Vincent College.

RESOLVED: That approval be given to a capital contribution of £22,000 towards the cost of relining the swimming pool at St Vincent College.

#### **19. MEDIUM TERM FINANCIAL STRATEGY AND CAPITAL STRATEGY**

The Financial Services Manager had submitted for the Board's consideration the updated Medium Term Financial and Capital Strategies.

The Manager advised that the policy and plans of the new Government are currently still being developed so that more amendments may be necessary to the strategies as these become clearer and any impact on the Council is known.

The Manager recognised that action must be taken to cut the projected budget to an acceptable level that would avoid Council Tax capping. To outline the seriousness of the situation the Manager had included extracts from the conclusions reached in the recent Audit Commission publication "*Surviving the crunch: Local finances in the recession and beyond*" (March 2010); these illustrated the Commission's concern about the challenges now facing councils.

The Capital Strategy set out a framework for monitoring the progress of ongoing schemes in addition to establishing a process of post implementation review of completed Projects.

RESOLVED: That the Medium Term Financial Strategy and Capital Strategy be approved.

## **20. APPROVAL OF THE 2009/10 STATEMENT OF ACCOUNTS**

The Deputy Chief Executive and Borough Treasurer had submitted to the Board for their consideration his report and the Statement of Accounts 2009/10.

His report set out the back ground to the requirement for members to approve the 2009/10 Statement of Accounts; which is shortly to be made available for public inspection and audit, together with some brief notes on the Statement and financial outturn position for 2009/10.

RESOLVED: That:

- a) the Statement of Accounts for the financial year ending 31 March 2010 be received and approved;
- b) the revenue variances detailed in Appendix C to the report be noted;
- c) the capital programme slippage detailed in Appendix D to the report be noted; and
- d) the write offs approved under delegated authority at Appendix E to the report be noted.

## **21. OBJECTION TO LAND AT TICHBORNE WAY BEING REGISTERED AS A TOWN OR VILLAGE GREEN**

**Note:** Councillor Carter, C R declared a personal and prejudicial interest in this item, left the meeting room and took no further part in the discussion or voting thereon.

By reason of special circumstances, the Chairman determined that the following item be considered at this meeting notwithstanding the fact that the item had not been available for public inspection in accordance with the provisions of Section 100B(4)(a) of the Local Government (Access to Information) Act 1985.

The special circumstances were created by the fact that a Public Inquiry on the above land is to be held tomorrow.

Consideration was given to a report of the Chief Executive which sought the Board's approval for an objection to be made by the Council to an application to register land at Tichborne Way as Town or Village Green and for Council Officers to sign witness statements as to facts related to the Land.

When the above recommendation was put to the meeting Councillor Wright voted against it.

RESOLVED: That the Chief Executive be authorised to sign a Statement of Objection to an application made to register land at Tichborne Way as Town or Village Green and other Council Officers be authorised to sign statements as to the facts related to the Land.

## **22. EXCLUSION OF PUBLIC**

RESOLVED: That in relation to the following item the public be excluded from the meeting, as it is likely, 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 during this item there would be disclosure to them of exempt information within Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972, and further that in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons set out in the report.

## **23. SALE OF GARAGES**

Consideration was given to an exempt cross reference from the Housing Board held on 16 June seeking approval to the disposal of garage blocks in Leesland Road, Nobes Avenue, Dunkeld Road and Nesbitt Close.

The cross reference was exempt from publication as it contained details of the financial affairs of the Council and third parties at a time when negotiations were not finally concluded. If this information were released it may have a negative impact on future negotiations on the sales described in the report. Therefore the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

RESOLVED: That:

- a) the Head of Property Services be authorised to agree terms for the sale of the Freehold interest in the garage blocks for disposal at Leesland Road, Nobes Avenue, Dunkeld Road and Nesbitt Close; and
- b) the Borough Solicitor be authorised to enter into such legal documentation as is necessary to effect the above decision.

The meeting ended at 6.25 p.m.



**A MEETING OF THE COMMUNITY AND ENVIRONMENT BOARD  
WAS HELD ON 14 June 2010**

The Mayor (Councillor Allen) (ex-officio); Chairman of the Policy and Organisation Board (Councillor Hook) (ex-officio) (P); Councillors Mrs Bailey (P), Burgess (Chairman) (P), Edgar (P), Mrs Forder (P), Henshaw (P), Mrs Hook (P), Kimber (P), Murphy (P), Ronayne (P) and Mrs Searle (P).

**PART II**

**12. SALE OF LAND ADJACENT TO NO 8 EWER COMMON**

**Note: Councillor Mrs Hook declared a personal and prejudicial interest in this item, left the meeting room and took no further part in the discussion or voting thereon.**

**Councillor Hook declared a personal and prejudicial interest in this item, left the meeting room and took no part in the discussion thereon.**

Consideration was given to a report of the Director of Planning and Economic Development Services seeking Board approval for the sale of the freehold interest of the land shown edged in black on plan 1 of the report.

An updated photographic plan was distributed to the Board and is attached in the minute book as Appendix A.

Members advised that the fencing would be picket style and no higher than 2 foot.

Members felt that the cherry tree that has been planted on the Common Land without permission should not be removed, but this did not set a precedent for allowing any such future unauthorised planting on the Common Land

Members agreed to the recommendation as contained in the report.

RESOLVED: That:

- (i) the sale of land adjacent to No 8 Ewer Common as shown on Plan 1, attached to the report, on terms to be agreed by the Council's Head of Property Services, be approved;
- (ii) the Borough Solicitor be authorised to enter into such documentation as is necessary to effect the above decision in consultation with the Head of Property Services; and
- (iii) authorisation be sought from the Policy and Organisation Board to proceed with the above resolutions.

### **13. LEASE OF NO2 BATTERY TO THE HISTORIC DIVING SOCIETY**

Consideration was given to a report of the Director of Planning and Economic Development Services seeking authorisation for the grant of a lease to the Historic Diving Society for No 2 Battery shown hatched black on plan 1 of the report.

Members were advised that, for clarification, paragraph 2.5 of the report had been amended to read:

The Council will be responsible for the external repairs. If the cost of repairs becomes costly because of the ingress of water or other causes then the Lease can be brought to an end by either the Council or the Lessee without any further obligation.

Councillor Carter was invited to address the Board. He advised that No 2 Battery was an important historical site which had been closed for a number of years. He welcomed the opportunity for the Historical Diving Society to take on the site and display the wealth of information they possessed.

He welcomed the proposal and that the museum would be a valuable asset to the town.

Councillor Edgar advised the Board that, as Ward Councillor, he would not support the application if he felt it was to the detriment of local residents. He also supported the placing of a stone panel in Holy Trinity Church recognising the importance of the grave in No 2 Battery.

Members welcomed the proposal and thanked officers for their work in bringing a derelict building back into use.

RESOLVED: That:

- (i) the grant of a lease of the Council land shown on Plan 1, attached to the report, on terms to be agreed by the Council's Head of Property Services, be approved;
- (ii) the Borough Solicitor be authorised to enter into such documentation as is necessary to effect the above decision in consultation with the Head of Property Services; and
- (iii) authorisation be sought from the Policy and Organisation Board to proceed with the above resolutions.

### **14. ENVIRONMENTAL HEALTH (COMMERCIAL) SERVICE PLAN 2010/11**

Consideration was given to a report of the Environmental Services Manager which sought the adoption, by the Board, of the report as the work plan for the Environmental Health (Commercial) Team for 2010-11.

RESOLVED: That the report be adopted by the Board as the work plan for the Environmental Health (Commercial) team for the year 2010-2011.

## **15. PROJECT INTEGRA ANNUAL ACTION PLAN 2010-2015**

**Note: Councillor Mrs Hook declared a personal interest in this item, remained in the meeting room and took part in the discussion and voting thereon.**

**Councillor Hook declared and personal interest in this item, remained in the meeting room and took part in the discussion thereon.**

Consideration was given to a report of the Environmental Services Manager which sought approval for the adoption of the Project Integra Annual Action Plan 2010-2015 for the Partnership. Approval was sought in accordance with the Project Integra Constitution.

The Board were advised that other Local Authorities had already adopted the action plan.

RESOLVED: That the Draft Project Integra Annual Action Plan 2010-2015 be approved.

## **16. LEE-ON-THE-SOLENT SKATE PARK EXTENSION AND UPGRADE**

Consideration was given to a report of the Head of Service Facilities seeking Board approval to use £32,000 of 'Other Sports' funding to extend and upgrade the Skate Park facility situated on the promenade at Lee-on-the-Solent.

Members welcomed the proposal and advised the Board that the extension and upgrade would be welcomed by young people.

RESOLVED: That the use of £32,000 of 'Other Sports' funding to extend and upgrade the Skate Park facility situated on the promenade at Lee-on-the-Solent be approved and that the matter be referred to the Policy and Organisation Board.

## **17. ST VINCENT COLLEGE CAPITAL CONTRIBUTION FOR RELINING THE SWIMMING POOL**

**Note: Councillor Ronayne declared a personal and prejudicial interest in this item, left the meeting room and took no part in the discussion or voting thereon.**

Consideration was given to a report of the Leisure Services Manager seeking Board approval for the Council to make a capital contribution of £22,000 towards the cost of relining the swimming pool at St Vincent College.

Members welcomed the proposal and recognised the importance of children being provided the opportunity to learn to swim whilst at primary school; currently 6 schools used the swimming pool.

It was seen as particularly important that facilities were available for children to learn to swim as Gosport was a peninsula.

RESOLVED: That a capital contribution of £22,000 towards the cost of relining the swimming pool at St Vincent College be approved and that the matter be referred to the Policy and Organisation Board.

The meeting commenced at 6.00 pm and concluded at 6.25 pm

## **A MEETING OF THE HOUSING BOARD**

**WAS HELD ON 16 JUNE 2010**

The Mayor (Councillor Allen) (ex-officio), Chairman of the Policy and Organisation Board (Councillor Hook) (P), Councillors CK Carter (P), Mrs Cully, Dickson (P), Edwards (P), Geddes, Forder (P), Hylands (P), Jessop (P), Lane (P) and Philpott (P).

It was reported that, in accordance with Standing Orders, Councillor Wright had been nominated to replace Councillor Mrs Cully and Councillor Hook had been nominated to replace Cllr Geddes for this meeting.

Also in attendance: Tenant Representative – Mrs Annie Barnes

### **PART II**

#### **12. LEASE OF LAND AND BUILDING FOR 12<sup>TH</sup> GOSPORT SCOUTS, ST LUKES ROAD**

Consideration was given to a report of the Director of Planning Economic Development which sought approval for the surrender and grant of a lease of land and building to include additional land at St Lukes Road to the 12<sup>th</sup> Gosport Scout Group.

It was noted that there was one amendment to the report. Paragraph 2.5 should read: 'The new fencing will enclose a secure area for the Scout Group (shown 1) on Plan 1. The off-road parking will be of benefit to the residents of St Luke's Road as it will potentially take some cars off the highway if and when works are undertaken'.

RESOLVED: That:

- a) authority be delegated to the Head of Property Services to agree terms with 12<sup>th</sup> Gosport Scout Group to enter into a new lease for the use of the existing land and building plus additional land;
- b) authority be delegated to the Borough Solicitor to enter into such documentation as necessary, in consultation with the Head of Property Services; and
- c) the Board recommend to the Policy and Organisation Board meeting on 30<sup>th</sup> June 2010 that the Lease of Land and Building for 12<sup>th</sup> Gosport Scouts be approved.

#### **13. MANAGEMENT OF A2 DOMINION PROPERTIES AT ROYAL CLARENCE YARD**

Consideration was given to a report of the Housing Services Manager which sought approval to provide tenancy management services with A2 Dominion for social housing properties that were planned to be developed by Berkley Homes at sites known as C1 and C2 at Royal Clarence Yard.

It was noted that there was one amendment to the report. Paragraph 2.6 should read: "The developers are planning to have the units built out and handed over in the Spring of 2012".

Members questioned whether new staff would be employed to fulfil the proposed management arrangements outlined in the report. It was confirmed by officers that staff resource would be as a result of redeployment extending existing contracts or new staff recruited, but any costs associated with providing the services would be covered by the fees and charges paid by A2 Dominion. This could be decided once funding for the Kick Start programme had been released after the outcome of the Government's budget on 22<sup>nd</sup> June 2010.

It was noted by Members that the provision of services by the Council's tenancy management team would be beneficial for both the residents of C1 and C2 Royal Clarence Yard and the surrounding areas. However it was stressed that these services would not have a negative impact on the services provided for Gosport Borough Council tenants.

RESOLVED: That:

- a) the Council provide tenancy management services with A2 Dominion under a Management Agreement for blocks C1 and C2 Royal Clarence Yard; and
- b) authority be delegated to the Housing Services Manager, in consultation with the Chairman of the Housing Board, to finalise the services to be provided and the terms of the Management Agreement to be entered into for these services.

#### **14. HOUSING SERVICES MANAGER'S UPDATE OF THE HOUSING SUBSIDY REFORM**

Consideration was given to a presentation given by the Housing Services Manager which provided an update on the Housing Subsidy Reform.

On 14<sup>th</sup> October 2009, the Housing Board had considered a report entitled 'Council Housing Finance Reform' giving responses to the Government's consultation paper published the previous July. The consultation paper had asked for information across the 17 questions it had posed to Local Authorities.

In March 2010, the Government released a prospectus entitled 'Council Housing: A Real Future'. This was still a consultation document (a further consultation document to the one considered by Board in October 2009) and had posed a further 6 questions. The consultation period for this document would close on 6<sup>th</sup> July 2010.

The 6 questions from the consultation paper which was released in March 2010 would be circulated to all Housing Board Members and the Leader of the Council.

The consultation document puts forward a proposal of a once and for all settlement between Central and Local Government that would completely replace the current system. In essence, for a one off allocation of debt a Local Authority would come out of the annual subsidy system. Consequently Council's could retain their own rent income with which they could maintain their stock.

The amount to be paid would be determined by a one off calculation that would estimate how much Gosport would need to manage, repair and maintain its stock that would then be netted off against the expected income stream from rents. This would provide a residual income figure and the Government would calculate how much debt Gosport could service with the remaining income.

Should there be an offer of a way out of the subsidy system, this Council could expect to hear by late December 2010. When an offer comes forward the Board would need to consider all the implications of that offer, which would need to be considered in the context of a workable business plan taking into account income streams and likely future expenditure.

## **15. ANY OTHER ITEMS**

There was no other business to discuss.

## **16. EXCLUSION OF PUBLIC**

RESOLVED: That in relation to the following items, the public be excluded from the meeting, as it is likely, 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 during these items, there would be disclosure to them of exempt information within Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972, and further that in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons set out.

## **17. MANAGEMENT OF FRANKLIN ROAD (NO.65 – 151 ODDS)**

Consideration was given to an exempt report by the Housing Services Manager which outlined a proposed Management Agreement and informed the Board of the progress to improve tenancy services to the Registered Social Landlord's tenants and to grant the Housing Services Manager authority to develop the management agreement.

It was confirmed that the agreement would be up for renewal from 31<sup>st</sup> January 2011 and not 1<sup>st</sup> January 2011 as indicated in paragraph 2.5 of the report.

Councillor Philpott congratulated the Housing Services Manager and her team for their hard work and the improvements they had facilitated in the area.

This report was exempt from publication as the public interest was better served by not disclosing the financial details contained in this report as similar negotiations were underway with another Registered Social Landlord for the delivery of management services and the financial details in this report may have a negative impact on those negotiations.

RESOLVED: That the Council enter into an agreement with Housing 21 to provide Housing Management Services as outlined in the report and authorise the Housing Services Manager to finalise the terms of the agreement.

## **18. SALE OF GARAGES**

Consideration was given to an exempt report by the Housing Services Manager which sought approval to dispose of garage blocks in Leesland Road, Nobes Avenue, Dunkeld Road and Nesbitt Close.

It was noted that the words 'the garage area and' should be added to first sentence of paragraph 2.7 in the report after the words 'The valuation of'.

This report was exempt from publication as the public interest was better served by not disclosing the financial details contained within this report as release of such details may have a negative impact on future negotiations on the sales described in this report

RESOLVED: That the Board recommend to the Policy and Organisation Board that the Head of Property Service agree terms for the sale of the Freehold interest and authorises the Bough Solicitor to enter into legal documentation as necessary.

The meeting ended at 6.35p.m.



## AGENDA ITEM NO. 7

<b>Board/Committee:</b>	COUNCIL
<b>Date of Meeting:</b>	14 JULY 2010
<b>Title:</b>	REGENERATION OF ROWNER - EXERCISE OF COMPULSORY PURCHASE POWERS – UPDATE REPORT
<b>Author:</b>	CHIEF EXECUTIVE
<b>Status:</b>	FOR DECISION

### **Purpose**

To inform Council of the progress of the regeneration of the Rowner Estate and to propose an amendment to the boundaries of the proposed compulsory purchase order as agreed at the Council meeting on 8<sup>th</sup> March 2010. The amendments are shown on Plan 1 attached to this report and the new CPO Plan to be approved is attached as Plan 2.

### **Recommendation**

That the Council:

Having noted this report the Council continues to support the proposal for a compulsory purchase order made on 8<sup>th</sup> March 2010 but considers that the boundaries of the order land should be amended as proposed in this report and should include the areas marked yellow on the enclosed Plan 1 and delete the areas shown hatched on the enclosed Plan 1 on the completion of the acquisition of the land referred to in this report by First Wessex Housing.

Accordingly the Council thinks the development is likely to contribute to the achievement of the following objects namely the promotion and improvement of the economic, social and environmental wellbeing of their area for the reasons set out in this report and the report to Council on 8<sup>th</sup> March 2010 in accordance with Section 226(1) (A) of the Town and Country Planning Act 1990 and resolves to:

- (a) Make a compulsory purchase order pursuant to Section 226(1)(A) of the Town and Country Planning Act 1990 ("1990 Act") and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to acquire the land and new rights shown coloured pink and blue respectively on the Plan No 2 attached which it thinks is necessary to facilitate for the carrying out of development for a mixed use development including a new neighbourhood centre, retail and

residential uses with car parking at Rowner village upon the completion of the acquisition of the land referred to in this report by First Wessex Housing;

- (b) Note the progress of the regeneration of Rowner.

## **1.0 BACKGROUND**

- 1.1 Members will recall the Council considered a report on the regeneration of Rowner on 3<sup>rd</sup> October 2007 and agreed to enter into a partnership with Portsmouth Housing Association Limited, (now First Wessex Housing ("FWH")), English Partnerships (now the Homes and Communities Agency ("HCA")), Taylor Woodrow (now Taylor Wimpey ("TW")), and Hampshire County Council ("HCC") to secure the renewal of Rowner.
- 1.2 The Partnership Agreement was completed on 8th November 2007 and the partners are collectively referred to as the Rowner Consortium. Significant progress was made by the Rowner Consortium since 2007 and full details were set out in the report to Council of 8th March 2010 a copy of which is appended to this Report.
- 1.3 The purpose of this report is to provide an update on the position and recommend some minor boundary changes to the land proposed to be included in the compulsory purchase order.

## **2.0 Progress since last report**

- 2.1 Since the last report, FWH have continued to negotiate for the acquisition of properties and the current position is that of the 506 properties in the order land, only 160 remain to be acquired of which agreement has been reached with 55 leaving only 105 properties where no agreement has been made.
- 2.2 Reserve matter planning approval has now been granted to the Consortium for Phase 1, and as a result of the detailed design for this phase, it has become apparent that a minor adjustment needs to be made to the order land.
- 2.3 It is proposed to realign Little Woodham Lane in order to connect it to the realigned Howe Road. This will require interference with the rights of the users of Little Woodham Lane, and there is a need to extend the boundary of the compulsory purchase order in a minor fashion to incorporate a small section of the lane to enable this realignment to be effected.

## **3.0 Open Space**

- 3.1 Where land is included in a compulsory purchase order which falls within certain special categories, as defined by Section 19 of the Acquisition of Land Act 1981, additional procedural requirements arise under compulsory purchase legislation. Land which constitutes open space i.e. it is laid out as a public garden or used by the public for recreation is special category land, and if such land is included in a compulsory purchase order, there is a requirement to replace it with land of the same area, which is equally advantageous to the

public who used the land taken. There is a requirement to seek a certificate from the Secretary of State that the replacement land is equally advantageous.

- 3.2 Where land is laid out as a public park or as sports pitches it will clearly fall within the definition of open space. Where however land is used on an informal basis for recreation the legal position is less clear cut.
- 3.3 The Council commissioned a report in 2004 entitled the Gosport Borough Local Plan Review Open Space Monitoring Report which identified open space in the Borough including on the Rowner site. However, the planning definition of open space is much wider than the legal definition in Section 19.
- 3.4 As a result it has been necessary for officers to survey the Order Land to establish the position. There is some evidence of informal recreation taking place on the site of the old tennis courts near Siskin Junior School and on an area of land at Darwin Way where there is access from a public highway to a grassed area. As this land is being acquired by FWH, it is no longer necessary to include it in the compulsory order. By omitting this land from the compulsory purchase order, the Council are not required to comply with the requirements of section 19 to provide replacement open space for the land taken and seek a certificate.
- 3.5 Other open land which is in the ownership of the Council or the Consortium along Howe Road shown hatched on Plan 1, is not considered to fall within the legal definition of open space set out in section 19, but in order to avoid any issue arising in respect of this land, it is recommended that this also be omitted from the compulsory purchase order, as it is not necessary to include it given the existing land ownership.
- 3.6 The proposals for Rowner require the Consortium to provide new areas of public open space, which will exceed the areas of land which are considered, may fall within the definition alongside the school and at Darwin way as explained above. In addition, the Consortium has agreed to contribute the sum of £193,229 towards the provision of sports pitches and recreation facilities in the borough.

#### **4.0 Inclusion of rights**

- 4.1 The original proposal included seeking rights to deal with a party wall at Lindbergh Close. It has now been decided that seeking compulsory rights to render a party wall is not necessary, and that this can be achieved under the provisions of the Party Wall Act. As the land is owned by FWH, seeking these rights is no longer required. However it has now been established that it is necessary to enter part of the forecourt of the petrol filling station on Grange Road, in order to deal with the party wall at the garage, and new rights will be required to carry out this temporary work. Rights are therefore sought both to deal with the initial demolition of the garages at the rear of the petrol filling station, and to enter the forecourt premises of the petrol filling station to carry out any maintenance as necessary.

## **5.0 Risk assessment**

- 5.1 By extending the boundary of the compulsory purchase order to include a small area of land on Little Woodham Lane, the Council are able to ensure that the private means of access can be realigned. Persons who have a right of access along this private road should not be affected and will in future enjoy the use of a length of road way which has been made up to adoptable standard. Whilst any extension of a compulsory purchase order may increase the number of potential objectors, the obvious benefit for users of the lane is likely to ensure that no objection should arise.
- 5.2 At the time of the earlier report the land by Siskin School and at Darwin Way was in private ownership and had to be included in the Order. Now the land is being acquired by FWH, a member of the Rowner Consortium, this is no longer the case.
- 5.3 By deleting land from the order which is in the ownership of the Council or the Consortium, no additional risks should arise and no objection should be made to the decision to delete land from a compulsory purchase order. The loss of open space land is a planning issue, which was considered by the Council when it determined the outline planning application for the development in July 2009.
- 5.4 Section 19 requires the Council to secure a certificate from the Secretary of State that replacement open space land meets the criteria of the section. A public inquiry can be held to consider the position and members of the public are entitled to object. The omission of the land from the compulsory purchase order, means that the Council will no longer have to seek a certificate, and this will reduce the cost of the compulsory purchase process, reduce the risk of the scheme not going ahead and ensure that the viability of the project overall is not undermined.
- 5.5 The new rights at the petrol filling station are necessary to ensure the scheme can be undertaken properly and to avoid any damage to premises omitted from the compulsory purchase order.

## **6.0 CONCLUSIONS**

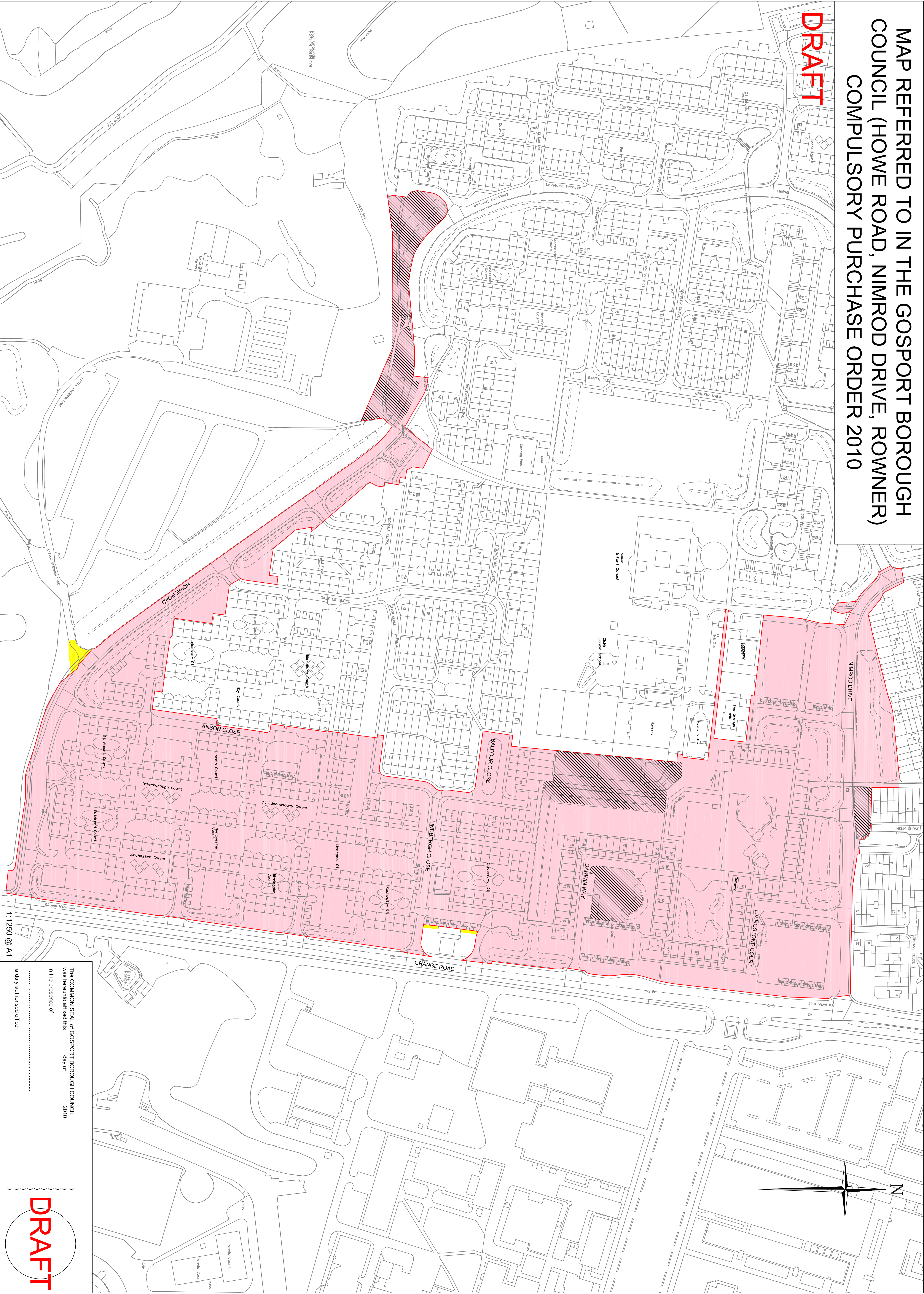
- 6.1 The conclusions set out in the report to Council on 8<sup>th</sup> March 2010 remain as relevant as ever in connection with this development. Now that a significant number of properties have been acquired, it is essential that this scheme progresses without delay.
- 6.2 The adjustments to the boundary which have been set out and justified in this report are essential to enable the development to go ahead.
- 6.3 The legislation relating to open space is designed to protect land which is enjoyed by the public, from being swallowed up by development and not replaced. That is not the case at Rowner, where new public open space will be provided as part of the scheme, and financial contributions are being made to provide additional recreational facilities elsewhere in the borough.

<b>Financial Services Comments:</b>	The proposal should have no direct impact on existing Council's budgets.
<b>Legal Services Comments:</b>	The legal position regarding open space has been addressed in this report. The comments set out in the report of 8 <sup>th</sup> March 2010 remain valid in respect of this report. In particular, the judgment made in respect of human rights is set out at paragraph 7 in that report remains the position in respect of this report. If this report is approved, it is intended to make the compulsory purchase order within the next two weeks.
<b>Service Improvement Plan Implications:</b>	
<b>Corporate Plan:</b>	The regeneration of Rowner is a corporate plan priority.
<b>Risk Assessment:</b>	See section 5 above.
<b>Background Papers:</b>	Reports to Council 3 <sup>rd</sup> October 2007 and 8 <sup>th</sup> March 2010, reports to Regulatory Board 21 <sup>st</sup> April 2009 and 6 <sup>th</sup> October 2009.
<b>Appendices/Enclosures:</b>	Plan 1 – showing land to be added/deleted from the original CPO  Plan 2 – Proposed CPO Boundary  Report to Council – 8 <sup>th</sup> March 2010 with original plan
<b>Report Author/Lead Officer:</b>	Ian Lycett



MAP REFERRED TO IN THE GOSPORT BOROUGH  
COUNCIL (HOWE ROAD, NIMROD DRIVE, ROWNER)  
COMPULSORY PURCHASE ORDER 2010

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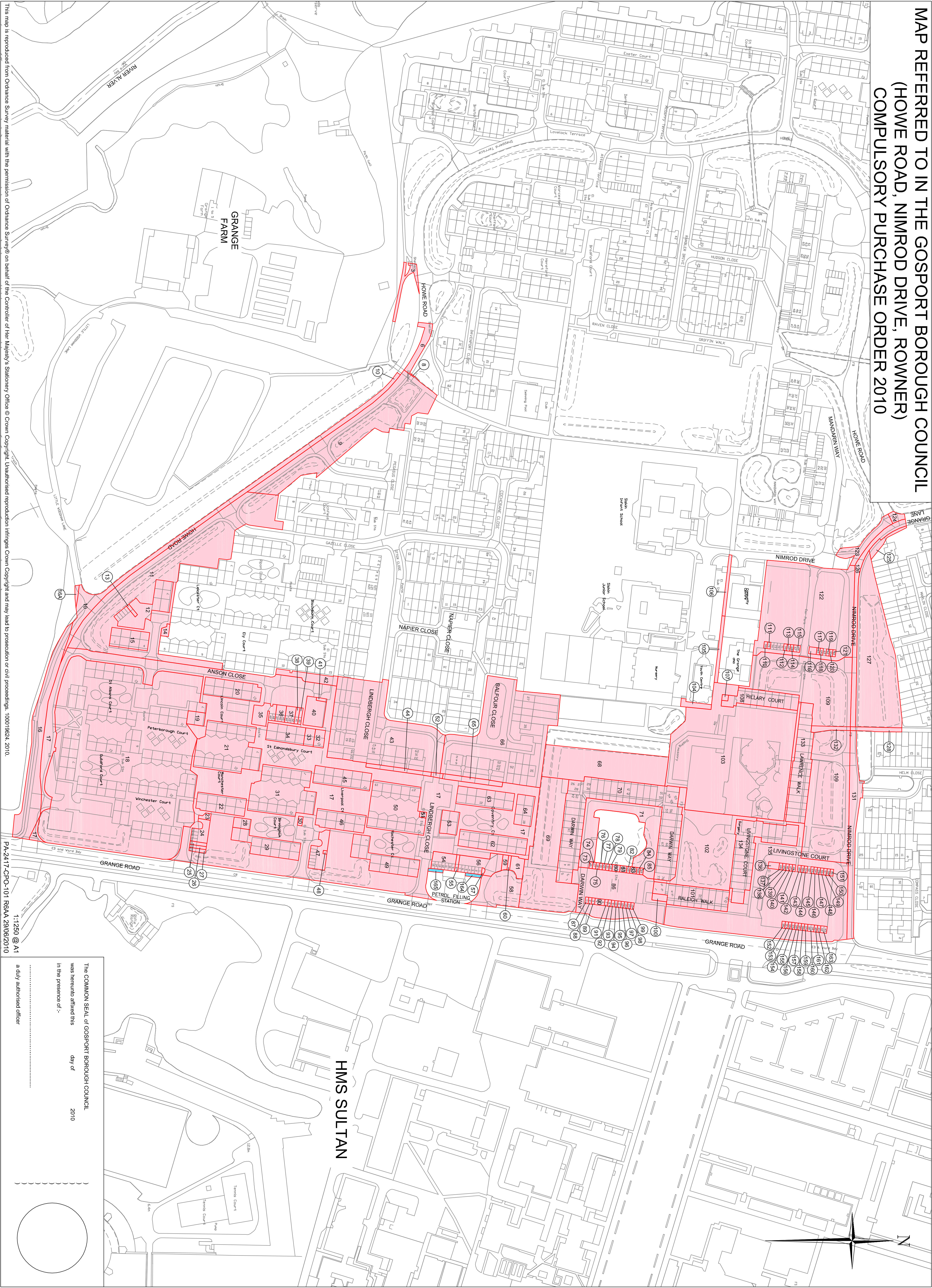
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The COMMON SEAL of GOSPORT BOROUGH COUNCIL  
was hereunto affixed this                      day of                      2010  
in the presence of:-  
.....  
a duly authorised officer

DRAFT



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PA2417-CPO-101 R&M 29/06/2010

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was hereunto affixed this                      day of                      2010  
in the presence of :-  
.....  
a duly authorised officer

HMS SULTAN



## AGENDA ITEM NO.

<b>Board/Committee:</b>	FULL COUNCIL
<b>Date of Meeting:</b>	8 MARCH 2009
<b>Title:</b>	REGENERATION OF ROWNER-EXERCISE OF COMPULSORY PURCHASE POWERS
<b>Author:</b>	CHIEF EXECUTIVE
<b>Status:</b>	FOR DECISION

### Purpose

To inform Council of the progress of the regeneration of the Rowner Estate and to propose the exercise by the Council of their compulsory purchase powers.

### Recommendation

That the Council:

Having noted this report thinks the development is likely to contribute to the achievement of the following objects namely the promotion and improvement of the economic, social and environmental well-being of their area for the reasons set out in this report in accordance with Section 226(1A) of the Town and Country Planning Act 1990 and

- a. makes a compulsory purchase order pursuant to Section 226 (1)(a) of the Town and Country Planning Act 1990 ('1990 Act') and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to acquire the land and new rights identified at Sections 5 and 6 in this report within the Nimrod Drive, and Howe Road area of Rowner shown coloured pink on the Plan, attached, which it thinks is necessary to facilitate for the carrying out of development for a mixed use development including a new Neighbourhood Centre, retail and residential uses with car parking at Rowner Village;
- b. agrees the amendments to the terms of the CPO Costs Cap as set out in Section 7 of this report;
- c. notes the progress of the regeneration of Rowner;

## **1.0 BACKGROUND**

- 1.1 The Council considered a report on the Regeneration of Rowner on 3 October 2007 and agreed to enter into a partnership with Portsmouth Housing Association Limited, English Partnerships (now the Homes and Communities Agency ('HCA')), Taylor Woodrow (now Taylor Wimpey ('TW')) and Hampshire County Council ('HCC') to secure the renewal of Rowner.
- 1.2 The partnership agreement was completed on 8 November 2007 and the



partners are collectively referred to as 'the Rowner Consortium'. Details of the significant progress made by the Rowner Consortium since 2007 is set out below.

## **2.0 HISTORY OF THE ROWNER ESTATE**

- 2.1 The Rowner Estate, situated within the Grange ward, was built by the Ministry of Defence for Naval personnel and their families during the 1960s. The Rowner Village, which was constructed to be the centre of the naval community, contains 301 maisonettes and flats.
- 2.2 During the housing boom of the 1980s, the Estate was subsequently sold. A proportion of the low rise residential properties were purchased by Registered Social Landlords, whilst the remainder, including the high rise village area, were sold to a private company who offered the properties for purchase on 125 year leases.
- 2.3 The Rowner Village has suffered from a lack of financial investment which has seen the building fabric deteriorate over the past 25 years. The poor environmental standards have caused property prices to collapse and the Estate to suffer from social problems during the 1990s when crime, vandalism and anti-social behaviour came close to creating a no-go area for public services.
- 2.4 In response to these social problems, a considerable amount of public money has been invested in the Rowner Estate. In 2000 the seven year Single Regeneration Budget Round 6 programme commenced and has created approximately £2.4M of investment for the Rowner Estate. A 10 year SureStart programme was launched in July 2002 and many other initiatives have been undertaken by various public bodies.
- 2.5 Improvements have been achieved and the Rowner Estate has developed into an active community and instances of crime and anti-social behaviour have fallen. Issues remain, however, around education, health, employment and family life.
- 2.6 Unfortunately, a lack of investment has caused the Rowner Village building fabric to continue to deteriorate. The Doctors' surgery has closed and only two shops remain open. The 'NAAFI' building is derelict and the underground car parks are threatening environments.
- 2.7 The Rowner Estate remains in the top 20% most deprived in England and is generally regarded as the worst Estate in South-East England. It has been featured on "Panorama" and was nominated as one of the worst buildings in Britain in Channel 4's "Demolition" programme shown in early 2006. Property prices remain very low. A 2 bedroom large flat and maisonette for example, can still be purchased for approximately £20,000 - £25,000.

### **3.0 PROGRESS OF THE SCHEME FOR THE REGENERATION OF ROWNER**

- 3.1 The regeneration of Rowner Village presents a complicated and unique challenge. The design and construction of the buildings and the relatively high cost of demolition coupled with its private ownership and mixture of tenure has made redevelopment unaffordable, despite the rapid increase in property and land values in Southern England.
- 3.2 As Council is aware, the regeneration of the Rowner Estate and particularly the redevelopment of the Village has been a corporate priority for this Council for a number of years. Officers and Members have been successful in securing public and private finance and the engagement of Government Agencies. Rowner is identified as a strategic area for redevelopment in the draft Core Strategy: Preferred Options dated September 2009 .
- 3.3 Since the last report to Council additional public funding of £3.2 million pounds has been provided by the Partnership for Urban South Hampshire. This money together with monies from PHA and HCA has enabled PHA to purchase, voluntarily, over 70% of the residential properties required to implement the whole regeneration scheme.
- 3.4 Negotiations with commercial tenants have been undertaken and terms agreed with the remaining tenant for their relocation within the new commercial centre.
- 3.5 Of the 506 residential interests on the site, agreement has been reached with 382 which leaves 124 residential interests to be acquired. Negotiations have been ongoing with landowners and tenants over a period of two and a half years. A relocation package has been offered which seeks to ensure people are not treated unfairly. The Consortium has made a serious effort to secure agreement with all persons having an interest in the order land. However, it is clear that without the use of compulsory purchase powers it will not be possible to assemble all the land required for the scheme and the project will not be able to proceed.
- 3.6 Outline planning permission has been obtained and reserved matters approval has been obtained for the first phase of the redevelopment. This phase includes affordable housing to allow the rehousing of those residents who wish to remain in Rowner.
- 3.7 A tenant has been secured for the supermarket to be built in phase 2 and which provides greater certainty on funding to ensure completion of the whole project and will provide around 200 local jobs.
- 3.8 However, despite the significant progress outlined above, the number of different landowners means that a CPO will need to be made to ensure that all the land and rights required for the scheme are obtained. This being the case, the Council has now received a request from the Consortium to proceed with the making of the CPO.

## **4.0 DELIVERY**

The Council has entered into a legal agreement with the Consortium for the delivery of the project. This has secured funding and the involvement of a major national house builder with the resources and expertise to ensure that the project will be completed once the land has been assembled.

## **5.0 THE CASE FOR A COMPULSORY PURCHASE ORDER**

- 5.1 The Council and its partners are seeking to secure the regeneration of the Rowner Estate through the redevelopment of the area known as the Village and selected viable 'intervention' areas. This development will provide a new Neighbourhood Centre and up to 700 new residential units ('the Scheme') which will facilitate the regeneration of the wider Rowner area through the delivery of new homes, job opportunities and access to community facilities, to create a place in which people will want to live and work. The Council and its partners view the implementation of the Scheme as an important step towards seeking to achieve the long term holistic regeneration and the renewal of the Rowner Estate.
- 5.2 The compulsory purchase powers conferred on the Council by Section 226 (1)(a) of the Town and Country Planning Act 1990 enables compulsory acquisition (following confirmation by the Secretary of State) where the Council consider the acquisition will facilitate the carrying out of development, redevelopment, or improvement on or in relation to land; and where it thinks the development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the Council's area.
- 5.3 On 24 July 2009 the Council granted outline planning permission for the redevelopment of land at Rowner. This included the area known as the Village and the intervention sites.
- 5.4 The key planning benefits of the proposals are:
- The delivery of new homes, job opportunities and access to community facilities, to create a place in which people will want to live and work.
  - The removal of outdated and neglected landscape features and their replacement with attractive new public spaces (including a community square) and a substantial improvement of the existing site and its features.
  - The creation of an attractive, safer and more permeable environment.
  - A mix of housing tenures to help create a mixed and balanced community responding to the identified needs, including affordable housing in Gosport.
  - The new Neighbourhood Centre which could create around 200 new jobs in an area where current unemployment is above the national average.

- The Neighbourhood Centre will be a central facility to reinforce the community facilities already in place and to provide an accessible and safe retail resource for local residents. The mix of uses and function of the Neighbourhood Centre are anticipated to contribute significantly to the creation of a sustainable community for Rowner.
  - The Development of up to 199 additional new dwellings which will contribute towards the Council's future housing target as set out in the South East Plan.
  - That of the 700 new dwellings, at least 37% will be affordable housing, and within Phase 1 approximately 45% of the new units will be affordable housing in order to assist with the rehousing of residents who wish to remain within the Rowner area.
  - The new Neighbourhood Centre will be anchored by a food store and will also include a pharmacy and up to three new retail units. This will replace the existing arrangement where most of the shops have closed and the Precinct fails to function as an effective centre.
  - The provision of quality spaces for community use, children's play, and improving linkages and access to the informal open space resource of the Alver Valley Country Park.
  - Improved road layout and improved accessibility.
  - Located on a previously developed site, predominantly within the urban area, the regeneration proposals have been formulated to maximise the benefits of orientation and layout and minimise the impact on noise, height and air quality.
  - The Scheme will deliver a minimum of Level 3 of the Code for Sustainable Homes and BREEAM 'Very Good' rating for non-residential buildings. The detailed design of Phase 1 of the Scheme is an energy efficient design, seeking to reduce energy usage and therefore keep energy costs low for residents.
  - Bringing regeneration to the Rowner area through high quality, environmentally sustainable homes and facilities and engaging with local community capacity and structures.
- 5.5 The land to be included in the CPO is shown on Plan 1 and whilst the Council and PHA own a significant proportion of this land, the freehold of the Village and a number of the flats themselves are in the ownership of third party landowners. In addition, there are some small, undeveloped plots of land and statutory undertakers' and telecommunication operators' interests to be acquired.
- 5.6 The Council has been aware of the social, economic and environmental problems on the Rowner Estate for a number of years. SRB and SureStart funding has been obtained to address some of the social and economic issues

experienced by the community. The Rowner Estate suffers from:

- High levels of deprivation.
- A lack of investment in the physical condition of the buildings.
- Continuing social problems including crime, vandalism and anti-social behaviour.
- An existing Neighbourhood Centre that fails to function as an effective centre.
- Collapse of property prices.
- An ownership structure which inhibits redevelopment of the Precinct area.
- Neglected landscape features.
- A distinct lack of architectural quality.

- 5.7 The proposals seek to provide a new Neighbourhood Centre, improved landscaping and new residential development in locations which it is considered will act as a catalyst to stimulate the long term regeneration of not only the Rowner Village but also the wider Rowner Estate.
- 5.8 The Scheme seeks to, inter alia, improve the quality, choice and range of residential units within the Rowner Estate to encourage a more balanced, sustainable community. Existing units within the Rowner Village and especially the block known as Livingstone Court are of poor quality both in terms of the premises and the environment. The Scheme has been carefully designed to seek to design out crime, and to reduce the building heights and massing of the Estate in order to reduce its 'threatening' appearance.
- 5.9 The new Neighbourhood Centre will incorporate a new food store, a pharmacy and up to three other independent retail units which will replace the existing retail units in the Precinct, most of which are no longer trading. The Neighbourhood Centre is proposed to be a central facility which reinforces the community facilities already in place, providing an accessible and safe resource for local residents, as well as jobs for local people.
- 5.10 The proposal includes a new north-south road and the realignment of the southern end of Howe Road together with new pedestrian crossing provisions which will be designed to provide improved 'at-grade' crossing points.
- 5.11 The proposal also seeks the reconfiguration and re-provision of green spaces on the Estate, to create an attractive environment and provide amenity space for residents. The Scheme will also seek to provide better linkages to the Alver Valley Country Park.

- 5.12 The regeneration scheme has been designed to improve the environment within which the community lives; the opportunities for employment in the local area and support the community by providing a focal point in the new Neighbourhood centre and improved linkages to the existing community facilities i.e. Community Centre, SureStart and 'Youthie'.
- 5.13 The Council therefore believes that the resultant Development will lead to an improvement to the economic, social and environmental wellbeing of the area.
- 5.14 In addition, the Council is utilising its powers under Section 226 (1)(a) of the Town and Country Planning Act 1990 because it is not certain that their partners will be able to acquire all the required land and interests by agreement although efforts to do so will continue in parallel with the compulsory purchase process.

## **6.0 RIGHTS**

In addition to acquiring the land within the site it is necessary to acquire rights to i) provide works to a party wall at Lindbergh Close; ii) provide rights to a party wall at the petrol filling station on Grange Road..

## **7.0 HUMAN RIGHTS ACT 1998**

- 7.1 The provisions of the European Convention on Human Rights ('ECHR') have been enacted directly into UK law under the Human Rights Act 1998 ("the 1998 Act") and the 1998 Act also places direct obligations on public bodies (such as the Council) to demonstrate that the use of compulsory purchase powers is in the public interest and the use of such powers is proportionate to the ends being pursued.
- 7.2 It is acknowledged that the compulsory acquisition of the land shown on Plan 1 ('the Order Land') will amount to an interference with Article 8 of the ECHR which provides that everyone has the right to respect for his private and family life his home and his correspondence. This may not be interfered with by a public authority except as in accordance with the law and as necessary in the interests of, inter alia, the economic well being of the country.
- 7.3 It is also acknowledged that the compulsory acquisition of the Order Land will amount to an interference with Article 1 of the First Protocol of the ECHR, which provides that every natural or legal person is entitled to peaceful enjoyment of his possessions.
- 7.4 However, there is a compelling case in the public interest for the compulsory acquisition of the Order Land which outweighs the ECHR rights. Furthermore, the use of compulsory purchase powers in this matter is proportionate. The Council is pursuing a necessary and legitimate aim and without the use of compulsory purchase powers, the much needed redevelopment of the Rowner Area will not be achievable as there is no evidence that the Order Land will be acquired and developed in the absence of the exercise of these powers.

- 7.5 The ECHR has recognised in the context of Article 1 that regard must be had to the fair balance which has to be struck between the competing interests of the individual and the community as a whole. Similarly any interference with Article 8 rights must be necessary for the reasons set out. In this case, any interference with convention rights is considered to be justified in the public interest in order to secure the regeneration of the Order Land.
- 7.6 Extensive consultation has been undertaken during the planning application process with the opportunity being given for interested parties to make representations regarding the proposals. Further representations can be made in the context of any public inquiry which the Secretary of State decides to hold in connection with the CPO. Those directly affected by the Order will be entitled to statutory compensation.

## **8.0 RISK ASSESSMENT**

- 8.1 There is a financial risk for the Council in respect of the Compulsory Purchase Order.
- 8.2 To manage the risk, a number of control mechanisms were included in the CPO Agreement referred to in the previous report to Council. These included that:
- (i) All costs associated with the Compulsory Purchase Order for the Project will be met by the Partnership.
  - (ii) The Council shall not be obliged to proceed with any purchases under the Compulsory Purchase Order until it has been fully placed in funds to do so by the Partnership.
  - (iii) A CPO Cost Cap will be agreed after the date of confirmation of the Order. The cap will be the higher of either of the following:
    - (A) The aggregate of:
      - (a) The highest sum properly estimated by three Compulsory Purchase Order cost expert valuers as representing the likely Compulsory Purchase Order costs which will arise following confirmation and
      - (b) 35% of the sum in (a) above or
    - (B) the Community Costs Cap of approximately £32 million.
  - (iv) If the cost gap is exceeded and the completed Project is in surplus, before any 'further profit' is paid to parties (see clause 4.14), this Council will receive all 'further profit' until all costs incurred with the Compulsory Purchase Order are cleared.
  - (v) If the cost gap is exceeded despite all the above, Hampshire County Council have agreed to share any financial loss equally with this Council.

- 8.3 However given the extent of voluntary acquisitions the Council's partners have asked that the calculation of the CPO Costs Cap is varied as set out below:-
1. For the purposes of agreeing the first cost cap, which is now to be agreed before all the information on ownership of the land is known the figure to be used should be £11,561,938 as set out in December appraisal as verified by the Council's valuer.
  2. The Contingency percentage to be applied to this figure remains at 35%.
  3. The first costs cap will therefore be £15,608,616.
  4. When the CPO boundary and referencing is finalised then the valuation of the interests to be acquired would be repeated (first review) and this would then set the maximum for any subsequent costs cap.
  5. This valuation figure should be reviewed periodically and could decrease to take account of interests the Partnership have acquired, or increase but it would never increase above the figure set at the first review.
  6. The Council would be accepting that the Community Costs Cap was no longer relevant to the CPO Costs Cap.
  7. The contingency to be added to the first review valuation referred to in 4 would remain at 35%. However on subsequent reviews the Council will be prepared to accept a lower percentage figure if it can be demonstrated that the valuation of the land and interests to be acquired and the professional costs and fees are robust. For example, the acquisition of the freehold interest and the properties owned by the investors by the Partnership reduces the current risk of a compensation claim based on an alternative scheme and therefore the Council would be in a position to consider proposals for a reduction in the contingency provision.
- 8.4 It is considered that this variation to the calculation of the CPO Costs Cap strikes a fair balance in seeking to minimise the risk to the Council's financial position and recognising that there should be a review of both the valuation figure and contingency provision as the CPO process progresses.
- 8.5 The Borough Solicitor will need to make arrangements for the CPO Agreement to be varied.
- 8.6 All other terms of the CPO Agreement remain as set out in the earlier report to Council.
- 8.7 Additional risks include the Secretary of State refusing to confirm the CPO or a successful challenge to the Order. However the retention of expert advisors is the appropriate control mechanism to minimise this risk.



## **9.0 CONCLUSION**

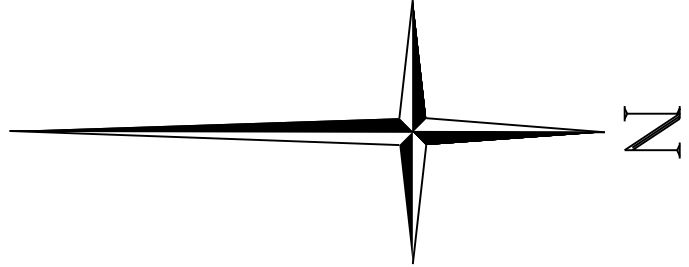
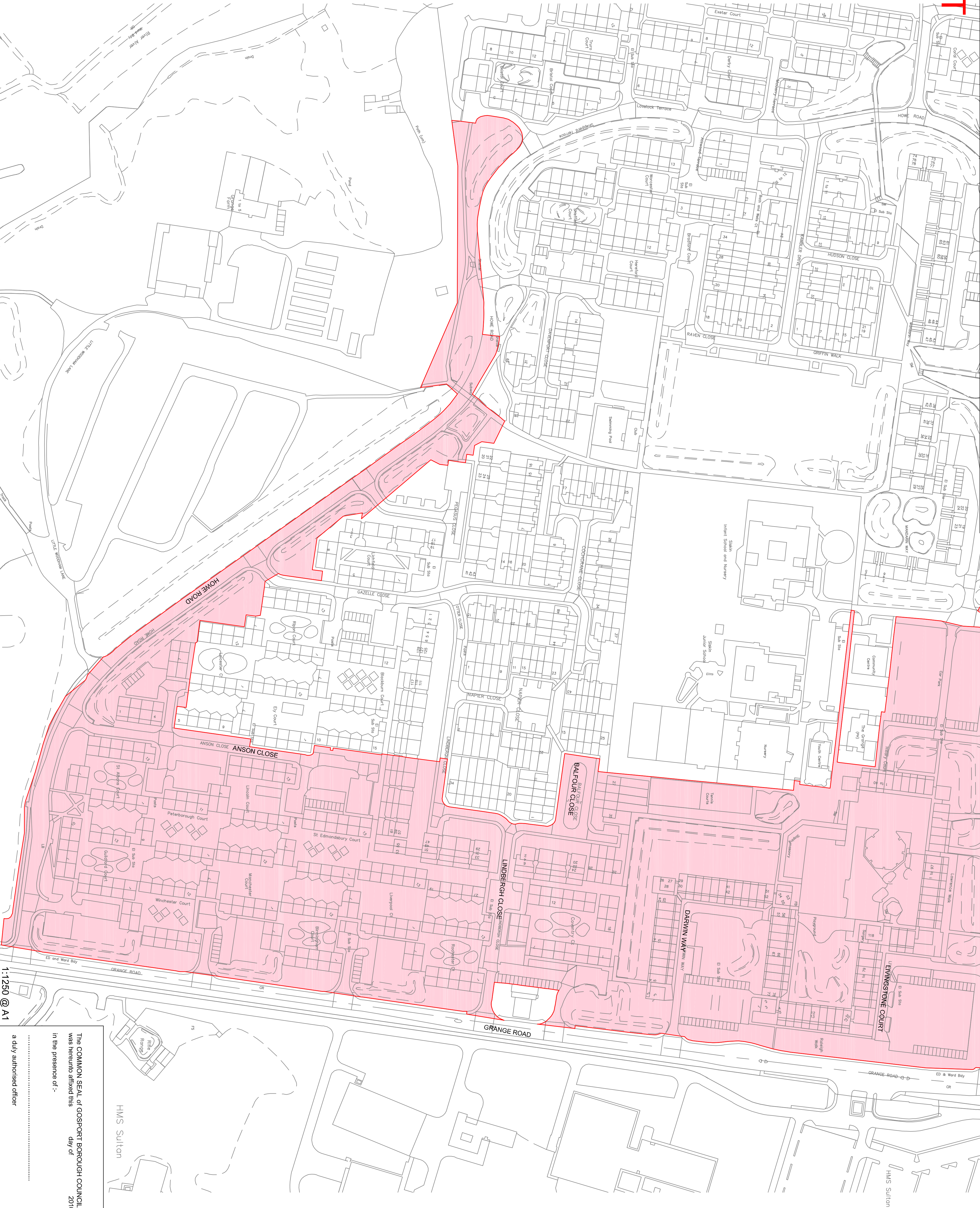
- 9.1 At the heart of this regeneration proposal is the Rowner Village, which contains 301 properties all in private ownership.
- 9.2 For the Rowner Estate to be successfully regenerated for the long term it is necessary to provide absolute certainty and ensure the land can be assembled in a reasonable timescale. To do this the Village must be acquired by agreement and as set out in Section 5 of this report by compulsory acquisition and the buildings demolished.
- 9.3 To make this both physically and financially possible, the regeneration Project must be wider than just the Village. A number of “intervention” sites have been identified and PHA have also included an extensive area of their land.
- 9.4 A ‘do nothing’ scenario is not an option at Rowner. The Livingstone Court building and the other buildings around the Precinct building have clearly failed and their current condition is having a very negative impact both aesthetically and socially on the surrounding area. The nature of the tenure of the occupiers and the interests of the absentee landlords make it extremely unlikely that any initiative to redevelop or refurbish the site will come forward from the private sector. Similarly private sector developers cannot invest in the area as without the Compulsory Purchase Order it will be impossible to assemble the land and secure vacant possession, particularly at Livingstone Court and the other properties around the Precinct. It is considered that any attempt to redevelop Rowner without addressing the Village area would be likely to fail as the history of initiatives in this area demonstrates.
- 9.5 The current initiative has resulted in the Consortium having secured a major food retailer to operate the food store as an anchor to the new Neighbourhood Centre. It is the Consortium’s view that this operator would not have been willing to invest in this food store without certainty of the scheme, the funding to be invested, planning permission and the promise of a Compulsory Purchase Order.
- 9.6 The Council has secured the commitment of all the partners to ensuring that anyone residing on the Estate who wishes to remain will be offered a property on a suitable tenure. PHA has undertaken and will continue to undertake all negotiations with residents on behalf of the partnership and will be assisted in this by the Council’s Housing Services Unit.
- 9.7 There is little doubt that this process and particularly the CPO process has the potential to be stressful for residents and all will be done to investigate and alleviate concerns and anxieties. The process of community consultation has been used not only to engage the community in the design of the redevelopment but also to seek to address individual concerns and allay any fears.
- 9.8 It should be stressed that negotiations have been ongoing and will continue with all residents and owners to agree the purchase of properties within the estate.

<b>Financial Services comments:</b>	The proposals should have no direct impact on existing Council budgets.
<b>Legal Services comments:</b>	<p>Set out in the report.</p> <p>Anyone who has an interest in the land to be included in a Compulsory Purchase Order will receive compensation calculated in accordance with the relevant Land Compensation Acts. In addition Home Loss payments and Disturbance payments may be payable. The Council has retained specialist Legal Advisors to deal with the Compulsory Purchase Order and associated issues.</p> <p>Residents and other land owners and occupiers will shortly be receiving a request for information as to ownership of land and this work is being undertaken by a specialist land referencing company.</p>
<b>Service Improvement Plan implications:</b>	
<b>Corporate Plan:</b>	The regeneration of Rowner is a Corporate Plan priority
<b>Risk Assessment:</b>	See Section 8 above
<b>Background papers:</b>	Report to Council 3 October 2007, Reports to Regulatory Board 21 April 2009 and 6 October 2009
<b>Appendices/Enclosures:</b>	Plan 1
<b>Report author/ Lead Officer:</b>	Ian Lycett



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COMPULSORY PURCHASE ORDER 2010

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The COMMON SEAL of GOSPORT BOROUGH COUNCIL  
was hereunto affixed this                      day of                      2010  
in the presence of:-  
.....  
a duly authorised officer

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## AGENDA ITEM NO. 8

<b>Board/Committee:</b>	COUNCIL
<b>Date of Meeting:</b>	14 JULY 2010
<b>Title:</b>	PETITION SCHEMES
<b>Author:</b>	BOROUGH SOLICITOR
<b>Status:</b>	FOR DECISION

### **Purpose**

To advise Councillors of recent legislative changes.

### **Recommendation**

1. To approve the Petition Scheme as set out in Appendix A.
2. To authorise the Borough Solicitor to finalise the arrangements for the implementation of the Petition Scheme including those relating to E Petitions.
3. To delegate authority to the Chief Executive as set out in Sections 2.7 and 2.8 of this report.
4. To approve the changes to the Council's Constitution as set out in Section 2.9 of this report.
5. To authorise the Borough Solicitor to make the necessary changes to the Council's Constitution to give effect to the decisions made above.

### **1 Background**

- 1.1 The Council has a number of mechanisms by which members of the public can present their views to the Council and its Boards and Committees. However recent statutory provisions have now put on a formal basis the right of the public to make petitions and for the Council to take action on them.

### **2 Report**

- 2.1 The Local Democracy, Economic Development and Construction Act 2009 includes provisions relating to the right of the public to present petitions to the Council and for the Council then to be under a duty to take action on them. The provisions relating to petitions save those in respect of the E Petition came into effect on 15 June 2010.
- 2.2 The Council is required to have a Petition Scheme and in drawing on that scheme to have regard to the guidance issued by the

Department of Communities and Local Government.

2.3 In that guidance the Department considered the key principles for a Petition Scheme are:

- Ensuring that local people know how to express their views
- Know local authorities will take action to respond to petitions
- Local people know that their views have been listened to
- Keeping prescribed requirements on Councils to a minimum
- Building on local authority best practice.

2.4 The duties placed on the Council under the Act also means that petitions with a significant level of support will be able to trigger a debate of an issue at Full Council. Petitions will also be able to call for a senior member of Council staff to attend a meeting of the appropriate Overview and Scrutiny Committee to answer questions about how they are delivering public services. Petition organisers will have the right to ask the Overview and Scrutiny Committee to review the Council's response to their petition, should they feel the response is inadequate.

2.5 It is recommended that the Council adopts the model Petition Scheme, included in the Guidance, with amendments. These amendments are simply to make sure that the examples given to members of the public relate to the functions of this Council rather than functions of Unitary or County Councils. The proposed Petition Scheme is attached as Appendix A.

2.6 The threshold for triggering a full Council debate has been set at 1500 in the model Petition Scheme and it is recommended that this is the figure adopted by this Council. The statutory provision says that this threshold must not be more than 5% of the Council's population and on the latest figures that would equate to 4,000 signatures, so it can be seen that the Council is not going to the maximum allowed by the legislation.

2.7 The threshold for senior Council officers to go in as at public meetings is set at 750 signatures in the model Petition Scheme and it is recommended that this figure is retained for the Gosport Scheme. In relation to relevant senior officers who can give evidence at a public inquiry it is recommended that it is the Council's chief officers who would be included in the list of senior staff. It is however recommended that authority be delegated to the Chief Executive to amend the list of senior staff as and when it becomes necessary.

2.8 The Petition Scheme at Appendix A also makes it plain that in circumstances where a petition was considered to be vexatious, abusive or otherwise inappropriate or raises a matter which is exempt from the Petition Scheme that the Council can decline to deal with the petition. It is recommended that authority to make those

decisions and also to respond to petitions (other than those which trigger a debate at Full Council or require senior officers to appear before Overview and Scrutiny Committee) is delegated to the Chief Executive.

- 2.9 As can be seen the workload for Overview and Scrutiny may increase as a direct result of the Petition Scheme and therefore it is suggested that the restriction relating to members of Policy and Organisation Board not being able to be members of Overview and Scrutiny is lifted to ensure that there is the widest pool of Councillors available to sit on Overview and Scrutiny. However it is appropriate to mirror the provision that relates to Executive Members and therefore it is recommended that paragraph 5.2.1 of the Council's Business Standing Orders (Part 4 – Schedule 11) of the Constitution is amended so that the reference to 'members of the Policy and Organisation Board' is removed and replaced by 'Chairman of the Service Boards'.

### **3 Risk Assessment**

- 3.1 The Council has to adopt a Petition Scheme in order to comply with the statutory requirements.

### **4 Conclusion**

- 4.1 The Council's Petition Scheme as set out in Appendix A satisfies the statutory requirements and also has regard to the guidance issued by the Department of Communities and Local Government. Further arrangements will now be put in place to ensure that the Council is able to comply (when in force) with the statutory requirements for E Petitions.

<b>Financial Services comments:</b>	There are no direct financial implications for existing budgets
<b>Legal Services comments:</b>	Contained in the report
<b>Service Improvement Plan implications:</b>	None
<b>Corporate Plan:</b>	None
<b>Risk Assessment:</b>	See Section 3
<b>Background papers:</b>	None
<b>Appendices/Enclosures:</b>	
Appendix 'A'	Gosport Borough Council Petition Scheme
<b>Report author/ Lead Officer:</b>	Linda Edwards, Borough Solicitor

# GOSPORT BOROUGH COUNCIL PETITION SCHEME

## Petitions

The Council welcomes petitions and recognises that petitions are one way in which people can let us know their concerns. All petitions sent or presented to the Council will receive an acknowledgement from the Council within 10 working days of receipt. This acknowledgement will set out what we plan to do with the petition. We will treat something as a petition if it is identified as being a petition, or if it seems to us that it is intended to be a petition.

Paper petitions can be sent to:

Democratic Services  
Town Hall  
High Street  
Gosport  
PO12 1EB

Or be created, signed and submitted online by following this link  
[www.gosport.gov.uk/epetitions](http://www.gosport.gov.uk/epetitions)

Petitions can also be presented to a meeting of the Council. These meetings take place on a quarterly basis, dates and times can be found here:

[www.gosport.gov.uk/sections/democratic-services/forthcoming-meetings/](http://www.gosport.gov.uk/sections/democratic-services/forthcoming-meetings/)

If you would like to present your petition to the Council, or would like your Councillor or someone else to present it on your behalf, please contact Geoff Rawling on 023 9254 5215 at least 10 working days before the meeting and he will talk you through the process. If your petition has received 1500 signatures or more it will also be scheduled for a Council debate:

[www.gosport.gov.uk/sections/democratic-services/agendas-minutes/council](http://www.gosport.gov.uk/sections/democratic-services/agendas-minutes/council)

and if this is the case we will let you know whether this will happen at the same meeting or a later meeting of the Council.

## **What are the guidelines for submitting a petition?**

Petitions submitted to the Council must include:

- A clear and concise statement covering the subject of the petition. It should state what action the petitioners wish the Council to take.
- The name and address and signature of any person supporting the petition.

Petitions should be accompanied by contact details, including an address, for the petition organiser. This is the person we will contact to explain how we will respond to the petition. The contact details of the petition organiser will not be placed on the website. If the petition does not identify a petition organiser, we will contact signatories to the petition to agree who should act as the petition organiser.

Petitions which are considered to be vexatious, abusive or otherwise inappropriate will not be accepted. In the period immediately before an election or referendum we may need to deal with your petition differently – if this is the case we will explain the reasons and discuss the revised timescale which will apply. If a petition does not follow the guidelines set out above, the Council may decide not to do anything further with it. In that case, we will write to you to explain the reasons.

## **What will the Council do when it receives my petition?**

An acknowledgement will be sent to the petition organiser within 10 working days of receiving the petition. It will let them know what we plan to do with the petition and when they can expect to hear from us again. It will also be published on our website.

If we can do what your petition asks for, the acknowledgement may confirm that we have taken the action requested and the petition will be closed. If the petition has enough signatures to trigger a Council debate, or a senior officer giving evidence, then the acknowledgement will confirm this and tell you when and where the meeting will take place. If the petition needs more investigation, we will tell you the steps we plan to take.

If the petition applies to a planning or licensing application, is a statutory petition (for example requesting a referendum on having an elected mayor), or on a matter where there is already an existing right of appeal, such as council tax banding and non-domestic rates, other procedures apply. Further information on all these procedures and how you can express your views is available [here](#)

Planning: - [www.gosport.gov.uk/planning](http://www.gosport.gov.uk/planning)



Council Tax: - [www.gosport.gov.uk/counciltax](http://www.gosport.gov.uk/counciltax)

Business Rates: - [www.gosport.gov.uk/sections/your-council/council-services/business-rates](http://www.gosport.gov.uk/sections/your-council/council-services/business-rates)

Licensing - [www.gosport.gov.uk/sections/environment/environmental-health/commercial-team/licensing/apply-for-licences](http://www.gosport.gov.uk/sections/environment/environmental-health/commercial-team/licensing/apply-for-licences)

We will not take action on any petition which we consider to be vexatious, abusive or otherwise inappropriate and will explain the reasons for this in our acknowledgement of the petition.

To ensure that people know what we are doing in response to the petitions we receive the details of all the petitions submitted to us will be published on our website, except in cases where this would be inappropriate. Whenever possible we will also publish all correspondence relating to the petition (all personal details will be removed). When you sign an e-petition you can elect to receive this information by email. {We will not send you anything which is not relevant to the e-petition you have signed, unless you choose to receive other emails from us.} [link to account settings]

## **How will Gosport Council respond to petitions?**

Our response to a petition will depend on what a petition asks for and how many people have signed it, but may include one or more of the following:

- taking the action requested in the petition
- considering the petition at a Council meeting
- holding an inquiry into the matter
- undertaking research into the matter
- holding a public meeting
- holding a consultation
- holding a meeting with petitioners
- referring the petition for consideration by the Council's Overview and Scrutiny Committee\*
- calling a referendum
- writing to the petition organiser setting out our views about the request in the petition

\*Overview and Scrutiny Committees are committees of Councillors who are responsible for scrutinizing the work of the Council – in other words, the Overview and Scrutiny Committee has the power to hold the Council’s decision makers to account.

In addition to these steps, the Council will consider all the specific actions it can potentially take on the issues highlighted in a petition. The table below gives some examples.

Petition subject	Appropriate steps
Alcohol related crime and disorder	If your petition is about crime or disorder linked to alcohol consumption, the Council will consider what measures in addition to the existing designated Public Place Order are required including as a last resort, impose an alcohol disorder zone. When an alcohol disorder zone is established the licensed premises in the area where alcohol related trouble is being caused are required to contribute to the costs of extra policing in that area. The Council’s response to your petition will set out the steps we intend to take and the reasons for taking this approach.
Anti-Social Behaviour (ASB)	<p>As the elected representatives of your local area, as social landlord and licensing authority, the Council plays a significant role to play in tackling anti-social behaviour. The Council, in conjunction with our partners in the local crime and disorder partnership have set out minimum service standards for responding to issues of anti-social behaviour, you can find more details about these standards here <a href="http://www.safergosport.co.uk">www.safergosport.co.uk</a>, and click on Tackling Crime.</p> <p>When responding to petitions on ASB, we will consider in consultation with our local partners, all the options available to us including the wide range of powers and mechanisms we have to intervene. For example, we will work with the neighbourhood policing team in the affected area to identify what action might be taken including what role CCTV might play, what action should be taken in relation to individuals and/or their parents and also consider identifying a dedicated contact within the Council to liaise with the community and neighbourhood partners on</p>

	issues of ASB in the area in question. Where appropriate, we will alert the crime and disorder reduction partnership and Crime and Disorder Overview and Scrutiny Committee to the issues highlighted in the petition.
Under-performing schools	The Council does not provide or run schools so any petition received would be forwarded to the Local Education Authority, Hampshire County Council
Under-performing health services	<p>We will work with local health partners to consider the matter raised in the petition including, where appropriate, exploring what role the Local Involvement Network</p> <p><a href="http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/Managingyourorganisation/PatientAndPublicinvolvement/DH_076366">webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/Managingyourorganisation/PatientAndPublicinvolvement/DH_076366</a></p> <p>might have in reviewing and feeding back on the issue (the Link is run by local individuals and community groups and independently supported – their role to find out what people want in terms of local health services, monitor those services and to use their powers to hold them to account). The Health Overview and Scrutiny Committee of Hampshire County Council will also be alerted to the petition and where the matter is sufficiently or potentially serious, the issue will be referred to them to consider for review.</p>

If your petition is about something over which the Council has no direct control (for example the local railway or hospital) we will consider making representations on behalf of the community to the relevant body. The Council works with a large number of local partners

[www.gosportpartnership.co.uk/LAA/localagreement.htm](http://www.gosportpartnership.co.uk/LAA/localagreement.htm)

and where possible will work with these partners to respond to your petition. If we are not able to do this for any reason (for example if what the petition calls for conflicts with Council policy), then we will set out the reasons for this to you. You can find more information the services for which the Council is responsible here

[www.gosport.gov.uk/az/](http://www.gosport.gov.uk/az/)

If your petition is about something that a different Council is responsible for we will give consideration to what the best method is for responding to it. This might

consist of simply forwarding the petition to the other Council, but could involve other steps. In any event we will always notify you of the action we have taken.

## **Full Council Debates**

If a petition contains more than 1,500 signatures it will be debated by the full Council unless it is a petition asking for a senior Council officer to give evidence at a public meeting. This means that the issue raised in the petition will be discussed at a meeting which all Councillors can attend. The Council will endeavour to consider the petition at its next meeting, although on some occasions this may not be possible and consideration will then take place at the following meeting. The petition organiser will be given five minutes to present the petition at the meeting and the petition will then be discussed by Councillors for a maximum of 15 minutes. The Council will decide how to respond to the petition at this meeting. They may decide to take the action the petition requests, not to take the action requested for reasons put forward in the debate, or to commission further investigation into the matter, for example by a relevant Board or the Overview Scrutiny committee. The petition organiser will receive written confirmation of this decision. This confirmation will also be published on our website.

## **Officer evidence**

Your petition may ask for a senior Council officer to give evidence at a public meeting about something for which the officer is responsible as part of their job. For example, your petition may ask a senior Council officer to explain progress on an issue, or to explain the advice given to elected Members to enable them to make a particular decision.

If your petition contains at least 750 signatures, the relevant senior officer will give evidence at a public meeting of the Council's Overview and Scrutiny committee. A list of the senior staff that can be called to give evidence can be found here

[www.gosport.gov.uk/testing/petition-scheme/officer-evidence-senior-officers/](http://www.gosport.gov.uk/testing/petition-scheme/officer-evidence-senior-officers/)

You should be aware that the Overview and Scrutiny Committee may decide that it would be more appropriate for another officer to give evidence instead of any officer named in the petition – for instance if the named officer has changed jobs. The Committee may also decide to call the relevant Councillor to attend the meeting. Committee Members will ask the questions at this meeting, but you will be able to suggest questions to the Chair of the Committee by contacting Geoff Rawling – 02392 545215 up to three working days before the meeting.

## **E-petitions {not yet available}**

The Council welcomes e-petitions which are created and submitted through our website [www.gosport.org.uk](http://www.gosport.org.uk) E-petitions must follow the same guidelines as paper petitions [link to guidelines]. The petition organiser will need to provide us with their name, postal address and email address. You will also need to decide how long you would like your petition to be open for signatures. Most petitions run for six months, but you can choose a shorter or longer timeframe, up to a maximum of 12 months.

When you create an e-petition, it may take five working days before it is published online. This is because we have to check that the content of your petition is suitable before it is made available for signature.

If we feel we cannot publish your petition for some reason, we will contact you within this time to explain. You will be able to change and resubmit your petition if you wish. If you do not do with within 10 working days, a summary of the petition and the reason why it has not been accepted will be published under the 'rejected petitions' section of the website.

When an e-petition has closed for signature, it will automatically be submitted to [insert details]. In the same way as a paper petition, you will receive an acknowledgement within 10 working days. If you would like to present your e-petition to a meeting of the Council, please contact [insert details] within 10 working days of receipt of the acknowledgement.

A petition acknowledgement and response will be emailed to everyone who has signed the e-petition and elected to receive this information. The acknowledgement and response will also be published on this website.

## **How do I 'sign' an e-petition (not yet available)**

You can see all the e-petitions currently available for signature here [insert link].

When you sign an e-petition you will be asked to provide your name, your postcode and a valid email address. When you have submitted this information you will be sent an email to the email address you have provided. This email will include a link which you must click on in order to confirm the email address is valid. Once this step is complete your 'signature' will be added to the petition. People visiting the e-petition will be able to see your name in the list of those who have signed it but your contact details will not be visible.

## **What can I do if I feel my petition has not been dealt with properly?**

If you feel that we have not dealt with your petition properly, the petition organiser has the right to request that the Council's Overview and Scrutiny Committee review the steps that the Council has taken in response to your petition. It is helpful to everyone, and can improve the prospects for a review if the petition organiser gives a short explanation of the reasons why the Council's response is not considered to be adequate. A form to initiate this review may be [found here](#)

The Committee will endeavour to consider your request at its next meeting, although on some occasions this may not be possible and consideration will take place at the following meeting. Should the Committee determine we have not dealt with your petition adequately, it may use any of its powers to deal with the matter. These powers include instigating an investigation, making recommendations to the Council Executive and arranging for the matter to be considered at a meeting of the full Council.

Once the appeal has been considered the petition organiser will be informed of the results within 5 working days. The results of the review will also be published on our website.

**GOSPORT BOROUGH COUNCIL**

<b>BOARD/COMMITTEE:</b>	<b>COUNCIL</b>
<b>DATE OF MEETING:</b>	<b>14 JULY 2010</b>
<b>TITLE:</b>	<b>INDEPENDENT REMUNERATION PANEL</b>
<b>AUTHOR:</b>	<b>BOROUGH SOLICITOR</b>
<b>STATUS:</b>	<b>FOR DECISION</b>

**PURPOSE**

To advise the Council of the need to convene a meeting of the Independent Remuneration Panel and to make recommendations as to its membership.

**RECOMMENDATIONS**

That the Council approves the proposals in paragraphs 2.4 and 2.5 of the report.

**1.0 BACKGROUND**

- 1.1** The Local Government and Housing Act 1989 provides for allowances to be paid to members of the Council under a Scheme of Allowances.
- 1.2** Whilst the decision on the Scheme of allowances is one for full Council before doing so it must have regard to the report of an independent remuneration panel set up by the Council.

**2.0 REPORT**

- 2.1** The Council's independent remuneration panel has met on a number of occasions over recent years although a number of its members no longer work or live in the Borough.
- 2.2** There is a need for the whole Scheme of Allowances to be fundamentally reviewed this year and therefore there is a need to convene a meeting of the panel as soon as possible. Regulations provide that the panel must have at least 3 members and they cannot be elected members of any local authority.

**2.3** Guidance issued by the Government recognises that Council's may wish to ask particular stakeholders such as the business community or voluntary sector to put forward nominations whilst for other nominations they may wish to advertise. The key point is that the panel must be independent and be seen to be independent so appointments made through friendship or any other personal association of members of the Council should always be avoided.

**2.4** It is proposed that the Independent Remuneration Panel should be composed as follows:-

- One member from the Education Sector ( there is a group representing Head teachers and the Principal of the St Vincent's which meet with the Chief Executive and Leader of the Council and it is proposed to ask this group to make this nomination).
- One member from the Voluntary/Community Sector (it is proposed to ask Gosport Voluntary Action as the Umbrella organisation for this sector to seek a nomination from its members)
- Two members from the Business Community (it is proposed to ask the Gosport Business Forum to seek 2 nominations from its membership)
- One member representing the Residents. It is proposed to advertise this vacancy in a local newspaper and also on the Council's website and notice boards. The other 4 members of the panel will be asked to make this appointment from the applications received to the advertisement.

**2.5** The Council should undertake a fundamental review of its scheme of allowances every 4 years so it is suggested that the members of this Independent Remuneration panel are appointed for 4 years.

### **3.0 RISK ASSESSMENT**

**3.1** The Council has to have a scheme of allowances and must have an independent Remuneration Panel to advise it.

### **SUPPORTING INFORMATION**

<b>Financial Services Comments:</b>	None
<b>Legal Services Comments:</b>	Contained in the Report
<b>Service Improvement Plan implications:</b>	Nil
<b>Corporate Plan:</b>	Nil
<b>Risk Assessment:</b>	Nil
<b>Background Papers:</b>	Council Meeting May 2002
<b>Appendices/Enclosures:</b>	None
<b>Report Author/Lead Officer:</b>	Linda Edwards, Borough Solicitor



## AGENDA ITEM NO. 10

<b>Board/Committee:</b>	COUNCIL
<b>Date of Meeting:</b>	14 JULY 2010
<b>Title:</b>	REVIEW OF CONTRACT STANDING ORDERS
<b>Author:</b>	DEPUTY CHIEF EXECUTIVE & BOROUGH TREASURER
<b>Status:</b>	FOR APPROVAL

### **Purpose**

To approve a revised set of Contract Procedure Rules, replacing the Contract Standing Orders (Part 4 Schedule 13 of the Council's Constitution), to come into effect on 15 July 2010.

### **Recommendation**

That the Council approves the adoption of the Contract Procedure Rules set out in Appendix 1 with effect from 15 July 2010.

#### **1      Background**

- 1.1 Contract Procedure Rules (CPRs) are adopted by the Council to regulate the way in which matters relating to contracts for works, supplies and services are dealt with.
- 1.2 Their purpose is to ensure that there are clear rules governing procedures for awarding contracts and that, whilst satisfying the need to obtain value for money at all times, the requirements for public accountability, control and probity are met.
- 1.3 There is a need for CPRs to be reviewed periodically to ensure that appropriate standards are maintained and that the procedures remain consistent with current business best practice. At the same time they must not be unnecessarily onerous and must allow authorised officers to have the freedom to operate in an effective and timely manner in the best interests of the Council.
- 1.4 The CPRs were last reviewed in 2002 and it is therefore considered that a review is now advisable in order to ensure compliance with latest guidance on EU procurement regulations and minimise the risk of expensive challenge.

## **2 Report**

- 2.1 The revised CPRs are set out at Appendix 1. These have been prepared by a small officer Group led by the Head of Internal Audit and subsequently endorsed by Council Management Team. They are based on a model set produced by the Chartered Institute of Public Finance and Accountancy but have been amended where necessary to reflect the specific needs of Gosport Borough Council in terms of processes, delegated authorities and monetary thresholds.
- 2.2 The new set of CPRs should be in place in time to assist in the management of the letting of major contracts for grounds maintenance, refuse collection, building and housing repair/maintenance etc. This process is due to commence in the near future and the proposed CPRs facilitate a partnering approach to contract letting where considered appropriate.

## **3 Risk Assessment**

- 3.1 Every contract entered into by the Council has an element of risk attached to it and part of the purpose of the Contract Procedure Rules is to ensure that processes are in place which mitigate the level of risk, appropriate to the size of the contract. It is therefore considered essential that the CPR's are effective, comprehensive and understandable.

## **4 Conclusion**

- 4.1 The Council's Contract Procedure Rules have been reviewed and a revised set is presented to the Council for approval, coming in to effect from 15 July 2010.

<b>Financial Services comments:</b>	There are no financial implications.
<b>Legal Services comments:</b>	None for the purpose of this report.
<b>Service Improvement Plan implications:</b>	They support the Council's overall pursuit of excellence.
<b>Corporate Plan:</b>	The Contract Procedure Rules underpin the effective management of the Council's business as set out in the Corporate Plan.
<b>Risk Assessment:</b>	Contract Procedure Rules are considered essential in the conduct of the Council's business to ensure that all risks are managed and controlled effectively in the award of contracts.
<b>Background papers:</b>	None
<b>Appendices/Enclosures:</b>	
Appendix '1'	Contract Procedure Rules
<b>Report author/ Lead Officer:</b>	Chris Davis ext 5306

# CONTRACT PROCEDURE RULES

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### A Brief Guide to Contract Procedure Rules

These contract procedure rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good purchasing practice and public accountability and deter corruption. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

Officers responsible for purchasing or disposal must comply with these contract procedure rules. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract. (For example, if Rule 8.1 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations in writing or tender submissions. Equally, it may not always be appropriate to make use of an exemption under Rule 3 even if one might apply or be granted.)

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail and fax transmissions as well as hard copy.

- Follow the rules if you purchase goods or services or order building work.
- Take all necessary legal, financial and professional advice.
- Declare any personal financial interest in a contract. Corruption is a criminal offence.
- Conduct a value for money review and appraise the purchasing need.
- Check whether there is an existing Corporate Contract or Hampshire/National Framework agreement you can make use of before undergoing a competitive process.
- Place all bids (quotations and tenders) and supporting information on the South East Business Portal
- Normally allow at least four weeks for submission of bids (except in cases of emergency).
- Keep bids confidential.
- Complete a written contract or Council order before the supply or works begin.
- Identify a contract manager with responsibility for ensuring the contract delivers as intended.
- Keep records of dealings with suppliers.
- Assess each contract afterwards to see how well it met the purchasing need and Value for Money requirements.

In accordance with the Constitution, Full Council have the power to make amendments from time to time to these Contract Procedure Rules following amendments agreed by Chief Officers and the Head of Internal Audit & Risk Assurance.

## DEFINITIONS APPENDIX

<b>Agent</b>	A person or organisation acting on behalf of the Council or on behalf of another organisation.
<b>Approved List</b>	A list drawn up in accordance with Rule 7.2.
<b>Award Criteria</b>	The criteria by which the successful Quotation or Tender is to be selected (see further Rules 10 and 11.2e).
<b>Award Procedure</b>	The procedure for awarding a contract as specified in Rules 8, 10 and 15.
<b>Best Value</b>	The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council. This terminology has now in many instances been superseded by Value for Money.
<b>Bond</b>	An insurance policy: if the contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Council against a level of cost arising from the contractor's failure.
<b>Board</b>	Each Board shall comprise of 10 members. All the powers, duties and functions of the Council as contained, mentioned or referred to in the statutory provisions from time to time in force governing the exercise of those powers, duties and functions described specifically and generally in the Terms of Reference for each Board appointed by the Council.
<b>Candidate</b>	Any person who asks or is invited to submit a Quotation or Tender.
<b>Chief Executive</b>	As identified in the Constitution.
<b>Chief Officer</b>	The officers defined as such in the Constitution
<b>Code of Conduct</b>	The code regulating conduct of Officers issued by the Head of Paid Service.
<b>Constitution</b>	The document approved by the Council which: <ul style="list-style-type: none"> <li>• allocates powers and responsibility within the Council and between it and others</li> <li>• delegates authority to act to the Board, Committees and Officers</li> <li>• regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.</li> </ul>
<b>Consultant</b>	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work.
<b>Contracting Decision</b>	Any of the following decisions: <ul style="list-style-type: none"> <li>• Composition of Approved Lists</li> <li>• Withdrawal of Invitation to tender</li> <li>• Whom to invite to submit a Quotation or Tender</li> <li>• Shortlisting</li> <li>• Award of contract</li> <li>• Any decision to terminate a contract</li> </ul>
<b>Corporate Contract</b>	A contract let by the Council to support the Council's aim of achieving Value for Money.

## Appendix 1

<b>Deputy Chief Executive &amp; Borough Treasurer</b>	As defined by the Constitution.
<b>European Union Procedure</b>	The procedure required by the EU where the Total Value exceeds the EU Threshold.
<b>EU Threshold</b>	The contract value at which the EU public procurement directives apply.
<b>European Economic Area</b>	The 15 members of the European Union, and Norway, Iceland and Liechtenstein
<b>Financial Services Manager</b>	As defined by the Constitution.
<b>Financial Regulations</b>	The financial regulations outlining Officer responsibilities for financial matters issued by the Section 151 Officer in accordance with the Constitution.
<b>Framework agreements</b>	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
<b>Government Procurement Agreement</b>	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.
<b>Borough Solicitor (Monitoring Officer)</b>	As identified in the Constitution.
<b>High Profile</b>	A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong.
<b>High Risk</b>	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
<b>High Value</b>	A high-value purchase is where the value exceeds the EU Threshold values.
<b>Invitation to tender</b>	Invitation to tender documents in the form required by these contract procedure rules.
<b>Key Decision</b>	Those decisions or recommendations (i.e. outcomes) made by individual Boards can be defined as key decisions.
<b>Section Head</b>	The Officer's immediate superior or the Officer designated by the Service Unit Manager to exercise the role reserved to the Section Head by these contract procedure rules.
<b>Nominated Suppliers and Sub-Contractors</b>	Those persons specified in a main contract for the discharge of any part of the contract.
<b>Non-commercial Considerations</b>	As defined in Section 17 of the Local Government Act 1988.
<b>Officer</b>	The officer designated by the Service Unit Manager to deal with the contract in question.
<b>Parent Company Guarantee</b>	A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead.
<b>Priority Services</b>	Those services required to be tendered as defined in the EU public procurement directives.
<b>Procurement</b>	The document setting out the Council's approach to procurement and key

<b>Strategy</b>	priorities.
<b>Purchasing Guide</b>	The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these contract procedure rules. The guide is available on the Council's intranet.
<b>Quotation</b>	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
<b>Relevant Contract</b>	Contracts to which these contract procedure rules apply (see rule 4)
<b>Shortlisting</b>	The process of selecting Candidates who are to be invited to quote or bid or to proceed to final evaluation.
<b>Supervising Officer</b>	The Section Heads immediate superior
<b>Tender</b>	A Candidate's proposal submitted in response to an Invitation to Tender
<b>Tender record log</b>	The log kept by Legal & Democratic Services to record details of Tenders (see Rule 13.5)
<b>Total Value</b>	<p>The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:</p> <p>(a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period</p> <p>(b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months</p> <p>(c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48</p> <p>(d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result</p> <p>(e) for Nominated Suppliers and Sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the Nominated Supplier or Sub-contractor.</p>
<b>TUPE</b> <b>Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No 246)</b>	Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (eg private contractor, local authority in-house team) to another (eg following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.
<b>Value for money</b>	Value for money is not the lowest possible price; it combines goods or services that fully meet the needs, with the level of quality required, delivery in time, and at an appropriate price.



# SECTION 1

## **SCOPE OF CONTRACT PROCEDURE RULES**

### **1. BASIC PRINCIPLES**

All purchasing and disposal procedures must:

- achieve value for money for public money spent
- be consistent with the highest standards of integrity
- ensure fairness in allocating public contracts
- comply with all legal requirements
- ensure that non-commercial considerations do not influence any contracting decision
- support the Council's corporate and departmental aims, objectives and policies
- comply with the Council's Corporate Procurement Strategy and Financial Regulations

### **2. OFFICER RESPONSIBILITIES**

#### **2.1 Officers**

2.1.1 Officers responsible for purchasing or disposal must comply with these contract procedure rules, Financial Regulations, the Code of Conduct and with all UK and European Union binding legal requirements. Officers must ensure that any Agents, Consultants and contractual partners acting on their behalf also comply.

2.1.2 Officers must:

- have regard to the guidance in the Purchasing Guide.
- check whether a suitable Corporate Contract or Hampshire/National Framework agreement exists before seeking to let another contract; where a suitable Corporate Contract or Hampshire/National Framework agreement exists, this must be used unless there is a justifiable reason

not to

- keep the records required by Rule 6
- take all necessary legal, financial and professional advice.

2.1.3 When any employee either of the authority or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.

## 2.2 Chief Officers

2.2.1 Chief Officers must:

- ensure that their staff comply with Rule 2.1
- keep registers of:
  - contracts completed by signature, rather than by the Council's seal (see Rule 16.3) and arrange their safekeeping on Council premises
  - exemptions recorded under Rule 3.2.

## 3. EXEMPTIONS and COLLABORATIVE ARRANGEMENTS

- 3.1 The Council and its Boards have power to waive any requirements within these contract procedure rules for specific projects, and any such decision may be a Key Decision.
- 3.2 Where a proposed contract is likely to exceed the EU Threshold, a Chief Officer has no delegated powers and no exemption from these requirements can be used if the EU Procedure applies.
- 3.3 Where an exemption is necessary because of an unforeseeable emergency (below the EU Threshold) involving immediate risk to persons, property or serious disruption to Council services, the Chief Officer, Deputy Chief Executive and Borough Treasurer and the Borough Solicitor may approve the exemption but they must prepare a report for the next appropriate Board to support the action taken.
- 3.4 All exemptions, and the reasons for them, must be recorded using the form in the Purchasing Guide. Exemptions shall be signed by the Chief Officer and countersigned by the Deputy Chief Executive and Borough Treasurer and Borough Solicitor.
- 3.5 In order to secure Value for Money, the authority may enter into collaborative procurement arrangements. The Officer must consult with the Deputy Chief Executive & Borough Treasurer where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.
- 3.8.1 All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these contract procedure rules and no exemption is required. However, purchases above the EU Threshold must be let under the EU Procedure, unless the consortium has satisfied this requirement already by letting their contract

in accordance with the EU Procedures on behalf of this authority and other consortium members.

- 3.8.2 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation, will be deemed to comply with these contract procedure rules and no exemption is required.

## 4. RELEVANT CONTRACTS

- 4.1 All Relevant Contracts must comply with these Contract Procedure Rules. A Relevant Contract is any arrangement made by, or on behalf of, the authority for the carrying out of works, supplies and services. These include arrangements for:

- the supply or disposal of goods
- the hire, rental or lease of goods or equipment
- the delivery of services, including (but not limited to) those related to:
  - the recruitment of staff;
  - land and property transactions;
  - financial and consultancy services.

- 4.2 Relevant Contracts do not include:

- contracts of employment which make an individual a direct employee of the authority, or
- agreements regarding the acquisition, disposal, or transfer of land (for which Financial Regulations shall apply).
- provision of legal services by external solicitors or barrister.

## **SECTION 2**

### **COMMON REQUIREMENTS**

#### **5. STEPS PRIOR TO PURCHASE**

5.1 The Officer must appraise the purchase, in a manner commensurate with its complexity and value, and taking into account any guidance in the Purchasing Guide, by:

- taking into account the requirements from any relevant value for money review
- appraising the need for the expenditure and its priority defining the objectives of the purchase
- assessing the risks associated with the purchase and how to manage them
- considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium
- consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring
- drafting the terms and conditions that are to apply to the proposed contract
- setting out these matters in writing if the Total Value of the purchase exceeds £20,000.

5.2 and by confirming that:

- there is member or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the Constitution

#### **6. RECORDS**

6.1 Where the Total Value is less than £20,000, the following records must be kept:

- invitations to quote and all Quotations
- a record:
  - of any exemptions and the reasons for them
  - of the reason if the lowest price is not accepted
- written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

6.2 Where the Total Value exceeds £20,000 the Officer must record:

- the method for obtaining bids (see Rule 8.1)
- any Contracting Decision and the reasons for it
- any exemption under Rule 3 together with the reasons for it
- the Award Criteria in descending order of importance
- Tender documents sent to and received from Candidates
- pre-tender market research
- clarification and post-tender negotiation (to include minutes of meetings)
- the contract documents
- post-contract evaluation and monitoring
- communications with and with the successful contractor throughout the period of the contract.

6.3 Records required by this rule must be kept for six years after the end of the contract (i.e. hard copies). However, written documents which relate to unsuccessful Candidates may be electronically scanned or stored by some other suitable method after 12 months from award of contract, provided there is no dispute about the award.

## **7. ADVERTISING, APPROVED LISTS AND FRAMEWORK AGREEMENTS**

### **7.1 Identifying and Assessing Potential Candidates**

7.1.1 Officers shall ensure that, where proposed contracts (in excess of £50k), might be of interest to potential Candidates located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- the Council's website
- portal websites specifically created for contract advertisements (IESE Business Portal)
- national official journals, or
- the Official Journal of the European Union (OJEU)/Tenders Electronic Daily (TED) (even if there is no requirement within the EU Procedure).

7.1.2 Officers are responsible for ensuring that all Candidates for a Relevant Contract are fully assessed. The assessment process shall establish that the potential Candidates have:

- Sound economic and financial standing (contact Internal Audit);-

- Sound technical ability and capacity;- and
- Are able to fulfil the requirements of the authority.

7.1.3 This shall be achieved in respect of proposed contracts that are expected to exceed £50,000 by selecting firms from:

- Approved Lists of providers, maintained by the authority or on its behalf, and compiled following responses to a public advertisement, or
- shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement.

7.1.4 Public advertisements issued in respect of Rule 7.1.3 above shall reflect the potential degree of interest from Candidates located within other member states of the EU.

## 7.2 Approved Lists

7.2.1 Approved Lists should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. Approved Lists cannot be used where the EU Procedure applies.

7.2.2 Chief Officers may draw up in consultation with the Borough Solicitor and Head of Internal Audit & Risk Assurance

- Approved Lists of persons ready to perform contracts to supply goods or services of particular types including without limitation on the basis of agreed contract terms
- criteria for Shortlisting from the lists.

7.2.3 No person may be entered on an Approved List until there has been an adequate investigation into both their financial and their technical ability to perform the contract.

7.2.4 Approved Lists must be drawn up after an advertisement inviting applications for inclusion on the list. The advertisement must be placed to secure the widest publicity among relevant suppliers throughout all member states of the EU. Persons may be entered on a list between the initial advertisement and re-advertisement provided the requirements of Rule 7.2.3 are met.

7.2.5 The list and Shortlisting criteria must be reviewed at least annually and re-advertised at least every three years. On re-advertisement, a copy of the advertisement must be sent to each person on the list, inviting them to reapply. Review means:

- the reassessment of the financial and technical ability and performance of those persons on the list.
- the deletion of those persons no longer qualified, with a written record kept justifying the deletion (In cases of significant failure, the Council will delete companies at the appropriate time rather than wait until the next review date).

7.2.6 All Approved Lists shall be maintained in an open, fair and transparent manner and be open to public inspection (on the procurement web page).

7.2.7 A register of pre-qualified contractors and Consultants (under the EU Threshold) maintained by or on behalf of central government (eg Constructionline) will be

deemed to be an Approved List for the purpose of these contract procedure rules and shall not be subject to the requirements of Rules 7.2.2 to 7.2.6 inclusive.

### 7.3 Framework Agreements

- 7.3.1 The term of a Framework Agreement must not **exceed four years** and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.
- 7.3.2 Contracts based on Framework Agreements may be awarded by either:
- applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or
  - where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call off, by holding a mini competition in accordance with the following procedure:
    - inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written Tenders;
    - fixing a time limit which is sufficiently long to allow Tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;
    - awarding each contract to the tenderer who has submitted the best Tender on the basis of the Award Criteria set out in the specifications of the Framework Agreement.

## SECTION 3

### CONDUCTING PURCHASE AND DISPOSAL

#### 8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The Officer must calculate the Total Value (i.e. full life cycle cost).

The following procedures apply where there are no other procedures which take precedence. Other procedures may include agency agreements with government. If in doubt, Officers must seek the advice of the Borough Solicitor and Head of Internal Audit & Risk Assurance.

##### 8.1 Purchasing – Competition Requirements

- 8.1.1 Where the Total Value for a purchase is within the values in the first column below, the Award Procedure in the second column must be followed. Shortlisting shall be done by the persons specified in the third column.

Total Value (excl vat)	Award Procedure <sup>1</sup>	SHORTLISTING
Less than £20,000	Written quotation	Section Head
£20,000 less than £50,000	Three written quotations.	Chief Officer
£50,000 less than £100,000	Three tenders	Chief Officer
£100,000 & less than EC threshold	Advertise project and invite expressions of interest in the execution of the works.	Chief Officer will consult the Chairman of the Board
Greater than EC threshold	Requirements of the Directive	Chief Officer in consultation with the Deputy Chief Executive & Borough Treasurer and the Borough Solicitor and the Chairman of the Board.

- 8.1.2 Where it can be demonstrated that there are insufficient suitably qualified Candidates to meet the competition requirement, all suitably qualified Candidates must be invited.
- 8.1.3 An Officer **must not** enter into separate contracts nor select a method of calculating the Total Value in order to minimise the application of these contract procedure rules.

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<sup>1</sup> Note awards above £50,000 must be posted on the IESE Business Portal and the Council's website.



## **8.2 Assets for Disposal**

- 8.2.1 Assets for disposal may be sent to public auction except where better Value for Money is likely to be obtained by inviting Quotations and Tenders. (These may be invited by advertising on the Council's internet site.) In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the Deputy Chief Executive & Borough Treasurer.

## **8.3 Providing Services to External Purchasers**

- 8.3.1 The Borough Solicitor and Deputy Chief Executive & Borough Treasurer must be consulted where contracts to provide services or supply goods for organisations other than the authority are contemplated.

## **8.4 Collaborative and Partnership Arrangements**

- 8.4.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these contract procedure rules. If in doubt, Officers must seek the advice of the Borough Solicitor and Head of Internal Audit & Risk Assurance.

# **9. PRE-TENDER MARKET RESEARCH AND CONSULTATION (includes quotations)**

- 9.1 The Officer responsible for the purchase:
- may consult potential suppliers prior to the issue of the Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential Candidate, but
  - must not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential Candidates or distort competition, and
  - should seek advice from the Borough Solicitor and Head of Internal Audit & Risk Assurance

# **10. STANDARDS AND AWARD CRITERIA**

- 10.1 The Officer must ascertain what are the relevant British, European or international standards which apply to the subject matter of the contract. The Officer must include those standards which are necessary properly to describe the required quality. The Borough Solicitor must be consulted if it is proposed to use standards other than European standards.
- 10.2 The Officer must define Award Criteria that are appropriate to the purchase and designed to secure an outcome giving Value for Money (using whole life costing) for the authority. The basic criteria shall be:
- 'lowest price' where payment is to be made by the authority

- 'highest price' if payment is to be received, or
- 'most economically advantageous tender', where considerations other than price also apply (i.e. carbon footprint).

If the last criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations.

These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters.

### 10.3 Award Criteria must not include:

- Non-commercial Considerations
- matters which discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement.

## 11. INVITATIONS TO TENDER (above £50,000)/QUOTATIONS (below £50,000)

11.1 The Invitation to Tender shall state that no Tender will be considered unless it is received by the date and time stipulated in the Invitation to Tender. No Tender delivered in contravention of this clause shall be considered.

11.2 All Invitations to Tender shall include the following:

- (a) A specification that describes the authority's requirements in sufficient detail to enable the submission of competitive offers.
- (b) A requirement for tenderers to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- (c) A requirement for tenderers to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and non-collusion.
- (d) Notification that Tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense.
- (e) A description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria in objective terms and if possible in descending order of importance.
- (f) Notification that no Tender will be considered unless it is enclosed in a sealed envelope or container which bears the word 'Tender' followed by the subject to which it relates, but no other name or mark indicating the sender or Tenderer
- (g) A stipulation that any Tenders submitted by fax or other electronic means shall be considered in exceptional circumstances

(i.e. postal strike) with prior approval with the Borough Solicitor.

- (h) The method by which any arithmetical errors discovered in the submitted Tenders is to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa.

- 11.3 All Invitations to Tender or Quotations must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 16).
- 11.4 The Invitation to Tender or Quotation must state that the Council is not bound to accept any Quotation or Tender.
- 11.5 All Candidates invited to Tender or quote must be issued with the same information (as listed in 11.2) at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

## 12. SHORTLISTING

- 12.1 Any Shortlisting must have regard to the financial and technical standards relevant to the contract and the Award Criteria. Special rules apply in respect of the EU Procedure.
- 12.2 The officers responsible for Shortlisting are specified in Rule 8.1.1.
- 12.3 Where Approved Lists are used, Shortlisting may be done by the Officer in accordance with the Shortlisting criteria drawn up when The Approved List was compiled (see Rule 7.2.2). However, where the EU Procedure applies, Approved Lists may not be used.

## 13. SUBMISSION, RECEIPT AND OPENING OF TENDERS (above £50,000)/QUOTATIONS (below £50,000)

- 13.1 Candidates must be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of Tenders. The EU Procedure lays down specific time periods (see guidance in the Purchasing Guide).
- 13.2 All Tenders must be returned to Democratic Services. Quotations are to be returned to the appropriate Chief Officer.
- 13.3 Tenders received by fax or other electronic means (eg email) may be accepted with prior approval of the Borough Solicitor.
- 13.4 The Officer must not disclose the names of Candidates to any staff involved in the receipt, custody or opening of Tenders.
- 13.5 The Borough Solicitor shall be responsible for the safekeeping of Tenders until the appointed time of opening. Each Tender must be:
- suitably recorded so as to subsequently verify the date and precise time it was received
  - adequately protected immediately on receipt to guard against loss or amendment of its contents

- recorded immediately on receipt in the Tender Record Log.

- 13.6 The Borough Solicitor's representative must ensure that all Tenders are opened at the same time when the period for their submission has ended. The Officer or his or her representative must be present. Tenders must be opened in the presence of at least two independent officers representing the Council, one being from Internal Audit.

Where the Total Value is more than the EU Threshold, one must be the Chairman of the Board.

- 13.7 Upon opening, a summary of the main terms of each Tender (i.e. significant issues that are unique to each Tender submission and were not stated in the Tender invitation documents such as Tender sum, construction period, etc) must be recorded in the Tender Record Log. The summary must be initialled by all those present.

## **14. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION**

- 14.1 Providing clarification of an Invitation to Tender to potential or actual Candidates or seeking clarification of a Tender, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a Tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an EU Procedure where this might distort competition, especially with regard to price (the process of Competitive Dialogue might be required with a short list of tenderers).
- 14.2 If post-tender negotiations are necessary after a single-stage Tender or after the second stage of a two-stage Tender, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best Tender and after all unsuccessful Candidates have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the Tender documents. Officers appointed by the Chief Officer to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
- 14.3 Post-tender negotiation must only be conducted in accordance with the guidance issued by the Borough Solicitor who must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two Officers, one of whom must be from a Service independent to that leading the negotiations.
- 14.4 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

## **15. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING CANDIDATES**

- 15.1 Apart from the debriefing required or permitted by these contract procedure rules, the confidentiality of Quotations, Tenders and the identity of Candidates must be preserved at all times and information about one Candidate's response must not be given to another Candidate.
- 15.2 Contracts must be evaluated and awarded in accordance with the Award Criteria. During this process, Officers shall ensure that submitted Tender prices are compared

with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.

- 15.3 The arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their Tender. Alternatively, if the rates in the Tender, rather than the overall price, were stated within the Tender invitation as being dominant, an amended Tender price may be requested to accord with the rates given by the tenderer.
- 15.4 Officers may accept Quotations and Tenders received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these contract procedure rules and, in respect of proposed contracts that are expected to exceed £50,000, the approval of the relevant Budget Holder has been secured. The awarding of contracts that are expected to exceed the EU Threshold **may only be awarded** by the Policy & Organisation Board.
- 15.5 Where the Total Value is over the EU Threshold, the Officer must notify all Candidates simultaneously and as soon as possible of the intention to award the contract to the successful Candidate. The Officer must provide unsuccessful Candidates with a period of at least ten days in which to challenge the decision before the Officer awards the contract. If the decision is challenged by an unsuccessful Candidate then the Officer shall not award the contract and shall immediately seek the advice of the Borough Solicitor.
- 15.6 The Officer shall debrief in writing all those Candidates who submitted a bid about the characteristics and relative advantages of the leading bidder. No information, other than the following, should be given without taking the advice of the Borough Solicitor:
- how the Award Criteria were applied
  - the prices or range of prices submitted, in either case not correlated to Candidates' names
  - the names of Candidates where there were three or more Candidates.
- 15.7 If a Candidate requests in writing the reasons for a Contracting Decision, the Officer must give the reasons in writing within 15 days of the request. If requested, the Officer may also give the debriefing information at Rule 15.6 above to Candidates who were deselected in a pre-tender Shortlisting process.

## SECTION 4

### **CONTRACT AND OTHER FORMALITIES**

#### **16. CONTRACT DOCUMENTS**

##### **16.1 Relevant Contracts**

16.1.1 All Relevant Contracts shall be in writing.

16.1.2 All Relevant Contracts, shall clearly specify:

- what is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done)
- the provisions for payment (i.e. the price to be paid and when)
- the time, or times, within which the contract is to be performed
- the provisions for the Council to terminate the contract.

16.1.3 The Council's order form or standard terms and conditions issued by a relevant professional body must be used wherever possible.

16.1.4 In addition, every Relevant Contract or purchase must also state clearly as a minimum:

- that the contractor may not assign or sub-contract without prior written consent
- any insurance requirements
- health and safety requirements
- ombudsman requirements
- the contractor meets the Council's equality requirements and operates in accordance with the current Equality Legislation.
- Freedom of Information Act requirements
- where Agents are used to let contracts, that Agents must comply with the Council's contract procedure rules
- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes, if relevant.
- data protection requirements, if relevant
- that charter standards are to be met, if relevant

16.1.5 The **formal advice** of the Borough Solicitor must be sought for the following contracts:

- where the Total Value exceeds £20,000;
- those involving leasing arrangements;
- where it is proposed to use a supplier's own terms.

### 16.2 Contract Formalities

16.2.1 Agreements shall be completed as follows:

Total Value	Method of completion	By
Up to £50,000	Signature	See Council Constitution Part 3 Schedule 10 (Appendix 1) <sup>2</sup>
Above £50,000 (also see 16.3.3 below)	Sealing	(As above)

16.2.2 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Deputy Chief Executive & Borough Treasurer. An award letter is insufficient.

16.2.3 The Officer responsible for securing signature of the contract (in accordance with these rules) must ensure that the person signing for the other contracting party has authority to bind it.

### 16.3 Sealing

16.3.1 Where contracts are sealed the Council's seal, must be witnessed in accordance with the Constitution.

16.3.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal in line with Part 3 Schedule 10 (Appendix 1) of the Council's Constitution.

16.3.3 A contract must be sealed where:

- the Council may wish to enforce the contract more than six years after its end
- the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services
- there is any doubt about the authority of the person

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<sup>2</sup> Official orders can be signed by Chief Officers

signing for the other contracting party, or

- the Total Value exceeds £50,000.

## **17. BONDS AND PARENT COMPANY GUARANTEES**

17.1 The Officer must consult the Financial Services Manager about whether a Parent Company Guarantee is necessary when a Candidate is a subsidiary of a parent company and:

- the Total Value exceeds £100,000, or
- award is based on evaluation of the parent company, or
- there is some concern about the stability of the Candidate.

17.2 The Officer must consult the Financial Services Manager about whether a Bond is needed:

- where the Total Value exceeds £1,000,000, or
- where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the Candidate.

## **18. PREVENTION OF CORRUPTION**

18.1 The Officer must comply with the Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 18.2 below.

18.2 The following clause must be put in every written Council contract:

“The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do or collude in any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or
- (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.

Any clause limiting the Contractor’s liability shall not apply to this clause.”



## **19. DECLARATION OF INTERESTS**

- 19.1 If it comes to the knowledge of a member or an employee of the authority that a contract in which he or she has a personal and/or prejudicial interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Borough Solicitor who shall report such declarations to the appropriate Board.
- 19.2 Such written notice is required irrespective of whether the personal and/or prejudicial interest is direct or indirect. An indirect personal and/or prejudicial interest is distinct from a direct personal and/or prejudicial interest in as much as it is not a contract to which the member or employee is directly a party.
- 19.3 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not required to be declared for the purposes of this standing order.
- 19.4 The Borough Solicitor shall maintain a record of all declarations of interests notified by members and Officers.

## **SECTION 5**

### **CONTRACT MANAGEMENT**

#### **20. MANAGING CONTRACTS**

- 20.1 Chief Officers in the sponsoring departments are to name contract managers for all new contracts. All contracts must have a named Council contract manager for the entirety of the contract.
- 20.2 Contract managers must follow the procedures set out in the Council's Purchasing Guide and all contracts must be logged onto a contract register administered by the Financial Services Unit.

#### **21. RISK ASSESSMENT AND CONTINGENCY PLANNING**

- 21.1 A business case must be prepared for all procurements with a potential value over £50,000. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.
- 21.2 For all contracts with a value of over £50,000, contract managers must:
- maintain a risk register during the contract period
  - undertake appropriate risk assessments and for identified risks
  - ensure contingency measures are in place.

#### **22. CONTRACT MONITORING, EVALUATION AND REVIEW**

- 22.1 All contracts which have a value higher than the £50,000, or which are High Risk, are to be subject to monthly formal review with the contractor. The review may be conducted quarterly if permitted by the Chairman of the Corporate Risk Management Group.
- 22.2 For all contracts with a value higher than the EU Threshold limits, or which are High Risk, an annual report must be submitted to the Council's Management Team.
- 22.3 A Council-developed Gateway review process must be applied to all contracts deemed to be High Risk, High Value, or High Profile. This process must be applied at key stages of major procurements.
- 22.4 During the life of the contract, the Officer must monitor in respect of:
- performance
  - compliance with specification and contract cost
  - any Value for Money requirements
  - user satisfaction and risk management.
  - Compliance with the Council's equality monitoring arrangements (as stated in the contract) and with current equality legislation annually.
- 22.5 Where the Total Value of the contract exceeds £100,000, the Officer must make a written report to the relevant Budget Holder evaluating the extent to which the purchasing need and the contract objectives (as determined in accordance with Rule 5.2) were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to reletting of the subsequent contract.