



Brighton & Hove  
City Council

# Overview & Scrutiny

Title:	<b>Overview &amp; Scrutiny Commission</b>
Date:	<b>22 July 2011</b>
Time:	<b>3.00pm</b>
Venue	<b>Committee Room 3, Hove Town Hall</b>
Members:	<b>Councillors:</b> Mitchell (Chair), Janio (Deputy Chair), Brown, Follett, Littman, Morgan, K Norman, Powell, Rufus and Summers
Contact:	<b>Tom Hook</b> <b>Head of Overview &amp; Scrutiny</b> 29-1110 tom.hook@brighton-hove.gov.uk

	The Town Hall has facilities for wheelchair users, including lifts and toilets
	An Induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter and infra red hearing aids are available for use during the meeting. If you require any further information or assistance, please contact the receptionist on arrival.
	<b>FIRE / EMERGENCY EVACUATION PROCEDURE</b>  If the fire alarm sounds continuously, or if you are instructed to do so, you must leave the building by the nearest available exit. You will be directed to the nearest exit by council staff. It is vital that you follow their instructions: <ul style="list-style-type: none"><li>• You should proceed calmly; do not run and do not use the lifts;</li><li>• Do not stop to collect personal belongings;</li><li>• Once you are outside, please do not wait immediately next to the building, but move some distance away and await further instructions; and</li><li>• Do not re-enter the building until told that it is safe to do so.</li></ul>

AGENDA

Part One	Page
27. PROCEDURAL BUSINESS	1 - 2
28. CHAIR'S COMMUNICATIONS	
29. CALL IN OF PROVISION OF THE COMMERCIAL PORTFOLIO'S ESTATE MANAGEMENT CONSULTANCY CONTRACT	3 - 32

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

Agendas and minutes are published on the council's website [www.brighton-hove.gov.uk](http://www.brighton-hove.gov.uk). Agendas are available to view five working days prior to the meeting date. Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

WEBCASTING NOTICE

This meeting may be filmed for live or subsequent broadcast via the Council's website. At the start of the meeting the Chairman will confirm if all or part of the meeting is being filmed.

You should be aware that the Council is a Data Controller under the Data Protection Act 1988. Data collected during this web cast will be retained in accordance with the Council's published policy (Guidance for Employees' on the BHCC website).

Therefore by entering the meeting room and using the seats around the meeting tables you are deemed to be consenting to being filmed and to the possible use of those images and sound recordings for the purpose of web casting and/or Member training. If members of the public do not wish to have their image captured they should sit in the public gallery area.

If you have any queries regarding this, please contact the Head of Scrutiny or the designated Scrutiny Support Officer listed on the agenda.

For further details and general enquiries about this meeting contact Mary van Beinum, Overview & Scrutiny Support Officer, (29-1062, email [mary.vanbeinum@brighton-hove.gov.uk](mailto:mary.vanbeinum@brighton-hove.gov.uk)) or email [scrutiny@brighton-hove.gov.uk](mailto:scrutiny@brighton-hove.gov.uk)

## Agenda Item 27

### To consider the following Procedural Business:-

#### A. Declaration of Substitutes

Where a Member of the Committee is unable to attend a meeting for whatever reason, a substitute Member (who is not a Cabinet Member) may attend and speak and vote in their place for that meeting. Substitutes are not allowed on Scrutiny Select Committees or Scrutiny Panels.

The substitute Member shall be a Member of the Council drawn from the same political group as the Member who is unable to attend the meeting, and must not already be a Member of the Committee. The substitute Member must declare themselves as a substitute, and be minuted as such, at the beginning of the meeting or as soon as they arrive.

#### B. Declarations of Interest

- (1) To seek declarations of any personal or personal & prejudicial interests under Part 2 of the Code of Conduct for Members in relation to matters on the Agenda. Members who do declare such interests are required to clearly describe the nature of the interest.
- (2) A Member of the Overview and Scrutiny Commission, an Overview and Scrutiny Committee or a Select Committee has a prejudicial interest in any business at meeting of that Committee where –
  - (a) that business relates to a decision made (whether implemented or not) or action taken by the Executive or another of the Council's committees, sub-committees, joint committees or joint sub-committees; and
  - (b) at the time the decision was made or action was taken the Member was
    - (i) a Member of the Executive or that committee, sub-committee, joint committee or joint sub-committee and
    - (ii) was present when the decision was made or action taken.
- (3) If the interest is a prejudicial interest, the Code requires the Member concerned:-
  - (a) to leave the room or chamber where the meeting takes place while the item in respect of which the declaration is made is under consideration. [There are three exceptions to this rule which are set out at paragraph (4) below].
  - (b) not to exercise executive functions in relation to that business and

(c) not to seek improperly to influence a decision about that business.

(4) The circumstances in which a Member who has declared a prejudicial interest is permitted to remain while the item in respect of which the interest has been declared is under consideration are:-

- (a) for the purpose of making representations, answering questions or giving evidence relating to the item, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise, BUT the Member must leave immediately after he/she has made the representations, answered the questions, or given the evidence,
- (b) if the Member has obtained a dispensation from the Standards Committee, or
- (c) if the Member is the Leader or a Cabinet Member and has been required to attend before an Overview and Scrutiny Committee or Sub-Committee to answer questions.

**C. Declaration of Party Whip**

To seek declarations of the existence and nature of any party whip in relation to any matter on the Agenda as set out at paragraph 8 of the Overview and Scrutiny Ways of Working.

**D. Exclusion of Press and Public**

To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

*Note: Any item appearing in Part 2 of the Agenda states in its heading the category under which the information disclosed in the report is confidential and therefore not available to the public.*

*A list and description of the exempt categories is available for the public inspection at Brighton and Hove Town Halls.*

# OVERVIEW AND SCRUTINY COMMISSION

## Agenda Item 29

Brighton & Hove City Council

<b>Subject:</b>	<b>Call in of Provision of the Commercial Portfolio's Estate Management Consultancy Contract</b>		
<b>Date of Meeting:</b>	<b>21 July 2011</b>		
<b>Report of:</b>	<b>Strategic Director, Resources</b>		
<b>Contact Officer:</b>	Name: Tom Hook	Tel:	29-1110
	E-mail: Tom.Hook@brighton-hove.gov.uk		
<b>Wards Affected:</b>	All		

### FOR GENERAL RELEASE

Note: The special circumstances for non-compliance with Council Procedure Rule 7, Access to Information Rule 5 and Section 100B (4) of the Local Government Act as amended (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) was the information contained within the reports was not available in time to meet dispatch deadlines.

#### 1. PURPOSE OF REPORT:

- 1.1 To determine whether to ask the Cabinet to reconsider its decision in relation to the Provision of the Commercial Portfolio's Estate Management Consultancy Contract which was taken at the Cabinet Meeting on July 14 2011.
- 1.2 The following information is contained in the appendices to this report:
  - a. **Appendix 1** contains the Call-In request;
  - b. **Appendix 2** contains the report from the Strategic Director, Resources which was agreed at the 14 July Cabinet meeting;
  - c. **Appendix 3** contains the official record of Cabinet's Decision in relation to this report;
  - d. **Appendix 4** contains an extract from the draft minutes of the Cabinet meeting;
  - e. **Appendix 5** contains further information on this issue supplied by the Strategic Director, Resources.

## 2. RECOMMENDATIONS:

- 2.1 (a) To note the decision taken by the Cabinet on the 14 July 2011 in relation to the Provision of the Commercial Portfolio's Estate Management Consultancy Contract;
- (b) To note the subsequent Call-In request;
- (c) To note the additional information supplied by the Strategic Director, Resources.
- 2.2 Having regard to the grounds for Call-In, to determine whether to refer the decision back to the Cabinet for reconsideration.

## 3. BACKGROUND INFORMATION

- 3.1 On 14 July 2011 the Cabinet agreed a report on Provision of the Commercial Portfolio's Estate Management Consultancy Contract (This report is reprinted in **Appendix 2**).
- 3.2 Further information relating to this matter from the Strategic Director, Resources is contained in **Appendix 5**.
- 3.3 On 15 July, Councillor Peltzer Dunn wrote to the Chief Executive, requesting that the Cabinet decision be called in. (The Call-In request is reprinted as **Appendix 1** to this report.)
- 3.4 The Chief Executive accepted the Call-In request on 15 July and asked for the issue to be considered at the Overview and Scrutiny Commission within seven working days.
- 3.5 Call-In is the process by which Overview & Scrutiny Committees can recommend that a decision made (in connection with Executive functions) but not yet implemented be reconsidered by the body which originally took the decision.
- 3.6 Call-In should only be used in exceptional circumstances, for instance where there is evidence that an important decision was not taken in accordance with the Council's constitution.
- 3.7 An Overview & Scrutiny Committee examining a decision which has been Called-In does not have the option of substituting its own decision for that of the original decision. The Overview & Scrutiny Committee may only determine whether or not to refer the matter back to the original decision making body for reconsideration.
- 3.8 In referring the decision back to Cabinet the Overview and Scrutiny Committee may attach recommendations for the Cabinet as to a new

course of action or a preferred alternate decision. Cabinet is however free to take the same decision again, or amend the decision in the light of the issues raised by the Overview and Scrutiny Committee.

3.9 In determining whether to refer a decision back to its originating body for reconsideration, the Overview & Scrutiny Committee should have regard to the criteria for Scrutiny reviews, as set out in the Council's constitution (Part 6.4.2) namely,

- The importance of the matter raised and the extent to which it relates to the achievement of the Council's strategic priorities, the implementation of its policies or other key issues affecting the well being of the City or its communities;
- Whether there is evidence that the decision-making rules in Article 11 of the constitution have been breached; that the agreed consultation processes have not been followed; or that a decision or action proposed or taken is not in accordance with a policy agreed by the Council;
- The potential benefits of a review especially in terms of possible improvements to future procedures and/or the quality of Council services;
- What other avenues may be available to deal with the issue and the extent to which the Councillor or body submitting the request has already tried to resolve the issue through these channels (e.g. a letter to the relevant Executive Member, the complaints procedure, enquiry to the Chief Executive or Chief Officer, Council question etc.);
- The proposed scrutiny approach (a brief synopsis) and resources required, resources available and the need to ensure that the Overview and Scrutiny process as a whole is not overloaded by requests.

3.10 In addition, the Committee should take into account:

- Any further information which may have become available since the decision was made
- The implications of any delay; and
- Whether reconsideration is likely to result in a different decision.

## **4. CONSULTATION**

4.1 No formal consultation has been undertaken in regard to this report.

## 5. FINANCIAL & OTHER IMPLICATIONS:

### Financial Implications:

- 5.1 Please see the original Cabinet report for the financial implications relating to the decision.

*Finance Officer Consulted: Rob Allen*

*Date: 18 July 2011*

### Legal Implications:

- 5.2 Call-in is a process by which overview and scrutiny ('O & S') committees can recommend that an executive decision made but not yet implemented be reconsidered by the decision-maker. Call-in does not provide for the O & S committee to substitute its own decision, but merely to refer the matter back to the decision-maker. That person or body can only be asked to reconsider any particular decision once.

In deciding whether or not to refer the decision back, the relevant O & S committee (here the O & S Commission), shall have regard to the following criteria:

- (i) the importance of the decision called-in, and the extent to which it relates to the achievement of the council's strategic priorities, the implementation of its policies or other key issues affecting the well-being of the City or its communities
- (ii) whether there is evidence that the decision-making rules in Article 13 of the constitution have been breached; that the agreed consultation processes have not been followed; or that a decision made is not in accordance with a policy agreed by Full Council
- (iii) any further information that may have become available since the decision was made
- (iv) the implications of any delay in implementing the decision
- (v) whether reconsideration is likely to result in a different decision

If, having scrutinised the decision taken by 14 July Cabinet, OSC is still concerned about it, OSC may refer the decision back to Cabinet for reconsideration, setting out in writing the nature of its concerns.

If the decision is referred back, the Cabinet shall reconsider whether to amend the decision or not before reaching a final decision and implementing it. This reconsideration shall take place either at the next programmed meeting of the Cabinet or at a special meeting called for the purpose.

*Lawyer Consulted: Oliver Dixon*

*Date: 18 July 2011*



Equalities Implications:

- 5.3 There are no direct equality implications to this report, although the 14 July Cabinet decision was made with regard to the equality implications contained within the original report of the Strategic Director, Resources.

Sustainability Implications:

- 5.4 There are no direct sustainability implications to this report, although the 14 July Cabinet decision was made with regard to the sustainability implications contained within the original report of the Strategic Director, Resources.

Crime & Disorder Implications:

- 5.5 There are no direct crime & disorder implications to this report, although the 14 July Cabinet decision was made with regard to the crime & disorder implications contained within the original report of the Strategic Director, Resources.

Risk and Opportunity Management Implications:

- 5.6 The Call-In procedure seeks to provide a system via which important decisions can be re-examined in a timely fashion, so as to ensure that the Council is not unnecessarily exposed to risk associated with taking decisions contrary to established procedure, whilst also minimising risk inherent in unduly delaying the decision making process.

Corporate / Citywide Implications:

- 5.7 There are no direct corporate/citywide implications to this report, although the 14 July Cabinet decision was made with regard to the corporate/citywide implications contained within the original report of the Strategic Director, Resources.

## **SUPPORTING DOCUMENTATION**

**Appendices:**

1. **Appendix 1** contains the Call-In request;
2. **Appendix 2** contains the report from the Strategic Director, Resources which was agreed at the 14 July Cabinet ;
3. **Appendix 3** contains the official record of the Cabinet's Decision in relation to this report;
4. **Appendix 4** contains the minutes of the Cabinet;
5. **Appendix 5** contains further information on this issue supplied by the Strategic Director, Resources.

**Documents in Members' Rooms:**

There are none.

**Background Documents:**

1. The Council's Constitution

## Appendix 1

Mr John Barradell  
Chief Executive  
Brighton & Hove City Council

15<sup>th</sup> July 2011

Dear John

I am writing under Overview and Scrutiny Procedure Rule 16.5 to request a call-in of the decision taken by Cabinet on 14<sup>th</sup> July – Provision of the Commercial Portfolio's Estate Management Consultancy Contract.

I believe that the decision taken by Cabinet, in respect of the Council's Downland Estate, was not taken in accordance with Article 13 of the Constitution ('Decision Making').

Recommendation 2.2 of the report gave Cabinet the option of either continuing to outsource the Downland Estate management or of bringing it back in-house. The Cabinet Member for Financial & Central Services decided, at the meeting, that the contract should be brought back in-house, without being put out to tender.

Although justification for bringing the contract back in-house was given in paragraph 3.11, I don't believe there was sufficient financial information contained within the report to enable Cabinet to make such a decision. Indeed, paragraph 3.12 states clearly that: "As the Council has no experience in directly managing the Downland Estate and it is vital to attract the right calibre of staff, it is difficult to calculate the exact additional ongoing cost of in-housing." How can a sound decision be taken in the best interests of council taxpayers when the officers themselves are not able to say what impact it will have upon the Council's overall financial position?

Paragraph 3.12 goes on to conclude: "It is, therefore, proposed that if the in-housing option is agreed, further work will be carried out to decide exactly how the new system would operate." This is commonly called shutting the stable door after the horse has bolted. The implications of in-housing versus outsourcing should have been laid out in full as part of the report to enable a sound and proper decision on recommendation 2.2 to be made.

The uncertainty and risk continues in paragraph 5.2. It states: "However, further work will be required to design the most cost-effective way to manage the services in-house and therefore better identify the cost involved. An additional budget will need to be identified to meet the

## Appendix 1

development and on-going implementation of a revised Downland Initiative strategy." So, not only are the financial implications not known, but no budget has been identified to cover the predicted additional costs.

There has also been a complete lack of consultation with affected parties which means that Cabinet was not in possession of potentially significant additional facts that could have informed their decision. Paragraph 3.11 states that under the Smith Gore contract, relationships with the Council's tenant farmers have improved from a very low base. However, there is no evidence given in the report that these farmers have been consulted about the management of their farms being taken over by the Council. Surely this should be a material consideration to a Cabinet decision?

In summary, I believe that the 2 elements of this report – the Urban Portfolio and the Downland Estate should be separated out. The reasoning and financial implications around the Urban Portfolio are sound and well-understood. However, I believe that considerably more feasibility and options appraisal work needs to be carried out on the implications and costs of bringing the Downland Estate back in-house before a sound and proportionate decision can be made by Cabinet. I strongly recommend to the Overview & Scrutiny Commission that this decision should be referred back to Cabinet when a full and proper evaluation of the options has been undertaken.

Councillor Garry Peltzer Dunn  
Deputy Leader of the Conservative Group

**CABINET****Agenda Item 44**

Brighton &amp; Hove City Council

<b>Subject:</b>	<b>Provision of the Commercial Portfolio's Estate Management Consultancy Contract</b>		
<b>Date of Meeting:</b>	<b>14 July 2011</b>		
<b>Report of:</b>	<b>Strategic Director, Resources</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Angela Dymott</b>	<b>Tel: 29-1450</b>
		<b>Richard Butler</b>	<b>29-1440</b>
		<b>Jessica Hamilton</b>	<b>29-1461</b>
	<b>E-mail:</b>	<b>angela.dymott@brighton-hove.gov.uk</b>	
		<b>richard.Butler@brighton-hove.gov.uk</b>	
		<b>jessica.hamilton@brighton-hove.gov.uk</b>	
<b>Key Decision:</b>	<b>Yes</b>	<b>Forward Plan No: CAB23507</b>	
<b>Wards Affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE****1. SUMMARY AND POLICY CONTEXT:**

- 1.1 To review the method of service provision of the Estate Management consultancy contract for the council's Commercial portfolio, currently provided externally by national consultants Cluttons and Smiths Gore for the Urban and Downland Estate portfolios respectively. The current contracts expire at the end of March 2012. The report explores the rationale for direct and indirect management options to inform the decision on how to procure these services in the future. If (part of) the service provision is to be delivered externally then the retender will need to be advertised in the Official Journal of the European Union (OJEU) as required by European Legislation. This is a lengthy process that needs to be started soon to adhere to the OJEU timetable.

**2. RECOMMENDATIONS:**

- 2.1 That Cabinet authorises:
- (a) The retendering of the Estate Management consultancy service for the commercial Urban portfolio, for a 5 year period, with an option for up to a 2 year extension. The timetable and process, are set out in paragraph 3.13 and Appendix 2.
  - (b) The granting of delegated powers to the Strategic Director, Resources in consultation with the Cabinet Member for Finance and Central Services to, a) award the contract following the recommendations of the evaluation panel and the results of the tendering process and b) approve an extension of up to 2 years to the contract if required dependent on performance.
  - (c) That the tender specifications be reviewed to ensure a quality service monitored by specific performance indicators with a positive attitude to income generation.

- 2.2 That Cabinet considers the options of continuing to outsource or bringing in-house the estate management of the Downland Estate as set out in the body of the report, and agrees on a way forward.
- 2.3 That in the event that Cabinet decides on the outsourcing option for the estate management of the Downland Estate, Cabinet grants the corresponding authorisations as per 2.1 a), b) and c) above for the retendering of the Estate Management consultancy service for the Downland Estate.

### **3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 The Council has a large commercial (Urban and Downland) portfolio that generates an annual income of approximately £9.5m pa. The portfolio comprises a mixture of properties as detailed in Appendix 1. The Council's property portfolio is significantly different to a standard institutional investment portfolio managed purely on investment criteria.
- 3.2 The urban portfolio comprises mainly secondary and tertiary properties and a small proportion of prime retail property. In addition there are a number of industrial estates developed mainly in the 1960s on ground leases and a wide range of other properties. Income generation is a key factor as we have a legal obligation to adopt sound working practices to secure best consideration in respect of such an important public asset. In addition the income helps support other key services in the city.
- 3.3 The agricultural portfolio or Downland Estate extends to about 10,500 acres (4400hectares) consisting of 22 Agricultural Act Holdings, 14 farm business tenancies, 7 commercial tenancies and 7 license agreements. Although the portfolios are currently held mainly for investment purposes, they are managed on the basis of more wide-ranging criteria taking account of environmental, social and economic regeneration as detailed under the Downland Initiative strategy. The Property and Design support service are the current owners of this strategy.
- 3.4 The Council also retains a large seafront property holding comprising a mixture of leisure and retail uses which generates an income of approximately £1m pa. Historically the seafront has been excluded from the main core contract as this is a specialist area regenerated in accordance with a specific strategy. It is not therefore proposed that the management of these properties be outsourced and this service will continue to be managed by a dedicated Estate surveyor in Property & Design but specialist advice is to be engaged particularly in regard to the clubs and bars which require specialist property knowledge of those trades and the factors affecting the businesses and assessment of their value.
- 3.5 Current Estate Management**  
The Property & Design service manage two outsourced contracts for the core day-to-day estates functions of the Council's commercial (Urban and Downland) portfolio. The Urban contract is handled by Cluttons and the Downland by Smiths Gore. These companies provide a full range of services including; rent and service charge collection, chasing arrears, new lettings, rent reviews, lease renewals, assignments of leases, instructing and liaising with solicitors, addressing tenants queries, maintenance issues, facilities management,

disputes, landlord & tenant issues and a range of minor activities involved in managing buildings and engaging with hundreds of tenants.

- 3.6 The more sensitive and strategic functions are managed by the council's Property Estates team within the Property and Design service. About 20% of the urban portfolio of properties, that require low maintenance and management, are managed by the Council's Property Estates team. This represents value for money for the council as the degree of management intervention is limited.

### **3.7 Urban Portfolio**

The management of the urban portfolio has been outsourced since 1995 and retendered in 2000 and 2005. As part of the Asset Management process Property & Design service continues to review the commercial portfolio both as a whole and in parts together with the management arrangements. The rationale identified for holding properties continues to work well and facilitates comprehensive investment, revitalisation and redevelopment of the City in line with corporate objectives as well as generating income to support other services. We have progressively developed strategic themes which form an important part of the overall management approach of the council that are put into effect through the contract specification by the managing agents. These themes include; retaining the character and mixed independent retail trading nature of The Lanes and the North Laine, promoting small and medium enterprises (SMEs), encouraging diversity, retaining individuality and adapting leasing arrangements to assist small businesses.

- 3.8 Experience demonstrates that outsourcing of the urban portfolio provides a number of advantages not available with in-house management including;

- The ability to utilise the breadth and depth of commercial property experience available in a large national property practice and take advantage of the research capability and in depth market knowledge available within professional commercial firms working full time in the property market. The commercial property market has become very sophisticated and such market knowledge and marketing expertise are vital to letting properties especially in times of difficult market conditions like those we have experienced over the past 3 years.
- Greater flexibility to deal with inevitable peaks and troughs in workload which can be greatly accentuated in times of prolonged market uplift or downturn
- Avoidance of the problem of attracting and retaining suitably qualified professional staff to the council.
- Enabling the Property Estates team to concentrate on strategic property issues whilst the management agents address the many demands of the commercial urban portfolio.

- 3.9 Due to the commercial complexity of the urban estate, it is proposed that the outsourcing of these core management functions to one main contractor continues. Additionally, it is proposed that the tendered contract specification be reviewed and updated with lessons learned to reflect better performance measures and incentives to ensure a quality service with a positive attitude to income generation. It is considered that value for money and greater flexibility will be achieved more readily with a 5-year contract offering the option of an extension of up to 2-years subject to performance. If as a result of the re tendering exercise the contract is awarded to a contractor who is different to the

incumbent, there may be issues involving the transfer of legal obligations in relation to personnel between those parties.

### **3.10 Agricultural Portfolio – Downland Estate**

The Downland Estate is currently managed to provide income generation, but within the Downland Initiative policy developed in 2005. The Downland Initiative vision is to ensure social, economic and environmental aims and benefits are achieved and has the overarching aim to “reconnect the people of Brighton & Hove to a more biodiverse Downland with better education and improved access and a better sense of connection to the land”. So far, there has been limited success in implementing the policy mainly due to the lack of central drive to join-up the large range of services and partners involved and sufficient funding.

The Downland Initiative is now 6 years old and needs reviewing in light of some significant changes since its inception:

- The Downland Estate is a key to the new Administration’s strategic direction to create a Biosphere Reserve.
- The formation of the South Downs National Park which provides a great opportunity for different approaches to the development of the Downs.
- The rapidly increasing potential for eco-tourism.

A review would give the development of the Downland new vigour and would allow us to bid for support from the different funding streams that are becoming available. Critical partners in the implementation of any Downland policy are the tenant farmers and our relationship and ability to influence them is therefore vital to success. As estate management is a key method of influencing tenant farmers, it is suggested that alternative ways of delivering the service are also considered.

3.11 Smiths Gore took over the day-to-day estates management contract in 2005. They have had some success in introducing changes, under the direction of the Property and Design service, to support the Downland Initiative. Additionally, they have improved relationships with tenant farmers that had floundered under previous contractors. However, the nature of any contract places our relationship at arms length. Currently, risks associated with this issue are managed through the design of the contract’s specifications and contract management. A more direct relationship, by bringing the day-to-day estate management in-house, could minimise these risks and provide the Council with greater influence in implementing a revised policy.

3.12 However, there would be additional on-going cost in pursuing the in-housing option and it may be difficult to recruit sufficiently skilled staff. The current contract costs approximately £80k pa (£20k of which is unfunded, the budget being approximately £60k) for which Smiths Gore provide ad-hoc specialist support and employ 1.5 FTEs to provide basic estate management. As the council has no experience in directly managing the Downland Estate and it is vital to attract the right calibre of staff, it is difficult to calculate the exact additional on-going cost of in-housing. It is estimated to be in the region of £50k to £70K pa spread across legal, finance, estate management and some spot purchasing of outside very specialist support (a total spend of between £130k to £150k). These additional costs could be reduced by a holistic review of all staff likely to be involved in the support of the Downland Estate and ensuring work is placed in



teams where economies of scale can be maximised. Additionally, the successful implementation of a reinvigorated Downland Initiative, may reduce overall environmental costs in the longer term and, in so doing, allow us to bid for external funding and release funds from partner agencies. It is therefore proposed that if the in-housing option is agreed, further work be carried out to decide exactly how the new system would operate.

Cabinet are therefore asked to consider in-housing the estate management of the Downland Estate as well as the option of re-tendering the contract to continue with the outsourcing arrangements.

### **3.13 Re-tendering Timetable**

The existing contract for both services ends on 31 March 2012. The proposed OJEU timetable set out in Appendix 2 and is tight. Subject to Cabinet approval we would need to place the OJEU advert(s) as soon as possible in order to achieve tender award(s) in January 2012 followed by a mobilisation period. To prepare for the re-tendering process a cross departmental working group will be established to work on the specification, evaluation criteria and procurement process to comply with European legislation. The Property Estates team are working closely with the Procurement team. Any recruitment and selection issues would also need to be addressed within the proposed timetable.

## **4. CONSULTATION**

- 4.1 Regular consultation will continue with the relevant stakeholders, councillors and the cross departmental working group

## **5. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 5.1 It is expected that the estimated expenditure under the retendered contract will increase by 5-10% in line with the increase of professional fees over the past 7 years although some further variation will depend upon the inclusion of additional properties and services. The new contract will be off-set to a degree by the variations in the scope of the portfolio and functions tendered and will have to be reviewed at the tender evaluation stage to enable the appropriate negotiations to occur.
- 5.2 Bringing the Downland estate management contract in house will increase on-going costs across finance, legal and estate management. The current budget is £59,160. There is expected spend of £27k in 11/12 to cope with an increase in very specialist support to lease renewals etc. The current budget base provision would need to be increased to approximately between £110k and £130k (an increase of £50k to £70k) and if work levels continue at last year's rate, an additional £27k will need to be found for continued specialist support. However, further work will be required to design the most effective way to manage the services in house and therefore better identify the cost involved. An additional budget will be need to be identified to meet the development and on-going implementation of a revised Downland Initiative strategy; this is projected to be in the region of £25,000. These additional costs would be identified within the FY12/13 budget.

*Finance Officer consulted: Rob Allen*

*Date: 27/06/11*

Legal Implications:

- 5.3 The retender of the Estate Management consultancy service contract(s) is subject to compliance with the full application of applicable EU legislation together with the Public Contracts regulations 2006, the Council's Contract Standing Orders and Financial Regulations.
- 5.4 The Transfer of Undertaking (Protection of Employment) regulations 2006 (TUPE) may apply should the management of the Agricultural (Downland) portfolio be transferred in-house. Under the existing contract with Smiths Gore, the contractor is obliged to provide the council with TUPE information which will help determine whether TUPE applies. As this information has not yet been requested, it is not possible at this juncture to comment on what liabilities the council will be taking on board. If there is not an employee and/or organised group of employees immediately before the change whose principal purpose is carrying on the relevant activities, a TUPE transfer will not occur. If a TUPE transfer does not occur, a recruitment process will need to be initiated and if upon provision of information it is determined that a TUPE transfer has occurred all of Smiths Gore's rights, duties and liabilities under or in connection with the transferring employees' contracts pass to the Council.
- 5.5 The recommendations in section 2 are proper to be referred to Cabinet for approval. This is to comply with Contract Standing Order 3.1, which stipulates that authority to enter into a contract(s) worth more than £500,000 be given by either Cabinet or the relevant Cabinet Member.

*Lawyer Consulted:*

*Isabella Hallsworth*

*Date: 27/06/11*

Equalities Implications:

- 5.6 Equalities issues are addressed in recruitment and the tendering process and contract agreement.

Sustainability Implications:

- 5.7 These issues will be addressed in the developing Downland Strategy and policies and tender specification ensuring that the successful bidder has commitments in place consistent with those promoted by the council.

Crime & Disorder Implications:

- 5.8 There are no crime & disorder implications.

Risk & Opportunity Management Implications:

- 5.9 Risks are that the council will be unable to recruit appropriately, few tenders are received and tender prices are high. Alternatively there could be a very high competitive level of interest which is to the council's advantage although the short listing process more time consuming.

## Corporate / Citywide Implications:

- 5.10 As contained in the body of the report, promoting the Downland Initiative strategy, regeneration of the City, value for money and a sustainable economy.

## **6. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

- 6.1 Return management of Urban portfolio to the Property Estates team.** This would bring the properties under direct internal control and reduce some of the communication and transactions that occur between the management company, the Estates team and Finance officers. However, it would lose all the key benefits of employing an external advisor identified above. In addition, as TUPE may apply it is not clear how many staff would transfer from Cluttons although the information we have indicates that at least 9 full time staff are employed in managing the portfolio including 2 based in New England House. From a comparison of the cost of the Cluttons contract and bringing 9.5(anticipated) staff in house it is apparent that in-sourcing this function would be more costly however a detailed analysis has not been done. The need for separation of the strategic and core management functions is important and cannot be overstated. Whilst both functions could take place in house we would have none of the benefits identified in 3.8 above accruing from outsourcing core management. In addition Finance staff within Cluttons' head office issue rent demands, collect the rent, arrears and provide other financial services which if passed to the council would create significant demands on the council's Finance team. Legal input on lease transactions and other Landlord & Tenant requirements would need in-house legal commitment that currently is not available.
- 6.2 Return the management of the Agricultural properties to the Property Estates team.** This option is outlined in paragraphs 3.10-3.12 above.
- 6.3 Outsource all of the Estates team work to an external management organisation.** In practice it is unlikely to be possible or desirable to outsource everything to the external consultancy company. It will remain necessary to retain an internal contact to liaise with the external organisations, ensure the strategic priorities of the council and City are met and monitor performance. It is vital to retain the strategic and property functions in house to maintain an overview and clear sense of direction for the property portfolio. In addition it is advantageous to retain sensitive and high value, low management, properties in house to retain close control and reduce costs.

## **7. REASONS FOR REPORT RECOMMENDATIONS**

- 7.1** To review the service delivery options for the major part of the council's commercial (urban and agricultural) portfolio to enable Cabinet to take an informed decision on the future provision of these services. The management and delivery of this service through a mixed economy has benefits for the council in terms of customer service, expertise, skills, capacity, value for money and efficiencies. This in turn allows the in house team to monitor the process and provide strategic and other property advice including the more sensitive issues in connection with the commercial and the operational properties of the council. Furthermore this split of functions allows the council to take advantage of the other benefits identified in 3.8 whilst retaining professional expertise in house to provide property advice to all services within the council on land and property

related issues. This is a constantly evolving area with fresh initiatives, such as the Localism Bill and the emerging Downland Strategy. The advantages and disadvantages of bringing the Downland estate management function in-house have been set out and need to be balanced against the council's policies and objectives.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Commercial Portfolio – Property Mix & Income Generation
2. Proposed Timetable

### **Documents in Members' Rooms**

None

### **Background Documents**

None

**Commercial Portfolio (Urban & Agricultural) – Property Mix**

Retail	63%
Industrial	22%
Office	3%
Agricultural	8%
<u>Residential, leisure, parking and miscellaneous properties</u>	<u>4%</u>
	100%

**Commercial Portfolio (Urban & Agricultural) - Income Generation**

Retail	67%
Industrial	15%
Offices	6%
Agricultural	7%
<u>Residential, leisure, parking and miscellaneous properties</u>	<u>5%</u>
	100%



**Proposed Timetable**

Place OJEU Notice	15 <sup>th</sup> July 2011
Expressions of Interest	24 <sup>th</sup> August 2011
Pre-Qualification Questionnaire returned	by 26 <sup>th</sup> July 2011
PQQ's reviewed and expressions of interest evaluated	7 <sup>th</sup> September 2011
Tenders sent out	23 <sup>rd</sup> September 2011
Tender Close	2 <sup>nd</sup> November 2011
Tender Opening	3 <sup>rd</sup> November 2011
Tender evaluation and Shortlist	15 <sup>th</sup> December 2011
Tenderers' presentations and interviews	18 <sup>th</sup> December 2011
Tender award, approval under delegated powers	16 <sup>th</sup> January 2012
Contract Handover start January	Late March 2012
Contract commencement	1st April 2012





Decision No: CAB022 – 14/07/11

Forward Plan No: CAB23507

This record relates to Agenda Item 44 on the agenda for the Decision-Making

## RECORD OF CABINET KEY DECISION

<b>DECISION-MAKER:</b>	CABINET
<b>PORTFOLIO AREA:</b>	FINANCE & CENTRAL SERVICES
<b>SUBJECT:</b>	PROVISION OF THE COMMERCIAL PORTFOLIO'S ESTATE MANAGEMENT CONSULTANCY CONTRACT
<b>AUTHOR:</b>	ANGELA DYMOTT, RICHARD BUTLER, JESSICA HAMILTON

### THE DECISION

- (1) That Cabinet authorises:
  - (a) The retendering of the Estate Management consultancy service for the commercial Urban portfolio, for a 5 year period, with an option for up to a 2 year extension. The timetable and process, are set out in paragraph 3.13 and Appendix 2.
  - (b) The granting of delegated powers to the Strategic Director, Resources in consultation with the Cabinet Member for Finance and Central Services to, a) award the contract following the recommendations of the evaluation panel and the results of the tendering process and b) approve an extension of up to 2 years to the contract if required dependent on performance.
  - (c) That the tender specifications be reviewed to ensure a quality service monitored by specific performance indicators with a positive attitude to income generation.
- (2) That Cabinet ~~considers the options of continuing to outsource or~~ **agrees to** bringing in-house the estate management of the Downland Estate as set out in the body of the report, ~~and agrees on a way forward.~~
- (3) ~~That in the event that Cabinet decides on the outsourcing option for the estate management of the Downland Estate, Cabinet grants the corresponding authorisations as per 2.1 a), b) and c) above for the retendering of the Estate Management consultancy service for the Downland Estate.~~

**REASON FOR THE DECISION**

To review the service delivery options for the major part of the council's commercial (urban and agricultural) portfolio to enable Cabinet to take an informed decision on the future provision of these services. The management and delivery of this service through a mixed economy has benefits for the council in terms of customer service, expertise, skills, capacity, value for money and efficiencies. This in turn allows the in house team to monitor the process and provide strategic and other property advice including the more sensitive issues in connection with the commercial and the operational properties of the council. Furthermore this split of functions allows the council to take advantage of the other benefits identified in 3.8 whilst retaining professional expertise in house to provide property advice to all services within the council on land and property related issues. This is a constantly evolving area with fresh initiatives, such as the Localism Bill and the emerging Downland Strategy. The advantages and disadvantages of bringing the Downland estate management function in-house have been set out and need to be balanced against the council's policies and objectives.

**DETAILS OF ANY ALTERNATIVE OPTIONS**

**Return management of Urban portfolio to the Property Estates team.** This would bring the properties under direct internal control and reduce some of the communication and transactions that occur between the management company, the Estates team and Finance officers. However, it would lose all the key benefits of employing an external advisor identified above. In addition, as TUPE may apply it is not clear how many staff would transfer from Cluttons although the information we have indicates that at least 9 full time staff are employed in managing the portfolio including 2 based in New England House. From a comparison of the cost of the Cluttons contract and bringing 9.5(anticipated) staff in house it is apparent that in-sourcing this function would be more costly however a detailed analysis has not been done. The need for separation of the strategic and core management functions is important and cannot be overstated. Whilst both functions could take place in house we would have none of the benefits identified in 3.8 above accruing from outsourcing core management. In addition Finance staff within Cluttons' head office issue rent demands, collect the rent, arrears and provide other financial services which if passed to the council would create significant demands on the council's Finance team. Legal input on lease transactions and other Landlord & Tenant requirements would need in-house legal commitment that currently is not available.

**Return the management of the Agricultural properties to the Property Estates team.** This option is outlined in paragraphs 3.10-3.12 above.

**Outsource all of the Estates team work to an external management organisation.** In practice it is unlikely to be possible or desirable to outsource everything to the external consultancy company. It will remain necessary to retain an internal contact to liaise with the external organisations, ensure the strategic priorities of the council and City are met and monitor performance. It is vital to retain the strategic and property functions in house to maintain an overview and clear sense of direction for the property portfolio. In addition it is advantageous to retain sensitive and high value, low management, properties in house to retain close

control and reduce costs.

#### **OTHER RELEVANT MATTERS CONCERNING THE DECISION**

The recommendations were amended to reflect the Cabinet's decision to bring the estate management of the Downland Estate in-house.

#### **CONFLICTS OF INTEREST**

None.

#### **CONFIRMED AS A TRUE RECORD:**

**We certify that the decision this document records was made in accordance with the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 and is a true and accurate record of that decision**

**Date:**

14 July 2011

**Decision Maker:**

Councillor Bill Randall  
Leader of the Council

**Signed:**



**Proper Officer:**

14 July 2011

Mark Wall, Head of Democratic Services

**Signed:**



#### **SCRUTINY**

Note: This decision will come into force at the expiry of 5 working days from the date of the meeting at which the decision was taken subject to any requirement for earlier implementation of the decision.

*Or: This decision is urgent and not subject to call-in (date of CE's agreement to urgency of decision).*

#### **Call-In Period**

15-21 July 2011

**Date of Call-in** *(if applicable) (this suspends implementation)*

**Call-in Procedure completed** *(if applicable)*

**Call-in heard by** *(if applicable)*

**Results of Call-in** *(if applicable)*



**BRIGHTON & HOVE CITY COUNCIL**

**CABINET**

**4.00PM 14 JULY 2011**

**COUNCIL CHAMBER, HOVE TOWN HALL**

**DRAFT MINUTES**

**Present:** Councillors Randall (Chair), Bowden, Davey, Duncan, Jarrett, J Kitcat, Shanks, Wakefield and West

**Also in attendance:** Councillors Peltzer Dunn (Opposition Spokesperson) and Mitchell (Opposition Spokesperson)

**Other Members present:** Councillors Fitch, Gilbey, Hawtree, MacCafferty, Mears, Morgan, A Norman, K Norman, Simson and Wealls

**PART ONE**

**44. PROVISION OF THE COMMERCIAL PORTFOLIO'S ESTATE MANAGEMENT CONSULTANCY CONTRACT**

- 44.1 The Cabinet considered a report of the Strategic Director, Resources concerning a review of the method of service provision of the Estate Management consultancy contract for the council's Commercial portfolio.
- 44.2 Councillor J Kitcat explained that the council's valuable commercial portfolio was currently managed in two parts with separate external consultants managing the Urban and Downland Estates portfolios respectively. He advised that the Cabinet was seeking to bring the estate management of the Downland Estate in-house to enable increased control and allow the council to have greater influence in implementing a revised Downland Initiative policy.
- 44.3 Councillor West stated that the advent of the South Downs National Park had brought many new opportunities, including the potential to improve access, increase eco-tourism and provide new employment prospects. By bringing the Downland Estate management in-house the council would be able to achieve closer management of such opportunities.
- 44.4 Councillor Peltzer Dunn requested that the meeting move into confidential session as he wished to request more detailed financial information, which could be commercially sensitive.
- 44.5 Councillor J Kitcat stated that adequate financial information had been included in the report and explained that the Cabinet was seeking to agree to tender for management of

the Urban portfolio and not to tender for the management of the Downland portfolio; a decision on how to proceed with the structures for management of the Dowland portfolio was not included in the report.

- 44.6 In response to a question from Councillor Peltzer Dunn, Councillor J Kitcat advised that a seafront surveyor had already been employed, but that the council would need to recruit staff to ensure that it had the necessary expertise available in-house.
- 44.7 Councillor Mitchell raised concerns about the decision to bring the management of the Downland portfolio in-house based on the information in the report and the risks posed to the Council; she advised the Cabinet to be mindful of its duty to its tenant farmers. She stated that it was unsafe to make such a decision while the costs remained unclear and that the benefits must be demonstrated to the taxpayer before proceeding.
- 44.8 Councillor Peltzer Dunn queried the lack of a strategy for the in-house management of the Downland portfolio and the need for more detailed financial information.
- 44.9 The Chair stated that the Administration felt it necessary to bring the management of the Downland portfolio in-house to make the most of the opportunities presented by the South Downs National Park and that he was confident it would be successful. He stated that the necessary financial information was included in the report and that a detailed strategy would be drawn up.
- 44.10 Councillor J Kitcat explained that closer control of the Downland portfolio was key to the Administration's plans to create a biosphere reserve and that it would bring significant opportunities for external funding and benefits for the city. He reiterated that the Cabinet was simply agreeing not to tender for the management of the Downland portfolio and that structures for the in-house management would be considered by the Cabinet at a future meeting.
- 44.11 In response to comments from Councillor Peltzer Dunn, the Head of Legal & Democratic Services advised that recommendation 2.2 presented the Cabinet with two options and that Councillor J Kitcat had moved a motion to bring management of the Downland portfolio be in-house. He stated the revised wording of recommendation 2.2, to reflect Councillor J Kitcat's motion, would be: "That Cabinet agrees to bring in-house to bring the estate management of the Downland Estate as set out in the body of the report" and advised that recommendation 2.3 had become obsolete.
- 44.12 Councillor J Kitcat noted that a revised version of Appendix 2 had been circulated.
- 44.13 The Chair put the recommendations, including the revised wording of paragraph 2.2 to the vote.
- 44.14 **RESOLVED** – That, having considered the information and the reasons set out in the report, the Cabinet accepted the following recommendations:
- (1) That Cabinet authorises:
    - (a) The retendering of the Estate Management consultancy service for the commercial Urban portfolio, for a 5 year period, with an option for up to a 2

- year extension. The timetable and process, are set out in paragraph 3.13 and Appendix 2.
- (b) The granting of delegated powers to the Strategic Director, Resources in consultation with the Cabinet Member for Finance and Central Services to, a) award the contract following the recommendations of the evaluation panel and the results of the tendering process and b) approve an extension of up to 2 years to the contract if required dependent on performance.
  - (c) That the tender specifications be reviewed to ensure a quality service monitored by specific performance indicators with a positive attitude to income generation.
- (2) That Cabinet ~~considers the options of continuing to outsource or~~ **agrees to** bringing in-house the estate management of the Downland Estate as set out in the body of the report, ~~and agrees on a way forward.~~
- (3) ~~That in the event that Cabinet decides on the outsourcing option for the estate management of the Downland Estate, Cabinet grants the corresponding authorisations as per 2.1 a), b) and c) above for the retendering of the Estate Management consultancy service for the Downland Estate.~~

The meeting concluded at 6.36pm

Signed

Chair

Dated this

day of





## **Appendix 5 - further information supplied by the Strategic Director, Resources**

- 1.1 The additional cost estimate of £50k to £70K pa is based upon the resources Smiths Gore provide to the contract; the equivalent of 1.5FTE spread across support from 1 surveyor, 3 senior surveyors and 3 estate managers plus ad-hoc support from more senior partners
- 1.2 The contract covers the full range of core estate management day to day functions including; rent and maintenance contribution collection, chasing arrears, new lettings, rent reviews, lease renewals, instructing and liaising with solicitors, addressing tenants queries, maintenance issues, disputes, landlord & tenant issues and a range of minor activities involved in managing land and buildings and engaging with tenants. The in-housed work would be spread across various services including legal, finance, estate management and some spot purchasing of outside very specialist support. Additionally, there are roles currently carried out in various services that may be able to be combined with in-house work providing economies of scale and new, more economical, ways of working. This spread of activity makes it difficult to provide an exact calculation of the in-housing costs without further, more detailed investigation. However, both the Strategic Director Resources and the Director of Finance have reviewed the costs estimate and believe there is little risk that costs will be greater.
- 1.3 In addition to the in-housing, there is likely to be costs in revising the Downland Initiative. This was noted for information in paragraph 5.2, but is not directly related to the question of in-housing and would form part of any further decision the Cabinet would need to make in respect of the revision of this policy.
- 1.4 Although no direct consultation by the Council with Farmers has taken place, Smiths Gore engage with them on a daily basis where estate management arrangements, amongst other issues, are often discussed.

