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9 September 2008

## **S U M M O N S**

**MEETING:** Policy and Organisation Board  
**DATE:** 17 September 2008  
**TIME:** 6.00 p.m.  
**PLACE:** Committee Room 1, Town Hall, Gosport  
**Democratic Services contact:** Chris Wrein

LINDA EDWARDS  
BOROUGH SOLICITOR

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### **MEMBERS OF THE BOARD**

The Mayor (Councillor Kimber)(ex-officio)  
Councillor Smith (Chairman)  
Councillor Chegwyn (Vice-Chairman)

Councillor Burgess	Councillor Langdon
Councillor Gill	Councillor Philpott
Councillor Hicks	Councillor Mrs Searle
Councillor Hook	Councillor Wright

### **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 room 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.**

**IMPORTANT NOTICE:**

- If you are in a wheelchair or have difficulty in walking and require access to the Committee Room on the First Floor of the Town Hall for this meeting, assistance can be provided by Town Hall staff on request

If you require any of the services detailed above please ring the Direct Line for the Democratic Services Officer listed on the Summons (first page).

**NOTE:**

- i. Members are requested to note that if any member wishes to speak at the Board meeting then the Borough Solicitor is required to receive not less than 24 hours prior notice in writing or electronically and such notice shall indicate the agenda item or items on which the member wishes to speak.
- ii. Please note that mobile phones should be switched off for the duration of the meeting.

**AGENDA**

**PART A ITEMS**

RECOMMENDED  
MINUTE FORMAT

1. APOLOGIES FOR NON-ATTENDANCE

2. DECLARATIONS OF INTEREST

*All Members present are required to declare, at this point in the meeting or as soon as possible thereafter, any personal or personal and prejudicial interest in any item(s) being considered at this meeting.*

3. MINUTES OF THE MEETING OF THE BOARD HELD ON 25 JUNE 2008

*To approve as a correct record the Minutes of the meeting of the Policy and Organisation Board held on 25 June 2008 (copy herewith).*

4. DEPUTATIONS – STANDING ORDER 3.5

*(NOTE: The Board is required to receive a deputation(s) on a matter which is before the meeting of the Board provided that notice of the intended deputation and its object shall have been received by the Borough Solicitor by 12 noon on Monday, 15 September 2008. The total time for deputations in favour and against a proposal shall not exceed 10 minutes).*

5. PUBLIC QUESTIONS – STANDING ORDER 3.6

*(NOTE: The Board is required to allow a total of 15 minutes for questions from members of the public on matters within the terms of reference of the Board provided that notice of such Question(s) shall have been submitted to the Borough Solicitor by 12 noon on Monday, 15 September 2008).*

6. TREASURY MANAGEMENT ANNUAL REVIEW 2007/08,  
PROGRESS REPORT 2008/09 AND PRUDENTIAL  
INDICATORS

PART I

*The annual treasury report is a requirement of the Council's reporting procedures and covers the treasury activity for 2007/08 together with a review of 2008/09 to date. The report also covers the actual Prudential Indicators for 2007/08 in accordance with the requirements of the Prudential Code.*

Contact Officer:  
Peter Wilson  
Ext 5301

Policy and Organisation Board  
17 September 2008

- |     |   |  |
|-----|---|--|
| 7.  | ENVIRONMENTAL HEALTH ENFORCEMENT POLICY<br>(CROSS REFERENCE FROM THE MEETING OF THE<br>COMMUNITY AND ENVIRONMENT BOARD HELD ON 8<br>SEPTEMBER 2008)   | PART II                                      |
|     | <i>To inform the Board of the results of stakeholder consultation on the Environmental Health Enforcement Policy approved at the Meeting on 3 March 2008 and confirmed by Policy and Organisation Board and Full Council on 12 March and 2 April respectively. Approval was subject to a further report if the results of the consultation made this necessary.</i> | Contact Officer:<br>David Palmer<br>Ext 5509 |
| 8.  | PROPOSED DEVELOPMENT – LEE ROAD, GOSPORT<br>(CROSS REFERENCE FROM THE MEETING OF THE<br>HOUSING BOARD HELD ON 10 SEPTEMBER 2008)  | PART II                                      |
|     | <i>To recommend that Gosport Borough Council lease an area of land at Lee Road to Portsmouth Housing Association who would carry out the redevelopment of that area of land to provide social rented housing.</i>   | Contact Officer:<br>Oona Hickson<br>Ext 5292 |
| 9.  | APPOINTMENT PANEL   | PART II                                      |
|     | <i>Personnel Sub-Board meeting on 3<sup>rd</sup> September 2008 approved the creation of a new post of Director of Economic Development, Tourism and the Arts.</i>  | Contact Officer:<br>Ian Lycett<br>Ext 5201   |
|     | <i>For appointments at Director and Chief Officer level, the Board may appoint an Officer or an Appointment Sub-Board with power to act on its behalf.</i>  |  |
| 10. | STOKES BAY FESTIVAL (REFERENCE FROM THE MEETING<br>OF THE COUNCIL HELD ON 14 JULY 2008)   | PART I                                       |
|     | <i>Motion on Mr Peter Chegwyn's proposed Stokes Bay Festival:</i>   |  |
|     | <i>"That the Council reaffirm the decision taken by the Emergency Sub-Board on 18 February 2008 to allow Mr Peter Chegwyn to hold a festival at Stokes Bay and reconsider the terms of the decision."</i>   |  |
| 11. | ANY OTHER ITEMS<br>which the Chairman determines should be considered, by reason<br>of special circumstances, as a matter of urgency.   |  |
| 12. | EXCLUSION OF PUBLIC<br>To consider the following motion:  |  |
|     | <br><i>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</i>   |  |

Policy and Organisation Board  
17 September 2008

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 reason set out.

**PART B ITEMS**  
**FOLLOWING THE EXCLUSION OF PRESS AND PUBLIC**

Item No.	Item	Paragraph no. of Part I of Schedule 12A of the Act	
13.	LAND AT FORT ROAD, GOSPORT	Paragraph 3 <b>Reason:</b> The report contains financial information which could be used by prospective purchasers and thereby adversely affect the offers which may be received.	PART II Contact: Ian Lycett Ext 5201

**A MEETING OF THE POLICY AND ORGANISATION BOARD  
WAS HELD ON 25 JUNE 2008**

The Mayor (Councillor Kimber) (ex-officio) (P); Councillors Burgess (P), Chegwyn (P), Gill (P), Hicks (P), Hook (P), Langdon (P), Philpott (P), Mrs Searle (P), Smith (Chairman) (P) and Wright (P).

**3. APOLOGIES**

There were no apologies for inability to attend the meeting.

**4. DECLARATIONS OF INTEREST**

Councillor Philpott advised that, with regard to agenda item 7 (Adoption of PUSH Business Plan) his employer had, as a stakeholder, been consulted on the draft Plan. He advised Members that he would not declare an interest unless the consultation with his employer was specifically discussed.

**5. MINUTES OF THE MEETINGS OF THE BOARD HELD ON 12 MARCH AND 15 MAY 2008**

RESOLVED: That the Minutes of the Board meetings held on 12 March and 15 May 2008 be approved and signed by the Chairman as true and correct records.

**6. DEPUTATIONS**

There were no deputations.

**7. PUBLIC QUESTIONS**

There were no public questions.

**PART I**

**8. DISPERSAL ORDER PROTOCOL AND FEEDBACK ON BRIDGEMARY DISPERSAL ORDER**

Consideration was given to a report of the Head of Community Safety (a copy of which is affixed in the Minute Book as Appendix A) which sought to establish an agreed protocol for how Gosport Borough Council would deal with Dispersal Order applications from the Police and also provided Members with feedback on the effects of the Bridgemary Dispersal Order.

Members agreed that, in addition to the Leader of the Council, Ward Councillors should also be consulted on whether to give consent to Dispersal Order applications.

RECOMMENDED: That:

- a) authority be delegated to the Chief Executive, in consultation with the Leader of the Council and Ward Councillors, to give consent to Dispersal Order applications in line with the protocol contained in at Appendix A of the report and for the Constitution of the Council to be amended to reflect such a delegation; and
- b) the feedback on the Bridgemary Dispersal Order be noted.

## **9. HASLAR TASK FORCE**

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

The special circumstances were created by the need to make recommendations to the next meeting of the Council regarding the future role and membership of the Haslar Task Force.

Consideration was given to a report of the Chief Executive (a copy of which is affixed in the Minute Book as Appendix B) which advised Members of the outcome of a Group Leaders' meeting on 24 June 2008 regarding the future role and membership of the Haslar Task Force.

Members emphasised that, although the remit of the Haslar Task Force was to save the hospital, it could be much broader depending on the future of the hospital and the site.

Members were advised that, although mileage allowances were still paid to Councillors when representing the Council on outside bodies, no special responsibility allowances would be paid until a review scheduled for the Autumn had taken place. Members requested that this be reflected in the recommendations to Council.

### **RECOMMENDED: That:**

- a) Gosport Borough Council membership on the Haslar Task Force remain non-political and on a 1:1:1 basis;
- b) Councillor Edgar remain as Gosport Borough Council's spokesperson on the Task Force;
- c) a meeting of the Haslar Task Force be called as soon as possible and Group Leaders be invited to attend;
- d) administrative support continue to be provided by Gosport Borough Council officers;
- e) until a review in the Autumn, no special responsibility allowances be paid for representation on outside bodies; and
- f) the remit of the Haslar Task Force continue to be to save Haslar Hospital.

## **PART II**

### **10. ECONOMIC DEVELOPMENT**

A presentation on Economic Development was given by Lynda Dine, Head of Economic Prosperity. The presentation covered the operation of the Economic Prosperity Section and its role in promoting economic prosperity in Gosport.

Mrs Dine was thanked for her presentation.

### **11. ADOPTION OF PUSH BUSINESS PLAN**

Consideration was given to a report of the Chief Executive which sought to obtain Board approval for the Partnership for Urban South Hampshire (PUSH) Business Plan 2008-2011 and to agree delegated authority to sign the South Hampshire Multi Area Agreement (MAA).

Members attention was drawn to recommendation b) in the report which had been revised to read:

“the Chief Executive, in consultation with the Leader of the Council, be delegated to sign the South Hampshire MAA on the basis it reflects the Business Plan and it therefore supports the implementation of the business plan”.

Members requested that PUSH be asked to consider that the following be included in the Business Plan for PUSH:

- The Daedalus Site be included in the two million square metres of employment space
- page 21: the priority actions look at the delivery of employment on redundant and potentially redundant Ministry of Defence sites
- Liaison with the Ministry of Defence take place regarding these sites
- The provision of a Stubbington by-pass
- Page 11: Renewal of Major Estates – include Rowner
- Page 43: Summary of Activity on estate Renewal – include Rowner

Members were advised that a Stubbington by-pass would only be delivered with the support of the County Council and therefore no guarantees could be given on this proposed scheme.

**RESOLVED:** That:

- a) approval be given to the PUSH Business Plan 2008-11 as set out in Appendix 1 of the Chief Executive’s report; and
- b) the Chief Executive, in consultation with the Leader of the Council, be delegated authority to sign the South Hampshire MAA on the basis it reflects the Business Plan and it therefore supports the implementation of the business plan.



**12. BUILDING CONTROL PARTNERSHIP: ANNUAL UPDATE AND ANNUAL REVIEW**

Consideration was given to a report of the Building Control Partnership Manager which updated the Board on the progress and financial outturn of the Building Control Partnership in the financial year ending March 2008. The report also requested confirmation of the continuation of the Partnership under the terms of the current open ended legal agreement.

Members were advised that there may be long term opportunities to work with partners on a larger scale leading to economies of scale and further efficiencies. Any such arrangement would, however, have to be to the benefit of the existing partnership.

RESOLVED: That the contents of the Annual Update and Review Report be noted and that support for the continuation of the Building Control Partnership under the terms of the existing Legal Agreement be confirmed.

**13. WASTE RECYCLING CENTRE: GRANGE ROAD**

Consideration was given to a cross reference from the meeting of the Community and Environment Board on 16 June 2008 which sought approval to extend the area of land currently leased to Hampshire County Council for the purpose of improving safety and traffic management.

RESOLVED: That:

- a) the Head of Property Services be authorised to agree Terms as set out in the report of the Development Services Manager; 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.

**14. TRANSFER OF PLAY AREA AT THE DAEDALUS ESTATE, LEE ON THE SOLENT FROM TAYLOR WIMPEY TO GOSPORT BOROUGH COUNCIL**

Consideration was given to a cross reference from the meeting of the Community and Environment Board on 16 June 2008. The cross-reference recommended approval of the transfer of the identified land on the terms set out in the report and that the Borough Solicitor be authorised to complete the necessary legal documentation to acquire the land as public open space.

RESOLVED: That:

- a) the transfer of the identified land on the terms set out in the report of the Leisure and Cultural Services Manager be approved; and
- b) the Borough Solicitor be authorised to complete the necessary legal documentation to acquire the land as public open space.

## **15. BUDGET STRATEGY 2009/11**

Consideration was given to a report of the Borough Treasurer which requested Members to consider the strategy for the preparation of the General Fund budgets for the next two financial years in the light of the previously approved Medium Term Financial Strategy.

Concerns were raised with regard to the recommendation contained in the report that the Board should consider amending the 4% Council Tax limit. It was proposed and seconded that the Strategy for 2009/11 should retain the limit of a maximum 4% increase in Council Tax. The proposal was put to the vote and declared a tie, whereupon the Chairman cast his vote against the proposal which was duly declared lost.

RESOLVED: That the budget strategy principles for 2009-2011 set out in bold type in sections 2 and 3 of the Borough Treasurer's report be approved and no specific maximum limit on Council Tax increases be decided until later in the budget process.

## **16. APPROVAL OF STATEMENT OF ACCOUNTS 2007/08**

Consideration was given to a report of the Borough Treasurer which set out the background to the requirement for Members to approve the 2007/2008 Statement of Accounts. The Statement of Accounts was shortly to be made available for public inspection and audit, together with some brief notes on the Statement and outturn position.

RESOLVED: That:

- a) the Statement of Accounts for the financial year ending 31 March 2008 be approved;
- b) the revenue variances detailed in Appendix of the report be noted;
- c) the capital programme slippage detailed in Appendix D of the report be noted;
- d) the write offs approved under delegated authority at Appendix E of the report be noted; and
- e) the Minimum Revenue Provision (MRP) Policy for 2007/08 and 2008/09 be approved as :
  - For all capital expenditure incurred before 1<sup>st</sup> April 2008, MRP will be based on the Regulatory Method – an extension of existing policy.
  - For all capital expenditure incurred after 1<sup>st</sup> April 2008, MRP will be based on the Asset Life Method except that where capital expenditure is incurred over more than one year then MRP will start in the year following the year in which the asset becomes operational

**17. CONSULTATION FOR MOVING THE DATES OF THE LOCAL ELECTIONS TO THE SAME DATE AS THE EUROPEAN ELECTIONS IN 2009**

Consideration was given to a report of the Chief Executive which sought the Board's response to the Department for Communities and Local Government proposals to move the date of the Local Election to the same date as the European Elections in 2009.

RESOLVED: That the Chief Executive advise the Department for Communities and Local Government, that this Council believes that it would not be beneficial to combine the 2009 Local and European Parliamentary Elections, for the reasons as outlined in paragraphs 2.2, 2.3 and 2.4 of the report.

**18. COUNCILLORS' REGISTRATION FOR DATA PROTECTION PURPOSES**

Consideration was given to a report of the Corporate Services Manager which considered the need for Gosport Borough Councillors to notify the Information Commissioners Office of their requirement to process personal data as specified in the Data Protection Act 1998.

RESOLVED: That:

- a) all Councillors be advised of the need to consider Notification, as individuals, to the Information Commissioner in accordance with the Data Protection Act 1998;
- b) the Council reimburse Members the annual Notification Fee of £35; and
- c) the annual cost to the Council of £1,190 be met from the Members' Expenses Budget.

**19. SUB-BOARDS – APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN**

Consideration was given to a report of the Chief Executive which advised Members of the need to appoint a Chairman and Vice-Chairman to the Coastline Editorial Panel.

RESOLVED: That Councillors Chegwyn and Foster-Reed be appointed Chairman and Vice-Chairman respectively of the Coastline Editorial Panel.

**20. RESIDENTIAL PARKING STANDARDS**

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

The special circumstances were created as, given that Hampshire County Council had withdrawn their support for residential car parking standards in the light of government advice, the residential car parking standards contained within Gosport Borough Council's Local Plan were no longer relevant. The Borough Council would now need, as a matter of urgency, interim car parking policy advice to enable it to determine planning applications. Longer term policies would be developed through the Local Development Framework.

Consideration was given to a report of the Development Services Manager which informed the Board that Hampshire County Council had decided that the determination of residential parking standards was a matter for the district councils to consider and that this Council should now assess the need for car parking provision in proposed residential developments.

RESOLVED: That:

- a) it be noted that Hampshire County Council will no longer prescribe residential car parking standards; and
- b) residential car parking provision be determined in accordance with the Supplementary Advice Note set out in Appendix A of the Development Services Manager's report.

## **21. PARKING OF CYCLES**

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

The special circumstances were created by the need to refer this issue to the Overview and Scrutiny Committee in time for its next meeting on 24 July 2008.

The Chairman advised that he had received a number of complaints from residents regarding the theft of cycles in the Leesland area. Members were advised that the Overview and Scrutiny Committee had already undertaken to scrutinise the provision of cycle lanes in the Borough and it may be appropriate to refer this issue to the Committee.

Members agreed that the parking of cycles be referred to the Overview and Scrutiny Committee for it to decide whether or not to scrutinise this issue.

RESOLVED: That the Overview and Scrutiny Committee be requested to consider the scrutiny of cycle parking.

## **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.

### **23. AWARD OF FIVE YEAR CCTV MAINTENANCE AND UPGRADE CONTRACT**

This report was exempt from publication as the public interest in maintaining the exemption outweighed the public interest in disclosing the information by reason that it contained personal and financial information that was not considered appropriate to be released to the public.

Consideration was given to a report of the Head of Community Safety which sought to update members on the process for and progress in, agreeing a new maintenance and upgrade contract for the CCTV system. The report also sought to enable a decision to be taken by the Council to agree a preferred tenderer in line with this process and before expiry of the current contract.

RESOLVED: That approval be given to the Chief Executive, in consultation with the Leader of the Council, to authorise Fareham Borough Council to accept a specified tender for a five year maintenance and upgrade contract to the Fareham and Gosport CCTV system.

The meeting ended at 8.35 p.m.

**CHAIRMAN**

<b>Board / Committee</b>	<b>POLICY AND ORGANISATION BOARD</b>
<b>Date of meeting:</b>	<b>17<sup>th</sup> SEPTEMBER 2008</b>
<b>Title:</b>	<b>TREASURY MANAGEMENT ANNUAL REVIEW 2007/08, PROGRESS REPORT 2008/09, &amp; PRUDENTIAL INDICATORS</b>
<b>Author:</b>	<b>DEPUTY CHIEF EXECUTIVE &amp; BOROUGH TREASURER</b>
<b>Status:</b>	<b>FOR APPROVAL AND RECOMMENDATION TO COUNCIL</b>

### **Purpose**

The annual treasury report is a requirement of the Council's reporting procedures and covers the treasury activity for 2007/08 together with a review of 2008/09 to date. The report also covers the actual Prudential Indicators for 2007/08 in accordance with the requirements of the Prudential Code.

### **Recommendations**

The Board is recommended to

1. Note this report and approve the 2007/08 prudential indicators and
2. Recommend to Council the revised 2008/09 limits at 3.3 – i.e. increase the current year limits for fixed interest rate investments from £10.5 to £15.0 million and for fixed interest rate borrowing from £8.0 to £12.0 million.

## **1.0 BACKGROUND**

### **1.1 Purpose of Report**

- 1.1 The Council's treasury management activities are regulated by a variety of professional codes, statutes and guidance. These are summarised in Appendix A.

The Council has adopted the CIPFA Code of Practice for Treasury Management in the Public Sector and operates its treasury management service in compliance with this Code and the requirements set out in Appendix A. These require that the prime objective of the treasury management activity is the effective management of risk, and that its borrowing activities are undertaken on a prudent, affordable and sustainable basis.

The Code requires as a minimum the regular reporting of treasury management activities to:

- forecast the likely activity for the forthcoming year (in the Annual Treasury Strategy Report); and
- review actual activity for the preceding year (this report).

## **1.2 Prudential Indicators**

The purpose of the indicators is to provide a framework for capital expenditure decision-making. The indicators highlight the level of capital expenditure, the impact on borrowing and investment levels and the overall controls in place to ensure the activity remains affordable, prudent and sustainable. The report also contains treasury prudential indicators.

## **1.3 Money Laundering**

Anti money laundering is now a key issue for all organisations that deal with large amounts of money and although Councils fall outside the scope of the Money Laundering Regulations 2003 they are not immune to the risks surrounding money laundering. The Council has accepted the CIPFA Treasury Management Code of Practice, which includes TMP9. TMP9 states that the Council is alert to the possibility that it may become the subject of an attempt to involve it in a transaction involving the laundering of money. The Council has a very restricted list of counter parties for treasury activities who are contacted mainly through the approved brokers. Knowing who is being dealt with reduces the risk of crime. The Head of Audit and Risk Management is the Council's Money Laundering Reporting Officer to whom officers may report any suspicious transactions.

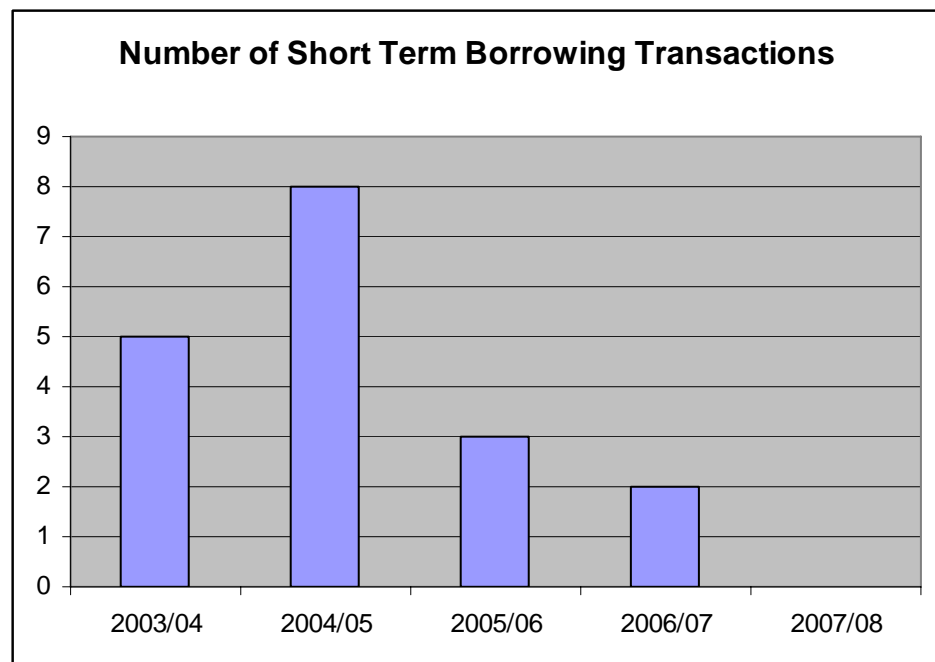
## **2.0 ANNUAL REVIEW 2007/2008**

### **2.1 Treasury Management**

2.1.1 Treasury management activities are defined as the management of the Council's cash flows, its banking, money market and capital market transactions; the effective control of the risks associated with those activities; and the pursuit of optimum performance consistent with those risks. Activities are strictly regulated by statutory requirements and the CIPFA code of practice. It is an important part of the overall financial management of the Council's affairs. Its importance has increased as a result of the freedoms provided by the Prudential Code

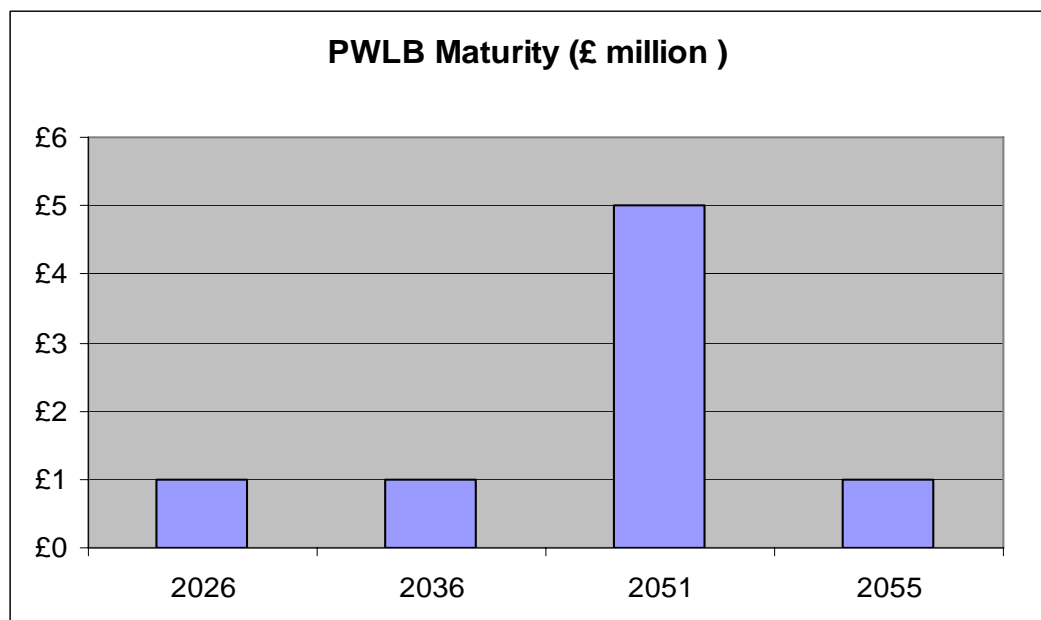
#### **2.1.2 Short Term Borrowing**

There were no short term borrowing transactions during 2007/08 and no short term debt outstanding at 31<sup>st</sup> March 2008. . The chart below shows a comparison of the number of short term borrowing transactions over the past five years.



### 2.1.3 Long Term Borrowing

No long term borrowing was undertaken in 2007/08. Long term borrowing remains at £8 million comprising four long term loans taken from the Public Works Loans Board in January 2006 at favourable rates of interest. The profile of when the loans fall due for repayment is shown below.



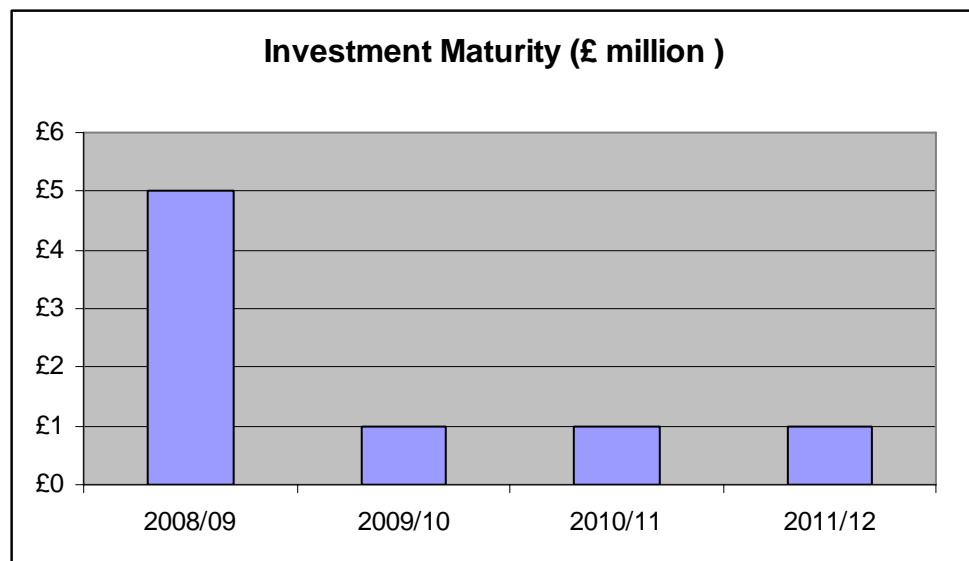


#### 2.1.4 Investments

The Council maintains two broad types of investments.

Funds that do not warrant by size or need to be invested in short or long term investments are generally placed in either the Global Treasury Fund (a money market fund operated by the Royal Bank of Scotland) or the Corporate Deposit Account (a high interest account operated by the Bank of Scotland). Money Market Fund interest rates may vary with both the amount placed and economic conditions. These liquid accounts offer immediate deposit and withdrawal facilities.

Investments placed outside of these accord with the criteria contained in the Treasury Management policy (approved by P&O Board in January 2008) and have fixed interest rates. Three new investments each of £1 million were placed in 2007/08, two of these were repaid before the year end. The Council maintained an average investment balance of £10.23m and received an average return of 5.54%. A comparable indicator is the average 3 month LIBID rate of 5.93%. Total investments at 31<sup>st</sup> March 2008 were £8 million, maturing (becoming repayable to the Council) as shown below.



### 2.1.5 The Treasury Position at the Year End

The treasury position at 31 March 2008 compared with the previous year was:

	31-Mar-07		31-Mar-08	
	Principal	Average Rate	Principal	Average Rate
Short Term Borrowing	-	-	-	-
Long Term Borrowing	£8.000m	3.89%	£8.000m	3.89%
<b>Total Debt</b>	<b>£8.000m</b>	<b>3.89%</b>	<b>£8.000m</b>	<b>3.89%</b>
Fixed Interest Investments	£9.000m	5.33%	£8.000m	5.54%
Variable Interest Investments	£2.309m	5.20%	£1,823m	6.01%
<b>Total Investments</b>	<b>£11.309m</b>	<b>5.30%</b>	<b>£9.823m</b>	<b>5.61%</b>

It should be noted that the accounting practice required to be followed by the Council (the SORP), changed for the 2007/08 accounts, and required financial instruments in the accounts (debt and investments etc.) to be measured in a method compliant with national Financial Reporting Standards. The figures in this report are based on the amounts borrowed and invested and so may differ from those in the final accounts by items such as accrued interest

## 2.2 Prudential Indicators

### 2.2.1 Treasury Position and Prudential Indicators

The Council is required by the Prudential Code to report the estimated and actual prudential indicators after the year-end. Appendix A provides a schedule of all the mandatory prudential indicators.

Certain of these indicators provide either an overview or a limit on treasury activity, and these are shown below:

### 2.2.2 Net External Borrowing

	2006/07	2007/08	2007/08
	Actual	Revised	Actual
	£'000	£'000	£'000
Net borrowing position	(3,309.0)	(2,000.0)	(1,823.0)
Capital Financing Requirement	3,871.4	7,236.7	6,379.3

The Capital Financing Requirement (CFR) shows the Council's underlying need to borrow for a capital purpose, and this is an indication for the Council's net borrowing position shown above

At year end, £0.8 million of capital receipts were 'set-aside' to reduce the level of the Council's capital financing requirement. This will yield revenue savings of £32,000 in 2008/09 by reducing the statutory charge to revenue (the Minimum Revenue Provision) for the repayment of capital debt. This is a temporary saving which will continue until capital funding is needed to progress the capital programme at which point further financing through use of the Prudential Code will be necessary.

In order to ensure that over the medium term borrowing net of investments will only be for a capital purpose, net borrowing should not, except in the short term, exceed the total CFR in the preceeding year plus estimates of any additional CFR for the current and next two financial years.

The table above shows that the Council has complied with this requirement.

### 2.2.3 Borrowing Limits

	2007/08
	Actual
	£'000
Original Indicator – Authorised Limit	10,026.1
Original Indicator – Operational Boundary	9,236.7
Maximum gross borrowing position during the year	8,000.0
Minimum gross borrowing position during the year	8,000.0

The Authorised Limit is the "Affordable Borrowing Limit" required by s3 of the Local Government Act 2003. This must not be exceeded and the table demonstrates that during 2007/08 the Council has maintained gross borrowing within its Authorised Limit.

The Operational Boundary is not a limit but it is an indicator of probable external debt during the year. Actual borrowing may vary above or below this boundary for short periods of time providing the Authorised Limit is not breached.

### 2.3 Economic Background for 2007/08 (largely derived from ICAP)

The rising trend in UK interest rates continued in the first half of the 2007/08 financial year. The domestic economic backdrop continued to present problems for the Monetary Policy Committee, notably in the early summer. CPI inflation breached the 3% upper limit of the Government's target range in April (reported in May), consumer spending growth remained buoyant and an expanding number of companies expressed intentions to raise prices.

Official Bank Rate was raised to 5.5% in May and 5.75% in July in response to the deteriorating inflation outlook. In addition, the Bank of England's May and August Inflation Reports hinted that more hikes might be necessary.

#### Interest Rates

End Qtr	Bank Rate	LIBOR			PWLB Rates		
		3mth	6mth	1yr	5yr	20yr	50yr
2007 Mar	5.25	5.6	5.8	5.9	5.35	4.80	4.45
Jun	5.50	6.0	6.1	6.3	5.80	5.20	4.80
Sep	5.75	6.3	6.3	6.2	5.25	5.00	4.75
Dec	5.50	6.0	6.0	5.8	4.64	4.63	4.47
2008 Mar	5.25	6.0	6.0	5.8	4.14	4.70	4.43

The market was plunged into chaos in late August as the tightening of credit conditions, triggered initially by the failure of a selection of US mortgage lending institutions, undermined investor confidence. LIBOR rates rose to well over 6.5% as financial organisations' reluctance to lend money to counterparties sparked a severe shortage of funds in the market.

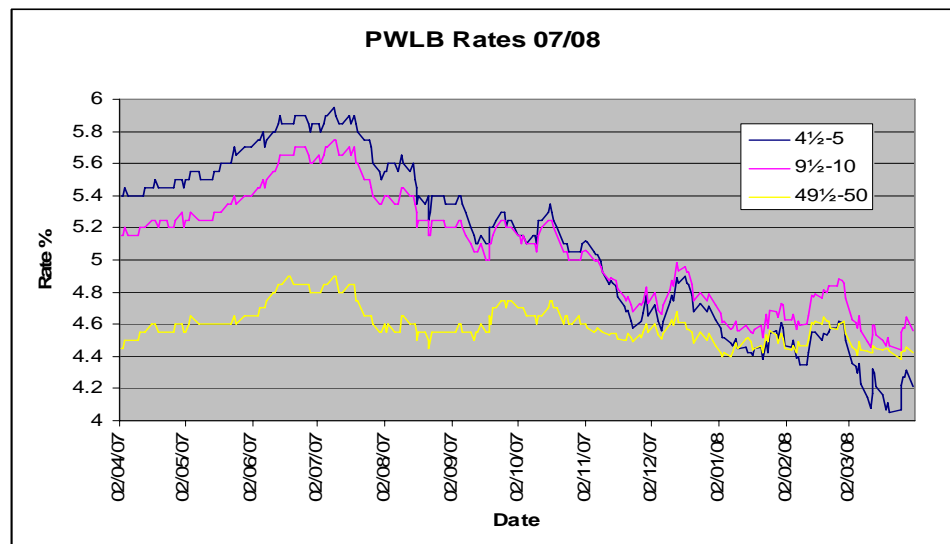
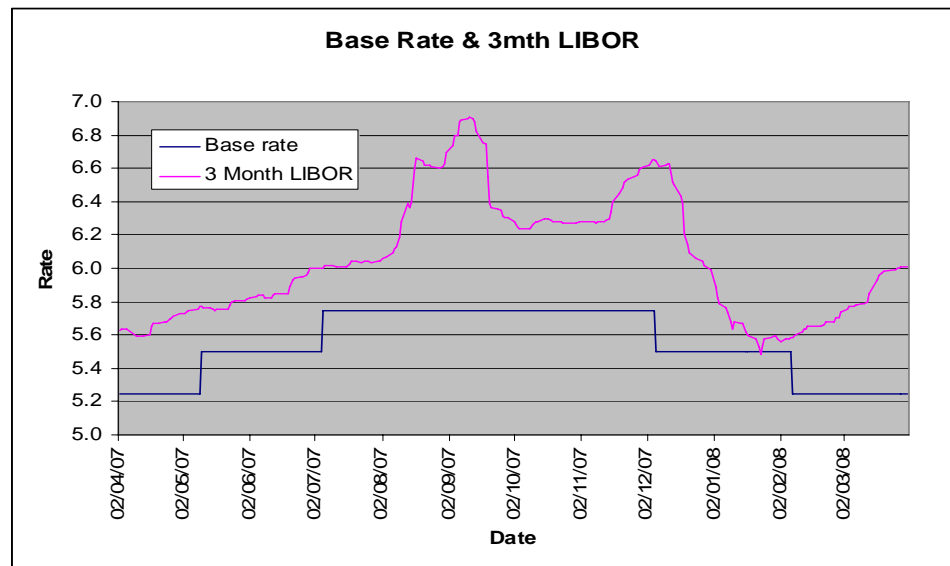
Central banks strove to boost market liquidity via the injection of funds to the banking system and there were signs that this might be working in January. But a series of disappointing financial results and a persistent undercurrent of mistrust ensured a wide margin between official and market rates continued to year end.

The credit crisis provoked a significant change in the Bank of England's assessment of UK economic prospects over the medium term. It was clearly concerned that the tightening of liquidity and the consequent rise in borrowing rates across the entire economy could lead to a rapid slowdown in activity. This would help to contain inflation pressures. Bank Rate was cut by 0.25% on two occasions, December and February, to end the year at 5.25%.

Long-term rates (gilt yields & PWLB rates) charted an erratic course. The upward pressure on rates in evidence in the closing stages of 2006/07 continued into the new year as concerns persisted that international interest would need to rise further to combat mounting inflation pressures.

Gilt yields peaked in late June and started to slip lower in the summer months. The flight to safe investments triggered by the financial crisis placed strong downward pressure upon gilt-edged yields in August/September notably at the short end of the maturity range and the rally in this part of the market gained momentum as the year drew on.

Progress to lower levels was erratic and limited in the early months of 2008, but the general trend in yields was to lower levels.



### 3.0 TREASURY MANAGEMENT IN 2008/09

- 3.1 The table below summarises the Council's treasury position at 1<sup>st</sup> August as compared to the end of the previous financial year.

	31 March 2008	1 August 2008
Short Term Borrowing	-	-
Long Term Borrowing	£8.000m	£8.000m
<b>Total Debt</b>	<b>£8.000m</b>	<b>£8.000m</b>
Fixed Interest Investments	£8.000m	£7.000m
Variable Interest Investments	£1.823m	£5.637m
<b>Total Investments</b>	<b>£9.823m</b>	<b>£12.637m</b>

The Council's present net investment position is expected to continue in the short to medium term. Base rates now stand at 5% down from 5.25% at the beginning of the financial year.

- 3.2 As part of the 2009/10 budget process, the capital programme will include revised projections of funding implications and these will be integrated into the Treasury Management Policy report in January 2009.
- 3.3 In order to provide more immediate headroom and flexibility to service the emerging capital programme, it is felt prudent to increase the current year limits for fixed interest rate investments from £10.5 to £15.0 million and for fixed interest rate borrowing from £8.0 to £12.0 million.
- 3.4 With effect from 1 April 2008 the CLG introduced new MRP (Minimum Revenue Provision) Guidance which requires an MRP Policy to be approved by Members. This new policy was approved by P&O Board on 25th June 2008 as part of the Approval of Accounts report.

### 4.0 RISK AND PERFORMANCE

- 4.1 The Council has complied with the relevant statutory and regulatory requirements, which limit the levels of risk associated with its treasury management activities. In particular its adoption and implementation of both the Prudential Code and the Code of Practice for Treasury Management means both that its capital expenditure is prudent, affordable and sustainable, and its treasury practices demonstrate a low risk approach.

- 4.2 The Council is aware of the risks of passive management of the treasury portfolio and, with the support of Butlers, the Council's advisers, has proactively managed the debt and investments over the year.
- 4.3 Shorter-term variable rates and likely future movements in these rates predominantly determine the Council's investment return. These returns can therefore be volatile and, while the risk of loss of principal is minimised through the annual investment strategy, accurately forecasting future returns can be difficult.

<b>Financial implications:</b>	As contained in the report.
<b>Legal implications:</b>	It is a legal requirement that an annual Treasury Management report is considered by a representative body of the Council.
<b>Service Improvement Plan implications:</b>	This report is required in order that to fulfil statutory requirements associated with the achievement of both service improvement plan and corporate plan targets.
<b>Corporate Plan</b>	
<b>Risk Assessment</b>	As contained in the report
<b>Background papers:</b>	Budget and Final Accounts working papers
<b>Appendices/Enclosures:</b>	Appendix A – Treasury Management Codes & Guidance Appendix B – Estimated and Actual Treasury position and Prudential Indicators
<b>Report Author / Lead Officer</b>	John Norman

### **Treasury Management - codes and guidance**

- The Local Government Act 2003, which provides the powers to borrow and invest as well as providing controls and limits on this activity;
- The Act permits the Secretary of State to set limits either on the Council or nationally on all local authorities restricting the amount of borrowing, which may be undertaken.
- Statutory Instrument (SI) 3146 2003, as amended, develops the controls and powers within the Act;
- The SI requires the Council to undertake any borrowing activity with regard to the CIPFA Prudential Code for Capital Finance in Local Authorities;
- The SI also requires the Council to operate the overall treasury function with regard to the CIPFA Code of Practice for Treasury Management in the Public Sector;
- Under the Act the ODPM has issued Investment Guidance to structure and regulate the Council's investment activities.



## Appendix B

		<b>2006/07 Actual £'000</b>	<b>2007/08 Revised £'000</b>	<b>2007/08 Actual £'000</b>
<b>1</b>	<b>Capital Expenditure</b>	6,707.4	7,674.6	7,235.0
	Financed by:			
	Capital receipts	1,413.2	716.0	719.7
	Capital grants	2,398.0	2,357.0	2,365.6
	Other contributions	839.3	1,235.3	923.3
	Revenue	400.0	0.0	0.0
	Total financing	<b>5,050.5</b>	<b>4,308.3</b>	<b>4,008.6</b>
	Net financing need	1,656.9	3,366.3	3,226.4
<b>2</b>	<b>Capital Financing Requirement (CFR) at 31st March</b>			
	Housing	(115.0)	1,936.0	2,371.3
	Non - Housing	3,986.4	5,300.7	4,008.0
	Total	<b>3,871.4</b>	<b>7,236.7</b>	<b>6,379.3</b>
<b>3</b>	<b>Treasury Position at 31st March</b>			
	Borrowing	8,000.0	8,000.0	8,000.0
	Other long term liabilities	0.0	0.0	0.0
	Total debt	<b>8,000.0</b>	<b>8,000.0</b>	<b>8,000.0</b>
	Investments	(11,309.0)	(10,000.0)	(9,823.0)
	Net borrowing (investments)	<b>(3,309.0)</b>	<b>(2,000.0)</b>	<b>(1,823.0)</b>
<b>4</b>	<b>Authorised Limit (against maximum position)</b>	10,000.0	10,026.1	8,000.0
<b>5</b>	<b>Operational Boundary</b>	10,000.0	9,236.7	8,000.0
<b>6</b>	<b>Ratio of financing costs to net revenue stream</b>			
	Non - Housing	-2.1%	-2.7%	-3.4%
	Housing	-1.3%	0.5%	0.1%

## Appendix B

		2007/08 Revised		2007/08 Actual	
8	<b>Limits on Activity</b>	<b>Upper</b>		<b>Upper</b>	
		<b>Investments</b>	<b>Borrowing</b>	<b>Investments</b>	<b>Borrowing</b>
		<b>£'000</b>	<b>£'000</b>	<b>£'000</b>	<b>£'000</b>
	Limits on fixed interest rates	(13,000.0)	8,000.0	(11,500.0)	8,000.0
	Limits on variable interest rates	(8,000.0)	2,500.0	(5,699.0)	0.0
9	<b>Maturity Structure (limits &amp; actual) of fixed borrowing</b>	<b>Lower</b>	<b>Upper</b>	<b>Lower</b>	<b>Upper</b>
		<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
	Under 12 months	0%	30%	0%	0%
	12 months to 2 years	0%	0%	0%	0%
	2 years to 5 years	0%	0%	0%	0%
	5 years to 10 years	0%	30%	0%	0%
	10 years and above	0%	100%	0%	100%
10	<b>Maximum percentage of principal sums invested for over 364 days</b>	50%		31%	
11	<b>Compliance with CIPFA Code of Practice for Treasury Management in the Public Services</b>	Yes		Yes	

**GOSPORT BOROUGH COUNCIL**

**REFERENCE**

**TO: POLICY AND ORGANISATION BOARD –  
17 SEPTEMBER 2008**

**FROM: COMMUNITY AND ENVIRONMENT BOARD –  
8 SEPTEMBER 2008**

**TITLE: ENVIRONMENTAL HEALTH ENFORCEMENT POLICY**

**AUTHOR: ENVIRONMENTAL SERVICES MANAGER**

**Attached is a copy of the report that was considered by the Community and Environment Board on the 8 September 2008 (Appendix 'B'), together with the Minute extract and Board Resolution (Appendix 'A').**

**RECOMMENDATION:**

To follow.

**APPENDIX 'A'**

**EXTRACT FROM THE MINUTES OF THE**  
**COMMUNITY AND ENVIRONMENT BOARD MEETING**  
**8 SEPTEMBER 2008**

**Minute No.**

**ENVIRONMENTAL HEALTH ENFORCEMENT POLICY**

To follow.

## APPENDIX B

<b>Board/Committee:</b>	Community and Environment Board
<b>Date of Meeting:</b>	8 September 2008
<b>Title:</b>	Environmental Health Enforcement Policy
<b>Author:</b>	Environmental Services Manager
<b>Status:</b>	FOR RECOMMENDATION TO POLICY AND ORGANISATION BOARD

### **Purpose**

To inform the Board of the results of stakeholder consultation on the Environmental Health Enforcement Policy approved at the Meeting on 3 March 2008 and confirmed by Policy and Organisation Board and Full Council on 12 March and 2 April respectively. Approval was subject to a further report if the results of the consultation made this necessary.

### **Recommendation**

- That the Board approves the amended Environmental Health Enforcement Policy.
- That the recommendation be referred to the Policy and Organisation Board.

### **1 Background**

- 1.1 Following approval of the Enforcement Policy in April, various potential stakeholders were contacted and their opinions and suggestions requested. A copy of the Policy was posted on the Council's web site. Comments were invited from local businesses in an article in the Spring 2008 edition of the Business Information Newsletter published by the Economic Prosperity Section; an item also featured in Members Information Bulletin 21 (copies in Appendix B). A leaflet was prepared and sent to all relevant organisations or individuals (also in Appendix B). A further thirty five organisations were contacted direct, as were all Unit Managers and Environmental Health staff. A full list of consultees can be found in Appendix C.
- 1.2 Responses were received from Gosport Police, British Petroleum and one of the Council's Principal Environmental Health Officers.
- 1.3 The opportunity was taken to incorporate relevant parts of the model enforcement policy published by the Health and Safety Executive (HSE) in April. Some minor rearrangement of paragraphs also took place.

### **2 Report**

- 2.1 A revised draft Environmental Health Enforcement Policy, incorporating recommendations from stakeholders and the HSE

model policy, is included as Appendix A. For ease of reference all changes have been highlighted.

### **3 Human Rights Implications**

- 3.1 No additional issues identified.

### **4 Race, Equal Opportunities and Consultation**

- 4.1 The consultation provided any potential stakeholder or interested party to make comments or suggestions about the Enforcement Policy. No equal opportunities issues have been raised by any consultee.
- 4.2 An updated Equalities Impact Assessment Screening has been approved by the Equality and Diversity Steering Group.

### **5 Sustainability**

- 5.1 As stated in the previous report, a robust enforcement policy can make a positive contribution to sustainability by ensuring and promoting compliance, supporting local economic activity (by providing information and support to businesses) and, through the stakeholder consultation process, promoting equal opportunities.

### **6 Crime and Disorder**

- 6.1 Unchanged from the previous report, namely that maintenance of an up to date Environmental Health Enforcement policy will assist the Council to meet its obligation to prevent crime and disorder in its area.

### **7 Risk Assessment**

- 7.1 No comments were received which challenged the initial assessment that the Enforcement Policy meets the requirements of the Regulators Compliance Code.

### **8 Conclusion**

- 8.1 Several changes to the Environmental Health Enforcement Policy have been made as a result of stakeholder consultation and by the incorporation of elements of the HSE model policy. A further report to the Board is therefore considered to be appropriate.
- 8.2 All relevant comments and suggestions have been incorporated. These enhance the previous version of the Policy.
- 8.3 A summary leaflet will be prepared once this revised Policy has been approved.

<b>Financial Services comments:</b>	None.
<b>Legal Services comments:</b>	None for the purposes of this Report.
<b>Service Improvement Plan implications:</b>	A revised EH Enforcement Policy is a requirement of the Environmental Services Unit SIP (reference ENV/EH/010).
<b>Corporate Plan:</b>	<p>This report contributes to the following core values of the Council :</p> <ul style="list-style-type: none"> <li>• Participation – through the stakeholder consultation exercise</li> <li>• Performance – by ensuring that the service operates efficiently in compliance with national requirements</li> <li>• People – ensuring that enforcement activity is undertaken without prejudice whilst recognising diversity</li> </ul> <p>and complies with the following strategic priorities :</p> <ul style="list-style-type: none"> <li>• People – in respect of the reduction of crime and anti-social behaviour in a way which complies with national requirements</li> <li>• Prosperity – improving social inclusion and supporting businesses by maintaining a level playing field on enforcement issues</li> <li>• Pursuit of Excellence – delivering a quality Environmental Health service</li> </ul>
<b>Risk Assessment:</b>	Contained in the body of the report
<b>Background papers:</b>	<ul style="list-style-type: none"> <li>• The Legislative and Regulatory Reform (Regulatory Functions) Order 2007</li> <li>• Regulator's Compliance Code (BERR, 17/12/07)</li> <li>• The Hampshire Licensing Protocol</li> <li>• Hackney Carriage &amp; Private Hire Conditions &amp; Penalty Points Scheme</li> </ul>
<b>Appendices/Enclosures:</b>	
Appendix 'A'	Revised Environmental Health Enforcement Policy
Appendix 'B'	Business Newsletter article, MIB article and explanatory leaflet used during the consultation period
Appendix 'C'	List of consultees
<b>Report author/ Lead Officer:</b>	David Palmer, Head of Environmental Health, 023 9254 5509; e-mail <a href="mailto:david.palmer@gosport.gov.uk">david.palmer@gosport.gov.uk</a>

### Revised Environmental Health Enforcement Policy

*Note – for ease of reference all changes to the previous version, excluding paragraph numbering, are highlighted thus.*

## **ENVIRONMENTAL HEALTH ENFORCEMENT POLICY**

This Policy is effective from 6 April 2008 and will form the basis of stakeholder consultation during 2008.

Note : The term “Improvement Notice” includes both Hygiene Improvement Notices and Improvement Notices for health and safety purposes, unless otherwise stated.

### **Authorisation of Officers**

- 1 Authorisation of officers is of paramount importance in the effective delivery of the functions of the Environmental Health service. The officer having delegated responsibility to authorise enforcement officers is the Environmental Services Manager.
- 2 All authorisations of enforcement officers are in writing, specifying the limits of authorisation. This forms part of the identification cards shown during visits/inspections.

### **Decision Making, Consistency and Transparency**

- 3 From HSE Model Enforcement Policy, April 2008 : Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. The Council recognises the importance of achieving and maintaining consistency in its approach to making all decisions that concern enforcement action, including prosecution. To achieve this the guidance given in Codes of Practice, LACORS<sup>1</sup> circulars and other advisory documents will always be considered.
- 4 From HSE Model Enforcement Policy, April 2008 (modified) : In practice consistency is not a simple matter. Enforcement officers are faced with many variables: the severity of the risk/hazard, the attitude and competence of management, the duty holder's compliance history. Decisions on enforcement action are discretionary, involving judgment by the officer. The Council has arrangements in place to promote consistency in the exercise of discretion, and these include liaison arrangements with the other enforcing authorities, the Health and Safety Executive (HSE) and Food Standards Agency (FSA).

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<sup>1</sup> Local Authorities Coordinators of Regulatory Services, [www.lacors.gov.uk](http://www.lacors.gov.uk)



- 5 Elected Members will decide in general policy terms what attitude the Council will take to serious breaches of the law relating to food safety, health and safety and licensing matters. Having determined this policy, Members will not thereafter be involved in detailed consideration of individual cases other than in exceptional circumstances or where a licence may be revoked or refused.
- 6 The decision to issue or refuse a licence is made by the Licensing Board where a criminal record check indicates the applicant has relevant criminal convictions. The Board will also determine all other applications where there are relevant representations or where a licence is reviewed following representations or a conviction for failing to comply with licence conditions. Only the Licensing Board may refuse or revoke any licence.
- 7 The decision whether to prosecute or issue a formal caution is delegated to the Borough Solicitor following a recommendation from the Head of Environmental Health. That decision will be based on the legislation, statutory Codes of Practice, including the Code for Crown Prosecutors<sup>2</sup>, and any guidance given by the HSE, HELA<sup>3</sup>, the FSA or LACORS.
- 8 Certain types of formal enforcement action, excluding prosecution and formal cautions, is delegated to those Officers who are deemed competent to do so by the Environmental Services Manager. In determining competence, due regard will be given to the qualifications, nature and extent of the experience in the relevant enforcement discipline held by the Officer concerned, and any relevant approved/statutory Code of Practice.
- 9 All regulatory activities by the Environmental Health Section will be carried out in a way which is transparent, accountable, proportionate and consistent. Activities will, so far as possible, be targeted only at cases in which action is needed.
- 10 From HSE Model Enforcement Policy, April 2008 : The Council will expect relevant good practice to be followed.
- 11 The Environmental Health Section will base all enforcement decisions on :
  - the severity and scale of the actual or potential harm arising from an incident
  - the seriousness of any potential breach of the law
  - the effect of the legislative breach upon the potential persons

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<sup>2</sup> [www.cps.gov.uk/publications/docs/code2004english.pdf](http://www.cps.gov.uk/publications/docs/code2004english.pdf)

<sup>3</sup> Health and Safety Executive/Local Authority Enforcement Liaison committee,  
[www.hse.gov.uk/lau/hela/](http://www.hse.gov.uk/lau/hela/)

affected

- the future consequences of failing to address the breach at the present time
- the track record of the duty holder or the business
- the enforcement priorities
- the practicality of achieving results
- the wider relevance of the incident including serious public concern
- any concurrent or potential action by other services and agencies and the suitability and effect of our action as opposed to combined with theirs in addressing the issues.

12 The Environmental Health Section will have due regard to the advice given in statutory Codes of Practice, strategic plans and guidance including :

- the Regulator's Compliance Code (Department for business, Enterprise and Regulatory Reform, December 2007<sup>4</sup>)
- the Central and Local Government Concordat on Good Enforcement (usually known as the Enforcement Concordat) where not superseded by the Regulator's Compliance Code
- advice from LACORS
- advice from the Food Standards Agency
- advice and guidance on licensing matters from the Department for Culture, Media and Sport (DCMS)
- advice from the Office for Criminal Justice Reform<sup>5</sup> and associated LACORS guidance<sup>6</sup>
- advice from the ~~Health and Safety Commission (HSC)~~, the HSE and HELA
- advice from the Department of Health

and other relevant Government and professional bodies and to following appropriate national strategies.

13 For health and safety enforcement, in deciding the level of response to complaints, reports of injury or occupational ill health, Authorised Officers shall also have regard to the current HSE Incident Selection Criteria and will consider the seriousness of the offence in relation to the assessment process required by the HSE's Enforcement Management Model (EMM)<sup>7</sup> and the likely effectiveness of the various enforcement options.

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<sup>4</sup> [http://bre.berr.gov.uk/regulation/reform/enforcement\\_concordat/index.asp](http://bre.berr.gov.uk/regulation/reform/enforcement_concordat/index.asp)

<sup>5</sup> see Home Office Circular 30/2005 on Cautioning of Adult Offenders : [www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/d820bbad9e5edd8680257013004d1ccf?OpenDocument](http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/d820bbad9e5edd8680257013004d1ccf?OpenDocument)

<sup>6</sup> LACORS Revised Guidance on Cautioning of Offenders, Issue 2 – January 2008

<sup>7</sup> see link from [www.hse.gov.uk/lau/lacs/45-24.htm](http://www.hse.gov.uk/lau/lacs/45-24.htm) plus explanatory note and the end of this document

- 14 The Council will use discretion in deciding the level of response to incidents, complaints or cases of ill health. In accordance with maintaining a proportionate response, most resources available for the investigation of incidents will be devoted to the more serious events.
- 15 In relation to taxis and private hire operators and drivers, the Council operates a points system to deal with infringements of its licensing conditions<sup>8</sup>. The Head of Environmental Health is authorised to issue points and the person concerned has the right of appeal to the Environmental Services Manager. The Head of Environmental Health has delegated authority to suspend a licence where the infringement is so serious as to place the public at risk or where the person concerned has accumulated 12 points in any 12-month period. Any suspension must be ratified at the next available Licensing Board.
- 16 The decision to issue or refuse a licence is made by the Licensing Board where a criminal record check indicates the applicant has relevant criminal convictions. The Board will also determine all other applications where there are relevant representations or where a licence is reviewed following representations or a conviction for failing to comply with licence conditions.
- 17 Only the Licensing Board may refuse or revoke any licence.
- 18 From HSE Model Enforcement Policy, April 2008 (modified) : Transparency means helping duty holders to understand what is expected of them and what they should expect from regulators. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they do not. Officers will always distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory.
- 19 From HSE Model Enforcement Policy, April 2008 (modified) : Transparency also involves officers keeping employees, their representatives, and victims or their families informed. These arrangements have regard to legal constraints and requirements.
- 20 From HSE Model Enforcement Policy, April 2008 (modified) : Officers will explain what to expect when they call and what the complaint procedure is. In particular:
- when officers offer information or advice, face to face or in writing, including any warning, they will explain what has to be done to comply with the law, and explain why. If asked officers will confirm any advice in writing and distinguish legal requirements from best practice advice

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<sup>8</sup> see link from [www.gosport.gov.uk/sections/environment/environmental-health/commercial-team/licensing/taxi-drivers](http://www.gosport.gov.uk/sections/environment/environmental-health/commercial-team/licensing/taxi-drivers)

- in the case of Improvement Notices, the officer will discuss the content and, if possible, resolve points of difference before serving it. The Notice will say what needs to be done, why, and by when; in the case of a prohibition notice, the notice will explain why the prohibition is necessary.

### **Supporting Economic Progress**

- 21 The Environmental Health Section will consider the impact of its interventions and ensure that the burden on 'regulated entities', i.e. businesses, is the minimum compatible with achieving the regulatory objective.

### **Risk Assessment**

- 22 From HSE Model Enforcement Policy, April 2008 (modified) : Legislation makes some duties specific and absolute. Others require action so far as is reasonably practicable. Deciding what is reasonably practicable to control risks involves the exercise of judgment. In the final analysis, it is the courts that determine what is reasonably practicable in a particular case. Where duty holders must control risks so far as is reasonably practicable, the Council will, when considering protective measures taken by them, take account of the degree of risk on the one hand, and on the other the cost, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is a gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.
- 23 The Environmental Health Section (From HSE Model Enforcement Policy, April 2008) has a system for prioritising contacts according to the risks posed by a duty holder's operations, and to take account of the hazards and the nature and extent of the risks that arise. We will ensure that our efforts are targeted on businesses where they are most needed and will apply a risk-based approach across all service areas.
- 24 Enforcement powers are only employed as a means to an end. Action will generally follow a hierarchy of alternatives unless urgent intervention is required.

### **Advice and Guidance**

- 25 The Environmental Health Section will help and encourage businesses to understand and meet regulatory requirements more easily but this does not relieve regulated entities of their responsibility to comply with their obligations under the law.

- 26 The Section is committed to providing low cost training for businesses in an effort to bring about improved standards and place great emphasis on providing clear guidance, information and advice to persons, organisations, duty holders or businesses so as to encourage compliance with the legislation. The Council's web site is employed extensively to disseminate up to date information.

### **Inspections**

- 27 From HSE Model Enforcement Policy, April 2008 (modified) : It is neither possible nor necessary for the Council to investigate all issues of non compliance with the law that are uncovered in the course of planned inspections or reported events.
- 28 The Environmental Health Section will ensure that regulatory effort is focussed on those businesses where non-compliance is likely and impact is high.
- 29 Food safety and health and safety regulation is undertaken by the same Team within the Section to ensure consistency, etc. Some joint working between regulators is already in place and more is planned.
- 30 From HSE Model Enforcement Policy, April 2008 (modified) : The Health and Safety Commission's priorities are used to target the Section's activities and resources as set out in the annual Commercial Service Plan, which also covers food safety, licensing and smoke-free enforcement. To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances.
- 31 Whenever an enforcement decision needs to be made fair regard shall be given to the normal hours of trading of any business under investigation. When necessary, inspections and investigations will be carried out in the early morning, in the evening and at weekends, in order to obtain fair and representative evidence pertaining to the alleged breach(s).
- 32 Prior notification of an impending enforcement inspection will not be made where such notification would defeat the purpose for which the inspection was being undertaken.
- 33 From HSE Model Enforcement Policy, April 2008 (modified) : In conducting investigations the Council will take account of any likely complimentary or shared enforcement roles, e.g. where the HSE has jurisdiction over some of the activities of a duty holder and we have jurisdiction over the rest of the activities. We will also refer relevant information to other Regulators where there is a wider regulatory interest.
- 34 [text relocated but not changed] Wherever appropriate the Authorised

Officer will liaise with other Teams within Environmental Health, other enforcement agencies and the, Home<sup>9</sup>, Originating<sup>10</sup> and Lead<sup>11</sup> Authorities or the Account Manager of a large, multi-site national organisation participating in the Large Organisations Partnership Pilot (LOPP)<sup>12</sup> will be advised of the action taken and its outcome. In addition, the Office of Fair Trading may be informed of details of any relevant conviction.

### **Information Requirements**

- 35 Information Requirements on businesses will be weighed against the costs and benefits of providing it and the Environmental Health Section will seek to share this data to avoid duplication.

### **Compliance and Enforcement Actions**

- 36 The Environmental Health Section will adopt positive incentives, such as a light touch or reduced data requirements. Action will be taken where appropriate but there will be discussion with the business first unless immediate action is warranted or delay would defeat the object of the enforcement action.
- 37 Schemes such as Safe2eat<sup>13</sup> and targeted inspection programmes mean that effort is focussed on the worst performing businesses and that those which remain broadly compliant already receive a lighter touch.

### **Accountability**

- 38 The Environmental Health Section has put in place effective consultation opportunities for businesses to provide feedback and also provides an effective complaints procedure.

### **Home, Lead and Originating Authority Principle**

- 39 Where Officers are considering taking enforcement action that is contrary to the advice of the relevant Home, Lead or Originating Authority, this shall be discussed with that Authority before taking action. Where the action impacts on the enterprise's policy that has

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<sup>9</sup> the Home Authority, for food safety purposes, is the local authority where the relevant decision-making base of an enterprise is located.

<sup>10</sup> the Originating Authority, for food safety purposes, is a local authority in whose area a decentralised enterprise produces goods and services

<sup>11</sup> the Lead Authority acts as a focal point of liaison on health and safety issues between other local authorities, the HSE and a business, organisation or intermediary group with multiple outlets across the country or a national membership, whose decision making bases is within its district.

<sup>12</sup> LOPP is a joint HSE/LACORS initiative to coordinate health and safety enforcement involving large organisations such as ASDA and Tesco.

<sup>13</sup> a web-based information source on standards of hygiene in food premises. See [www.gosport.gov.uk/safe2eat](http://www.gosport.gov.uk/safe2eat)

been agreed centrally by the decision-making base of the enterprise, then reference to the Home/Lead/Originating Authority is essential. Where appropriate, Home/Lead/Originating Authorities shall be advised of the action taken and its outcome.

### **Informal Action**

- 40 Informal action will be appropriate in the following circumstances :
- the consequences of non-compliance will not pose a significant risk to public health or to employees or members of the public who may visit the premises, and
  - the act or omission is not serious enough to warrant formal action, and
  - from the past history of the individual, enterprise or duty holder it can be reasonably expected that informal action will achieve compliance, and
  - confidence in the individual or duty holder, or in the management of the enterprise, is high.
- 41 Even where some of the above criteria are not met there may be circumstances in which informal action will be more effective than the formal approach. This may apply to businesses and enterprises associated with voluntary organisations using volunteers where no one is employed to work. In taking health and safety enforcement action contrary to that identified by the Enforcement Management Model (EMM) Authorised Officers must identify the reason for the proposed action in the “Outcome of Management Review” of the Enforcement Assessment Record of the EMM.
- 42 When informal action is taken to secure compliance Officers will ensure that written documentation is provided that :
- contains all the information necessary to understand what work is required, why it is necessary and the timescale for compliance
  - offers the opportunity for discussion or for the individual or proprietor to make representations, including contact point(s) and name(s)
  - indicates the statute or regulation contravened, measures which will enable compliance with the legal requirements and that other means of achieving the same effect may be chosen
  - provides the details of any other Council services or outside Agencies that may be able to provide assistance or related services
  - clearly indicates that any recommendations of good practice are not legal requirements.

### **Surrender, Seizure and Detention of Food**

- 43 Officers will encourage the voluntary surrender of food that is

suspected of not having been produced in compliance with the Food Hygiene (England) Regulations 2006<sup>14</sup>. Where voluntary measures are refused or inappropriate then Detention of Food notices will be served on the producer. Only Officers duly authorised by the Environmental Services Manager may serve notice to seize or detain food.

- 44 Where necessary, analysis of detained food will be undertaken as soon as possible by the Council's food examiner. Where detained food is considered to be in contravention of relevant legislation arrangements for its processing or destruction will be discussed with the producer. Where agreement on the destruction or processing with the producer is not reached, the matter will be brought before a Justice of the Peace for a Condemnation Order.
- 45 All food for destruction, either voluntarily or by way of a Condemnation Order, will be destroyed strictly in compliance with national guidance. The Council cannot accept voluntary surrender of raw meat or raw meat products.

#### **Fixed Penalty Notices**

- 46 A Fixed Penalty Notice may be issued for offences under the Health Act 2006 in respect of smoking in a smoke-free location or failing to display the required signs.
- 47 A Fixed Penalty Notice may be issued to an owner, occupier, manager or any other person in charge of smoke-free premises or a smoke-free vehicle for failing to display no smoking signs, or to an individual for smoking in smoke-free premises or in a smoke-free vehicle.
- 48 The amount of the penalty will be discounted if paid within a specified time period.
- 49 Persons to whom a Fixed Penalty Notice is issued may direct questions about the service of that Fixed Penalty Notice to the Head of Environmental Health. The Head of Environmental Health may decide upon the cancellation of a Fixed Penalty Notice.
- 50 If the person to whom a penalty notice has been given asks to be tried for the alleged offence proceedings may be brought against him.
- 51 Where the fixed penalty is not discharged the Council will consider action by way of legal proceedings.

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<sup>14</sup> [www.opsi.gov.uk/si/si2006/20060014.htm](http://www.opsi.gov.uk/si/si2006/20060014.htm)



### **Issue of Penalty Points**

- 52 The Council's Penalty Points Scheme forms part of the prevailing Hackney Carriage and Private Hire Conditions. This provides stepped enforcement for those licence holders who have contravened licence conditions or associated legal provisions. It does not, however, prejudice the Council's ability to take other actions which it is entitled to take under legislation, bye-laws or regulation.
- 53 The Head of Environmental Health is authorised to issue penalty points with the person concerned having the right of appeal to the Environmental Services Manager. The Head of Environmental Health has delegated authority to suspend a licence where the infringement is so serious as to place the public at risk or where the person concerned has accumulated 12 points in any 12-month period. Any suspension must be ratified at the next available Licensing Board.

### **Voluntary Closure of Food Premises**

- 54 The Council will consider voluntary closure of food premises where a health risk condition exists (as defined by Regulation 7(2) and Regulation 8(4), i.e. there is a risk/imminent risk of injury to health) provided that this undertaking is confirmed in writing and that the food business will not re-open without the officer's prior approval. Voluntary closure will not be accepted where there is no confidence that the proprietor will close the premises or cease the use of any equipment, process or treatment associated with the imminent risk.
- 55 If the business operator offers to close voluntarily the officer will :
- consider whether there is a risk of the establishment being re-opened without his knowledge and/or agreement (if this were to cause food poisoning or injury the Council could be criticised for not having used statutory powers)
  - recognise that there is no separate legal sanction against a business operator who re-opens for business after offering to close, although enforcement action for the actual breaches (e.g. unsafe food, similar processing as before, etc.) remains available
  - explain to the food business operator that, by making the offer to close, any right to compensation if a Court subsequently declines to make a Hygiene Emergency Prohibition Order is lost, and
  - ensure that frequent checks can be made on the establishment to ensure that it is not operational.

## **Statutory Notices**

- 56 Only Officers who are duly authorised by the Environmental Services Manager may issue (i.e. sign) Statutory Notices.
- 57 Authorised Officers must have personally witnessed the matter concerned, be satisfied that it is significant and that any other appropriate criteria are met before issuing or requesting any Statutory Notice. The Head of Environmental Health may issue certain Statutory Notices on the recommendation of Authorised Officers where the latter are not personally authorised to do so.
- 58 Authorised Officers shall endeavour to obtain the agreement of the duty holder regarding the placing of time limits on Statutory Notices, having taken due account of the risk. Authorised Officers will always discuss the works required with the duty holder, if possible resolve points of difference and fully consider alternative solutions.
- 59 When issuing a Statutory Notice the Authorised Officer will provide information about the right of appeal.
- 60 Failure to comply with a Statutory Notice will generally result in legal proceedings and/or work in default where appropriate and permitted.
- 61 Hygiene Improvement Notices : Officers will only consider the use of a Notice where one or more of the following criteria apply :
- there are significant contraventions of the legislation
  - there is a lack of confidence in the proprietor or enterprise to respond to the informal approach
  - there is a history of non-compliance with the Council's informal requests for action
  - standards are generally poor with little management awareness of statutory requirements
  - the consequences of non-compliance could be potentially serious to public health
  - in addition to any other formal action, e.g. prosecution, effective action also needs to be taken as quickly as possible to remedy conditions that are serious and deteriorating.
- 62 Hygiene Emergency Prohibition Notices : Officers will only consider the use of Hygiene Emergency Prohibition Notices where one or more of the following criteria apply :
- the consequences of not taking immediate and decisive action to protect public health would be unacceptable
  - an imminent risk of injury to health can be demonstrated; this might include evidence from relevant experts, including a food analyst or food examiner

- the guidance criteria concerning the conditions when prohibition may be appropriate, specified in the relevant Code of Practice, are fulfilled
  - there is no confidence in the integrity of an unprompted offer made by the proprietor to voluntarily close the premises or cease the use of any equipment, process or treatment associated with the imminent risk
  - a proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.
- 63 Where emergency action involving chemical contamination of food is being considered, Authorised Officers will normally take medical or other expert advice before reaching a final enforcement decision. The relevant guidance concerning which bodies are to be contacted will be consulted.
- 64 Where a Hygiene Emergency Prohibition Notice has been issued, an application for a Hygiene Emergency Prohibition Order must be made to the Magistrates' Court within three working days. Failure to do so will entitle the proprietor of the business to compensation.
- 65 The operator of a food business subject to a Hygiene Emergency Prohibition Order will be given not less than 24 hours notice of the intention to apply at the Magistrates' Court for such an Order.
- 66 Remedial Action Notices : Premises subject to approval(s) under E.C. Regulation 853/2004<sup>15</sup> that are in breach of requirements of the Regulation(s) may be subject to a Remedial Action Notice to address the breach.
- 67 Health and Safety Improvement Notices : Officers will only consider the use of Improvement Notices where indicated by the HSE's Enforcement Management Model assessment.
- 68 Health and Safety Prohibition Notices : Authorised Officers will only consider the use of Prohibition Notices where one or more of the following criteria apply :
- the consequences of not taking immediate and decisive action to protect health and safety would result in an unacceptable risk of personal injury
  - a serious risk of personal injury can be demonstrated; this might include evidence from relevant experts, such as a civil engineer or the Employment Medical Advisory Service
  - the Authorised Officer has had regard to any relevant Approved Code of Practice or HSE, HELA or LACORS Guidance, concerning the conditions when Prohibition may be appropriate

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<sup>15</sup> [www.food.gov.uk/multimedia/pdfs/h2ojregulation.pdf](http://www.food.gov.uk/multimedia/pdfs/h2ojregulation.pdf)

- the Authorised Officer has no confidence in the integrity of an unprompted offer made by the duty holder to voluntarily close the premises or particular part of the premises or to cease the use of any equipment, process or treatment associated with the unacceptable risk to personal injury
- a duty holder is unwilling to confirm in writing his or her unprompted offer of a voluntary prohibition
- an assessment under the EMM identifies service of a Prohibition Notice as an appropriate course of action.

### **Simple Cautions**

69 The following conditions will be met before a Simple Caution is administered :

- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction, and
- the suspected offender must admit the offence either verbally or in writing (there must be a record). A Simple Caution will not be appropriate where a person has not made a clear and reliable admission of the offence (for example where intent is denied or there are doubts about the person's mental health or intellectual capacity or where it is likely that the person could avail themselves of the provisions of a statutory defence), and
- it is in the public interest to use a Simple Caution as the appropriate means of disposal, and
- the suspected offender must understand the significance of a Simple Caution and give consent to being cautioned.

70 Simple Cautions cannot be given for smoke-free offences as none of these are indictable.

71 If all the above requirements are met, the Officer will always consider whether the offence makes it appropriate for disposal by a Simple Caution but where a suspect is under 18, a Simple Caution will not be given.

72 Where a person declines the offer of a Simple Caution the suspect will be advised that the Council has the discretion to proceed with the matter by way of legal proceedings.

73 Simple Cautions may be appropriate for individuals and corporate bodies. They will be used only in accordance with the relevant Home Office Circular, the Code of Practice made under section 22 of the Legislative and Regulatory Reform Act 2006<sup>16</sup>, the Code for Crown Prosecutors and relevant guidance from HSE, HELA, FSA, LACORS, etc.

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<sup>16</sup> see further explanation at [www.lacors.gov.uk/lacors/ContentDetails.aspx?id=14911](http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=14911)

- 74 When considering the disposal of a matter by way of a Simple Caution the Council will have regard to any aggravating or mitigating factors involved in the commission of the offence and determine which factors may be most appropriate in the local circumstances.
- 75 The Head of Environmental Health is the Officer duly authorised to issue Simple Cautions and will not be personally involved in the investigation of the offence. Should this be unavoidable, the Environmental Services Manager will make the necessary decisions. All decisions will be recorded in the Quality Log for the case.
- 76 The views of the victim, if any, will be taken into account and the proposal to offer a Simple Caution explained, though the fact that a victim declines to support a prosecution will not preclude the consideration of a Simple Caution. The final decision is at the discretion of the Council. The victim will be kept informed of the final outcome.
- 77 The suspect's criminal record will be checked to avoid inappropriate use of a Simple Caution. In particular, the Home, Lead or Originating Authority will be contacted for this purpose. If the suspect has previously received a Caution, then a further Simple Caution will not normally be considered unless the matter is trivial or unrelated.
- 78 The Simple Caution may be administered by post or in person. The suspect will be given adequate time to decide whether to accept, including the opportunity to seek independent legal advice.
- 79 Simple Cautions will be recorded and may be published.

### **Prosecution and/or Default Action**

- 80 Where circumstances have been identified which may warrant a prosecution, all evidence and information will be considered to enable a consistent, proportionate and objective decision to be made. For health and safety enforcement any decision to initiate proceedings must be supported by an EMM assessment indicating prosecution as an appropriate response.
- 81 A decision to prosecute will be made in any of the following circumstances and at the earliest opportunity :
- where the alleged offence involves a ~~flagrant breach~~ (From HSE Model Enforcement Policy, April 2008) reckless disregard of the law such that public health, safety or well-being has or is being put at risk
  - From HSE Model Enforcement Policy, April 2008 : where death was a result of a breach of the legislation
  - where the gravity of the alleged offence, taken together with the seriousness of any actual or potential harm, or the general record

- and approach of the offender, warrants it
- the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of an Authorised Officer
- where there has been a failure to pay the appropriate fine during the time specified on a Fixed Penalty Notice
- for persistently failing to comply with a Fixed Penalty Notice for failure to display the correct no smoking signs in smoke-free premises or a smoke-free vehicle or for smoking in smoke-free premises or in a smoke-free vehicle
- failing to prevent smoking in a smoke-free premises or a smoke-free vehicle
- a Simple Caution has been offered but rejected
- the alleged offence involves the failure to comply in full or in part with the requirements of a Statutory Notice
- there is a history of similar offences or persistent poor compliance
- there has been a failure to comply with a written informal warning or an Improvement Notice or Prohibition Notice
- Authorised Officers have been intentionally obstructed or assaulted in the lawful course and pursuit of their duties. This includes refusing to provide name and address when requested by an Authorised Officer.

82 The Borough Solicitor and the Head of Environmental Health will also consider prosecution where, following an investigation or other regulatory contact, the following circumstances apply :

- false information has been wilfully supplied or there has been intent to deceive
- there have been serious failures by the management of the business or organisation
- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law and conviction may deter others from similar failures to comply with the law.

83 When considering the decision to prosecute, Officers will also have regard to relevant Codes of Practice and guidance from the appropriate national regulator and consider the following factors :

- a) the seriousness of the alleged offence, e.g.
  - the risk or harm to public health
  - identifiable victims or potential victims
  - failure to comply with a Statutory Notice served for a significant breach of legislation
  - deliberate disregard for financial reward.

- b) the previous history of the party concerned, including :
  - offences following a history of similar offences
  - failure to respond positively to past warnings
  - failure to comply with statutory notices.
- c) the competence of any important witnesses and their willingness to co-operate.
- d) the willingness of the party to prevent a recurrence of the problem.
- e) the probable public benefit of a prosecution and the importance of the case, e.g. whether it might establish legal precedent or address a high incidence of similar offences in the area. Advice on the public interest is contained in the Code for Crown Prosecutors. The general advice is that the more grave the offence, the less likelihood there will be that the public interest will allow anything other than prosecution.
- f) whether any other action, such as issuing a Simple Caution or a Notice or imposing a Prohibition, would be more appropriate or effective. It is possible in exceptional circumstances to prosecute as well as issue a notice and failure to comply with a notice would be an additional offence.
- g) Any explanation offered by the company or the suspected offender. Suspected offenders will always be given the opportunity to offer an explanation before prosecution decisions are taken.
- h) Where applicable, the likelihood of the defendant being able to establish a 'due diligence' or 'best practicable means' defence. Where appropriate, reference will be made to case law and guidance issued by the Food & Drink Federation, FSA, LACORS, the Chartered Institute of Environmental Health, National Consumers Association, National Farmers Union and the Retail Consortium, etc.

84 Before a prosecution proceeds, the Borough Solicitor and Head of Environmental Health will ensure that they are satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction; a bare prima facie case will not be enough. Where there is insufficient evidence to prosecute, other types of formal action, such as Simple Cautioning, are not alternatives.

- 85 In circumstances where the Court must impose a Prohibition Order on a food business operator participating in the management of the food business due to a continuing risk to health, the Authorised Officer must obtain evidence in respect of the proprietor failing to take the necessary steps to ensure the provision of hygienic conditions and practices. This could include details relating to the absence or inadequacy of any documented food safety management systems, including HACCP (Hazard Analysis And Critical Control Point techniques<sup>17</sup>) and SFBB (Safer Food, Better Business<sup>18</sup>).
- 86 Default action may be an option when a Statutory Notice has not been complied with. This may be in addition to, or instead of, prosecution. Where the law allows the Council will consider taking default action to remedy a condition, etc., to achieve compliance with a Statutory Notice, if necessary under a Warrant to Enter the premises and including the seizure of equipment, etc. Costs will be recovered from the person(s) responsible where possible.
- 87 Where appropriate, Home, Originating and Lead Authorities or the Account Manager of a large, multi-site national organisation participating in the Large Organisations Partnership Pilot (LOPP) will be advised of the action taken and its outcome. In addition, the Office of Fair Trading may be informed of details of any relevant conviction.
- 88 From HSE Model Enforcement Policy, April 2008 (modified) : Additionally, the Council will actively consider the management chain and the role played by individual directors and managers. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.
- 89 From HSE Model Enforcement Policy, April 2008 (modified) : Where circumstances warrant it and the evidence to support a case is available the Council will prosecute without prior warning or recourse to alternative sanctions.
- 90 From HSE Model Enforcement Policy, April 2008 (modified) : In cases of sufficient seriousness, and when given the opportunity, the Council will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make the Council will have regard to Court of

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<sup>17</sup> HACCP is the main platform for international legislation and good manufacturing practices for all sectors of the food industry. It is an internationally recognised risk management tool which focuses on the hazards that affect food safety and establishes critical control limits at critical points during the production process.

<sup>18</sup> a simple approach to food safety developed by the FSA and aimed at small catering businesses; see [www.gosport.gov.uk/sections/environment/environmental-health/commercial-team/safer-food-better-business/](http://www.gosport.gov.uk/sections/environment/environmental-health/commercial-team/safer-food-better-business/)



Appeal guidance: the Court of Appeal has said "In our judgment magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence".

### **Revocation of Premises Approval**

- 91 Where premises have been approved for the manufacture of foods under any specific food products Regulations and there is in force an Emergency Hygiene Prohibition Notice or a Hygiene Prohibition Order the Authorised Officer, in consultation with the Head of Environmental Health, shall consider the revocation of the approval.

### **Licensed Premises**

- 92 Licensing Act 2003 : The Licensing authority is required to promote the following objectives in relation to premises and people licensed under the Act :
- preventing crime and disorder
  - protecting public safety
  - preventing nuisance
  - protecting children from harm.
- 93 Gosport Borough Council recognises the interests of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law and the four licensing objectives it seeks to promote. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law.
- 94 The Hampshire Licensing Protocol formalises the working agreement between licensing authorities, Hampshire Constabulary and Hampshire Fire & Rescue Service in respect of licensing compliance. This includes the nomination of liaison officers, disclosure arrangements, provision of advice, complaint investigation, review of licences, prosecutions, cautions, etc.
- 95 The Protocol sets out the roles and responsibilities of the various enforcement agencies. It promotes the targeting of agreed problem and high risk premises which require greater attention, while providing a lighter touch in respect of low risk premises which are well run.

- 96 In respect of instigating legal proceedings, the typical division of responsibility is as follows :

Crime and Disorder	Hampshire Police
Public Safety	Licensing Authority (i.e. the Borough Council), Hampshire Fire and Rescue Service, Hampshire Constabulary and Hampshire Trading Standards
Public Nuisance	Licensing Authority or Hampshire Police
Protection of Children	Hampshire Police, Licensing Authority, Hampshire Trading Standards in consultation with Hampshire County Council Children Services

- 97 In respect of making representations and seeking reviews, the division is as follows :

Crime and Disorder	Hampshire Police
Public Safety	Local Authority Health and Safety Service, Health and Safety Executive, Hampshire Constabulary and/or Hampshire Fire and Rescue Service
Public Nuisance	Local Authority Pollution Service and/or Hampshire Police
Protection of Children	Hampshire Children Services as the Child Protection Agency, and/or Hampshire Trading Standards

- 98 Gambling Licensing : The Head of Environmental Health is the appropriate person to initiate any enforcement action to be taken under the Gambling Act 2005.

### **Referral to Another Agency**

- 99 Where any matter is found to fall more appropriately under the enforcement regime of another regulatory body or agency, e.g. the Police authority or HSE, the case will be referred to that agency by the Council. In all cases of referred enforcement the person(s) under investigation will be notified in writing by the Council of the reasons for referral.

### **Revisits to Premises**

- 100 Following service of a Statutory Notice or a written informal warning and/or advice, officers will revisit the premises to check that compliance has been achieved. For very minor contraventions officers may advise that a check will be carried out at the next routine inspection. The decision on whether a follow-up visit is necessary will be based upon the seriousness of the non-compliance and the

likelihood that further formal action will be taken as a direct result of the visit. Where practicable, the officer who undertook the original visit or inspection will carry out the revisit if there are significant breaches of legislation.

### **Enforcement At Premises In Which The Council Has An Interest**

- 101 The Council will not take action against itself and where such action may prove necessary the matter will be passed to the Borough Solicitor for referral to the appropriate national enforcement authority, etc.
- 102 Where Council-owned premises are operated by a contractor or other occupier the Council shall retain responsibility for enforcement. Under these circumstances the Council will apply its enforcement policy and procedures in exactly the same way as it does in all other premises at which it has the enforcement responsibility.

#### **From HSE Model Enforcement Policy, April 2008 (modified) :** **Accident Investigation**

- 103 Accidents will be investigated in accordance with the principles of proportionality, consistency, targeting, transparency and accountability.
- 104 The purpose of investigation is to :
- identify immediate and underlying causes
  - ensure the duty holder takes appropriate remedial action to prevent reoccurrence
  - evaluate compliance with the relevant statutory provisions
  - apply the principles of the Enforcement Management Model and take enforcement action if appropriate.
- 105 Investigations will be :
- continued only so far as they are proportionate to the achievement of the objectives set for them [see below]
  - conducted and/or supervised by staff who are competent
  - provided with adequate resources and support, including information, equipment and staffing
  - conducted so that efficient and effective use is made of the resources committed to them
  - timely, so far as this is within the control of the investigating inspector
  - subject to suitable management procedures for monitoring the conduct and outcome of investigations

106 Factors to determine whether an investigation continues to be proportionate :

- public expectation, for example, where there has been a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries
- the potential (taking into account whether the accident could have been reasonably foreseen) for a repetition of the circumstances to result in a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries either in the activities of a specific duty holder or within industry generally
- the extent to which the available evidence allows conclusions as to causation to be drawn and supported with sufficient certainty, including conclusions as to responsibility for alleged breaches of relevant legislation
- the extent to which the resources needed for the investigation are disproportionate to the hazard(s) or risk(s)
- the prevalence of the event, either in the activities under the control of a specific duty holder, or in an industry sector generally.

### **Death at Work**

107 Where there has been a breach of health and safety law leading to a work-related death the Council will consider whether the circumstances of the case might justify a charge of manslaughter. Officers will liaise with the Police, Coroners and the Crown Prosecution Service (CPS) and if they find evidence suggesting manslaughter they will pass it on to the Police or, where appropriate, the CPS. From HSE Model Enforcement Policy, April 2008 (modified) : If the Police or the CPS decide not to pursue a manslaughter case, the Council will bring a health and safety prosecution if that is appropriate.

108 The Council will always carry out a site investigation of a reportable work-related death following liaison with the Police and where evidence indicates that a serious criminal offence or possible health and safety offences may have been committed. Such investigation will be undertaken in accordance with “Work Related Deaths: A protocol for liaison”<sup>19</sup> and the associated “Work Related Deaths: Investigators Guide”<sup>20</sup> both published by the HSE. This specifically excludes deaths from natural causes or by suicide.

From HSE Model Enforcement Policy, April 2008 (modified) :  
**Publicity**

<sup>19</sup> [www.hse.gov.uk/pubns/misc491.pdf](http://www.hse.gov.uk/pubns/misc491.pdf)

<sup>20</sup> [www.hse.gov.uk/enforce/investigators.pdf](http://www.hse.gov.uk/enforce/investigators.pdf)

- 109 The Council may publicise the names of all the companies and individuals who have been convicted in the previous 12 months of breaking the law and will also consider drawing media attention to factual information about charges that have been laid before the courts, having due regard to publicity that could prejudice a fair trial.
- 110 The Council will also consider publicising any conviction that could serve to draw attention to the need to comply with legal requirements, or deter anyone tempted to disregard their duties under the law.

### **PACE Interviews – Police And Criminal Evidence Act 1984**

- 112 Questioning of duty holders and other persons will be carried out as a formal interview where there is suspected involvement in criminal offences. All interviews shall be conducted with regard to the Act and associated Codes of Practice.

### **Human Rights Act 1998**

- 113 Regard shall be had to the Human Rights Act 1998 when applying this Policy.

From HSE Model Enforcement Policy, April 2008 :

#### **Explanatory Note : The HSE's Enforcement Management Model (EMM)**

The EMM is not a procedure in its own right. It is not intended to fetter inspectors' discretion when making enforcement decisions, and it does not direct enforcement in any particular case. It is intended to:

- promote enforcement consistency by confirming the parameters, and the relationships between the many variables, in the enforcement decision making process;
- promote proportionality and targeting by confirming the risk based criteria against which decisions are made;
- be a framework for making enforcement decisions transparent, and for ensuring that those who make decisions are accountable for them; and
- help experienced inspectors assess their decisions in complex cases, allow peer review of enforcement action, and be used to guide less experienced and trainee inspectors in making enforcement decisions.

The EMM and the associated procedures enable managers to review the decision making process and their inspectors' enforcement actions to ensure the purpose and expectations of the HSE's Enforcement Policy Statement have been met.

The EMM does not exist in isolation. It is supported by quality procedures which address, amongst other things, the selection and investigation of accidents.

## Appendix B

### Extract from Economic Prosperity Newsletter, Spring 2008

#### **Consultation on Revised Enforcement Policies**

The Regulator's Compliance Code, published by the Government in December 2007, sets out new requirements for local authority environmental health enforcement.

As a result, Gosport Borough Council will be implementing a revised Environmental Health Enforcement Policy, covering key areas of food safety, health and safety, licensing and smoke-free enforcement. The policy becomes effective from 6 April 2008 and businesses are being invited to comment on the policy during the first three months of operation. Details can be found on the Council's web site, [www.gosport.gov.uk/enforcement](http://www.gosport.gov.uk/enforcement), from Monday 7 April. Printed copies are also available on request from the same date by contacting Environmental Health on 023 9254 5505 or by visiting Gosport Town Hall between 9am and 5pm, Monday to Friday.

The deadline for feedback on the policy is 1 July 2008. For further information contact David Palmer, Head of Environmental Health, on 023 9254 5509 or e-mail [david.palmer@gosport.gov.uk](mailto:david.palmer@gosport.gov.uk).

### Extract from Members Information Bullet No. 21, 11 April 2008

#### **1. ENFORCEMENT POLICY REVIEW**

The Council recently approved a revised generic enforcement policy and Environmental Health enforcement policy. This was to reflect requirements of the new national Regulators Compliance Code. The policies came into effect on 13 March and 6 April respectively.

Stakeholder consultation has now commenced and runs until 1 July. Members will receive a report during the September Board cycle where amendments can be made if necessary.

Further information on the policies and review process can be found at <http://www.gosport.gov.uk/sections/environment/revised-enforcement-policies>

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Date Submitted: 1 April 2008*

Summary Leaflet Used During the Consultation



## REVISED ENFORCEMENT POLICIES

### Revised Enforcement Policies

The Council recently revised its generic and Environmental Health-specific enforcement policies and now seeks the opinion of any stakeholder, whether from the business sector, private individuals, neighbouring Councils or other interested organisations.

### Why is This Important to You?

The purpose of enforcement is to protect the public, the environment and groups such as consumers and workers. Enforcement can include offering advice and assistance as well as more formal action.

Formal enforcement action is usually an option of last resort, except in urgent or emergency cases, and remains an important part of the Council's approach to regulation. Most businesses want to comply with the law and the Council will, whenever possible, try to help businesses meet their legal obligations. Prevention is better than cure.

Enforcement action can make a positive contribution to economic growth by acting against rogue traders and helping to create a level playing field for businesses.

It is important that enforcement action taken by any regulator is always :

- **transparent** - i.e. is based on clear, understandable policies
- **accountable** - including consultation arrangements (such as this) and having complaint procedures in place in case things go wrong
- **proportionate to the risk** - ensuring that any action we require is not excessive
- **consistent** - although authorised staff are expected to exercise judgement in individual cases it is important to promote consistency
- **targeted** where it is needed, i.e. in the areas of greatest risk.

## **Reason for Revision of These Policies**

In December 2007 the Government published the Regulator's Compliance Code. This covers a wide range of enforcement activity affecting businesses and sets out requirements for councils. It comes into effect on 6<sup>th</sup> April 2008.

Where the Code does not apply the Council will continue to follow the principles of the Cabinet Office Enforcement Concordat, which we adopted in 2000.

A number of national bodies have issued guidance on enforcement action. We take account of this in all our regulatory work.

As well as taking incorporating the requirements of the new Code, the revised Environmental Health enforcement policy merges three earlier versions (covering food safety, health & safety and licensing) into one together with the smoke free laws introduced in 2007.

## **Consultation**

There was not enough time for the Council to consult on the revised enforcement policies before the April deadline. The new policies were therefore approved subject to consultation over the coming months.

Stakeholder feedback will be analysed and any amendments considered by Councillors in September 2008.

## **Who Are Our Stakeholders?**

Stakeholders fall into the following categories –

business proprietors : this is the group most likely to be the subject of a 'regulatory intervention' by the Council, for instance in the areas of food safety or health and safety at work

people who make a complaint to the Council about anything which has a potential to become an enforcement issue. This encompasses the vast majority of our reactive work although only a very small proportion of these cases results in any formal enforcement action



'offenders' : these will be individual citizens who, perhaps through some form of anti-social behaviour, give rise to complaint and become the subject of a 'regulatory intervention'

the Police and local Court Service : the police, local Magistrate's and Clerks have an interest the new policies

neighbouring local authorities may be interested in our proposals, in terms of ensuring cross-boundary consistency.

Any of these stakeholders could be members of Black and Minority Ethnic Groups or other 'hard to reach' groups.

### **Stakeholder Consultation Process**

The consultation will be carried out in the following ways :

mail shots : an invitation to contribute to the policy development process will be offered to businesses and local courts

web site : a copy of the revised policies will be posted on the Council's web site and responses invited

business newsletter : the Council's Economic Prosperity Section publishes a newsletter which is sent to all businesses within the Borough. The enforcement policy issue has been mentioned in an article and proprietors invited to participate in the consultation

individual discussion during visits to business premises : the issue will be raised by staff whilst visiting businesses in the course of routine duties and/or when investigating complaints, etc.

e-mail circulation to neighbouring local authorities and police

inclusion with customer satisfaction survey questionnaires

### Further Information

Copies of the policies and response form can be downloaded from our web site : [www.gosport.gov.uk/enforcement](http://www.gosport.gov.uk/enforcement)

Printed copies of the policies are available on request from the Environmental Health Section by :

- telephoning 023 9254 5505, 5506, 5507 or 5583 during office hours
- e-mailing a request to [ehs@gosport.gov.uk](mailto:ehs@gosport.gov.uk) at any time
- visiting the Environmental Health Reception at Gosport Town Hall (address overleaf) between 9 and 5, Monday to Friday.

### Consultation Timetable and Process

The deadline for feedback is 1 July 2008. Consultees should send their responses to :

Enforcement Consultation  
Gosport Borough Council  
Environmental Health  
**FREEPOST PO 10870**  
Town Hall, High Street  
Gosport PO12 1YZ

Use of the supplied response form, available on request or from our web site, [www.gosport.gov.uk/enforcement](http://www.gosport.gov.uk/enforcement), is preferred.

Officers will analyse the responses and prepare a report for Councillors who will consider what changes need to be made during their September Board and Council Meeting cycle.

Gosport Borough Council is committed to equal opportunities for all.

If you need this document in large print, on tape, in Braille or in other languages, please ask.

April 2008

## Appendix C

### List of Consultees

<b>Organisation</b>
Alverstoke Service Station
Anson Service Station
Any resident or other interested party – via GBC web site and leaflet
BP PLC
Budgens Local Petrol Station
Citizens Advice Bureau
Director of Regulatory Services, Fareham Borough Council
Environmental Health staff
GBC Councillors, via Members Information Bulletin dated 11 April
GBC Service Unit Managers
Gosport Access Group
Gosport Voluntary Action
Hanson PLC (local plus head office)
HCC Adult Services Equality, Diversity and Inclusion Manager
HCC Adult Social Services
HCC Children & Families
HCC Equality and Diversity Manager
HCC Youth Service
Head of Environment & Public Protection, Portsmouth City Council
Huhtamaki (UK) Ltd.
K&R Plant Hire
Local businesses via Economic Prosperity Newsletter
Manager of PRENO (Portsmouth Race Equality Network Org)
Morrisons (local plus head office)
Police
Pooles (Fareham) Ltd.
Portsmouth Housing Association
Portsmouth Magistrates' Court
Rusdene Services Ltd.
Scruse & Crossland Ltd.
Solent Cleaners (local plus head office)
Somerfield Stores Ltd.
Star Forton Rd Service Station
Star Solent Service Station
Tyco Healthcare UK Ltd.
Vector Aerospace Ltd.
Victim Support

**GOSPORT BOROUGH COUNCIL**

**REFERENCE**

**TO: POLICY AND ORGANISATION BOARD –  
17 SEPTEMBER 2008**

**FROM: HOUSING BOARD – 10 SEPTEMBER 2008**

**TITLE: PROPOSED DEVELOPMENT – LEE ROAD, GOSPORT**

**AUTHOR: HOUSING SERVICES MANAGER**

**Attached is a copy of the report that was considered by the Housing Board on the 10 September 2008 (Appendix 'B'), together with the Minute extract and Board Resolution (Appendix 'A').**

**RECOMMENDATION:**

To follow.

**APPENDIX 'A'**

**EXTRACT FROM THE MINUTES OF THE**  
**HOUSING BOARD MEETING**  
**10 SEPTEMBER 2008**

**Minute No.**

**PROPOSED DEVELOPMENT – LEE ROAD, GOSPORT**

To follow.

## APPENDIX B

<b>Board/Committee:</b>	Housing Board
<b>Date of Meeting:</b>	10 <sup>th</sup> September 2008
<b>Title:</b>	Proposed Development – Lee Road, Gosport
<b>Author:</b>	Housing Services Manager/OH
<b>Status:</b>	For Recommendation to Policy and Organisation Board

### **Purpose**

This report seeks a decision to recommend to the Policy and Organisation Board that Gosport Borough Council lease an area of land at Lee Road to Portsmouth Housing Association who would carry out the redevelopment of that area of land to provide social rented housing.

### **Recommendation**

To forward this report to the Policy and Organisation Board with the recommendation that a long lease of the land be granted at nil cost in lieu of grant and nomination rights.

#### **1 Background**

- 1.1 Lee Road is an area of land that was leased on a long lease to Portsmouth Housing Association (on 6 June 1994 when the redevelopment of the Dukes Road area was undertaken). One plot of land however was not leased as part of the agreement, with the intention for it to be used for visitor car parking.
- 1.2 In recent years however the site has been used for fly tipping and as a congregation site for local youths. This location has resulted in numerous reports of anti-social behaviour, including youth drinking, drug taking and swearing. There have been incidents of cars being dumped and burned out on the site.
- 1.3 A parking survey carried out by Portsmouth Housing Association shows that the land in question is not utilised for this purpose.
- 1.4 Ward Councillors were consulted regarding the redevelopment last year and supported, subject to detail, plans to build a house on the plot in question.

- 1.5 Local residents have shown an interest in having the site redeveloped for housing purposes and have shown a keen interest when Councillors, Council Officers and a PHA Officer visited the site last year.

## **2 Report**

- 2.1 It is proposed that the land in question is leased on a long lease to Portsmouth Housing Association at nil cost in lieu of grant funding. The proposal for the site is the provision of a specifically adapted house for use by a family nominated by Gosport Borough Council from the housing register. A specific family has been identified who have a severely disabled child and who would not be able to be appropriately housed by this Council from existing stock – without substantial Disabled Facilities Grant investment.

## **3 Risk Assessment**

- 3.1 The only risk identified to this scheme is the possibility that the Housing Association would be refused planning permission. To negate this risk, any report to Policy and Organisation Board would not be submitted without planning approval having been given on this site.

## **4 Conclusion**

- 4.1 After consultation with Ward Councillors and discussion with some neighbouring residents, Portsmouth Housing Association has had plans drawn for a disabled adapted house to be sited on a Gosport Borough Council owned plot of land that is currently not used for its intended purpose (parking).
- 4.2 This report proposes that Housing Board recommend to Policy and Organisation Board that the land in question is leased on a long lease to the Housing Association at nil cost in lieu of grant, in order to effectively utilise the land and assist in the appropriate re-housing of a household with specific needs.
-

<b>Financial Services comments:</b>	None
<b>Legal Services comments:</b>	The Council has the power to enter into the recommended lease, but it must ensure that the disposal in question falls within one of the General Consents issued under Section 25 of The Local Government Act 1988, otherwise a specific consent from the Secretary of State will be required. The proposed transfer, together with others where there is financial assistance or a gratuitous benefit to a Registered Social Landlord must not exceed £10million in any financial year.
<b>Service Improvement Plan implications:</b>	None
<b>Corporate Plan:</b>	None
<b>Risk Assessment:</b>	The risk is negated by the provision that no report would be put before the Policy and Organisation Board without prior planning approval for the proposed development.
<b>Background papers:</b>	None
<b>Appendices/Enclosures:</b>	
Appendix A	Site plans
<b>Report author/Lead author:</b>	Head of Housing Strategy and Enabling



<b>Board/Committee:</b>	POLICY & ORGANISATION BOARD
<b>Date of meeting:</b>	17 <sup>th</sup> SEPTEMBER 2008
<b>Title:</b>	APPOINTMENT PANEL
<b>Author:</b>	CHIEF EXECUTIVE
<b>Status:</b>	FOR DECISION

### **Purpose**

Personnel Sub-Board meeting on 3<sup>rd</sup> September 2008 approved the creation of a new post of Director of Economic Development, Tourism and the Arts.

For appointments at Director and Chief Officer level, the Board may appoint an Officer or an Appointment Sub-Board with power to act on its behalf.

### **Recommendation**

It is recommended that the Board appoint an Appointment Sub-Board to act on its behalf in making the appointment of Director of Economic Development, Tourism and the Arts.

## **1. Background**

- 1.1 In accordance with the Officer Employment Procedure Standing Orders (Part 4, Schedule 14 of the Constitution), the job description and person specification have been drawn up, and arrangements will be made for the appropriate advertising of the post.
- 1.2 The Officer Employment Procedure Standing Orders also provide, for Director and Chief Officer appointments, that "... the Policy and Organisation Board may appoint an Officer or an Appointment Sub-Board with power to act on its behalf on appointments".

## **2. Report**

- 2.1 The procedure adopted in the Council for the most recent Chief Officer appointments (Environmental Services Manager and Housing Services Manager) was an Appointment Sub-Board consisting of a representative of each political group (with the Chief Executive and any other Officers as appropriate in attendance).
- 2.2 It is requested that the Board determine the appropriate membership of the Appointment Sub-Board to draw up a short list, interview and agree the appointment to this post.

### **3. Risk assessment**

- 3.1 The appointment of this new Director post will provide necessary and valuable support and assistance in delivering development projects and supporting other staff, thus contributing to the achievement of the Council's strategic objectives.
- 3.2 The appointment also assists with succession planning, ensuring that appropriate skills and expertise are available for the future.

### **4. Financial implications**

- 4.1 The post will be graded at 80% CE, being £63,576 to £72,132, with the cost being met from the Housing and Planning Delivery Grant for 2008/9 and 2009/10.

### **5. Conclusion**

- 5.1 The Board are asked to nominate an Appointment Sub-Board to make the appointment to the newly created Director post.

<b>Financial implications:</b>	Contained in paragraph 4
<b>Legal implications:</b>	As set out in the report
<b>Service Improvement Plan implications:</b>	
<b>Corporate Plan:</b>	Service at the heart of the Council's mission to improve everyone's quality of life
<b>Risk Assessment:</b>	Paragraph 3
<b>Background papers:</b>	Constitution – Officer Employment Standing Orders (Part 4, Schedule 14)
<b>Appendices/Enclosures:</b>	Nil.
<b>Report author/Lead Officer:</b>	Ian Lycett