



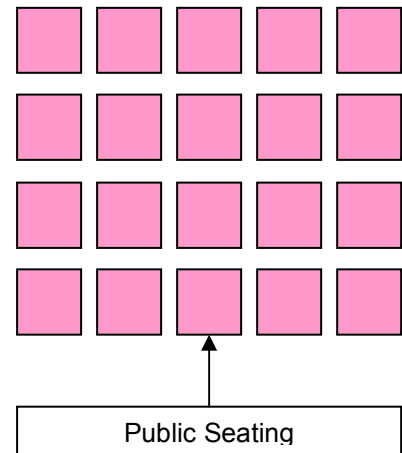
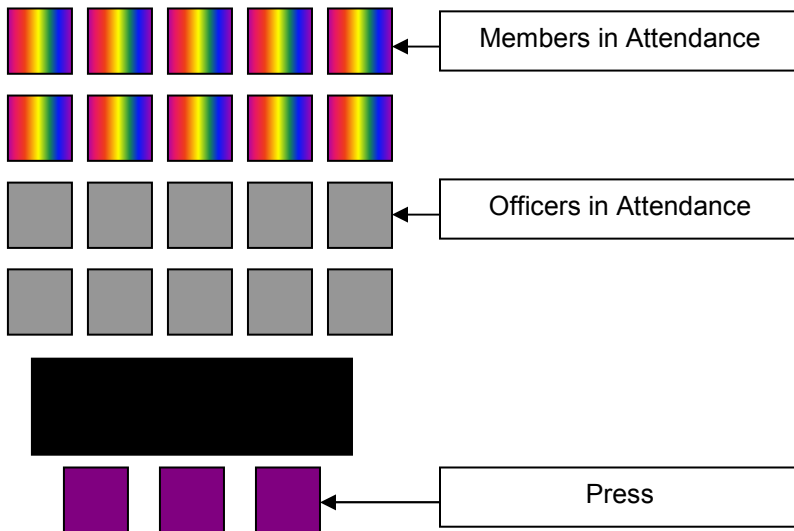
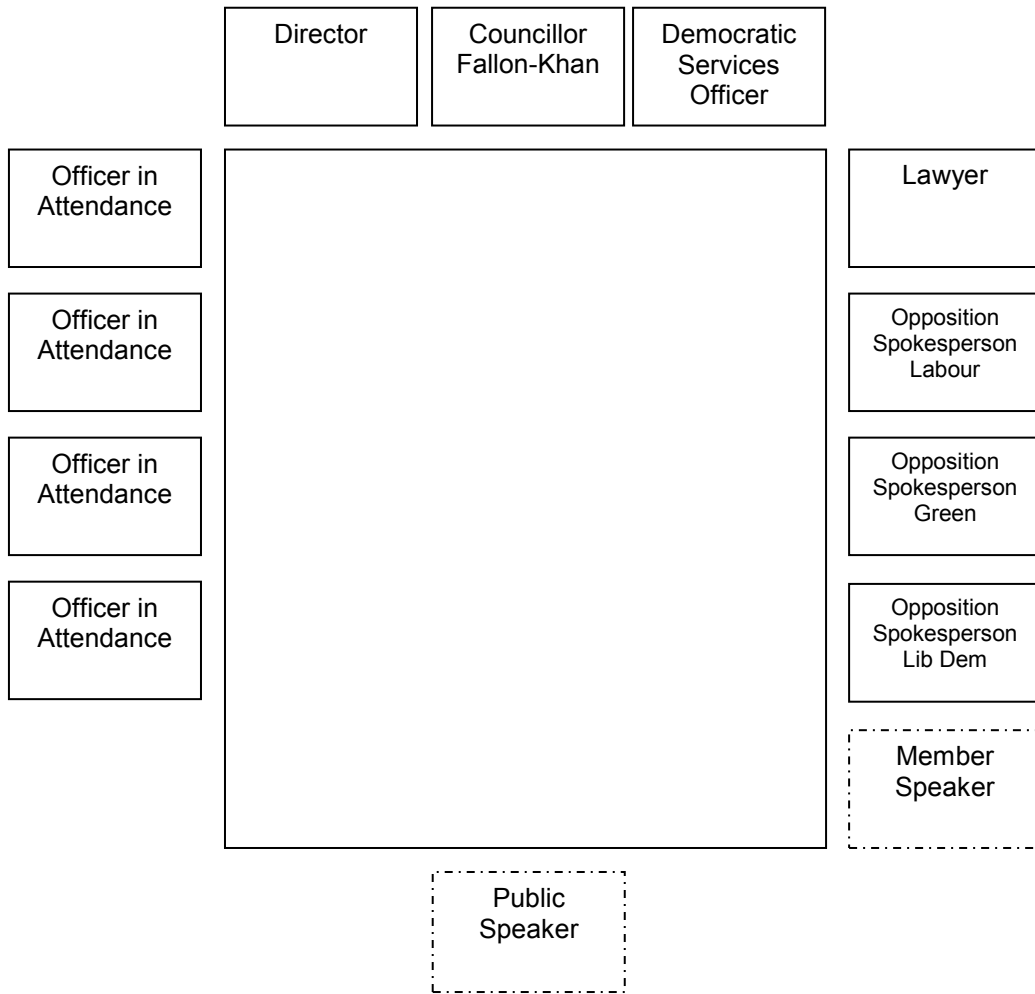
Brighton & Hove
City Council

Cabinet Member Meeting

Title:	Central Services Cabinet Member Meeting
Date:	12 October 2009
Time:	4.30pm
Venue	Committee Room 3, Hove Town Hall
Members:	Councillor: Fallon-Khan (Cabinet Member)
Contact:	Nara Miranda Democratic Services Officer 01273 291004 (voicemail only) nara.miranda@brighton-hove.gov.uk

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Democratic Services: Meeting Layout



AGENDA

16. PROCEDURAL BUSINESS

- (a) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (b) 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 either that it is confidential or the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.

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

17. MINUTES OF THE PREVIOUS MEETING

1 - 8

Minutes of the Meeting held on 29 June 2009 (copy attached).

18. CABINET MEMBER'S COMMUNICATIONS

19. ITEMS RESERVED FOR DISCUSSION

- (a) Items reserved by the Cabinet Member
- (b) Items reserved by the Opposition Spokesperson
- (c) Items reserved by Members, with the agreement of the Cabinet Member.

NOTE: Petitions, Public Questions, Deputations, Letters from Councillors, Written Questions from Councillors and Notices of Motion will be reserved automatically.

20. PETITIONS

No petitions received by date of publication.

CENTRAL SERVICES CABINET MEMBER MEETING

21. PUBLIC QUESTIONS

(The closing date for receipt of public questions is 12 noon on 5 October 2009)

No public questions received by date of publication.

22. DEPUTATIONS

(The closing date for receipt of deputations is 12 noon on 5 October 2009)

No deputations received by date of publication.

23. LETTERS FROM COUNCILLORS

No letters have been received.

24. WRITTEN QUESTIONS FROM COUNCILLORS

9 - 12

- i) **Eco-apprenticeships** – Question from Councillor Turton (copy attached)

25. NOTICES OF MOTIONS

No Notices of Motion have been referred.

26. LEGAL SERVICES FRAMEWORK

13 - 34

Report of the Director of Strategy & Governance (copy attached).

Contact Officer: Alison Leitch

Tel: 29-1516

Ward Affected: All Wards;

27. OCCUPATIONAL HEALTH PROCUREMENT

35 - 42

Report of the Director of Strategy & Governance (copy attached).

Contact Officer: Hilary Ellis

Tel: 29-1305

Ward Affected: All Wards;

28. ICT FUND 2009-2010

43 - 48

Report of the Director of Finance & Resources (copy attached).

Contact Officer: Paul Featherstone

Tel: 29-0433

Ward Affected: All Wards;

CENTRAL SERVICES CABINET MEMBER MEETING

29. COMMERCIAL PORTFOLIO ESTATE MANAGEMENT CONSULTANCY 49 - 52 (1 APRIL 2005 - 31 MARCH 2012)

Report of the Director of Finance & Resources (copy attached).

Contact Officer: Angela Dymott, Richard Butler Tel: 29-1450, Tel: 29-1440

Ward Affected: All Wards;

30. PROPERTY DISPOSALS - UPDATE 53 - 60

Report of the Director of Finance & Resources (copy attached).

Contact Officer: Angela Dymott, Richard Butler Tel: 29-1450, Tel: 29-1440

Ward Affected: All Wards;

PART TWO

31. PROPERTY DISPOSALS - UPDATE [EXEMPT CATEGORIES 1 AND 3] 61 - 68

Report of the Director of Finance & Resources (circulated to Members only).

Contact Officer: Richard Butler, Angela Dymott Tel: 29-1440, Tel: 29-1450

Ward Affected: All Wards;

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. 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.

For further details and general enquiries about this meeting contact Nara Miranda, (01273 291004 (voicemail only), email nara.miranda@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

Date of Publication - Friday, 2 October 2009

CENTRAL SERVICES CABINET MEMBER MEETING

Agenda Item 17

Brighton & Hove City Council

BRIGHTON & HOVE CITY COUNCIL

CENTRAL SERVICES CABINET MEMBER MEETING

4.30pm, 29 JUNE 2009

COMMITTEE ROOM 1, HOVE TOWN HALL

MINUTES

Present: Councillor Fallon-Khan (Cabinet Member)

Also in attendance: Councillor Duncan (Opposition Spokesperson, Green) and Marsh (Opposition Spokesperson, Labour)

Other Members present: Councillors Young and Harmer-Strange

PART ONE

1. PROCEDURAL BUSINESS

1a Declarations of Interest

1.1 There were none.

1b Exclusion of Press and Public

1.2 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Cabinet Member for Central Services considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I(1) of the Act).

1.3 **RESOLVED** – That the press and public be not excluded from the meeting.

2. MINUTES OF THE PREVIOUS MEETING

2.1 **RESOLVED** – That the minutes of the meeting held on 23 February 2009 be approved and signed by the Cabinet Member as a correct record.

3. CABINET MEMBER'S COMMUNICATIONS

3.1 There were none.

4. ITEMS RESERVED FOR DISCUSSION

4.1 The Cabinet Member reserved all the items as per agenda.

5. PETITIONS

5.1 There were none.

6. PUBLIC QUESTIONS

6.1 There were none.

7. DEPUTATIONS

7.1 There were none.

8. LETTERS FROM COUNCILLORS

8.1 There were none.

9. WRITTEN QUESTIONS FROM COUNCILLORS

9.1 There were none.

10. NOTICES OF MOTIONS

10.1 There were none.

11. CORPORATE BUILDING MAINTENANCE STRATEGY 2009-2012

11.1 The Cabinet Member considered a report of the Director of Finance & Resources concerning the corporate building maintenance strategy 2009/2012. The strategy sat under the Asset Management Plan and Corporate Property Strategy, a document which set the council's strategy for prioritising and procuring its maintenance works to meet service needs and maximise value for money and how the council monitored its performance (for copy see minute book).

11.2 **RESOLVED** - That the Corporate Building Maintenance Strategy 2009-2012, set out in Appendix 1 to the agenda, be approved.

12. DISABILITY DISCRIMINATION ACT - UPDATE ON PROGRAMME OF WORKS TO COUNCIL OWNED BUILDINGS

12.1 The Cabinet Member considered a report of the Assistant Director, Property & Design, concerning the Disability Discrimination Act, which updated the Member on the

corporate programme of rolling access improvement works being carried out under the Disability Discrimination Act 1995 requirements (for copy see minute book).

- 12.2 The Technical Access Manager pointed out that the council had the target to comply with the access requirements in its facilities. She was pleased to note that, last year, the council had reached the target of 70%. She explained that the target for the current year was to reach the 75% level.
- 12.3 The Opposition Spokesperson, Labour Group, sought clarification about how the prioritisation of works was carried out and requested an update in terms of the plan undertaken with the libraries, in particular the Moulsecomb Library. She also enquired about what the position was in relation to the local schools.
- 12.4 The Technical Access Manager explained that the assessments were graded at different levels: Grade 1 was outstanding, where no work was required, and Grade 2 was considered acceptable, which was the case of the Moulsecomb Library. The Manager noted that the prioritisation process concentrated on the assessments made at Grades 3 and 4 in order to improve those accesses.
- 12.5 In terms of schools, the Technical Access Manager indicated that schools have a different code of practice, which dovetailed with SEN (Special Educational Needs) duties, and reported that the adjustments in schools tended to be more personal to students requirements even though they were still required to comply with the building regulations.
- 12.6 In answer to questions about the probability of producing larger than planned projects, the Technical Access Manager explained that officers tried to anticipate the full range of needs that might be required by as wide range of users as possible, and tried to work and deliver on that basis.
- 12.7 The Cabinet Member welcomed the report. He noted and recognised that the work achieved was beyond target. He thanked all officers involved with the work and delivery of this project.
- 12.8 **RESOLVED** – That, having considered the information and the reasons set out in the report, the Cabinet Member accepted the following recommendations:
- (1) That the progress of access works being undertaken corporately - in a target driven rolling programme - to properties owned or leased by BHCC from which the council provides a service, helping the council to meet their duties under the Disability Discrimination Act, be noted.
 - (2) That it be noted that the target for 2008/09 of 70% of council buildings open to the public in which access for disabled people to public areas/services is improved had been achieved.

13. DISPLAY ENERGY CERTIFICATES - UPDATE

- 13.1 The Cabinet Member considered a report of the Director of Finance and Resources concerning the display of energy certificates, which updated the Member on various

issues: the progress that had been achieved to date; the analysis of the information received; the emerging themes and actions, and the proposals to address the areas and sites that are under-performing, through a prioritised programme of works under the carbon management programme (for copy see minute book).

- 13.2 The Energy and Water Manager explained that the project came as a result of an EU programme, whereby buildings above a particular height were required to comply with the Display Energy Certificates. He pointed out that 70% of the work required had been achieved and any outstanding areas would need to be finished by October 2009. He noted that the areas that needed greater focus were the schools and council officers were working towards bringing those schools on board.
- 13.3 The Assistant Director, Property & Design, indicated that the team was working with the Children & Young People's Trust in order to create a pack for schools. She reported that the council had a School Officer in place, who was dedicated to liaising with the schools about these matters. She also explained that loan schemes were available to schools, which they could access to support them in carrying out this work.
- 13.4 Councillor Harmer-Strange proposed that the dedicated officer wrote to the chairs of governors of all schools to let them know what funding was available to them in terms of energy efficiency. The Cabinet Member concurred with this proposal.
- 13.5 The Opposition Spokesperson, Labour, sought clarification about how the budget was prioritised.
- 13.6 The Energy and Water Manager explained that Display Energy Certificates were updated on an annual basis and any outcomes were brought forward. He noted that there were benchmarks to be achieved in terms of energy efficiency and the aim was to get those buildings which rated lower to address their requirements.
- 13.7 **RESOLVED** - That, having considered the information and the reasons set out in the report, the Cabinet Member accepted the following recommendations:
- (1) That it be agreed that the results of the DEC and Advisory reports form the basis of the council's strategy for carbon emissions reduction, as such priority should be given to those buildings which receive the lowest ratings.
 - (2) That the report and its recommendations be submitted to Cabinet for approval.
 - (3) That the initiatives considered in the report be communicated to all the Chairs of Governors within the city.

14. AGENCY CONTRACT FOR TEMPORARY STAFFING

- 14.1 The Cabinet Member considered a report of the Director of Strategy & Governance concerning the Agency Contract for Temporary Staffing, which sought to agree the process for the re-tender of the City Council's agency staffing contract at the end of the current contract period, which expires on 19 March 2010 (for copy see minute book).

- 14.2 The Acting Director of Strategy & Governance explained that, contrary to the recommendations in the report, this item would not be considered for approval at today's meeting, but would be taken for discussion only. He indicated that, because of the large value of the contracts, the Leader of the Council was agreeable to the report being taken to Cabinet for final approval.
- 14.3 The Opposition Spokesperson, Green Group, noted that the decision on the tender process would be made at Cabinet. He sought clarification, however, on recommendation 2.1 of the report, which requested that approval powers were delegated to officers to carry out the proposals.
- 14.4 The Acting Director of strategy & Governance explained that when the report was resubmitted to Cabinet, a decision would be taken on the use of delegated powers. Given the Leader's views on the Cabinet being the principal forum for major financial decisions, it was likely that the final approval of the tender would also be done in Cabinet or the CMM.
- 14.5 The Opposition Spokesperson, Green Group, noted that the process being considered was the tender process. He indicated, however, that was also interested to know about the actual terms of contracts. He sought clarification on the details of payments, and enquired whether they met the national minimum wage or whether they would be considered in line with the council's salary rates.
- 14.6 The Recruitment Strategy Manager clarified that the rates were defined by the agency themselves. He recognised that, in some areas, agency staff received less than the council's contractors even though, in other instances, they also received more. He explained that all was dependant on the specified job description.

The Recruitment Strategy Manager agreed to look into the matter of payment rates and bring any information available to the Cabinet meeting where the report would be finally considered.

- 14.7 The Acting Director of Governance & Strategy explained, however, that the responsibility for setting pay rates for individual roles did not lie with members of the Cabinet. He clarified that pay was subject to equal pay and other legislation, which regulated such matters.
- 14.8 The Legal Adviser further explained that, in terms of the procurement process, if rates of pay were to be specified as a contract condition, such rates needed to be specified upfront before bids were evaluated, given that such a condition may impact on the contract price.
- 14.9 In response to queries from the Opposition Spokesperson, Labour Group, the Recruitment Strategy Manager made the following comments:
- Internal casual pools and contracts with the council remained at the bottom of the salary spine, as opposed to permanent staff.
 - Agencies under the neutral vendor model were not able to provide their own company staff, whereas in the managed solution model, different contracts could apply or bid for work.

- Schools would be able to use the same provider if they so wished and would not incur in any charges for using them. However, they also had the possibility to use their own contractors.
- Schools' governing bodies retained their right not to abide by the new arrangements proposed for the council.

14.10 Following discussions on this item, the Cabinet Member reiterated the position that the report contents would only be noted at this stage and its recommendations referred to Cabinet for approval. He requested that Members contacted him or any of the relevant officers, in the meantime, should they wish further clarification on the report.

14.11 **RESOLVED:** That, following the discussions raised at the meeting, the recommendations be amended as follows:

1. ~~To seek approval to delegate approval powers to the Head of Human Resources following a tender exercise (in compliance with the European Union Public Procurement Directive) to re-let Brighton & Hove City Council for the provision of agency workers for all directorates across the council. The contract incorporates both requests for all temporary and interim workers.~~

2. ~~The contract will be for 5 years with an option to extend a further two years, thus enabling the City Council to maximise the benefits to directorates and partner organisations in planning for their requirements both now and for the future. The recommended contract is for agency and interim staffing provided through a Hybrid Solution.~~

1. That the report be noted.

2. That the report be referred to Cabinet for approval with revised recommendations.

15. **CORPORATE PROCUREMENT OF ENERGY - 100KW ENERGY CONTRACT FOR 2009-10**

15.1 The Cabinet Member considered a report of the Director Finance and Resources regarding the Corporate Procurement of Energy – 100K Energy contract for 2009/10. The report noted that the council had committed to procure energy solely from 100% renewable sources and explained the current market, the testing undertaken to achieve value for money and gave the council's energy expert's recommendations with regard to the future contracting of the 100kw electricity contract (for copy see minute book).

15.2 The Opposition Spokesperson, Labour Group, enquired whether schools fell under the contracts proposed and sought clarification about the difference between the designations of 'green energy' and 'brown energy'.

15.3 The Assistant Director, Property & Design, explained that schools had the choice to be included in the council's contracts; however, they were not compelled to. She noted that 7 schools were currently included, through their PFI contractor. She clarified that green energy referred to renewable sources whilst brown energy related to fossil energy.

15.4 The Cabinet Member welcomed the report and congratulated officers for the excellent piece of work produced by recording the information in graphs as per Appendix A to the report.

15.5 **RESOLVED** – That, having considered the information and the reasons set out in the report, the Cabinet Member accepted the following recommendations:

- (1) That the recommendation to place a new 100 kW electricity contract with Eon for 12 months be approved.
- (2) That the Director, Finance and Resources be authorised, in consultation with the Cabinet Member, to approve the placement of the contract without delay, ensuring the lowest possible price.

The meeting concluded at 5.30pm

Signed

Cabinet Member

Dated this day of

CENTRAL SERVICES CABINET MEMBER MEETING	Agenda Item 24 Brighton & Hove City Council
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Central Services Cabinet Member Meeting – 12 October 2009

Note:

Councillors' written questions, as detailed, will be taken as read at the meeting. The Councillor asking the question may ask one relevant supplementary question, which shall be put and answered without discussion. One other supplementary question may be asked by any other Member of the Council, which shall also be put and answered without discussion.

(A separate addendum with the written answers will be circulated at the meeting).

EXTRACT FROM THE PROCEEDINGS OF THE ENTERPRISE, EMPLOYMENT & MAJOR PROJECTS CABINET MEMBER MEETING HELD ON THE 10 JUNE 2009

Written questions from Councillors – Eco apprenticeships (paragraphs 9.9 to 9.10)

ENTERPRISE, EMPLOYMENT & MAJOR PROJECTS CABINET MEMBER MEETING

4.00PM 10 JUNE 2009

COMMITTEE ROOM 1, HOVE TOWN HALL

MINUTES

Present: Councillor Kemble (Cabinet Member)

Also in attendance: Councillor Turton (Opposition Spokesperson - Labour)

9 WRITTEN QUESTIONS FROM COUNCILLORS

9.1 The Cabinet Member considered the following written question from Councillor Turton:

“Given that the Learning and Skills Council will be abolished in 2010 and responsibilities for 14-19 education and learning will be transferred to local authorities and two new agencies, (Skills Funding Agency and Young People Learning Agency), could the Cabinet Member explain (a) What preparations the City Council has made for this transfer and (b) What preparatory discussions have taken place with relevant agencies at national and/or regional level for links to be forged with these two agencies?”

9.2 The Cabinet Member replied to state that a) The City Council was well prepared for the transfer of responsibility for the commissioning of 16-18 education from April 2010. Children & Young Peoples Trust staff began working in a virtual team with Learning & Skills Learning staff 18 months before these announcements were made as both organisations saw the value of working more closely.

9.3 A Transition group, chaired by the Assistant Director for Learning, Schools and Skills in the Children & Young Peoples Trust, containing representatives from other CYPT Teams (Secondary and Special Schools, Quality & Performance, Finance and the Learning Partnership), Economic Development, Human Resources and representatives from the Learning & Skills Council and 14-19 Partnership Board had been meeting regularly since the announcement of changes in October 2008.

- 9.4 A two stage process submitting the city's vision of transition arrangements and outlining how the CYPT would engage and work in partnership with neighbouring Local Authorities had been completed and shared with TMT/Cabinet. It proposed that the three Local Authorities needed to work together and plan and commission provision within the local travel to learn area that stretches out to Worthing in the west, Eastbourne in the east and Crawley in the north.
- 9.5 National announcements had been made on staff transfer under TUPE arrangements and a total of seven Learning & Skills Council staff would be absorbed into the Children & Young Peoples Trust from April 2010. The additional posts were being included in the current CYPT restructure of Tier 3 and 4 posts.
- 9.6 b) The Skills Funding Agency would have a regional satellite office in the city and once transference of staff to the SFA began further preparatory work would take place.
- 9.7 The National Apprenticeship Service (NAS) which would have overall responsibility for all Apprenticeships in England was operational and the City Council was currently working on a Memorandum of Understanding with NAS to clarify both parties roles and responsibilities.
- 9.8 The Young People's Learning Agency (YPLA) would have oversight of the transition phase of 16-18 commissioning. The YPLA would have a small base in the city and further preparatory work was ongoing with both the YPLA and GOSE.
- 9.9 Councillor Turton thanked the Cabinet Member for his response and asked if any of the new eco apprenticeships were behind the council's agenda? Would the opportunities of the Memorandum of Understanding (between the City Council and the National Apprenticeship Service) enable the active encouragement of eco apprenticeships?
- 9.10 The Cabinet Member replied to say that this question was appropriate to the remit of the Cabinet Member for Central Services and it would therefore be submitted to the Central Services Cabinet Member Meeting.

CENTRAL SERVICES CABINET MEMBER MEETING

Agenda Item 26

Brighton & Hove City Council

Subject: Legal Services Framework
Date of Meeting: 12 October 2009
Report of: Director of Strategy & Governance
Contact Officer: Name: Alison Leitch Tel: 29-1516
E-mail: alison.leitch@brighton-hove.gov.uk
Key Decision: No Forward Plan No: N/A
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 All the District and Borough Councils in West and East Sussex, East Sussex County Council, West Sussex County Council, Brighton and Hove City Council and the East Sussex Fire and Rescue Authority have a need from time to time for external legal services either because internal legal resources are fully committed to other work which has a higher or equal priority, or the work requires specialist expertise. In 2007/2008 the total cost of such work across all the above authorities was in the region of £3-3.5m.
- 1.2 The above authorities wish to set up a procurement framework that they can all use, that will have tested the market for the services to be provided and improve the efficiency of acquiring those services. Arun District Council's Chief Executive is the lead Chief Executive across West Sussex for shared legal services and it is proposed therefore that Arun District Council be the lead authority for this procurement framework agreement.

2. RECOMMENDATIONS:

- 2.1 Authorise the Head of Law to enter into a Consortium Agreement to achieve a joint procurement framework agreement for external legal services with all or any of the Unitary, County, District, Borough and Fire and Rescue Authorities in West and East Sussex (the Consortium Authorities) to be led by Arun District Council, and take any steps necessary or incidental to implementing the framework agreement.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Consortium Agreement sets out the obligations and responsibilities of each of the authorities comprising the Consortium Authorities including indemnities to ensure that each authority is solely responsible for the cost of any service that authority procures under the Joint Procurement Framework Agreement.

- 3.2 Arun District Council be the lead authority for the Joint Procurement Framework Agreement and work with a core team of legal and procurement officers from the Consortium Authorities on the procurement process. The tender will follow the Restricted Procedure where potential providers will be required to pass a Pre-Qualification Questionnaire stage before receiving an Invitation to Tender. All tender submissions will be evaluated and a suitable number of providers for each category of work will be awarded a place on the Framework Agreement.
- 3.3 As lead authority, Arun District Council will enter into a Joint Procurement Framework Agreement for four years with selected providers on behalf of all the Consortium Authorities with a provision to extend the Joint Procurement Framework Agreement for a further 2 years.
- 3.4 Local Authorities provide a diverse range of services and in the course of doing so the need arises from time to time to appoint firms of solicitors and barristers to assist with the work involved.
- 3.5 That work can include routine legal services or specific one off projects that the in-house legal team are unable to carry out within the timescale required because resources are fully committed to other work which has a higher or equal priority or the work requires specialist expertise.
- 3.6 The areas of such work across the Consortium Authorities covers:
- ♦ Administrative/Local Government Law
 - ♦ Adult Care Services
 - ♦ Children's Care Services
 - ♦ Civil Litigation
 - ♦ Contracts
 - ♦ Construction
 - ♦ Criminal Litigation
 - ♦ Education
 - ♦ Employment
 - ♦ Environmental Amenities
 - ♦ Environmental Health
 - ♦ Highways
 - ♦ Housing
 - ♦ Information and IT Law
 - ♦ Licensing
 - ♦ Major Projects
 - ♦ Planning
 - ♦ Property
- 3.7 Some of this work is appropriate to be carried out by another authority within the Consortium, or local firms or barristers, whilst other parts of the work require the

input of a specialist in that field. Currently each of the Consortium Authorities arrange for work to be outsourced on a project by project basis. A Joint Procurement Framework Agreement will enable the costs involved to be market tested.

- 3.8 The Consortium Authorities will each put forward a core team of legal officers and procurement officers to set up the procurement process to be followed and the evaluation process to be applied. It is proposed that the number of service providers accepted for each sub-category of work is set on the basis of:
- ♦ anticipated quantity of work
 - ♦ likelihood of there being a conflict of interest
- 3.9 It is expected that by dividing the work into main and then sub-categories there will be interest from a large number of service providers ranging from the small local providers right through to the large national service providers.
- 3.10 Service providers will submit details of their time charges for the procurement process work within the sub-categories and if selected those charges will apply throughout the period of the Joint Procurement Framework Agreement subject to adjustment for inflation. When any one of the Consortium Authorities has work to put out, the authority will select one or more of the firms on the framework and ask for a case/matter plan including an estimate of the time the work will take and which person(s) will carry out the work. The authority then decides who to place the work with, without the need to go through any other procedure under the authority's contract or financial standing orders other than relating to budget provision.
- 3.11 There is no guarantee to the service providers that work will be given to them. The allocation of work depends upon each authority's future need to put work out.
- 3.12 Funding for the set-up costs including relevant officer time will be provided from an allocated sum of £10,000 from the Sussex Improvement Partnership through the Regional Improvements and Efficiency Consortium
- 3.13 It is intended that the use of the framework should be monitored throughout the life of the Agreement which will provide valuable data to all the Consortium Authorities for future procurement.

4. CONSULTATION

- 4.1 Individual authorities have consulted their legal services teams to determine the demand for this service. Given that the arrangement proposed is a framework agreement, each authority can choose to use it or not depending upon their own requirements, and their ability to source legal services which represent value for money for the authority elsewhere.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The entering into and operation of a Sussex wide Framework Agreement requires no upfront costs for the Council and is expected to deliver better value for money and produce efficiencies in the procurement of external legal advice. The operation of the Agreement will be monitored during the four year life and will inform future procurement processes

Finance Officer Consulted: Anne Silley

Date: 06/08/2009

Legal Implications:

- 5.2 The entering into of the consortium agreement would not require any payment from the council, and would allow them access to a properly procured framework agreement which could realise the council significant savings. There is no cost to the council of entering the agreement, and no obligation on the council to use the services under the framework if they did not (for any reason) offer the council value for money. The Council must take the Human Rights Act into account in respect of its actions but it is not considered that any individual's Human Rights Act rights would be adversely affected by the recommendations in this report.

Lawyer consulted: Alison Leitch

Date: 06/08/2009

Equalities Implications:

- 5.3 All firms applying for selection under the framework agreement will be required to comply with relevant equalities legislation.

Sustainability Implications:

- 5.4 All firms applying for selection under the framework agreement will be required to provide details of the sustainability schemes.

Crime & Disorder Implications:

- 5.5 It is not anticipated that entering into this agreement will have a negative effect on crime and disorder in Brighton & Hove.

Risk & Opportunity Management Implications:

- 5.6 There is a low risk in entering into this agreement, given that it is up to the council whether to use the services under it. Therefore, it represents an opportunity for savings rather than a risk.

Corporate / Citywide Implications:

- 5.7 None identified.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 That the Council enters into the Consortium Agreement with the other authorities within West and East Sussex to form a Joint Procurement Framework Agreement as detailed in this report. Arun District Council is to take the lead on this project (preferred option).
- 6.2 That the Council does not enter in the Consortium Agreement with the other authorities within West and East Sussex to form a Joint Procurement Framework Agreement as detailed in this report. Given that there are no cost implications for doing so, this option is not recommended.
- 6.3 That the council enters into a Framework Agreement solely for work needed by the council. This option remains open to the council whether or not the Sussex-wide framework is entered into. However, it is likely that the Sussex-wide framework will offer greater value for money due to the potential size and scope of the work on offer to the legal providers.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 Approval of entering into the relevant consortium agreement is sought in order to deliver efficiency savings and value for money for the council when instructing external legal providers.
- 7.2 The method proposed allows the council to market test the cost of external legal services, to seek efficiency savings based on the economy of scale and to establish a more efficient method of procuring external legal services.

SUPPORTING DOCUMENTATION

Appendices:

1. Consortium Agreement

Documents in Members' Rooms

1. None

Background Documents

1. None

DATED 2009

ARUN DISTRICT COUNCIL
and
ADUR DISTRICT COUNCIL
and
BRIGHTON & HOVE COUNTY COUNCIL
and
CHICHESTER DISTRICT COUNCIL
and
CRAWLEY BOROUGH COUNCIL
and
EASTBOURNE BOROUGH COUNCIL
and
EAST SUSSEX COUNTY COUNCIL
and
HASTINGS BOROUGH COUNCIL
and
HORSHAM DISTRICT COUNCIL
and
LEWES DISTRICT COUNCIL
and
MID SUSSEX DISTRICT COUNCIL
and
ROTHER DISTRICT COUNCIL
and
WEALDEN DISTRICT COUNCIL
and
WEST SUSSEX COUNTY COUNCIL
and
WORTHING BOROUGH COUNCIL

AGREEMENT FOR THE PURPOSES OF ESTABLISHING
A CONSORTIUM TO ENTER INTO A FRAMEWORK AGREEMENT
FOR THE PROCUREMENT OF LEGAL SERVICES

Head of Legal Services
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CONDITIONS OF CONTRACT

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15.	VARIATION
16.	LAW AND JURISDICTION
17.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

THIS AGREEMENT is made the

2009

between

ARUN DISTRICT COUNCIL of Arun Civic Centre, Maltravers Road, Littlehampton
BN17 5LF

and

ADUR DISTRICT COUNCIL OF CIVIC CENTRE of Civic Centre, Ham Road,
Shoreham-by-Sea, BN43 6PR

and

BRIGHTON & HOVE CITY COUNCIL of Kings House, Grand Avenue, Hove BN3
2LS

and

CHICHESTER DISTRICT COUNCIL of East Pallant House, East Pallant, Chichester
PO29 1TY

and

CRAWLEY BOROUGH COUNCIL of Town Hall, The Boulevard, Crawley, RH10
1UZ

and

EASTBOURNE BOROUGH COUNCIL of Town Hall, Grove Road, Eastbourne BN21
4UG

and

EAST SUSSEX COUNTY COUNCIL of County Hall, St. Anne's Crescent, Lewes
BN7 1SF

and

HASTINGS BOROUGH COUNCIL of Town Hall, Queens Road, Hastings TN34 1QR
and

HORSHAM DISTRICT COUNCIL of Park House, North Street, Horsham RH12 1RL
and

LEWES DISTRICT COUNCIL of 32 High Street, Lewes BN7 2LX

and

MID-SUSSEX DISTRICT COUNCIL of Oaklands, Oaklands Road, Haywards Heath
RH16 1SS

and

ROTHER DISTRICT COUNCIL of Town Hall, Bexhill-on-Sea, East Sussex TN39
3JX

and

WEALDEN DISTRICT COUNCIL of Council Offices, Pine Grove, Crowborough TN6
1DH

and

WEST SUSSEX COUNTY COUNCIL of County Hall, West Street, Chichester PO19
1RQ

and

WORTHING BOROUGH COUNCIL of Town Hall, Chapel Road, Worthing BN11
1HA

(hereinafter independently called "**the Participating Authority**" and collectively
called "**the Participating Authorities**")

WHEREAS:

- (A) The Participating Authorities wish to enter into an agreement to establish a consortium for the purposes of jointly procuring legal services from various third parties.
- (B) The Participating Authorities wish to record their respective rights and obligations in this Agreement.

IN CONSIDERATION of each of the representations, covenants and undertakings given by the Participating Authorities to each other (which the Participating Authorities agree is adequate consideration to ensure enforceability of this Agreement between themselves), it is hereby agreed collectively between all the Participating Authorities as follows:

1. Definitions

In this Agreement the following expressions shall have the following meanings unless the context otherwise requires:

- “2000 Act”** means the Freedom of Information Act 2000 and any subordinate legislation made thereunder from time to time together with any guidance and codes of practice issued by the Information Commissioner in relation thereto;
- “Agreement”** means this consortium agreement concluded between each of the Participating Authorities and comprising these Conditions;
- “Commencement Date”** means 1st May 2009;
- “Confidential Information”** means information (as defined below), data and material of any nature which any of the Participating Authorities may receive or obtain in connection with this Agreement and:
 - (1) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998); or
 - (2) the disclosure of which would or would be likely to prejudice the commercial interests of any of the Participating Authorities or any other person and the public interest in maintaining non disclosure would outweigh the public interest in disclosure; or
 - (3) the disclosure of which by any of the Participating Authorities would constitute a breach of confidence actionable by another Participating Authority or a third party; or
 - (4) which constitutes a trade secret;

“Environmental Information Regulations”	means the Environmental Information Regulations 2004;
“Expert”	means the person appointed by the mutual agreement of the Participating Authorities, or in accordance with Condition 9 , the cost of whose appointment shall be equally borne by each of the Participating Authorities subject to the provisions of Condition 9 ;
“Force Majeure”	shall include an event referred to in Condition 12 of these Conditions;
“Framework Agreement”	means the contracts for the Services due to be entered into between the Participating Authorities and the Service Providers (to be executed on behalf of each of the Partnering Authorities by the Lead Partner);
“Information”	means information as defined in section 84 of the 2000 Act;
“Instruction Form”	means an instruction form issued by any of the Participating Authorities for the Services in accordance with the Framework Agreement;
“Lead Authority”	means the Participating Authority identified in Condition 5 or any successor of that Participating Authority that takes on the duties of the lead authority in accordance with the Framework Agreement;
“Nominated Officer”	means the person nominated by each Participating Authority as its duly authorised representative for the purpose of this Agreement in accordance with Condition 4 ;
“Participating Authorities”	means the consortium comprising the 15 (fifteen) Participating Authorities established by this Agreement (and any variation thereto);
“Request for Information”	shall have the meaning set out in section 8 of the 2000 Act or any apparent request for Information under the 2000 Act or the Environmental Information Regulations;
“Services”	means each of the services as defined in the Framework Agreement;
“Service Providers”	means each of the service providers which enter into the Framework Agreement with the Participating

“Term” Authorities;
means the period referred to in **Condition 2 (Term)**.

In this Agreement where the context so admits:

- (a) references to the singular shall include the plural and vice versa and references to any gender shall include all genders;
- (b) any reference to a Participating Authority’s consent or notice means a Participating Authority’s prior written consent or written notice;
- (c) the headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) references to Conditions are, unless otherwise provided, references to the Conditions of this Agreement.

2. TERM

2.1 The Term of this Agreement shall be from the Commencement Date and, subject to prior termination in accordance with the Conditions contained herein, shall continue until expiry of the Framework Agreement unless otherwise extended upon the unanimous written agreement of each of the Participating Authorities.

3. OBJECTIVES OF THE CONSORTIUM

3.1 The objectives of the Participating Authorities include entering into the Framework Agreement with each of the Service Providers and subsequently issuing Instruction Forms independently of each other to the Service Providers and carrying out all the necessary processes to enable them to administer the objectives and review the future requirements of the Participating Authorities.

3.2 In order to achieve their objectives, the Participating Authorities shall jointly:

3.2.1 agree a programme of procurement and (where applicable) agree upon:

- (i) any services required;
- (ii) the funding sources and/or allocation of funding;
- (iii) the potential tenderers;
- (iv) the tender documentation, including contract terms and conditions in an agreed form;
- (v) the tender submissions and consequent award of contracts on behalf of the Participating Authorities;
- (vi) the contract management and monitoring of the performance of the Service Providers and report performance results to the Participating Authorities;

3.2.2 develop strategies or projects to further the aims and objectives of the Participating Authorities.

4. NOMINATED OFFICERS

- 4.1 Every Participating Authority shall appoint a Nominated Officer for the purposes of attending periodic meetings, in accordance with **Condition 4.4** below, to discuss and promote the progress of the objectives of the Participating Authorities as set out in **Condition 3** above. Such Nominated Officers shall be deemed to be the representatives of the Participating Authorities and shall unless otherwise stated in writing by any of the Participating Authorities, have unequivocal authority to act on their behalf for the purposes of implementation of this Agreement.
- 4.2 Prior to the commencement of this Agreement, each Participating Authority shall notify the other Participating Authorities in writing of the person it has appointed to be its Nominated Officer and, throughout the period of this Agreement, or any variation of identity of its Nominated Officer.
- 4.3 Each of the Participating Authorities accept that the Nominated Officers shall have power on behalf of his/her Participating Authority to issue instructions and directions and agree upon any matter relating to the delivery of the Participating Authorities' objectives and the Framework Agreement and exercise the functions and powers of the Participating Authority under this Agreement.
- 4.4 The Nominated Officers shall hold regular meetings throughout the Term of this Agreement to monitor the progress of this Agreement and Framework Agreement. The Nominated Officers shall meet not less than once every six (6) months unless otherwise agreed by the Participating Authorities. The meetings shall be held at a location(s) to be agreed by the Nominated Officers.
- 4.5 All decisions made by the Nominated Officers from the Participating Authorities must be unanimously agreed.

5. SIGNING AUTHORITY

- 5.1 Each of the Participating Authorities irrevocably agree that Arun District Council shall be the Lead Authority and shall have authority to execute the Framework Agreement on half of each of the Participating Authorities and any subsequent variations or amendments to the Framework Agreement.
- 5.2 The Lead Authority shall only exercise such signing authority in accordance with **Condition 5.1** above, with the prior consent of the Participating Authorities. Such consent must be unanimous by the Participating Authorities.
- 5.3 Subject to the provisions of **Condition 5.4** and especially **Condition 7** below, where the Framework Agreement has been entered into by the Lead Authority, all the Participating Authorities shall be jointly bound by the terms of the Framework Agreement and accept liability for any costs, losses, expenses, damages and liabilities arising as a consequence of entering into the Framework Agreement.

- 5.4 In the event that any one or more of the Participating Authorities is or are independently liable or responsible as a consequence of default, negligence or fraud by itself or themselves for any breach of the Framework Agreement or this Agreement, each and every Participating Authority in breach respectively accepts liability for any costs, losses, expenses, damages and liabilities arising as a direct consequence thereof and agrees to reimburse each of the Participating Authorities not in breach against all of the said losses, expenses, damages and liabilities accordingly to the extent they have been incurred by any Participating Authority not in breach of the Framework Agreement.
- 5.5 Each of the Participating Authorities irrevocably accepts that the issue by itself of the Instruction Form for the Services shall be exclusive to itself and will result in exclusive commitment by that Participating Authority, without obligation or liability being incurred by any other Participating Authority, including but not limited to the Lead Authority.

6. MONITORING

- 6.1 In accordance with **Condition** 3.2.2 above, the Lead Authority shall be responsible for monitoring the performance of the Framework Agreement that it has entered into on behalf of the Participating Authorities. The Nominated Officers, on behalf of their respective Participating Authorities, shall be the main points of contact for the Lead Authority for the purposes of monitoring of the Framework Agreement and any Instruction Forms issued thereunder.
- 6.2 The Participating Authorities shall meet with each other regularly to report to the Participating Authorities on the progress of any contracts that are awarded as a consequence of this Agreement. The Participating Authorities agree to use their best endeavours to share information with each other of all the Service Providers' performance levels and to participate in service quality reviews.
- 6.3 The Lead Authority shall use reasonable endeavours to make certain proper processes are in place in order:
- 6.3.1 to ensure that the performance of Services by the Service Providers and the quality of the Services provided are as specified in the Framework Agreement;
- 6.3.2 to confirm that the outputs expected from the Framework Agreement are being achieved and, in particular, that value for money is being obtained;
- 6.3.3 to identify requirements for changes to the Framework Agreement in response to the changing demands of the project and to plan and manage the introduction of those changes;
- 6.3.4 to anticipate problems and resolve issues arising from the operation of the Framework Agreement;

6.3.5 To provide auditable justification for releasing payments due under the Framework Agreement.

6.4 The Lead authority shall ensure that regular progress reports are made to the Participating Authorities on the performance and effectiveness of the Framework Agreement.

7. LIABILITY

7.1 Following the entering into of the Framework Agreement by the Lead Authority on behalf of each of the Participating Authorities and the issue of an Instruction Form by any of the Participating Authorities, the Participating Authority which issued the Instruction Form shall be responsible for and hereby accepts sole and exclusive liability for all costs, damages, claims, demands, expenses and/or liabilities, whether direct or indirect, incurred as a consequence of issue of the Instruction Form and agrees to indemnify the Lead Authority (and (where applicable) any other Participating Authorities) against any liability that may arise as a consequence thereof.

8. TERMINATION

8.1 The Participating Authorities shall be entitled upon the happening of any of the following events to terminate this Agreement ("Termination") with the Participating Authority that is in breach, without prejudice to any accrued rights or remedies under this Agreement, forthwith by written notice having immediate effect:

8.1.1 That Participating Authority commits a breach of any terms of this Agreement which breach is capable of being remedied and the Participating Authority has failed to remedy the said breach within fourteen (14) days after issue of a written request from the Lead Authority that the relevant Participating Authority in breach should do so;

8.1.2 Any material breach by any of the Participating Authorities of any of its obligations under this Agreement.

8.2 Any of the Participating Authorities may individually terminate their involvement in this Agreement upon serving 6 months' written notice to each of the other Participating Authorities at any time during the Term and this Agreement shall continue with the remaining Participating Authorities unless It is unanimously agreed in writing by the remaining Participating Authorities that this Agreement should be terminated in its entirety. The Participating Authorities terminating this Agreement shall remain liable for all costs, damages, expenses and/or liabilities incurred by themselves prior to termination, whether pursuant to this Agreement and/or the Framework Agreement.

9. DISPUTE RESOLUTION AND EXPERT DETERMINATION

9.1 Any dispute or differences between the Participating Authorities arising out of or in connection with this Agreement shall in the first instance be referred to

the Nominated Officers of the Participating Authorities who will discuss and attempt to resolve the matter. If any dispute is incapable of resolution between the Participating Authorities, the dispute shall in the first instance be referred to the Chief Executives of each of the Participating Authorities for resolution.

- 9.2 In the event of failure to resolve the dispute in accordance with **Condition 9.1** above, the dispute shall be referred to an Expert to be agreed upon by the majority of the Chief Executives of the Participating Authorities; in the event of absence of agreement within 5 working days of such referral, the Participating Authorities agree the President of the Law Society shall be the nominee of the Expert. The Participating Authorities shall on request promptly supply to the Expert all such assistance, documents and information as he may require for the purpose of his determination and the Participating Authorities shall use all reasonable endeavours to procure the prompt determination of the reference.
- 9.3 The Expert shall be deemed to act as an expert and not as an arbitrator.
- 9.4 The costs of the Expert appointed under this **Condition 9** shall be equally apportioned between the Participating Authorities or as may otherwise be directed by the Expert.
- 9.5 If the Participating Authorities are unable to agree the identity of the individual to act as the Expert then the Expert shall either be chosen from the Registry of Independent Experts maintained by the Law Society or be nominated by an Institute agreed upon between the Participating Authorities with the intent that by agreement or nomination the Expert be appointed and the dispute referred to the Expert within seven (7) days.
- 9.6 Nothing in this Agreement shall prevent any Participating Authorities at any time from seeking any interim or interlocutory relief from the Court.
- 9.7 Any Participating Authorities may, within ninety (90) days after receipt of the determination of the Expert, refer any matter comprised in the dispute to the Court for determination and the Court shall have jurisdiction to determine the rights of the Participating Authorities in respect of such matters.

10. CONFIDENTIALITY AND PUBLICITY

Confidentiality

- 10.1 Subject to **Conditions 10.3, 10.6 and 10.8**, each Participating Authority undertakes to the other Participating Authorities as follows:
- 10.1.1 to treat all Confidential Information belonging to any one or more of the other Participating Authorities as confidential and safeguard it accordingly both during the Term of this Agreement and following expiry or termination of this Agreement;
- 10.1.2 not to disclose any Confidential Information belonging to another Participating Authority without the prior written consent of that Participating Authority, except to such persons and to such extent as may be strictly necessary for

the performance of this Agreement or except where such disclosure is otherwise expressly permitted by the provisions of this Agreement; and

10.1.3 Not use any Confidential Information received from another Participating Authority otherwise than for the purposes of or in connection with this Agreement.

10.2 The Participating Authorities shall use their best endeavours to procure that their employees, agents and sub-contractors keep confidential and do not make any disclosure of Confidential Information to any third party in breach of **Condition** 10.1 above and only use such Confidential Information in connection with the performance of this Agreement.

10.3 **Condition** 10.1 shall not apply to any disclosure of Confidential Information:

10.3.1 where a Participating Authority can demonstrate the Confidential Information has become or will become generally available to the public and in the public domain otherwise than through the act or default of (or on behalf of) the relevant Participating Authority;

10.3.2 which was in the possession of the receiving Participating Authority without restriction as to its disposal, before receiving it from the disclosing Participating Authority;

10.3.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

10.3.4 which is required by law, any judicial or administrative process, the rules of any stock exchange or governmental or regulatory authority having the force of law;

10.3.5 to enable a determination to be made under the Dispute Resolution Procedure referred to under **Condition** 9;

10.3.6 by a Participating Authority to any department, office or agency of the Government;

10.3.7 which is for the purpose of:

10.3.7.1 the examination and certification of a Participating Authority's accounts; or

10.3.7.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which a Participating Authority has utilised its resources;

10.3.8 which is independently developed without access to the Confidential Information;

10.3.9 by a Participating Authority to any third party insofar as this may be necessary to the performance or provision by that party of any services or works whatsoever for or to that Participating Authority;

- 10.4 The Participating Authorities shall not make use of this Agreement or other information issued or provided in connection with this Agreement otherwise than for the purpose of this Agreement, except with the prior written consent of all the other Participating Authorities;
- 10.5 The Participating Authorities shall facilitate a Participating Authority's compliance with the Code of Practice on Access to Government Information (second edition) or the Environmental Information Regulations and in the event that a Participating Authority is required to provide information to a person as a result of a request made to it under such Code or Regulations, the Participating Authorities shall provide such information relating to this Agreement to enable a Participating Authority to adhere to the requirements of the Code of Regulations.
- 10.6 Nothing in this **Condition** 10 shall prevent a Participating Authority from using any ideas, know-how or techniques gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in the disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 10.7 The Participating Authorities acknowledge that nothing in this **Condition** 10 shall fetter or affect any of the Participating Authorities' obligations under the Data Protection Act 1998, the 2000 Act or the Environmental Information Regulations.

Publicity

- 10.8 Subject to **Condition** 10.10, the Participating Authorities shall not and shall procure that any member of their personnel or sub-contractors shall not make any public statement or issue any press releases or any other form of publicity document relating to, connected with or arising out of this Agreement or the matters contained in this Agreement without obtaining the other Participating Authorities' prior written approval as to its contents and manner and timing of its presentation and publication.
- 10.9 The Participating Authorities shall not and shall procure that any member of their personnel, shall not communicate with, or provide information to any representatives of the press, television, radio or other media on any matter concerning or arising out of this Agreement without the prior written approval of the other Participating Authorities.
- 10.10 Any Participating Authority may make a public statement or announcement concerning the completion of this Agreement is required by law or any regulatory or Government body to which a Participating Authority is subject or submits, wherever situated, whether or not the requirement has the force of law **PROVIDED THAT** any such statement does not contravene the duty of confidentiality contained in **Condition** 10.1

11. WAIVER

11.1 Failure by a Participating Authority or Participating Authorities at any time for any period to enforce any one or more of the provisions of this Agreement or to require performance by another Participating Authorities of any of the provision of this Agreement shall not:

11.1.1 constitute or be construed as a waiver of any such provision or the right at any time subsequently to enforce all terms and conditions of this Agreement; or

11.1.2 affect the validity of this Agreement or any part thereof or the right of the Participating Authorities to enforce any provision in accordance with its terms.

12. FORCE MAJEURE

12.1 If a Force Majeure event arises on or following the date of this Agreement (irrespective of the fact that this Agreement may then be conditional) which directly causes any Participating Authority to be materially unable to comply with any of its obligations hereunder, the Participating Authorities may agree such terms as are appropriate for the continued performance of this Agreement. If no such terms are agreed within one (1) month of the commencement of the said event, and such event is continuing or its consequence remains such that a Participating Authority is materially unable to comply with its obligations, the Participating Authorities hereby agree that this Agreement shall thereupon terminate, subject to the provisions of **Condition 8** (Termination). Failure by any Participating Authorities to comply with its contractual obligations by reason of a Force Majeure event shall not constitute a breach of contract.

12.2 The events which are to be classified as Force Majeure events shall include each of the following:

- (a) war, civil war, conflict or terrorist attack arising within and affecting the United Kingdom;
- (b) nuclear, chemical or biological contamination of the Service Provider's property arising from any of the events at (a) above;
- (c) riot, flood or earthquake;
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; or
- (e) any circumstances beyond the reasonable control of any of the Participating Authorities (to the extent the Participating Authorities are not in default).

13. FREEDOM OF INFORMATION

13.1 The Participating Authorities acknowledge that each Participating Authority is subject to the requirements of the Environmental Information Regulations and the 2000 Act and agree to use all reasonable endeavours to assist the other

Participating Authorities to comply with such obligations imposed under those provisions.

- 13.2 The Participating Authorities shall process Information produced in the performance of this Agreement or relating to this Agreement in accordance with a records management system that complies with the Lord Chancellor's code of practice for the keeping and management of records under section 46 of the 2000 Act.
- 13.3 The Participating Authorities shall provide all necessary assistance as reasonably requested by a Participating Authority to enable that Participating Authority to respond to a Request for Information within the time for compliance prescribed by section 10 of the 2000 Act and provide the Participating Authority with a copy of all Information in their possession or power in the form and within the timescale that the Participating Authority reasonably requires;
- 13.4 The Participating Authorities acknowledge that a Participating Authority may be obliged under the 2000 Act or the Environmental Information Regulations to disclose Information:
- 13.4.1 without consulting the other Participating Authorities; or
- 13.4.2 following consultation with the other Participating Authorities and having taken their views into account.

14. NOTICES

Notices under this Agreement shall be given by sending them by pre-aid registered post, fax (with a confirmatory copy by post) or personal delivery to the Nominated Officer of each Participating Authorities at their respective addresses set out in the description of the Participating Authorities or to such other address notified in writing to the sender. Notices sent by registered post shall be deemed to have been received forty-eight (48) hours after sending (as evidenced by the sender's receipt), notices sent by fax shall be deemed to have been received on the first working day after sending (as shown by the timed printout on or with the sender's copy) and notices sent by personal delivery shall be deemed to have been received at the time delivery is acknowledged.

15. VARIATIONS

No variation to this Agreement shall be binding unless it is agreed unanimously in writing by all of the Participating Authorities.

16. LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the Laws of England and the Participating Authorities submit to the exclusive jurisdiction of the English courts.

17. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Unless expressly stated nothing in this Agreement or any agreement referred to herein will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the Participating Authorities to this Agreement.

IN WITNESS whereof this Agreement has been executed by each of the Participating Authorities in accordance with their respective constitutions on the day and year above written

For and on behalf of
ARUN DISTRICT COUNCIL

For and on behalf of
ADUR DISTRICT COUNCIL

For and on behalf of
BRIGHTON & HOVE CITY COUNCIL

For and on behalf of
CHICHESTER DISTRICT COUNCIL

For and on behalf of
CRAWLEY BOROUGH COUNCIL

For and on behalf of
EASTBOURNE BOROUGH COUNCIL

For and on behalf of
EAST SUSSEX COUNTY COUNCIL

For and on behalf of
HASTINGS BOROUGH COUNCIL

For and on behalf of
HORSHAM DISTRICT COUNCIL

For and on behalf of
LEWES DISTRICT COUNCIL

For and on behalf of
MID-SUSSEX DISTRICT COUNCIL

For and on behalf of
ROTHER DISTRICT COUNCIL

For and on behalf of
WEALDEN DISTRICT COUNCIL

For and on behalf of
WEST SUSSEX COUNTY COUNCIL

For and on behalf of
WORTHING BOROUGH COUNCIL

CENTRAL SERVICES CABINET MEMBER MEETING

Agenda Item 27

Brighton & Hove City Council

Subject:	Occupational Health Procurement		
Date of Meeting:	12 October 2009		
Report of:	Director of Strategy & Governance		
Contact Officer:	Name	Hilary Ellis	Tel: 29-1305
	E-mail:	<u>Hilary.Ellis@brighton-hove.gov.uk</u>	
Key Decision:	Yes	Forward Plan No.: CS12854	
Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 To comply with EU legislation, Brighton & Hove City Council Occupational Health service must be subject to a robust procurement process.
- 1.2 This process should ensure that an effective and efficient occupational health service is provided, which will:
 - create organisational savings by reducing staff absence
 - improve service delivery for the residents of Brighton & Hove by promoting an early return to work following sickness absence or injury thereby achieving best value through effective use of resources
 - improve the health and wellbeing of employees, which is essential to organisational success.

2. RECOMMENDATIONS:

- 2.1 The Cabinet Member to agree to delegate the award of the Occupational Health contract to officers.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

Legal Background

- 3.1 There is a legal requirement under the Health and Safety at Work Act (1974) for Brighton & Hove City Council as the employer to provide a healthy and safe workplace to ensure the physical and mental well-being of staff.

Historical Background to Contract

- 3.2 A contract for an OH service has existed with ESCC since 1997.
- 3.3 Initially the contract was only for the Education & Social Services departments; an historical continuation from the County Council.
- 3.4 The service has developed over the last 12 years to include the whole council.
- 3.5 A one year waiver was signed to extend the contract for 2008/09 and again for 2009/10. A further 6 month waiver is currently being sought to extend the contract to September 2010.
- 3.6 During 2009, closer partnership working with East Sussex County Council has enabled the identification of service improvements and cost savings. These are:-
- savings in relation to administrative aspects of the contract
 - delays reduced, as patient/staff files are now immediately accessible via file storage in Kings House not in County Hall, Lewes,
 - increased number of clinics,
 - home visits / site visits by Occupational Health Physician (OHP) & Occupational Health Adviser (OHA),
 - on-site physiotherapy services,
 - reduction of risk from loss of confidential information in post, previously files sent between ESCC and Brighton & Hove City Council,
 - Occupational Health staff having more involvement with Health Safety and Wellbeing and Human Resources teams, increasing their local control and involvement.

The Current Service

- 3.7 The current OH service ensures that Brighton & Hove City Council employees receive support during periods of ill-health or injury enabling an earlier return to work, to ensure smooth running and efficient service provision for the public.
- 3.8 The service consists of a number of different elements, which are;
- Pre-employment health screening for prospective staff;
 - Health enquiry appointments (for staff whose health, fitness and/or capability may affect their ability to fulfil their contract of employment and may be off-sick);
 - Workplace and home visits by the Occupational Health Physician or Adviser;
 - Ergonomic assessments of the work-station
 - Audiometry (health surveillance activity to test hearing)
 - Ill-health retirement (including under the Teachers' Pension Scheme);
 - Professional return to work advice / guidance for staff and managers;
 - Accessible and detailed medical reports;
 - Specific health advice for formal hearings ;
 - Occupational Health Physician attendance at formal hearings;
 - Professional medical advice enabling efficient, effective and proportionate responses to health issues and or other related situations such as pandemics or emergencies;

- Confidential counselling referral service for individual employees and couples (where one or both are employees);
- Group counselling;
- Mediation (for example where dignity at work issues have arisen);
- Trauma / post traumatic stress counselling such as debriefs following a disturbing or distressing incident of violence / sudden bereavement;
- Physiotherapy
- Management information to assess usage of the OH service and assist planning

The procurement process

- 3.9 A procurement process must be undertaken to comply with legislation, to ensure that the Council is achieving Best Value and is providing a high quality service.
- 3.10 Procurement and Legal have indicated that officers will be available to commit time to this process, if approved.

Benchmarking

- 3.11 A recent benchmark exercise illustrated that Brighton & Hove City Council's spend on occupational health of £20 per head is within the lowest quartile of those surveyed (Portsmouth City Council, Southampton City Council, Luton City Council and Derby City Council).

New Contract

- 3.12 The specification for the new contract will include all the elements in the existing contract as agreed by the OH Steering Group.
- 3.13 Suggestions from the Group to be included in the new contract are:
- Dedicated website to promote health and wellbeing
 - Dyslexia testing and signposting for support
 - Evening appointments / extended opening hours
 - Vaccinations
 - Occupational Health clinics at different locations across the Council's sites
 - Occupational Health referrals to be managed through both face to face appointments and telephone calls
 - The use of technology to remind staff and managers of Occupational Health appointments to reduce non attendance
 - Measuring satisfaction in relation to the quality of the service provided

4. CONSULTATION

- 4.1 A cross council steering group has been set up to ensure the service being procured meets organisational needs. The membership list is at Appendix 1.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications

- 5.1 The current Occupational Health service costs £206,000 per annum.

- 5.1.1 The contract will be awarded for 5 years and the total spend is expected to range between £1,000,000 – £1,160,000
- 5.1.2 In 07-08 staff absence BV12 days lost per head = 10.12. Target set is 9.2.
- 5.1.3 Hidden costs include backfill arrangements and possible service disruption to residents.
- 5.1.4 Indirect costs from insurance claims, etc.

Finance Officer Consulted: Patrick Rice

Date: 25/09/2009

Legal Implications:

- 5.2 OH/staff counselling services are 'Part B' services for the purpose of the EU Procurement Directives (and corresponding UK Regulations).
- 5.2.1 However, the council still remains under a duty to achieve 'best value' in the award and also to apply the general EU principles of non-discrimination, transparency, proportionality and the maintenance of competition in the award of all contracts, whether they are Part B or not.
- 5.2.2 There are possible TUPE implications for the individuals involved in delivering the contract.

Lawyer Consulted: Alison Leitch

Date: 25/09/2009

Equalities Implications:

- 5.3 The OH service provides expertise in ensuring that the council meets its legal duty under the DDA

The Equalities and Inclusion officer is a member of the Occupational Health Procurement Steering Group.

The Occupational Health service provides a service to all staff.

Sustainability Implications:

- 5.4 None identified.

Crime & Disorder Implications:

- 5.5 None identified.

Risk & Opportunity Management Implications:

- 5.6 To be advised following the Pre tender risk appraisal

Corporate/Citywide Implications:

- 5.7 None identified.

6 EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 To be achieved through the procurement process.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 To seek agreement from Cabinet Members for the delegation of the award of the Occupational Health contract, to officers.

SUPPORTING DOCUMENTATION

Appendices:

1. Members of the Occupational Health Steering Group

Documents In Members' Rooms

1. None

Background Documents

1. Business cases for individual projects

Members of Occupational Health Steering Group

Sarah Day,	Occupational Health and Wellbeing Manager
Charlotte Thomas	Head of HR
Hilary Ellis	Head of Health, Safety & Wellbeing
Pauline Lambert	Head of Nursing, Governance & Safety, CYPT
Rena Hope	Unison
Lynne Henshaw	GMB
Sharon Stewart	Senior Procurement Advisor
Joel Caines	Coaching & Advice Manager, HR
Rachel Mallalieu	Occ. Health & Wellbeing Support Officer
Fran Koester	Administrator (minutes)
Denise D'Souza	Director of Community Care, ASC & Housing
Diane Coe	Equalities & Inclusion Officer
Jan Jonker	Head of Strategy, Hollingdean Depot and/or
Mike Moon	Head of Operations, City Clean
Paul Holloway	Interim Head of Life Events, Customer Services

CENTRAL SERVICES CABINET MEMBER MEETING

Agenda Item 28

Brighton & Hove City Council

Subject: ICT Fund 2009-2010
Date of Meeting: 12 October 2009
Report of: Director of Finance and Resources
Contact Officer: Name: Paul Featherstone Tel: 29-0433
E-mail: Paul.Featherstone@brighton-hove.gov.uk
Key Decision: No Forward Plan No: N/A
Wards Affected: All

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 The purpose of this report is to set out proposals for the use of the 2009/10 ICT Fund detailing how the expenditure will help support the council's business objectives.

2. RECOMMENDATIONS:

- 2.2 That the Cabinet Member agrees the allocation of the ICT Fund as set out in this report.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Council's ICT Fund has been set at £685,000 for 2009/10. This is a reduction in the initial £750,000 following a Spend to Save case in 2008/09 to implement better systems for the backup of data. This saw the implementation of tape library systems at two locations backing up all the council data. The potential for investment in ICT is significant and the purpose of this report is to set out the carefully evaluated priorities to ensure that this limited amount of funding can be used to best effect. All of the proposals are supported by business cases setting out the costs and benefits of the investment. The proposals have been grouped into three areas:

- Availability and access – investment to ensure that resilient systems and infrastructure are available on demand allowing our core business to operate effectively.
- Improvement and efficiency – investment to support the ongoing transformation of all the council's services to improve service quality and value for money
- Integration and mobilisation – investing in secure and robust technologies providing facilities for flexible and remote working.

Availability and Access (£87,000)

- 3.2 As more and more of the council's business becomes dependent on ICT, it becomes increasingly important to make sure that the council's systems and networks are available 24/7. We will further develop our capacity to maintain the operational integrity of business services and systems by replacing core infrastructure, network equipment and hardware as appropriate.
- 3.3 It is essential we have sustainable storage and backup facilities in order that the increased volume of electronic information can be recovered if there are any systems or hardware failures, reducing the impact on business continuity outside ICT. We will complete the programme started in 2008/9 to replace our backup and recovery solution and implement an archiving solution for electronic data.
- 3.4 In order to improve system availability and management, we will introduce new tools and enhance some existing technologies. We will integrate our monitoring and reporting through Microsoft Systems Centre. This will further increase our ability to support the vast range of systems in use across the council in line with changing demands.

Integration and Mobilisation (£233,500)

- 3.5 ICT will lead the delivery of remote and flexible working facilities by redeveloping our own working environment and implementing technology which paves the way for employees to access their work tools from any Council office or from any remote site via the internet. We will continue to invest in virtual technology through application and desktop virtualisation facilities to further optimise IT support. Virtualisation is the process where a number of servers can be hosted on a single physical server. This has the effect of reducing the numbers of physical servers and therefore the energy requirements along with improving business continuity for systems.

Improvement and Efficiency (£200,000)

- 3.6 Investment in the Corporate Geographical Information Systems (GIS) has enabled the analysis and display of data which contains a location-based component, such as an address with map co-ordinates. Many of the original investment objectives are near to completion and further investment will be made to continue developing the use of GIS in the Authority. There is now a single view of all maps across the authority and the launch of the same maps on the public website now allows our citizens to see our information. An example is the ability to use maps on our website to log issues such as litter or graffiti.
- 3.7 The development of GIS in conjunction with the development of a single maintained corporate address database using our existing Local Land and Property Gazetteer (LLPG) will deliver consolidated public facing address details for all customer facing departments in the Council, a contractual and statutory requirement. This means that

we have an increased level of confidence in our addressing information and ensure that we are able to capture all resident views for example in consultations.

- 3.8 Two of the key systems to support the transformation of information, Electronic Documents Records Management (EDRM) and Customer Relationship Management (CRM) will continue to be developed. These are currently available to only some service areas (Cityclean and Planning). Extending the deployment of these solutions was identified in 2008/9 and this will continue to be extended.

Residual funds and the Value for Money II programme

- 3.9 The above expenditure totals £520,500. This covers the works that can be delivered in the 2009/10 financial period. We are awaiting the outcome of the high level business case for the Value for Money 2 programme, which will identify areas for improvement. These findings are expected by December 2009 which would leave insufficient lead in time for ICT projects to be delivered before the end of the financial year. Therefore the balance of £164,500 should be re-profiled into the 2010/11 financial period.

4. SUMMARY

The proposals outlines above are summarized in the table below:

Project	Description	Cost
Availability and Access		
Backup and Recovery Solution	Review and replace existing backup solution	£33,000
Microsoft Systems Centre	Integrated Infrastructure and Service monitoring	£54,000
		£87,000
Integration and Mobilisation		
ICT relocation and flexibility platform	Works to increase density of staff in Hove Town Hall and accommodate all ICT staff. Mobile and virtual technology deployment programme	£233,500
		£233,500
Improvement and Efficiency		
Project Management Resource	Dedicated project control and corporate governance resource for the delivery of the 2009/10 ICT capital programme	£90,000

Corporate Information Systems development	Integration and development of corporate systems (EDRM, GIS, LLPG and CRM)	£132,000
		£200,000
Value for Money 2		
Reprofile into 2010/11	Ensure sufficient financial resource available to deliver the ICT in order to support the VFM programme	£164,500
		£164,500
TOTAL		£685,000

5. CONSULTATION

- 5.1 This report supports the high level objectives contained in the ICT Strategy 2008 – 2012 considered by The Overview and Scrutiny Commission at its meeting on 21st October 2008 and by Cabinet at its meeting on 20th November 2008.

6. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 6.1 Funding for £685,000 of the strategy was agreed by Council on 12th of February 2009.

It is anticipated that updating of the current systems will add value from increased functionality, whilst still be supported by current revenue budget.

Finance Officer Consulted: Patrick Rice

Date: 15/09/2009

Legal Implications:

- 6.2 There are no significant legal implications arising from the report itself. The requirements for the Council to publish contact details for customer facing departments are contained in the Freedom of Information Act 2000 and reflected in the Council's publication scheme. Any contracts or procurement activities arising from the implementation of the strategy need to be considered separately for compliance with European and domestic legislation as well as the Council's standing orders.

Lawyer consulted: Elizabeth Culbert

Date: 17/09/2009

Equalities Implications:

- 6.3 An Equalities Impact Assessment (EIA) will be conducted against any part of the programme which results in a change to user functionality.

- Sustainability Implications:
- 6.4 This work programme supports a number of initiatives (such as mobile & flexible working, consolidated infrastructure, thin client computing) supporting the wider corporate commitment to sustainability and the reduction of carbon emissions. The virtualisation programme to date has reduced our physical servers by 30% which results in saving approximately 2.3MW electricity per year and 19,500 Kg Carbon Dioxide.
- Crime & Disorder Implications:
- 6.5 None identified.
- Risk and Opportunity Management Implications:
- 6.6 Each scheme/action identified within the programme will be subject to appropriate risk assessment. This report allocates funding to business resilience which helps manage risks of business continuity.
- Corporate / Citywide Implications:
- 6.7 This report allocates funding to support the council's Value for Money programme.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Documents In Members' Rooms

1. None

Background Documents

1. Business cases for individual projects

CENTRAL SERVICES CABINET MEMBER MEETING

Agenda Item 29

Brighton & Hove City Council

Subject:	Commercial Portfolio Estate Management Consultancy (1st April 2005- 31st March 2012)
Date of Meeting:	12 October 2009
Report of:	Director of Finance & Resources
Contact Officer: Name:	Angela Dymott Tel: 29-1450 Richard Butler 29-1440
	E-mail: angela.dymott@brighton-hove.gov.uk Richard.butler@brighton-hove.gov.uk
Key Decision: Yes	Forward Plan No: CS12784
Wards Affected: All	

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 In 2004, the Policy & Resources Committee approved the award of two five-year contracts for commercial portfolio estate management consultancy, in each case with an option for a two-year extension. Policy & Resources Committee approval made no provision as to which decision-making body or person within the council would have authority to exercise the option. As Policy & Resources approval was an executive decision the same is true as regards the contract extension and it falls to the Central Services Cabinet Member to give the necessary authorisation to delegate authority to the appropriate officer, the Director of Finance & Resources.

2. RECOMMENDATIONS:

- 2.1 That the Central Services Cabinet Member grants the Director of Finance & Resources delegated authority to extend the council's existing contracts for commercial portfolio estate management consultancy by two years.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 On 8 December 2004, the Policy & Resources Committee resolved to award, subject to contract, the council's estate management consultancy service to two separate firms for a five-year period with an option of a two-year extension. Cluttons won the contract for the commercial investment property portfolio and Smiths Gore for the agricultural investment portfolio.

- 3.2 Prior to tendering these portfolios in 2004 and based on previous experience it was clear that there are advantages to be gained in giving the council greater flexibility under the management contract particularly regarding timing of the renewal. A key consideration being that renewal might come due at a time, or in circumstances, when a rigid timescale could be to the council's disadvantage. This concept was approved by Policy & Resources Committee in the initial procurement report in June 2004 and incorporated in the procurement documents. Similar flexibility has been built into other council contracts.
- 3.3 The terms of the contract specify that the Council serve notice by 1st July 2009 regarding its intentions to invoke the extension of the contract. To ensure continuity of service and following consultation with the Legal team and the interim Director of Finance & Resources, Cluttons and Smiths Gore were advised on 30th June 2009 of the Council's intention to extend the contracts, subject to approval of this Cabinet Member Meeting.
- 3.4 Where the council's executive resolves to authorise a five-year contract with an option for a 2-year extension, the resolution should include a provision specifying who has authority to grant the extension. In the case of the estate management consultancy contract, however, Policy & Resources Committee resolution made no reference to authority levels and it therefore becomes necessary to seek Cabinet Member approval to grant authority to the appropriate person.
- 3.5 Having implemented Policy & Resources Committee contract decision in 2005, and having worked closely with the contract holders (Cluttons and Smiths Gore) since then, the Assistant Director of Property & Design is best qualified to make a decision about whether to extend the contracts.
- 3.6 It is therefore recommended that Cabinet Member Meeting grant delegated authority to the Director Finance & Resources to make that decision.

4. CONSULTATION

- 4.1 A proper tendering process for this work was undertaken at the time, and the contract entered into allowed for the extensions referred to here. At the time that the extension was considered during June 2009 consultation took place with the Council's contracts lawyers and the interim Director of Finance & Resources.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 As set out in Section 6 of this report, an extension of the current contract is felt to be the best option in terms of value for money.

The annual costs of both contracts are principally based on a percentage of income received and number of lease renewals/reviews carried out within the two portfolios. It is therefore difficult to estimate with any certainty the exact annual cost of the contracts as they are largely dependant on the current market conditions of the two investments portfolios. The contract costs and rental receipts are managed within the appropriate service budget as part of the general fund. The annual costs for the 2008/09 financial year were approximately £410,000 for

the commercial investment portfolio and £60,000 for the agricultural investment portfolio.

Legal Implications:

- 5.2 The extension to this contract was provided for in the original contract which was procured in accordance with the relevant EU law and accompanying UK Regulations. The Council must take the Human Rights Act into account in respect of its actions but it is not considered that any individual's Human Rights Act rights would be adversely affected by the recommendations in this report.

Equalities Implications:

- 5.3 None identified.

Sustainability Implications:

- 5.4 None identified.

Crime & Disorder Implications:

- 5.5 None identified.

Risk & Opportunity Management Implications:

- 5.6 None identified.

Corporate / Citywide Implications:

- 5.7 None identified.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 One possible option would have been to re-tender the contract but this is a long, expensive and resource intensive process which takes in excess of 12 months. This was not considered realistic in the time available.
- 6.2 The only other alternative could have been to terminate the contract with effect from 31st March 2010 and bring the services in house. This was discounted for the agricultural portfolio because appropriate staff (2 FTE) would not transfer and we do not have the expertise in house the agricultural portfolio having been managed externally for at least the last 75 years. To bring the urban management back in house would have incurred greater costs than the running of the contract, not all of the staff currently managing the portfolio contract (at least 8-10 full time equivalent staff work on the contract) would have transferred, we would be faced with appointing extra staff and finding additional accommodation and we would lose the ready access to the range of services and expertise (much of it freely available because of the existing contact) available from Cluttons.

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 Both companies provide value for money in managing their respective portfolios, a fact demonstrated by the results of the bidding process in 2004. At that time a detailed weighted scoring matrix was used to evaluate the bids; Cluttons had an overall score of 85% compared with the second place company at 35% and on the agricultural portfolio Smiths Gore scored 66% compared with the second company at 59%. In addition, the basic management fee and the different fees charged for types of work under the portfolio remain competitive with fees currently being

charged by other companies. This has been well demonstrated by instances outside the contract where Cluttons have bid successfully for instructions such as the Amex sale and rent review. Cluttons is one of the leading property management companies in the country and Smiths Gore is the biggest agricultural specialist with an excellent track record. It is therefore advised that both contracts represent value for money and should be extended.

- 7.2 The original report to the Policy & Resources Committee dated 8 December 2004 omitted to include a provision for delegating to the Authorised Officer (Director of Finance & Resources) authority to extend these contracts on behalf of the council. This report seeks to rectify that omission and enable the Director of Finance & Resources to extend these contracts for the two year extensions allowed under each contract. Having implemented Policy & Resources Committee's contract decision in 2005, and having worked closely with the contract holders (Cluttons and Smiths Gore) since then, the Assistant Director of Property & Design is best qualified to make a decision about whether to extend the contracts.
- 7.3 It is therefore recommended that the Central Services Cabinet Member grants delegated authority to the Director of Finance & Resources to make that decision.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Documents In Members' Rooms

1. None

Background Documents

1. Report of the Director of Finance & Property to the Policy and Resources Committee dated 8 December 2004 (Agenda Item No. 144).

CENTRAL SERVICES CABINET MEMBER MEETING

Agenda Item 30

Brighton & Hove City Council

Subject:	Property Disposals - Update		
Date of Meeting:	12 October 2009		
Report of:	Director Finance & Resources		
Contact Officer:	Name:	Angela Dymott	Tel: 29-1450
		Richard Butler	29-1440
	E-mail:	<u>angela.dymott@brighton-hove.gov.uk</u>	
		<u>richard.butler@brighton-hove.gov.uk</u>	
Key Decision:	No	Forward Plan No: N/A	
Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report gives an annual update on and property disposals within the non – operational (investment) and operational portfolios that incorporates a review of disposals undertaken over the past year. This report is complemented by a separate report and Appendix A in Part 2 of the Agenda.

2. RECOMMENDATIONS:

- 2.1 That the contents of the report, the implications of the current property climate and the progress achieved on disposals over 2008 – 09 together with impending transactions be noted.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The Council has a large property portfolio comprising a diverse range of non – operational (investment) and operational properties. Together these include; commercial investments , agricultural property, development sites, operational premises such as schools, libraries and social care establishments, residential, central administration, parks and recreational properties, seafront premises and a number of historic and listed buildings.
- 3.2 The investment (commercial and agricultural) portfolio produces an annual rental income of approximately £8.5 million and makes a valuable contribution towards services provided by the Council. The portfolio requires active management and this is provided by the Estates Team, Property & Design, supported by external consultants, Cluttons and Smiths Gore for the urban and agricultural properties respectively.

4. Property Reviews

- 4.1. The Corporate Property Officer (CPP), Property & Design is responsible for the council's over- arching function of asset management under the Asset Management Plan (AMP) & Corporate Property Strategy 2008 - 2011. This provides a strategic overview of the assets and the systems, processes and policies to manage and maintain them. It also provides a framework for challenging and reviewing the reasons for continuing to hold the assets and sets out our corporate property strategy that shows how our property objectives align with the council's corporate priorities.
- 4.2 For operational properties, age, changing services and legislative requirements are significant determining factors regarding the continued and alternative use of property. Once a property becomes surplus to requirements in terms of service need the building falls under the management of Property & Design it will be subject to asset management processes and property performance review evaluating its condition, suitability and capacity. A detailed option appraisal is undertaken when the property is declared surplus to requirements and a range of alternatives explored to include possible transfer to community groups or disposal. In addition, opportunities for development may occur within the operational portfolio either because we have identified the potential need working in partnership with other agencies, and/or an outside requirement arises, such as the new medical facility under construction at Whitehawk Road for the Primary Care Trust.
- 4.3 The investment portfolio is the subject of annual Strategic Reviews in consultation with our external agents. Whilst the majority of the properties are income producing we remain vigilant for development opportunities that regenerate areas of the City and working in partnership can address some of its needs in terms of housing and improved facilities – i.e. leisure, commercial, retail and industrial. These may arise when occupiers or developers seek to; modernise facilities, replace outmoded buildings or extend and therefore require a new long lease as security for funding. We negotiate the surrender of the existing lease in exchange for a new lease and a further premium payment. It is therefore of strategic benefit for the council to seek disposals through long leaseholds rather than freeholds so we can exert our influence in the City for the present and in the future to enable future opportunities to be capitalised on and maximised.
- 4.4 The central objectives in maintaining the investment portfolio are to improve revenue income whilst identifying and taking advantage of disposal opportunities to generate capital. These objectives also need to be balanced against the social and environmental development opportunities and corporate council priorities. Generally speaking it has been and is possible to balance these competing objectives through consultation and careful selection of properties for disposal to ensure the required outcomes are met.
- 4.5 Following a Best Value review and on-going annual reviews over the past 10 years a list of properties from the non- operational portfolio have been identified for disposal on the basis that they were poorly – performing investments and non - strategic to the portfolio. Many of the properties have since been sold; those retained are affected by traffic proposals or circumstances have changed which

dictate retention. In most instances the preferred method of disposal was by auction because, in the active market which prevailed for several years, they provided an open, competitive and speedy method of concluding sales. In some instances other disposal methods have been adopted where appropriate.

- 4.6 The review of the investment portfolio is reassessed annually and a separate strategic review was undertaken more recently to identify further disposal opportunities in accordance with the asset management process and criteria. Whilst some properties are secondary or tertiary investments, often detached from the main areas of the portfolio, they continue to earn income without undue management expenditure. In addition, although not obvious strategic holdings, experience has demonstrated that it is often better to hold assets and take advantage of situations that arise, possibly when adjoining properties become ripe for redevelopment to enable a comprehensive land assembly that could achieve far more for the City. Accordingly, it is considered preferable to monitor the portfolio and explore potential opportunities annually rather than adopt an arbitrary list for disposal where timing, opportunity and City outcomes might not be right.

5. Economic Situation

- 5.1 Whilst the process of disposal is ongoing economic circumstances are a major influence on the buoyancy of the property market and the speed at which transactions proceed. Most major transactions are reliant upon external funding and the economic situation which has prevailed for the last two years has impacted on value, market confidence and availability of funding which has brought most development to a halt.
- 5.2 The UK property market peaked late summer 2007 although the US sub prime mortgage crisis emerged early in 2007. The recession began in the US in December 2007 and by February 2008 the UK Government were forced to step in at Northern Rock which was subsequently mirrored by events in the US. Since the credit crunch took hold the UK property market has endured a tough time. Credit markets froze as banks struggled to retain liquidity and investor confidence evaporated. Manufacturers saw credit disappear, economic growth went into reverse, employment began to fall and by June 2008 the UK went into recession. The situation worsened when the global economic crisis was triggered by the collapse in the US of Lehman Brothers in October 2008.
- 5.3 During this period developers came to a halt on projects in the City and commercial and residential markets were at a virtual standstill. We continued to assess the situation as events unfolded although there were few options open other than to wait for confidence to return. The fall in values made it imprudent to offer new properties on the market. We were aware of cash rich purchasers looking for bargains but to sell in such a depressed market would not serve the council's best interests or represent value for money. Efforts have been directed towards preparing for the future marketing of properties including Patcham Court Farm development site this autumn. It is apparent also that there is still buoyancy in the hotel market based upon market commentary and actual proposals for hotel development e.g. the attractive range of bids received for hotel use on the former Ice Rink site where negotiations are continuing with the preferred bidder and the

proposed marketing of the former Charter Hotel where there is continued hotel interest.

- 5.4 Close attention to the economy and the market are key factors in preparing for disposals. Share prices have rallied from the low in March 2009 and with continued low interest rates and “quantitative easing” the UK economy shows signs of recovery in various sectors. Investment levels for commercial property during the first half of 2009 have been low, but are anticipated to rise as historically attractive prices tempt more cash-rich investors into the market. While the banks’ reluctance to lend will slow the speed of the recovery there is a view that their leniency over breaches of loan-to-value covenants coupled with limited available development should ensure a quicker recovery than was seen in the 1990s economy. Other views are more cautious.

6. Disposal Activity During 2008 - 09 and into 2009 -10

- 6.1 The council has been proactive in this area and a number of disposal transactions have been concluded on deals agreed during the previous financial year in spite of the conditions stated in 5.2, 5.3 and 5.4 above. These are set out in the Part 2 report Appendix A together with some anticipated receipts where transactions are on - going. Discussions are continuing on schemes where developers remain active and others are being prepared for market or options being assessed. One which will come to the market this autumn is Patcham Court Farm where the informal planning brief has been reassessed to allow scope to consider a wider range of development options to extend the sites market appeal. There was active interest in the former Ice Rink site in Queen Square for hotel development and discussions are continuing with the preferred bidder. Elsewhere we are preparing to market the former Charter Hotel in Kings Road which continues to attract interest from the hotel sector. We have also had an encouraging response from agents regarding the possible sale of a surplus property in the Withdean area. Transactions can take a long time to complete often because of the need to resolve problems with the property or because of the impact of the economic situation on funding availability or occupier confidence.

7. Significant Site Disposals

- 7.1 One significant success this year has been the negotiation of an option agreement with American Express for the sale of the freehold interest in their premises where the site is held on a long ground lease from the council. Not only should this produce a capital receipt for the council but it facilitates expansion at American Express helping to retain one of the city’s major employers creating new employment opportunities and allowing redevelopment of a large area of the city.
- 7.2 Discussions are continuing on a number of commercial development sites and major projects. The council’s control of a number of employment sites and other major properties, such as the Brighton Centre means opportunities arise both from council initiatives and as a result of market interest. Such proposals are usually significant, entail comprehensive land assemblies with various parties and can take time to come to fruition.

8. CONSULTATION

- 8.1 Consultation has taken place with all relevant parties. In addition a revised consultation protocol has been developed on property disposals to ensure that the consultation process throughout any disposal/ development, from inception through design to planning, is clear and thorough so that all interested parties are aware of the situation and have an opportunity to comment at the appropriate stage in the process.

9. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 9.1 There are no direct financial implications attached to this report as the capital receipts anticipated have been included in initial and follow up reports and have been included in the Council's budget process. Any delays in realising the receipts, which are used to support the Council's Capital Investment Programme, have been taken into account in the financial forecasts.

Finance Officer Consulted: Rob Allen

Date: 11/09/2009

Legal Implications:

- 9.2 There are no adverse legal implications considered in this report.

Lawyer Consulted: Anna Mackenzie

Date: 11/09/2009

Equalities Implications:

- 9.3 There are no equalities implications.

Sustainability Implications:

- 9.4 There are no sustainability implications.

Crime & Disorder Implications:

- 9.5 There are no crime and disorder implications

Risk and Opportunity Management Implications:

- 9.6 There are no risk and opportunity management implications

Corporate / Citywide Implications:

- 9.7 Improvement in the property market will enable development and disposal opportunities across generating capital receipts.

10. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 10.1 Potential property proposals are evaluated through the Asset Management disposal process to identify opportunities for disposal from the investment portfolio. This includes a review of the properties and internal consultation to identify other possible council uses. The property is considered in conjunction with council policies which might direct its use. The process identifies site restrictions and any development potential in preparing for marketing. Once the method of disposal is agreed consultation ensues with ward councillors and other directly interested parties which could dictate whether we market openly or on a restricted basis e.g. community transfer. The disposal will go through several

stages including marketing, assessments of bids, approval of terms and finalising the transaction with the preferred bidder.

10.2 The operational portfolio is reviewed for disposal options and fitness for purpose through the same asset management processes and specific property performance reviews that plot the condition and suitability of a property on a decision matrix where “considered disposal “ may be one of the options. At the start of any disposal process the options are informed by the establishment of the planning criteria and initiation of the consultation protocol. We assess the most appropriate method of disposal for each property. The actions and proposals outlined in this report indentify disposals that have concluded in the financial year, others that are on-going plus the steps taken to keep projects alive and bring other properties to the market.

11. REASONS FOR REPORT RECOMMENDATIONS

11.1 The council has managed some successful disposals despite the economic situation and the restricted property market. Transactions that have been ready to complete on the basis of deals agreed earlier have been concluded where possible. During the current financial year terms have been agreed for an option allowing American Express to buy the council’s freehold interest in the site occupied by their European HQ building. This transaction occurred at a time when large commercial sales were scarce and given the need by Amex to expand its operation in the city and redevelop the existing building it took place at a level reflecting a better market and will result in a significant capital receipt for the council. In addition there have been various indications that the hotel sector has remained buoyant as evidenced by the level of interest in the former Ice Rink site when it was marketed and by continuing interest in the former Charter Hotel. Our strategy has been to take advantage of these pockets of interest in the uncertain property market.

11.2 Otherwise the prudent view is that it is not appropriate to bring significant properties to the market at the bottom of the property cycle when the eventual economic and market recovery would allow a better return on transactions in due course. Location is often identified as the most crucial factor in regard to value but timing is significant in getting the best out of the market. Other options and delivery vehicles are being explored with various partners as now is the time to prepare for potential disposals so that the council is best placed and in a good position to accelerate any disposal and take advantage of changes in market conditions.

SUPPORTING DOCUMENTATION

Appendices:

1. None.

Documents in Members' Rooms

1. None.

Background Documents

1. None.

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