



**Brighton & Hove
City Council**

Cabinet Meeting

Title:	Cabinet
Date:	1 September 2011
Time:	4.00pm
Venue	Council Chamber, Hove Town Hall
Members:	Councillors: Randall (Chair) Bowden, Davey, Duncan, Jarrett, Kennedy, J Kitcat, Shanks, Wakefield and West
Contact:	Tanya Davies Acting Democratic Services Manager 01273 291227 tanya.davies@brighton-hove.gov.uk

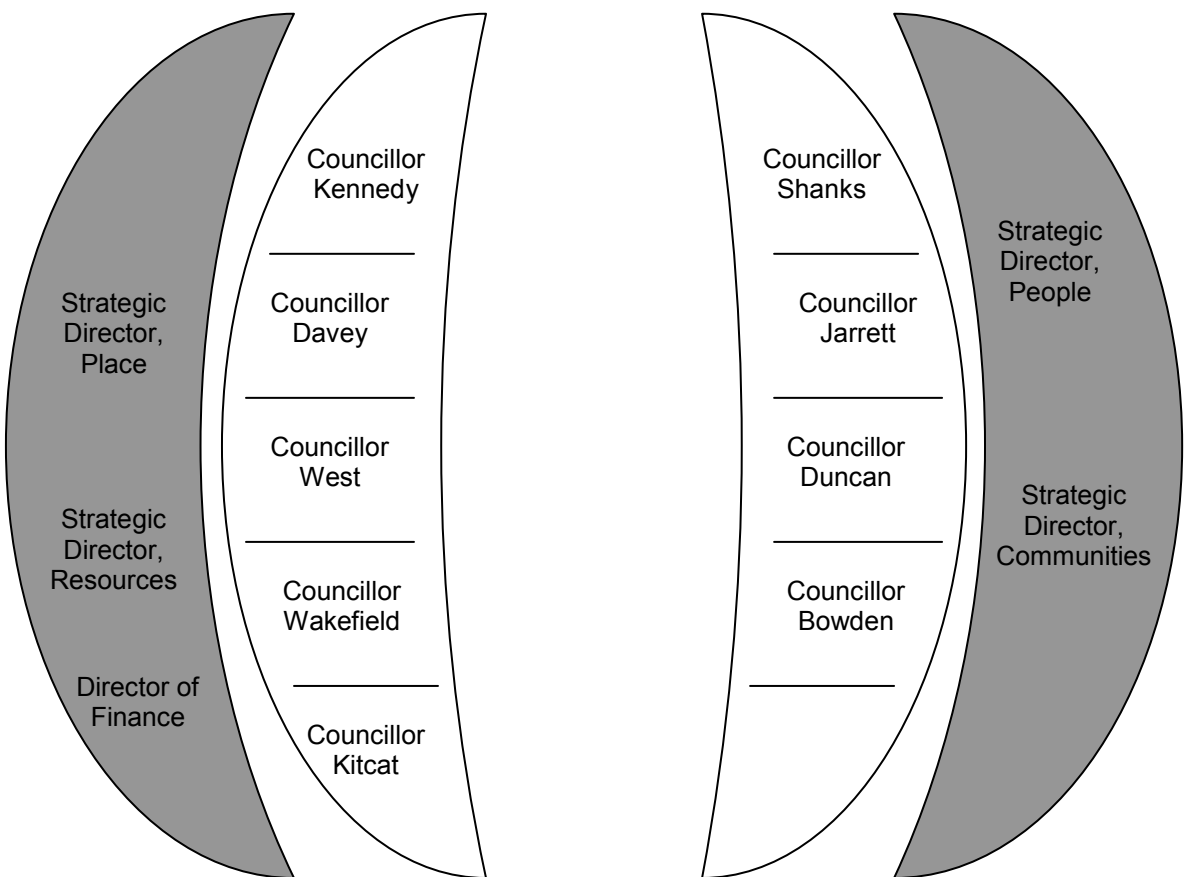
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Democratic Services: Meeting Layout

Monitoring Officer Councillor Randall Chief Executive Democratic Services Officer

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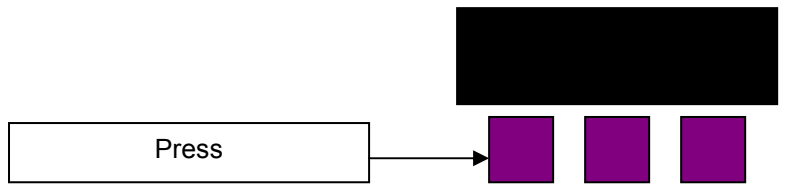
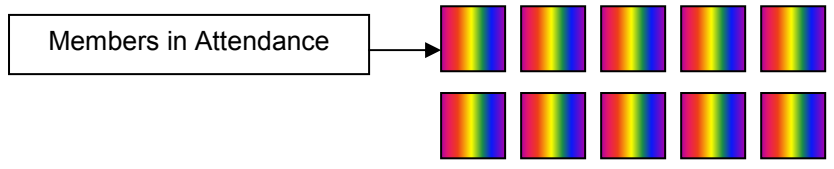
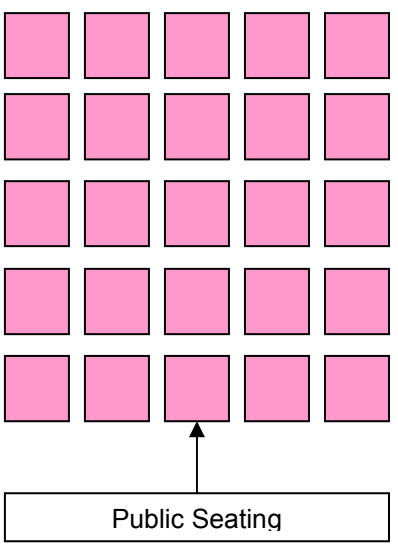
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Speaker Leader of the Conservative Group Leader of the Labour & Co-operative Group



AGENDA

50. 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.

51. CHAIR'S COMMUNICATIONS

52. PROVISION OF THE COMMERCIAL PORTFOLIO (AGRICULTURAL) ESTATE MANAGEMENT 1 - 36

Report of the Strategic Director, Resources (copy attached).

Contact Officer: Tom Hook

Tel: 29-1110

Ward Affected: All Wards

CABINET

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.

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For further details and general enquiries about this meeting contact Tanya Davies, (01273 291227, email tanya.davies@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk.

Date of Publication - Tuesday, 23 August 2011

Subject:	Provision of the Commercial Portfolio's Downland Estate Management Consultancy Contract		
Date of Meeting:	1 September 2011		
Report of:	Strategic Director, Resources		
Lead Member:	Cabinet Member for Finance & Central Services		
Contact Officer:	Name:	Tom Hook	Tel: 29-1110
	Email:	tom.hook@brighton-hove.gov.uk	
Key Decision:	No		
Ward(s) affected:	All		

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

- 1.1 This report relates to the call-in meeting of the 22 July Overview and Scrutiny Commission (OSC), convened to consider the call-in request in relation to Downland Estate Management Contract.
- 1.2 OSC resolved to call-in the Cabinet decision. This report sets out for Cabinet all background information relating to the decision, recommendations and minutes from the OSC meeting, and extra information provided by the Strategic Director, Resources since the call-in meeting.
- 1.3 The following information is contained in the appendices to this report:
 - (a) **Appendix 1** contains the report from the Strategic Director, Resources which was agreed at the 14 July Cabinet meeting;
 - (b) **Appendix 2** contains the official record of Cabinet's Decision in relation to this report;
 - (c) **Appendix 3** contains an extract from the draft minutes of the Cabinet meeting;
 - (d) **Appendix 4** contains the Call-In request;
 - (e) **Appendix 5** contains further information on this issue supplied by the Strategic Director, Resources for the call-in meeting;
 - (f) **Appendix 6** contains the draft minutes of the 22 July Overview and Scrutiny Commission (OSC) meeting and recommendations to Cabinet.

2. RECOMMENDATIONS:

- 2.1 That Cabinet, in accordance with Part 6, paragraph 16.10 of the Council's constitution, and having considered the resolution of the Overview and Scrutiny Commission on 22nd July and the additional information provided to OSC and in this paper, either:
- (a) confirms the Cabinet decision of 14 July 2011 in relation to the Downland Estate Management Contract; or
 - (b) agrees to proceed with an external procurement process in relation to the Downland Estate Management Contract and gives delegated power to the Strategic Director Resources to award the contract.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 On 14 July 2011 the Cabinet agreed a report on Provision of the Commercial Portfolio's Estate Management Consultancy Contract (This report is reprinted in **Appendix 1**).
- 3.2 On 15 July, Councillor Peltzer Dunn wrote to the Chief Executive, requesting that the Cabinet decision be called in. (The Call-In request is reprinted as **Appendix 4** to this report.)
- 3.3 The Chief Executive accepted the Call-In request on 15 July and asked for the issue to be considered at the Overview and Scrutiny Commission.
- 3.4 The Overview and Scrutiny Commission met on the 22 July to consider the issues raised. The Strategic Director, Resources provided additional information for the call-in meeting contained in **Appendix 5**. The draft minutes of this meeting are attached as **Appendix 6** and the following is the extract of the resolution:

2.2.1 Resolution of the Overview and Scrutiny Commission

"That the decision on Downland Estate Management be referred back to Cabinet for reconsideration on the grounds:

- There was inadequate consultation carried out prior to the decision being taken
- The financial implications of the decision had not been properly assessed"

Additionally OSC Members recommended that any subsequent report to Cabinet should clearly set out:

- 1) Council objectives regarding its management of the Downland Estate
- 2) What alternative options have been explored for its management
- 3) What implications each of the options would have on key stakeholders
- 4) The financial implications of each of the options, detailing what the risks are and a breakdown of any additional costs of the council
- 5) Consultation feedback
- 6) The proposed timetable specifically for the Downland Estate

- 3.4.1 In agreeing to refer the decision back Overview and Scrutiny Commission Members made clear that the Urban Estate Management element was not being called-in.
- 3.5 Having taken evidence from the Cabinet Member for Finance and Central Services and relevant officers, and following debate the Overview and Scrutiny Commission agreed to refer the decision relating specifically to the Downland Estate Portfolio back to Cabinet for reconsideration. In doing so the Commission made a number of recommendations found in **Appendix 6**.

4. EXTRA INFORMATION PROVIDED SINCE THE 22 JULY OSC MEETING

Background to Additional Information

- 4.1 The OSC Members voted to refer the decision on the Downlands Estate Management back to cabinet on the following grounds:
- There was inadequate consultation carried out prior to the decision being taken
 - The financial implications of the decision had not been properly assessed
- 4.2 Additionally Members recommended that any subsequent report to Cabinet should clearly set out some specific information.
- 4.3 This part of the report provides additional information that officers have managed to gather following the OSC meeting to help inform these area.

Consultation

- 4.3.1 As is usual practice when bringing a request to re-procure a contract to Cabinet, consultation has been concentrated internally on cross-council working officer groups between property, procurement, legal, finance and countryside teams. Consultations had also been carried out with informal Cabinet and the Leadership.
- 4.3.2 A key concern of OSC was the level of consultation with the farmer tenants. The general, day-to-day communications between the farmers and Smiths Gore/Council staff provide an insight into their wishes and concerns. In addition, in June Smiths Gore undertook an independent confidential consultation with their client and tenant farmers. The feedback is sensitive and confidential and was not available to OSC. However, subsequent to the OSC meeting, Smiths Gore have agreed to provide the following summary that includes feedback with regard to potentially bringing back the service in-house:

‘As part of Smiths Gores client service review, a sample of tenants were interviewed by telephone. Whilst recognising that it is possible for the council to bring the management of the Downland Estate in hand none of the tenants interviewed supported this approach. Two areas of concern were expressed. Firstly that the council would fail to deliver the same level and standard of management service provided by the council’s current and previous managing agents. Secondly, at a policy level there is a considerable degree of scepticism and concern with aspects of the Green Party’s manifesto.

Individual specific concerns were raised with regard:-

- The inability of in house agent to hold an independent view and thus strike a sensible & balanced approach to negotiations and issues of judgement.
- Likelihood that tenants would need to seek and incur the cost of their own independent advice more frequently than to date, probably resulting in matters being referred to arbitration.
- The Councils political agenda would have too much influence.
- An in house agent would not be able to resist political pressure to deliver items/requirements that were unrealistic or impractical.
- The Council was likely to achieve reduced levels of rent.
- An In house agent would not have the benefit of being able to call upon experience gained from working with other landowners both locally and nationally.
- Council expenditure would be diverted away from farm/landlord repairing obligations and towards fulfilling the 'Green Agenda'

4.3.3 The feedback by tenant farmers on Smiths Gore's performance was that they were highly regarded and a significant improvement on the previous agents, but that they needed to be more responsive to requests and carrying out tasks.

Financial Implications

4.3.4 Financial implications are detailed in paragraphs 6.1-6.3.

Additional Information Related to Specific OSC Proposals

4.3.5 In addition to the general concerns around consultation and finance, OSC asked that Cabinet review specific information if they agreed to review their decision. Where it has been possible to gather information in the time available, this is provided below under the relevant question/area:

(a) Set Out Council objectives regarding its management of the Downland Estate

The Cabinet Member has indicated that he wishes to review the current Downland Initiative and the Strategic Director of Place has been charged to set up a joint Member/Officer working group to review the policy. Until this is done, it is difficult to set out the Council objectives regarding the management of the Downland Estate. To await the development of the policy would be to risk legal challenges over the potential renewal of the Estate Management contract or the ability to effectively in-house the service. However, the 3 key priorities set out in the Leader's speech provide good guidance as to what those objectives may be and the Cabinet Member has indicated that a key objective to in-housing the Estate Management is to develop closer working relationships with tenant farmers in order that the Administrations' policies can be better implemented.

The current Downland Initiative is likely to already provide much of what will be the policy of the Administration and therefore also gives guidance on possible objectives. The Initiative's current objectives are to:

- [agriculture and land use](#) - establish a sustainable agricultural system on the Downs with greater emphasis on local healthy food production, diversification and farm management
- [access](#) - significantly expand the amount of access land adjacent to the urban fringe, connect existing blocks of open access land, improve links between open access land Rights of Way including “easy access” routes, connecting the urban area into the countryside, provide for the needs of cyclists and horse riders
- [wildlife and landscape](#) – conserve and enhance downland habitats and species to meet biodiversity Action plan targets, landscape enhancement and habitat restoration
- [education and interpretation](#) – implement an integrated interpretation and publicity strategy for residents and visitors, school visits, etc.

Since the publication and the formal adoption of the DI the council has been working in partnership with representatives from South Downs Joint Committee, Natural England, ESCC, Smiths Gore, farmers and internal officers from planning, countryside and property teams, to develop and implement an Action Plan and secure funding where appropriate for the recommendations.

The key objectives achieved so far include:

- Increased public access including an additional 3kms footpaths/bridleways, 290ha of open access land. Creation of Permitted Access Land at Stanmer through the acquisition of the tenancy of Home Farm, Stanmer. Approx 800-900acres.
- The provision of easy access routes for disabled users and buggies at Stanmer.
- Creation of Permitted Access Land through the acquisition of the tenancy of Ovingdean Grange Farm, Ovingdean.
- 9 resolved ‘Missing Link’ footpaths.
- Creation of new access point to existing ‘Open Access Land’ at Pickershill Farm.
- Contribution to LDF consultation in working to shape the council’s planning policy.
- Negotiated total capital receipts of approx £2m
- Disposal of non-core property assets, including part of Court Farm, Falmer and properties at Ovingdean, to provide funding for diversification and DI projects.
- Letting of orchard within Stanmer to a community organisation offering education opportunities.
- Provision of additional allotments at Ovingdean.
- Working with Brighton & Hove Food Partnership to achieve interaction with schools and farms
- Transfer of some farmland around Ditchling Beacon to the National Trust
- Through negotiations with tenants Smiths Gore have achieved surrender of land including woodland Burial site in Woodingdean, cycle track, Community Stadium, extension to St Wulfrens Church graveyard and Bevendean Community Garden.

In addition 29 other lesser actions have been achieved mainly though re-lettings, rent reviews and succession negotiations, 106 are on-going and 49

have failed. The scope and success of actions is restrained by the legal framework under which the land is occupied and the funding available to initiate change. Under their tenancies our farmers are under no obligation to agree change and will resist if they do not believe it is in their best interest.

(b) What alternative options have been explored for its management

Alternative options were explored in the original Cabinet paper including, of course, continuing to out-source the Estate Management service.

(c) What implications each of the options would have on key stakeholders

Implications on one of the key stakeholder groups, the tenant farmers, are partially answered above in the Consultation section. Implications for other stakeholder groups gained through biodiversity, eco-tourism etc should only be positive if the right decision is made.

(d) The financial implications of each of the options, detailing what the risks are and a breakdown of any additional costs of the council

The financial implications, as far as they are known at the moment, have been given for in-housing and for re-procuring the contract within the initial Cabinet paper and in the additional information to OSC.

(e) Consultation feedback

Additional information provided in the section above.

(f) The proposed timetable specifically for the Downland Estate

The proposed timetable if the management is brought in house is as set out below. It is hoped to have a rural surveyor employed by January 2012

Action	Date
Prepare job description, personal specification	September 2011
Advertising	October 2011
Shortlisting, interview and selection	November 2011
Employment commencement	January 2012
Smiths Gore management contract ceases	March 2012

5. COMMUNITY ENGAGEMENT AND CONSULTATION

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

6. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

6.1 The original Cabinet decision provided an estimate of the costs of bringing the service in-house as between £50,000 and £70,000. Further work has been undertaken to ensure that these estimates remain reasonable. The current cost of the contract is £60,000 plus in 2010/11 £27,000 additional contract fees were

paid. A draft budget for the core contract has been prepared that includes the following costs:

- A new full time rural practice surveyor post
- Additional in-house legal resources
- Additional in-house administrative support
- Additional in-house debt collection and financial monitoring resource
- Access to a small amount of specialist support

6.2 There are two key areas of financial uncertainty. The first is the ability to recruit a sufficiently qualified and experienced surveyor and this will impact on the total costs of this element of the work. All the other areas will require detailed analysis of workloads with Smiths Gore including consideration of the impact of TUPE legislation. The second is the quantity and nature of highly specialised technical expertise, whether in relation to lease renewals, policy issues or legal that can currently be accessed via Smiths Gore but may need to be separately purchased under in-house arrangements. On the basis of the current workload and approach it is considered that the risks are relatively well understood and that the in-house service could be delivered within these financial parameters. However as is the case with any area of service, changes in policy or approach could impact on the quantity and nature of the costs incurred in the future. The council's current financial planning assumptions are that additional expenditure of this nature would be absorbed through the identification of additional savings or reprioritisation of other spend and this will need to be factored into the council's budget proposals for 2012/13. The budget planning process has been designed to produce options to work within reduced expenditure limits over the next 2 years and the savings proposals that this will generate should provide sufficient flexibility and choice in how this is achieved.

6.3 There may be one-off set up costs associated with the in-sourcing proposal however these are expected to be relatively small and absorbed in existing workloads. The intention to renew the Downland Initiative policy is expected to cost approximately £25,000 irrespective of the model of service delivery.

Finance Officer consulted: Catherine Vaughan Date: 23/08/11

Other Implications:

6.4 All other implications remain unchanged from those stated in the 14 July Cabinet report and the 22 July OSC report (both re-printed in the papers accompanying this report).

7. EVALUATION OF ANY ALTERNATIVE OPTION(S):

7.1 The Overview and Scrutiny Commission evaluated whether or not to send the original decision back to Cabinet for reconsideration.

8. REASONS FOR REPORT RECOMMENDATIONS

8.1 Recommendations are based on the resolution 22 July OSC meeting.

SUPPORTING DOCUMENTATION

Appendices:

1. **Appendix 1** contains the report from the Strategic Director, Resources which was agreed at the 14 July Cabinet meeting;
2. **Appendix 2** contains the official record of Cabinet's Decision in relation to this report;
3. **Appendix 3** contains an extract from the draft minutes of the Cabinet meeting;
4. **Appendix 4** contains the Call-In request;
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6. **Appendix 6** contains the draft minutes of the 22 July OSC meeting and recommendations to Cabinet

Documents in Members' Rooms

None

Background Documents

1. The Council's Constitution

CABINET**Agenda Item 44**

Brighton & Hove City Council

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

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

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

2. RECOMMENDATIONS:

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

1 September 2011 Cabinet Agenda Item 52 Appendix 1

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

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

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

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

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

3.7 **Urban Portfolio**

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

- 3.8 Experience demonstrates that outsourcing of the urban portfolio provides a number of advantages not available with in-house management including;
- The ability to utilise the breadth and depth of commercial property experience available in a large national property practice and take advantage of the research capability and in depth market knowledge available within professional commercial firms working full time in the property market. The commercial property market has become very sophisticated and such market knowledge and marketing expertise are vital to letting properties especially in times of difficult market conditions like those we have experienced over the past 3 years.
 - Greater flexibility to deal with inevitable peaks and troughs in workload which can be greatly accentuated in times of prolonged market uplift or downturn
 - Avoidance of the problem of attracting and retaining suitably qualified professional staff to the council.
 - Enabling the Property Estates team to concentrate on strategic property issues whilst the management agents address the many demands of the commercial urban portfolio.
- 3.9 Due to the commercial complexity of the urban estate, it is proposed that the outsourcing of these core management functions to one main contractor continues. Additionally, it is proposed that the tendered contract specification be reviewed and updated with lessons learned to reflect better performance measures and incentives to ensure a quality service with a positive attitude to income generation. It is considered that value for money and greater flexibility will be achieved more readily with a 5-year contract offering the option of an extension of up to 2-years subject to performance. If as a result of the re tendering exercise the contract is awarded to a contractor who is different to the

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

3.10 **Agricultural Portfolio – Downland Estate**

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

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

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

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

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

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

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

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

3.13 Re-tendering Timetable

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

4. CONSULTATION

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

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

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

Finance Officer consulted: Rob Allen

Date: 27/06/11

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Legal Implications:

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

Lawyer Consulted:

Isabella Hallsworth

Date: 27/06/11

Equalities Implications:

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

Sustainability Implications:

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

Crime & Disorder Implications:

- 5.8 There are no crime & disorder implications.

Risk & Opportunity Management Implications:

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

Corporate / Citywide Implications:

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

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

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

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

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

7. REASONS FOR REPORT RECOMMENDATIONS

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

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

SUPPORTING DOCUMENTATION

Appendices:

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

Documents in Members' Rooms

None

Background Documents

None

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Commercial Portfolio (Urban & Agricultural) – Property Mix

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

Commercial Portfolio (Urban & Agricultural) - Income Generation

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

Proposed Timetable

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

Brighton & Hove City Council

Decision No: CAB022 – 14/07/11

Forward Plan No: CAB23507

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

RECORD OF CABINET KEY DECISION

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

THE DECISION

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

Brighton & Hove City Council

REASON FOR THE DECISION

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

DETAILS OF ANY ALTERNATIVE OPTIONS

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

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

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

Brighton & Hove City Council

sensitive and high value, low management, properties in house to retain close control and reduce costs.

OTHER RELEVANT MATTERS CONCERNING THE DECISION

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

CONFLICTS OF INTEREST

None.

CONFIRMED AS A TRUE RECORD:

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

Date:

14 July 2011

Decision Maker:

Councillor Bill Randall
Leader of the Council

Signed:



Proper Officer:

14 July 2011

Mark Wall, Head of Democratic Services

Signed:



SCRUTINY

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

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

Call-In Period

15-21 July 2011

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

Call-in Procedure completed *(if applicable)*

Call-in heard by *(if applicable)*

Results of Call-in *(if applicable)*

BRIGHTON & HOVE CITY COUNCIL

CABINET

4.00PM 14 JULY 2011

COUNCIL CHAMBER, HOVE TOWN HALL

DRAFT MINUTES

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

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

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

PART ONE

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

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

CABINET

14 JULY 2011

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

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

CABINET

14 JULY 2011

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

The meeting concluded at 6.36pm

Signed

Chair

Dated this

day of

Mr John Barradell
Chief Executive
Brighton & Hove City Council

15th July 2011

Dear John

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

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

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

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

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

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

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

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

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

Councillor Garry Peltzer Dunn
Deputy Leader of the Conservative Group

Further information supplied by the Strategic Director, Resources

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

BRIGHTON & HOVE CITY COUNCIL
OVERVIEW & SCRUTINY COMMISSION
3.00PM 22 JULY 2011
COMMITTEE ROOM 3, HOVE TOWN HALL
MINUTES

Present: Councillors Mitchell (Chair); Janio (Deputy Chair), Littman, K Norman, Rufus, Summers, A Norman, Lepper and Sykes

PART ONE

27. PROCEDURAL BUSINESS

27a. Declarations of Substitutes

27.1 Councillors Vanessa Brown, Matt Follett, Warren Morgan and Stephanie Powell, sent their apologies. Substitutions were as follows, Cllr Ann Norman for Cllr Vanessa Brown, Cllr Jeane Lepper for Cllr Warren Morgan and Cllr Ollie Sykes for Cllr Matt Follett.

27b. Declarations of Interest

27.2 Councillor Kitcat declared a prejudicial interest as his role as the Cabinet Member responsible for Finance and Central Services, and his involvement in taking the decision at Cabinet.

The Chair having taken legal advice declared a personal, non-prejudicial interest as a council nominated trustee on the Brighton and Hove Estates Conservation Trust where one of the other trustees works for Smith's Gore, the consultants who are currently contracted by the council to manage the Downland Estate.

27c. Declarations of Party Whip

27.3 There were none.

27d. Exclusion from the Press and Public

27.4 In accordance with section 100A(4) of the Local Government Act 1972, it was considered whether the press and public should be excluded from the meeting during the consideration of any items contained in the agenda, having regard to the nature of the business to be transacted and the nature of the proceedings and the likelihood as to whether, if members of the press and public were present, there would be disclosure to them of confidential or exempt information as defined in section 100I (1) of the said Act.

27.5 RESOLVED – The press and public not be excluded from the meeting.

OVERVIEW & SCRUTINY COMMISSION**22 JULY 2011****28. CHAIR'S COMMUNICATIONS**

- 28.1 The Chair thanked everyone for attending the meeting at short notice and acknowledged that call-in meetings were very disruptive.

The Chair explained that a call-in means that a decision which had recently been taken by the Council's Executive was being challenged on the grounds of perceived flaws in the decision-making process.

Call-ins did not provide the Overview and Scrutiny Commission to substitute its own decision, but merely to refer the matter back to the decision-maker.

The decision maker could only be asked to reconsider any particular decision once.

In deciding whether or not to refer the decision back to Cabinet, Members were informed that they should be aware of the criteria set out in paragraphs 3.9 and 3.10 of the Commission report.

29. CALL IN OF PROVISION OF THE COMMERCIAL PORTFOLIO'S ESTATE MANAGEMENT CONSULTANCY CONTRACT

- 29.1 Councillor Peltzer-Dunn introduced the call-in, informing the Committee that there was significant information missing from the Cabinet report with respect to the Downland Estate.
- 29.2 Cllr Peltzer Dunn clarified that it was only the Downland Estate element of the decision he was seeking to have reconsidered; the Urban Estate element he was not challenging.
- 29.3 Cllr Peltzer Dunn felt that the Cabinet report:
- did not detail what the additional costs were to the Council if the contract was taken in-house;
 - stipulated that it would be difficult to recruit specialist staff that was required to manage the contract, thereby presenting additional risk
 - stated that no budget had been allocated to address the additional costs, causing further financial pressure to the budget
 - that if the in-housing option was agreed, further work needed to be carried out to decide exactly how the new arrangements would operate to produce the most cost effective way to manage the service in-house
 - detailed no consultation feedback from the council's tenant farmers on views of the potential of the council taking direct management of the Estate
- 29.4 In responding to the call-in request Councillor J Kitcat told Commission Members that the management of the Downland Estate was central to the success of the wider Downland Initiative; something the Cabinet were anxious to prioritise. He advised that by directly managing the area it would be possible to link the Initiative to other council priorities such as in reducing the pollution levels, improving connects between the City and the South Downs National Park and in creating a Biosphere Reserve. Cllr J Kitcat

OVERVIEW & SCRUTINY COMMISSION**22 JULY 2011**

felt the Cabinet report set out clear costs, and risk provisions had been taken into account in taking the decision.

In relation to the consultation with the tenant farmers, the Committee heard how this would be carried out in the future. (A meeting had taken place with Smiths Gore and two of the Cabinet Members prior to the cabinet meeting. The feedback received was limited).

- 29.5 In answer to a question on why the decision taken differed to the recommendations presented in the original report the Cabinet Member advised that Members had been presented with options but had decided that the in-house option best supported council priorities.
- 29.6 In response to a question on how the decision made fitted within the Intelligent Commissioning (IC) model, the Committee were informed that as the contract was of limited financial value it was not of a level to be prioritised within the IC model. The IC model was being used for larger strategic issues, not for every contract the council was seeking to let.
- 29.7 Commission Members queried the need to take the decision at this time, and were advised that the Urban Estate issue was more urgent than the Downland element. Members were told all decisions have an element of risk, that Cabinet accepted the risks involved with Downland Estate and that exact figures could not be estimated due to the unknown resource arrangements.
- 29.8 In response to questioning as to why the Cabinet took a decision that would require the commitment of additional council resources the Commission were informed that the Downland Initiative had to date lacked sufficient progress and it was therefore decided a different approach requiring more direct management was being taken which would it was hoped give the opportunity to apply for different external funding sources.
- 29.9 A Member commented on the lack of consultation information within the Cabinet report and how could a decision be made by the Cabinet on such vague information. Members were advised that Smiths Gore had undertaken some consultation with tenant farmers but this was currently a confidential document.
- 29.10 In answer as to who the stakeholders and cross departmental working group were in respect to the consultation, Members were advised this related to an officer group focusing on issues such as procurement and legal implications.
- 29.11 In answer to a question on what savings could be made through bringing the service in-house, the Committee were advised that through working holistically across departments and dovetailing the Downland Estate management with existing council services would provide efficiencies.
- 29.12 Comments were made that there was sufficient financial information provided in the report and that Senior Managers had reported that there would be little risk that the costs would be any greater.

OVERVIEW & SCRUTINY COMMISSION**22 JULY 2011**

- 29.13 Following Member questioning Cllr Kitcat and Cllr West left the room. Commission Members debated whether or not to refer the decision back to Cabinet.
- 29.14 The Strategic Director, Resources clarified that the consultation document compiled by Smiths Gore and referred to in the discussions was a routine consultation carried out by Smiths Gore towards the end of a contract to gauge client satisfaction and was not a consultation as to whether the service should be brought back in-house. The document was therefore the property of Smiths Gore.
- 29.15 **RESOLVED-** the Commission noted :
- (a) The decision taken by Cabinet on the 14 July 2011 in relation to the Provision of the Commercial Portfolio's Estate Management Consultancy Contract
 - (b) The subsequent Call-In request
 - (c) Additional information supplied by the Strategic Director, Resources.

Members voted to refer the decision on Downland Estate Management back to Cabinet for reconsideration on the grounds:

- There was inadequate consultation carried out prior to the decision being taken
- The financial implications of the decision had not been properly assessed

Additionally Members recommended that any subsequent report to Cabinet should clearly set out:

- Council objectives regarding its new proposals for the Downland Initiative with costings
- What alternative options have been explored for Downland Management
- What implications each of the options would have on key stakeholders
- The financial implications of each of the options, detailing what the risks are and a breakdown of any additional costs of the council
- Stakeholder Consultation feedback, particularly in relation to the council's tenant farmers
- The timetable for consultation and reporting back to Cabinet.

In agreeing to refer the decision back Commission Members made clear that the Urban Estate Management element was not being called-in.

The meeting concluded at 5.30pm

Signed

Chair

Dated this

day of