




Brighton & Hove  
City Council

# Policy, Resources & Growth Committee

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| Title:  | <b>Policy, Resources &amp; Growth Committee</b>  |
| Date:   | <b>14 June 2018</b>  |
| Time:   | <b>4.00pm</b>  |
| Venue   | <b>Council Chamber, Hove Town Hall</b>   |
| Members:  | <b>Councillors:</b><br>Yates (Chair), Hamilton (Deputy Chair), Janio (Opposition Spokesperson), Mac Cafferty (Group Spokesperson), Bell, Daniel, Mitchell, Peltzer Dunn, Sykes and Wealls  |
| Contact:  | <b>Lisa Johnson</b><br>Democratic Services Manager<br>01273 291228<br>lisa.johnson@brighton-hove.gov.uk  |
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## AGENDA

### PART ONE

Page

#### PROCEDURAL MATTERS

#### 1 PROCEDURAL BUSINESS

**(a) Declaration of Substitutes:** Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.

**(b) Declarations of Interest:**

- (a) Disclosable pecuniary interests;
- (b) Any other interests required to be registered under the local code;
- (c) Any other general interest as a result of which a decision on the matter might reasonably be regarded as affecting you or a partner more than a majority of other people or businesses in the ward/s affected by the decision.

In each case, you need to declare

- (i) the item on the agenda the interest relates to;
- (ii) the nature of the interest; and
- (iii) whether it is a disclosable pecuniary interest or some other interest.

If unsure, Members should seek advice from the committee lawyer or administrator preferably before the meeting.

**(c) 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 Two of the Agenda states in its heading 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 exempt categories is available for public inspection at Brighton and Hove Town Halls.*

#### 2 MINUTES

1 - 18

To consider the minutes of the meeting held on the 29<sup>th</sup> March, 2018 (copy attached).

Contact Officer: Lisa Johnson  
Ward Affected: All Wards

Tel: 01273 291228

## POLICY, RESOURCES & GROWTH COMMITTEE

### 3 CHAIR'S COMMUNICATIONS

### 4 CALL OVER

- (a) Items (7- 15 and 17 - 20) will be read out at the meeting and Members invited to reserve the items for consideration.
- (b) Those items not reserved will be taken as having been received and the reports' recommendations agreed.

### GENERAL MATTERS

### 5 PUBLIC INVOLVEMENT

To consider the following matters raised by members of the public:

- (a) **Petitions:** to receive any petitions presented by members of the public to the full Council or as notified for presentation at the meeting by the due date of 31 May, 2018;
- (b) **Written Questions:** to receive any questions submitted by the due date of 12 noon on the 8<sup>th</sup> June, 2018;
- (c) **Deputations:** to receive any deputations submitted by the due date of 12 noon on the 8<sup>th</sup> June, 2018.

Contact Officer: Lisa Johnson

Tel: 01273 291228

### 6 MEMBER INVOLVEMENT

19 - 22

To consider the following matters raised by councillors:

- (a) **Petitions:** to receive any petitions submitted to the full Council or as notified for presentation at the meeting by the due date of 31 May, 2018;
- (b) **Written Questions:** to consider any written questions;
- (c) **Letters:** to consider any letters;
- (d) **Notices of Motion:** to consider any Notices of Motion referred from Council or submitted directly to the Committee:
  - (i) UNITE Construction Charter, (copy attached);
  - (ii) Women in Government and Politics (copy attached).

Contact Officer: Lisa Johnson

Tel: 01273 291228

### FINANCIAL MATTERS

### 7 TARGETED BUDGET MANAGEMENT (TBM) PROVISIONAL OUTTURN 2017/18

23 - 96

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

## **POLICY, RESOURCES & GROWTH COMMITTEE**

*Contact Officer:* Nigel Manvell *Tel:* 01273 293104  
*Ward Affected:* All Wards

### **8 EDUCATION BASIC NEED - ALLOCATION £15MILLION PREVIOUSLY EARMARKED FOR PURCHASE OF A SITE FOR A NEW FREE SCHOOL 97 - 102**

Extract from the proceedings of the Children, Young People & Skills Urgency Sub-Committee (copy attached).

*Contact Officer:* Greg Weaver *Tel:* 01273 291214  
*Ward Affected:* All Wards

## **STRATEGIC & POLICY MATTERS**

### **9 CHARTER FOR THE CONSTRUCTION SECTOR 103 - 108**

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

*Contact Officer:* Cliff Youngman *Tel:* 01273 291408  
*Ward Affected:* All Wards

### **10 BRIGHTON I360 UPDATE 109 - 118**

Report of the Executive Director for Economy, Environment & Culture (copy attached).

*Contact Officer:* Mark Ireland *Tel:* 01273 291240  
*Ward Affected:* All Wards

### **11 UPDATE ON ROYAL PAVILION & MUSEUMS GOVERNANCE 119 - 122**

Report of the Executive Director for Economy, Environment & Culture (copy attached).

*Contact Officer:* Val Birchall *Tel:* 01273 292571  
*Ward Affected:* All Wards

### **12 OUR PEOPLE PROMISE - DEVELOPING OUR EMPLOYER OFFER 123 - 138**

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

*Contact Officer:* Alison Mcmanamon *Tel:* 01273 290511  
*Ward Affected:* All Wards

## **REGENERATION & PROPERTY MATTERS**

### **13 TAKING OF LEASE FOR GP HUB AT PRESTON BARRACKS 139 - 148**

Report of the Executive Director for Economy, Environment & Culture (copy attached).



## POLICY, RESOURCES & GROWTH COMMITTEE

Contact Officer: Robert Crossan Tel: 01273 291442  
Ward Affected: Hollingdean & Stanmer

### 14 LONGLEY INDUSTRIAL ESTATE AND NEW ENGLAND HOUSE 149 - 178

Report of the Executive Director for Economy, Environment, & Culture (copy attached).

Contact Officer: Alan Buck Tel: 01273 292287  
Ward Affected: St Peter's & North Laine

### 15 UPDATE ON OPTIONS PROGRAMME FOR FUTURE DELIVERY OF HOUSING REPAIRS AND MAINTENANCE 179 - 260

Report of Executive Director for Neighbourhoods, Communities & Housing (copy attached).

Contact Officer: Martin Reid Tel: 01273 293321  
Ward Affected: All Wards

## GENERAL MATTERS

### 16 ITEMS REFERRED FOR COUNCIL

To consider items to be submitted to the 19<sup>th</sup> July 2018 Council meeting for information.

*In accordance with Procedure Rule 24.3a, the Committee may determine that any item is to be included in its report to Council. In addition, each Group may specify one further item to be included by notifying the Chief Executive no later than 10.00am on the 9<sup>th</sup> July, 2018 (the eighth working day before the Council meeting to which the report is to be made), or if the Committee meeting takes place after this deadline, immediately at the conclusion of the Committee meeting.*

Contact Officer: Lisa Johnson Tel: 01273 291228

## PART TWO

### STRATEGIC & POLICY MATTERS

### 17 BRITISH AIRWAYS I360 LIMITED – RESTRUCTURE PROPOSAL - EXEMPT CATEGORY 3 261 - 294

Appendix to the Brighton i360 Update report, Item 10 on the agenda (circulated to Members only).

Contact Officer: Mark Ireland Tel: 01273 291240  
Ward Affected: All Wards

## POLICY, RESOURCES & GROWTH COMMITTEE

### REGENERATION & PROPERTY MATTERS

**18 TAKING OF LEASE FOR GP MEDICAL CENTRE AT PRESTON BARRACKS - EXEMPT CATEGORY 2 295 - 304**

Report of the Executive Director for Economy, Environment & Culture (circulated to Members only).

Contact Officer: Robert Crossan Tel: 01273 291442  
Ward Affected: Hollingdean & Stanmer

**19 LONGLEY INDUSTRIAL ESTATE AND NEW ENGLAND HOUSE - EXEMPT CATEGORY 2 305 - 314**

Joint report of the Executive Director for Economy, Environment & Culture and the Executive Lead Officer for Strategy, Governance & Law (circulated to Members only).

Contact Officer: Alan Buck Tel: 01273 292287  
Ward Affected: St Peter's & North Laine

### PROCEDURAL MATTERS

**20 PART TWO MINUTES - EXEMPT CATEGORY 3 315 - 316**

To consider the part two minutes of the meeting held on the 29<sup>th</sup> March, 2018 (circulated to Members only).

Contact Officer: Lisa Johnson Tel: 01273 291228

**21 PART TWO PROCEEDINGS**

To consider whether the items listed in Part Two of the agenda and decisions thereon should remain exempt from disclosure to the press and public.

Contact Officer: Lisa Johnson Tel: 01273 291228

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 and deputations to committees and details of how questions and deputations can be raised can be found on the website and/or on agendas for the meetings.

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## POLICY, RESOURCES & GROWTH COMMITTEE

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### FURTHER INFORMATION

For further details and general enquiries about this meeting contact Lisa Johnson, (01273 291228, email [lisa.johnson@brighton-hove.gov.uk](mailto:lisa.johnson@brighton-hove.gov.uk)) or email [democratic.services@brighton-hove.gov.uk](mailto:democratic.services@brighton-hove.gov.uk)

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Date of Publication - Wednesday, 6 June 2018



**BRIGHTON & HOVE CITY COUNCIL**

**POLICY, RESOURCES & GROWTH COMMITTEE**

**4.00pm 29 MARCH 2018**

**COUNCIL CHAMBER, HOVE TOWN HALL**

**MINUTES**

**Present:** Councillors Hamilton (Deputy Chair), Janio (Opposition Spokesperson), Mac Cafferty (Group Spokesperson), Bell, Mitchell, Peltzer Dunn, Sykes, Wealls, Yates and Robins.

**PART ONE**

**107 PROCEDURAL BUSINESS**

**107 (a) Declarations of Substitutes**

107.1 Councillor Robins was present in substitution for Councillor Morgan

**107 (b) Declarations of Interest**

107.2 There were no declarations of interests in matters listed on the agenda.

**107(c) Exclusion of Press and Public**

107.3 The Committee considered whether the press and public should be excluded from the meeting during the consideration of any of the items listed on the agenda.

107.4 **RESOLVED:** That the press and public be excluded from the meeting during consideration of the items contained in part two of the agenda.

**108 MINUTES**

108.1 **RESOLVED:** That the Minutes of the meeting held on 8 February 2018 be agreed and signed as a correct record.

**109 CHAIR'S COMMUNICATIONS**

109.1 The Chair gave the following communication:

I'd like to inform those present that this meeting will be webcast live and will be capable of repeated viewing.

I've been asked to provide an update on the proposals to move the Royal Pavilion & Museums into Trust in July of this year following the decision made by the January ROG Committee. The decision of the January committee remains in place until and unless a different decision is made by the Committee. However, implementation of the decision has been delayed in order to allow for a further and external review of the options. The change that has been made relates to the mechanism for implementation, to allow time for an external review. Officers will be bringing an update report to the next meeting of this Committee which will provide further information on the external review of options and seek agreement for the revised timetable which will allow for the external review of the options.

## 110 CALL OVER

110.1 The following items were reserved for discussion:

- Item 113: Treasury Management Strategy Statement 2018/19 (Incorporating Annual Investment Strategy)
- Item 115: 2018/19 Local Transport Plan Capital Programme
- Item 116: Phasing Out Single Use Plastics
- Item 117: Annual Planned Maintenance and Asset Management Fund Allocations 2018-19 for the Council's Operational Buildings
- Item 118: Orbis Hard Facilities Management Procurement
- Item 119: Education Capital Resources and Capital Investment Programme 2018/19
- Item 122: Procurement Programme for Housing Repairs, Planned Maintenance and Capital Works
- Item 128: Grant of New Leases Shoreham Airport
- Item 130: Grant of Lease Shoreham Airport (Part Two) - Exempt Category 3

110.2 The Democratic Services Officer confirmed that the items listed above had been reserved for discussion, and that the following reports of the agenda, with the recommendations therein had been agreed and adopted:

- Item 114: Pay Policy Statement 2018/19
- Item 120: Purchase of Property With Restrictive Covenant
- Item 121: A Request to Purchase A Piece of HRA Land on Mile Oak Road.
- Item 123: Briefing Report on ASE Regional Adoption Agency
- Item 124: Data Protection Officer Designation
- Item 125: Survivors Network Pledge
- Item 126: Authority to Enter into a Sublease for a Medium Supported Accommodation Service for Health & Adult Social Care Clients
- Item 127: Tender for Transport Professional Services

## 111 PUBLIC INVOLVEMENT

111.1 Referred petition:

### **Open Brighton's Homeless Shelters 365 Days a Year**

Petition from Mr J Hadman referred from the Council meeting held on 1 February 2018, (5500 signatures).

The petition stated:

*We the undersigned petition Brighton & Hove City Council to open homeless night shelters all year round (365 days).*

*In the meantime, we urge the council to conform to central government directions on opening SWEP shelters (Severe Weather Emergency Protocol). We understand this government requirement is not being met, with approximately £90,000 left unspent from previous years of SWEP budget.*

*Lead Petitioner – John Hadman*

*Additional Information:*

*Why is this important?*

*Rough sleeping has almost doubled in the last year, but, the number of supported beds for homeless people has plummeted. There is also not enough affordable accommodation for people to move on to, making matters worse. As a result, despite the goal of no second night out, rough sleepers are waiting an average of 12 weeks before some form of accommodation is provided. We therefore urge BHCC to fund resources to expand the amount of support accommodation available for homeless people all year round, not just when temperatures hit 0c and ensure that the existing budget available is spent.*

The Chair gave the following response:

Brighton & Hove City Council operates its SWEP policy in line with guidance issued by Homeless Link and is fully compliant with this. SWEP is triggered when the temperature is predicted to fall to 0 degrees or below for two consecutive nights, for Amber weather warnings and at other times of extreme weather taking into account issues such as wind chill. The Brighton & Hove SWEP provision exceeds provision in many local authority areas across the UK according to the yearly survey conducted by Homeless link.

The city council is aware that some local authorities including London have, or are considering, moving to a one night at zero trigger and a couple of others have gone beyond this. SWEP provision in other areas of the UK is being examined as part of a review which is currently ongoing with a view to a tender of SWEP provision later in the year. In terms of the budget, SWEP has a budget of £40,000.00 per annum and how much of this is spent is dependent on the weather, we have spent less than the allocated budget in the last few years due to mild winters however this financial year we have exceeded the allocated budget. The budget underspend does not carry over year on year neither does the overspend. The city council is currently in the process of reviewing the winter night shelter and its operation with a view to examining what provision should be put in place for next winter.

I propose that we agree to note the petition and receive a report to a future meeting.

111.2 **RESOLVED:** That the Committee agreed to note the petition and receive a report at a future meeting.

**112 MEMBER INVOLVEMENT****112.1 International Women's Day Commemoration – Blue Plaque**

The Committee considered a Letter from Councillor Mac Cafferty asking the Committee to look at options to commemorate the movement for women's votes through a blue plaque. Councillor Mac Cafferty

**112.2 The Chair provided the following response:**

Whilst the Brighton Blue Plaque scheme is overseen by the Brighton & Hove Commemorative Plaque Panel (BHCPP), and therefore is not within our direct control, I am sure all concerned will agree that it would be appropriate to mark the centenary and am happy to propose that we ask the Chief Executive to write a letter in support of the proposal for a commemorative blue plaque at the Quadrant, next to the Clock Tower. The city archives, held at The Keep, and collections at Royal Pavilion & Museums, contain a rich seam of information concerning the suffragette and suffragist activities in Brighton & Hove, and officers will investigate and bring forward recommendations to the committee concerning possible locations and people whose contributions should be recognised as suggested. The Royal Pavilion & Museums service is already marking the centenary with a series of blogs telling the stories of the suffragette movement in Brighton. The most prominent Brighton suffragette was Minnie Turner, and her boarding house at 13-14 Victoria Road might, for example, be an appropriate site for a plaque.

Depending on the approval of the BHCPP and the practicalities, we would hope that a plaque could be installed during the centenary year, and officers will bring a report back to this committee to consider how we can further highlight and recognise these important stories.

112.3 Councillor Robins said that rather than having a plaque to commemorate a movement, that there be a number of plaques to celebrate individuals, and suggested that a group be set up to look at the options.

112.4 Councillor Janio said he supported the proposals.

112.5 Councillor Mitchell said she supported the installation of a plaque/s, and the suggestion to set up a group to look at the different options.

112.6 **RESOLVED:** That the letter be noted and a report be brought back to the Committee.

**113 TREASURY MANAGEMENT STRATEGY STATEMENT 2018/19 (INCORPORATING ANNUAL INVESTMENT STRATEGY)**

113.1 The Committee considered the report of the Executive Director Finance & Resources regarding the Treasury Management Strategy Statement and the Annual Investment Strategy for 2018/19.

113.2 Councillor Wealls thanked the Executive Director Finance & Resources for the recent training provided on the strategies. He noted that there had been changes from last



year's strategies, but only some of those had been highlighted in the report and asked if in future all changes could be noted. The Executive Director Finance & Resources agreed to do that.

113.3 Councillor Yates referred to Appendix 3 to the report, and asked if there was any update on whether the Council were able to access the Public Works Loan Board's infrastructure interest rates. Officers said it was hoped they would find out in the next few weeks, but the timescale wasn't certain.

113.4 **RESOLVED:**

- (i) That Policy, Resources & Growth Committee recommends that full Council approve the TMSS and Treasury Management Practices, which remain as approved by Policy, Resources & Growth Committee on 23 March 2017.
- (ii) That Policy, Resources & Growth Committee recommend that full Council approve the Annual Investment Strategy 2018/19 as set out in Appendix 2 to this report.
- (iii) That Policy, Resources & Growth Committee recommends that full Council approve the Borrowing Strategy as set out in Appendix 3 to this report.

**114 PAY POLICY STATEMENT 2018/19**

114.1 **RESOLVED:** That the Committee agreed to recommend to Council the adoption of the pay policy statement 2018/19 attached at Appendix 1 to the report.

**115 2018/19 LOCAL TRANSPORT PLAN CAPITAL PROGRAMME**

115.1 The Committee considered the report of the Executive Director Economy, Environment & Culture, which set out the Local Transport Plan (LTP) budget allocation for 2018/19 and provided indicative allocations for 2019/20 and 2020/21. The Executive Director referred to the extract from the Environment, Transport & Sustainability Committee (held on 20 March 2018), which recommended to Policy, Resources & Growth Committee that they agree the LTP capital programme budget allocation for 2018/19, but did not agree to note the indicative allocation of future LTP budgets as it was felt that officers should spend more time exploring alternative options for funding in relation to the allocations ear-marked for the Shelter Hall. The Executive Director reassured the Committee that officers would do that. The Committee were referred to paragraph 3.3 of the report, and advised that since the report had been prepared the government had announced allocations of what was now called 'Pothole & Flood Resilience Funding', and the sum which the Council would receive for 2018/19 was an additional £188,705. The Council were still awaiting confirmation of the 'Incentive Funding' sum for 2018/19, and when received would be included in the Quarterly Financial Update for the Committee.

115.2 The Chair noted the two recommendations in the report, and confirmed that as the Environment, Transport & Sustainability Committee (ETS) had not agreed to note the

indicative allocation of future LTP budgets, that this Committee would only be considering recommendation 2.1 in the report.

- 115.3 Councillor Sykes referred to paragraph 3.7 of the report and was concerned that there was a programme to treat tree root areas using flexible paving to reduce highway penetration, as he suggested that by reducing penetration the risk of flooding was increased. Officers advised that flexible paving was used rather than paving stones, as it allowed some movement from the tree roots and it did allow some moisture to penetrate through which allowed the trees to thrive.
- 115.4 Councillor Sykes noted that an additional £0.5m would be invested to maintain Hove Station Footbridge, and asked how that money would be spent and what discussions had taken place with Network Rail. Officers advised that the money would be used to support further investigations on the condition of the bridge, and the Council would work with Network Rail to look at what repairs may be needed.
- 115.5 Councillor Sykes referred to the Capital Programme Allocation, and was surprised that the allocation for Electric Vehicle Charging Points had remained the same for a number of years despite the increase in the number of electric cars and suggested there was a lack of vision for the future of transport in the city. Officers advised that the allocation reflected that the Council were hopeful that they would receive significant funding from the government, which would enable the Authority to look at how further roll out electric charging points across the city.
- 115.6 Councillor Sykes asked if the Flood Defence Grant would be used to offset the need to use the Council's own capital money. Officers advised that funding from DEFRA would be used for flood defence works.
- 115.7 Councillor Mitchell (Chair of ETS Committee) said that the allocations represented a good balance between large schemes and local smaller schemes, and a large amount of funding was being committed to maintaining the seafront.
- 115.8 Councillor Janio said that the Conservative Group had not supported the indicative allocations of future LTP budgets at the recent ETS Committee, as it was felt that it was inappropriate to take £1.5m away from the transport budget to rebuild Shelter Hall and the arches. Councillor Mitchell said that work on the seafront enabled the A259 to continue to function, as the arches held up the road.
- 115.9 **RESOLVED:** That the Committee
- (i) Agreed the 2018/19 Local Transport Plan capital programme budget allocation of £5.365 million to projects and programmes and notes the additional allocations for schemes agreed at Budget Council, as set out in Appendix 2 of the report

## 116 PHASING OUT SINGLE USE PLASTICS (SUPS)

- 116.1 The Committee considered the report of the Executive Director Economy, Environment & Culture, which provided an update on work that had begun in phasing out single use plastics (SUPs) across council buildings and services. The report was prepared in

response to two Notice of Motion passed by Council, which called for the phasing out of SUPs across council building and services.

- 116.2 Councillor Mac Cafferty accepted that it was a preliminary report, but did not feel that it went far enough and that it had been five months since the Notice of Motions relating to SUPs had been agreed, and if anything the situation had got worse. He referred to the Programme Board being set up, and asked that members could be involved. He said that the Council needed to be stronger with procurement, and asked if members could see the outcome of the consultation with service providers on reducing or finding alternatives to SUPs. China had recently announced that it would no longer be accepting recyclable plastic, and he suggested that this could be a good opportunity to show innovation with regard to levels of recycling. The Council's waste contractor Veolia had said they were not able to adapt the contract to recycle more plastic, so the Council would need to look at reducing the amount of waste at source. The Executive Director Economy, Environment & Culture said that a lot of work had been undertaken by officers, who now had to look at the resourcing implications of trying to reduce SUPs, and agreed that the current situation with recycling plastic presented opportunities for innovation. With regard to the Programme Board, he said that members would not be excluded, and would be provided with regular updates.
- 116.3 Councillor Mitchell said that the report sought to capture the main points in both of the Notices of Motion, looking at both what the Council could do to reduce the use of plastic whilst also acknowledging the work of our partners in particular the Biosphere Board. In order to get real change it would be necessary to work with external partners and harness the enthusiasm of the public. With regard to the contract with Veolia, Councillor Mac Cafferty may have been referring to letter from them in August 2017. However since then the Council have been in discussions with them to look at recycling other types of plastic.
- 116.4 Councillor Bell asked if the next report could provide more information about the consultation and examples of the engagement with external providers. The Executive Director Economy, Environment & Culture agreed.
- 116.5 Councillor Peltzer Dunn asked if there could not be a condition in the lease for Council controlled properties that SUPs would not be sold. The Executive Lead for Strategy Governance and Law said that additional clauses to a lease would impact on the rent, and there would be an issue on enforceability, but there would be no automatic legal restriction on such a clause so it could be considered.
- 116.6 RESOLVED: That the Committee noted
- (i) The report and work progress detailed in section 4 of the report.
  - (ii) That it would receive a more detailed report on progress in July 2018
  - (iii) The conclusions and next steps provided in section 6 of the report.

**117 ANNUAL PLANNED MAINTENANCE AND ASSET MANAGEMENT FUND ALLOCATIONS 2018-19 FOR THE COUNCIL'S OPERATIONAL BUILDINGS**

117.1 The Committee considered the report of the Executive Director Economy, Environment & Culture, which sought approval for the annual Property Revenue and Capital Budget allocations.

117.2 Councillor Sykes said he was unclear what the allocation was for Brighton Town Hall; the report said it was £750k over the next few years, but there had been an allocation of £1.5m from elsewhere. The Executive Director Economy, Environment & Culture said there were two allocations of money to Brighton Town Hall, £1.5m from the Capital Programme, and £750k from this fund as part of the Workstyles 4 programme. An outline report on Brighton Town Hall proposals had come to this committee previously, and it was agreed that a business case would be brought back. That business case was still being prepared and a further report would be brought back to this committee in due course. The Executive Director Economy, Environment & Culture said that future reports would include information on other capital funds available for the project.

117.3 **RESOLVED:** That the Committee

- (i) Approved the annual programme of planned maintenance works as detailed in Appendices 2 and 3 of the report, at a total estimated cost of £3,300,650;
- (ii) Approved the Asset Management Fund allocation for 2018/19 totalling £1,000,000, as detailed in paragraph 3.4.1 of the report.
- (iii) Granted delegated authority to the Assistant Director of Property & Design to procure the planned maintenance budget and asset management fund improvement works and award contracts within these budgets, as required, in accordance with the council's Contract Standing Orders.

**118 ORBIS HARD FACILITIES MANAGEMENT PROCUREMENT**

118.1 The Committee considered the report of the Executive Director for Economy, Environment & Culture, which informed the Committee of the recent activities conducted by Orbis Property Services and Orbis Procurement regarding hard facilities management services.

118.2 Councillor Sykes noted that there were similarities between the work being procured by Orbis and that being procured by Housing for responsive repairs (outlined in Item 117). However, Orbis had rejected the possibility of using in-house staff for the works, and asked for clarification as to why. The Assistant Director Property & Design said that this report related to very specific trade contractors which were not available in-house. There would also better value for money through economy of scale, whilst making sure that local agendas were taken into consideration. The Chair said that he hoped that local contractors would be used where possible.

118.3 Councillor Janio referred to paragraph 3.5.4.1 of the report and noted that there would be five core work streams which would be split into groups of £100k, and that any

spend over £500k would need to be agreed by the relevant committee. However, if every contract were split into £100k sections there would never be a need for committee agreement. The Assistant Director Property & Design said that that paragraph referred to work under £100k and over £100k, so any cost would be split that way rather than dividing the full cost into £100k segments.

118.4 **RESOLVED:** That the Committee

- (i) Authorise the commencement of the procurement of contracts for the delivery of hard facilities management services where the council is the contracting authority, and note that Appendix 2 to the report gives an indication of the contracts which will be procured and who the contracting party for each contract will be.
- (ii) Delegate authority to Assistant Director Property & Design to agree changes to the proposals in Appendix 2 and note that further report(s) to convey the outcome of the Orbis hard facilities management procurement activity and obtain authority for the award of any contracts for hard facilities management services will be brought to future meeting(s) of this Committee.

**119 EDUCATION CAPITAL RESOURCES AND CAPITAL INVESTMENT PROGRAMME 2018/2019**

- 119.1 The Committee considered the report of the Executive Director Families, Children & Learning on Education Capital Resources and Capital Investment Programme 2018/2019. The report informed the Committee of the level of available capital resources allocated to this service for 2018/19 and to recommend a Capital Investment Programme for 2018/19.
- 119.2 The Chair said that two amendments had been received, one from the Conservative Group and one from the Labour and Co-operative Group. The Chair noted that the Labour amendment had been received after the deadline, but would use his discretion to accept it.
- 119.3 The Chair asked that the Labour Group move their amendment. Councillor Mitchell moved the Labour Group amendment to the recommendations, which read:

*Insert an additional recommendation after recommendation (1) as follows:*

*(2) That the Committee approves the funding necessary to enable all necessary building, adaptation and other associated works undertaken at Dorothy Stringer School to accommodate the "misplaced 38" children for September 2018 subject to the agreement of the Head Teacher and the Governing Body of the school.*

*(3) Authorise the Executive Director, Families, Children & Learning to take all steps necessary or incidental to the above.*

*The amended recommendations to read:*

- (1) *That the agreed allocation of funding as shown in Appendices 3 and 4 be approved for inclusion within the council's Capital Investment Programme 2018/19;*
- (2) *"That the Committee approves the funding necessary to enable all necessary building, adaptation and other associated works to be undertaken at or Dorothy Stringer School to accommodate the "misplaced 38" children for September 2018 subject to the agreement of the Head Teacher and the Governing Body of the school*
- (3) *That the Executive Director, Families, Children & Learning be authorised to take all steps necessary or incidental to the above.*
- (4) *That the Assistant Director of Property & Design be granted delegated authority to procure the capital maintenance and basic needs works and enter into contracts with these budgets, as required, in accordance with Contract Standing Orders in respect of the entire Education Capital Programme.*

Councillor Mitchell noted that both amendments were trying to achieve the same thing. The Labour Group had only had sight of the Conservative Group amendment on the morning of the meeting, and were concerned that the proposals would delay the process of accommodating the 'misplaced 38' children at Dorothy Stringer. The Group had therefore put forward an amendment which instructed officers to progress the work which would be needed to accommodate the additional children, with the agreement of the head teacher and governing body. Councillor Yates seconded the motion and reserved his right to speak.

119.4 The Chair asked that the Conservative Group move their amendment and the Committee would then discuss all the proposals.

119.5 Councillor Janio moved the Conservative Group amendment to the recommendations, which read:

*To add additional recommendations 2 and 3 as shown in **bold** below.*

1. *That the agreed allocation of funding as shown in Appendices 3 and 4 be approved for inclusion within the council's Capital Investment Programme 2018/19;*
2. ***That Committee requests an urgent report be submitted to Children, Young People & Skills Committee to provide the necessary funds from the Government's £15m "additional secondary provision" for Dorothy Stringer & Varndean Schools to immediately accommodate the "misplaced 38" children for September 2018;***
3. ***That Committee requests an urgent report be submitted to Children, Young People & Skills Committee to allocate the balance of the Government funded £15m in 2 (above) on the remainder of the qualifying school estates; and***

4. *That the Assistant Director of Property & Design be granted delegated authority to procure the capital maintenance and basic needs works and enter into contracts with these budgets, as required, in accordance with Contract Standing Orders in respect of the entire Education Capital Programme.*

Councillor Janio said that the Leader of the Council had said that there was £15m, which had been allocated to building the new secondary school that was no longer needed, which would now be spent on other schools on the city. Councillor Janio said that that money should be used to increase the capacity at Dorothy Stringer Secondary School to enable the 38 children who were not allocated a place at their catchment school to attend. Councillor Bell seconded the motion and reserved his right to speak.

- 119.6 Councillor Sykes referred to the substantive report and was concerned in particular with the information in Appendix 3, which he felt was rather confusing and provided in a slap dash manner. He was concerned that when it was decided not to proceed with the new secondary school, that the administration had not made provision to prevent children having to travel across the city to attend school, and had now at the last minute put forward proposals to address the situation. He said he was minded to support the Conservative amendment, but it was also important to get funding approved as soon as possible. He said that temporary accommodation could be put in place within three months, and would not need planning permission.
- 119.7 Councillor Peltzer Dunn referred to the Labour Group amendment and asked if it was known when the governors at Dorothy Stringer School had last met. The Executive Director Families Children & Learning said he didn't know, but a member of the public said that they had met in December 2017, and March 2018. Councillor Peltzer Dunn said that he understood that at the December meeting, the governors had said they could accommodate 30 additional children in two mobile classrooms, but the amended recommendations now related to an additional 38 children. The Executive Director Families, Children & Learning said that Varndean had agreed to take an additional 30 children in September 2018, and would not require additional investment then, but would need it from 2019 and discussions were being held with the school. Dorothy Stringer had not said that they could take additional children in 2018, but could form September 2019. The Chair said that he understood that the school's view had changed and they could now take an extra 30 pupils from September 2018, and the Council would do what it could to enable that to happen.
- 119.8 Councillor Bell said that the Labour administration should not have put the parents of the 'misplaced 38' through the stress of not being allocated a catchment school, and the matter should have been dealt with before this meeting.
- 119.9 Councillor Yates said that the Authority could not tell schools what to do, and noted that the Conservative Group were instructing the school governors to take extra pupils. He referred to the Conservative Group amendment and said that there would be delay in taking a report to the Children Young People & Skills (CYPS) Committee and then to the Policy Resources & Growth (PR&G) Committee, so there would be no possible resolution until July 2018.

- 119.10 Councillor Mac Cafferty said that the Administration had failed to provide certainty for parents, and the city had a school catchment area which didn't provide places for everyone in that area and the matter needed to be resolved now.
- 119.11 Councillor Janio suggested that the Labour Group amendment was proposed only to cause trouble. He said that the Conservative Group amendment asked for a report to go to the CYPS Committee so they could decide how to spend the £15m.
- 119.12 Councillor Mitchell said that the Labour Group amendment had been written in response to the Conservative Group one, and had been designed to speed up the process as the provision of additional places at Dorothy Stringer needed to be done now rather than wait until July.
- 119.13 The Chair noted that the next CYPS Committee was due to be held on 18 June 2018, and the next PR&G Committee after that was 12 July 2018. Therefore there would be no resolution until seven weeks before the start of the new school year. The school had said that it could take extra children and everyone wanted to work to do the best for the children.
- 119.14 Councillor Bell said that the Labour Administration had not listened to the parents of the '38' before, and had only submitted an amendment in response to the Conservative Group one.
- 119.16 The Chair suggested that there be a short adjournment for the three parties to discuss the possibility of proposing a joint amendment to the recommendations of the report. The Committee agreed.
- 119.17 Following a discussion between the three parties the following amendment was proposed by Councillor Janio and seconded by Councillor Mitchell and Councillor Sykes:

*RECOMMENDATIONS:*

1. *That the agreed allocation of funding as shown in Appendices 3 and 4 be approved for inclusion within the council's Capital Investment Programme 2018/19;*
2. *That the Committee approves the funding necessary to enable all necessary building, adaptation and other associated works undertaken at Dorothy Stringer School to accommodate the "misplaced 38" children for September 2018*
3. *That an urgency meeting of the Children, Young People & Skills Committee be convened to consider the allocation the balance of the Government funded £15m in 2 (above) on the remainder of the qualifying school estates;*
4. *That Officers Convene an urgent meeting of relevant parties required to agree the parameters for swift implementation of the works required to accommodate the 'Misplaced 38.' This meeting is likely to include the Head Teacher, the Chair of Governors, appropriate BHCC property officers among others;*



5. *Authorise the Executive Director, Families, Children & Learning to consider the conclusions of this urgent meeting in the expectation that facilities will be in place for September 2018; and*
6. *That the Assistant Director of Property & Design be granted delegated authority to procure the capital maintenance and basic needs works and enter into contracts with these budgets, as required, in accordance with Contract Standing Orders in respect of the entire Education Capital Programme.*

119.18 The Chair said that he would take a vote on the proposed amendment without further discussion. The amendment was agreed.

119.19 **RESOLVED:** That the Committee agreed:

- (i) That the agreed allocation of funding as shown in Appendices 3 and 4 to the report be approved for inclusion within the Council's Capital Investment Programme 2018/19;
- (ii) That the Committee approved the funding necessary to enable all necessary building, adaptation and other associated works undertaken at Dorothy Stringer School to accommodate the "misplaced 38" children for September 2018;
- (iii) That an urgency meeting of the Children, Young People & Skills Committee be convened to consider the allocation the balance of the Government funded £15m in (ii) (above) on the remainder of the qualifying school estates;
- (iv) That Officers convene an urgent meeting of relevant parties required to agree the parameters for swift implementation of the works required to accommodate the 'Misplaced 38.' This meeting is likely to include the Head Teacher, the Chair of Governors, appropriate BHCC property officers among others;
- (v) That the Committee authorise the Executive Director, Families, Children & Learning to consider the conclusions of this urgent meeting in the expectation that facilities will be in place for September 2018;
- (vi) That the Assistant Director of Property & Design be granted delegated authority to procure the capital maintenance and basic needs works and enter into contracts with these budgets, as required, in accordance with Contract Standing Orders in respect of the entire Education Capital Programme.

## **120 PURCHASE OF PROPERTY WITH RESTRICTIVE COVENANT**

120.1 **RESOLVED:** That it be agreed that -

- (i) The council purchase and refurbish the two properties at in Queens Park ward, Brighton to provide 15 units of accommodation for future use by the council as temporary accommodation;
- (ii) A budget of £2.040m for the purchase and refurbishment of these two properties be approved, which included a purchase price of £1.200m.

**121 A REQUEST TO PURCHASE A PIECE OF HRA LAND ON MILE OAK ROAD****121.1 RESOLVED:** That the Committee

- (i) Approved the disposal of the freehold of the land adjacent to 336 Mile Oak Road, as indicated in the report, for £27,000.
- (ii) Agree that the capital receipt arising from the sale of the freehold of the land adjacent to 336 Mile Oak Road be used to support the HRA Capital Programme.

**122 PROCUREMENT PROGRAMME FOR HOUSING REPAIRS, PLANNED MAINTENANCE AND CAPITAL WORKS**

122.1 The Committee considered the report of the Executive Director Economy Neighbourhoods, Communities & Housing, which updated members on the commencement of an options programme in relation to the future delivery of repairs, planned maintenance and capital works for the Council's housing stock.

122.2 Councillor Bell asked that once the procurement stage was reached that there would be something solid which could be taken to the leaseholders. The Executive Director Economy Neighbourhoods, Communities & Housing said the Council were liaising with leaseholders, and a report would come to the Housing & New Homes Committee in June 2018 setting out the role of leaseholders.

122.3 Councillor Yates asked how certain officers were that the proposed timetable could be adhered to. The Executive Director Economy Neighbourhoods, Communities & Housing said officers were confident with the timetable. There would be two key decisions, one in June 2018 when Councillors would give permission to move the matter forward, and one in October 2018 when the decision to move forward with the preferred option, which could be one of a number of options such as a single contract, multiple contracts or in-house provision etc, would be made by Councillors.

122.4 Councillor Janio said that listening to residents was important, and without their input the authority would not know if things were not going well. Councillor Janio asked if resident's comment during any consultant could be provided to Councillors. The Executive Director Economy Neighbourhoods, Communities & Housing said she would speak to every councillor, and listen to all residents to ensure that the next contract is as good as it should be. The Executive Director Finance & Resources said that the Procurement Advisory Board does give members an opportunity to have oversight of the contract.

122.5 Councillor Wealls informed the Committee that the Procurement Advisory Board, when considering the different contractors, would be balancing such things as social value, cost, quality of work etc and so there would be member input.

122.6 **RESOLVED:** That the Committee noted the commencement of an options programme in relation to the future delivery of repairs, planned maintenance and capital works for the Council's housing stock, as detailed in the report.

**123 BRIEFING REPORT ON ASE REGIONAL ADOPTION AGENCY****123.1 RESOLVED:** That the Committee -

- (i) Noted the report and in particular background information;
- (ii) Agreed in principle to the development of 'Adoption South East' Regional Adoption Agency in order to comply with Department for Education 'Adoption – A Vision for Change' agenda;
- (iii) Agreed in principle to aligned budgets for the formation of Adoption South East;
- (iv) Agreed for a more detailed report to be presented following approval on government funding.

**124 DATA PROTECTION OFFICER DESIGNATION****124.1 RESOLVED:**

- (i) That in response to the requirements of the General Data Protection Regulation, the Committee approved in principle this Council's designation of a statutory Data Protection Officer which Brighton & Hove City Council shares with its fellow founding Orbis partner authorities: East Sussex County Council and Surrey County Council.
- (ii) That the Committee approved that the Executive Director – Finance & Resources be given delegated authority to take all steps necessary or incidental to appoint to the above role.
- (iii) That the Committee granted to the Monitoring Officer delegated authority to amend the Council's Constitution so as to include provision in the Scheme of Delegations to Officers for the new statutory Data Protection Officer role.
- (iv) That the Committee approved that responsibility for acting as the Council's Senior Information Risk Owner be delegated to the Executive Director – Finance & Resources and that this be reflected in the Scheme of Delegations to Officers.

**125 SURVIVORS NETWORK PLEDGE**

**125.1 RESOLVED:** That the Committee agreed that Brighton & Hove City Council sign the Survivors Network Pledge and signs up for the Over to You Kite mark.

**126 AUTHORITY TO ENTER INTO A SUBLEASE FOR A MEDIUM SUPPORTED ACCOMMODATION SERVICE FOR HEALTH & ADULT SOCIAL CARE CLIENTS**

**126.1 RESOLVED:** That authority be granted for a sub-lease between Brighton & Hove City Council and BYMCA in accordance with the Heads of Terms attached to the report.

**127 TENDER FOR TRANSPORT PROFESSIONAL SERVICES**

127.1 **RESOLVED:** That the Committee grant delegated authority to the Assistant Director City Transport, to award a framework contract for a four year term to successful suppliers following the OJEU tendering process.

**128 GRANT OF NEW LEASES SHOREHAM AIRPORT**

128.1 The Committee considered the report of the Executive Director Economy, Environment & Culture regarding the grant of new leases at Shoreham Airport.

128.2 Councillor Mac Cafferty noted recommendation 2.2, and asked if any further amendments to the Heads of Terms could come back to the this committee rather than to Leaders Group. The Executive Director Economy, Environment & Culture said that the Leaders Group would only look at minor changes, and any major changes would come back to this committee. The Executive Lead Strategy Governance & Law said that any changes would be referred to the Leaders Group, and they would have the option of referring the matter back to the committee if they felt it was appropriate. Councillor Peltzer Dunn suggested that if the Leaders Group were not unanimous in their decision that it would automatically come back to this committee. The Chief Executive said he understood the concerns, but if the changes were urgent it would preferable for the matter to be referred to an urgency sub-committee.

128.3 Councillor Yates welcomed the report and said it was one of the good things which were happening as part of the City Deal, and it was good that the Council were looking at issues which were outside of the city and that it supported the regeneration of the local area.

128.4 Councillor Sykes noted that an agreement needed to be made in March or April 2018 to ensure that the Tidal Walls Scheme could commence this year, and asked if there was assurance from officers that the Council was close to agreeing the lease and that the matter would not need to come back to either this Committee or the Leaders Group. The Executive Director Economy, Environment & Culture hoped that agreement could be reached on any outstanding issues, and a positive decision from this Committee would give the administrator assurance that we were moving forward which would allow them to enter into the necessary agreements to that they wish to do so to allow access for the flood defence wall works to commence.

128.5 Councillor Janio congratulated officers on the work undertaken, and agreed that any minor changes to the Heads of Terms could be considered by the Leaders Group.

128.6 **RESOLVED:** That the Committee -

- (i) Authorised the grant of four new leases across the airport estate in line with draft Heads of Terms in Part II and subject to the delegation set out in recommendation (ii) below;
- (ii) Granted delegated authority to the Executive Director for Economy, Environment and Culture and Executive Lead Officer, Strategy Governance and Law to negotiate any further amendments to the Heads of Terms in order to secure the

best position for the councils. Any proposed amendments to the Heads of Terms to be reported to Leaders Group prior to the granting of the four new leases;

- (iii) Granted delegated authority to the Executive Director for Economy, Environment and Culture and the Executive Lead Officer, Strategy Governance and Law to finalise the legal documents and to take any other necessary steps to give effect to the agreement described in the Heads of Terms.

**129 ITEMS REFERRED FOR COUNCIL**

129.1 **RESOLVED:** That no items be referred to Council

**PART TWO SUMMARY**

**130 GRANT OF NEW LEASES SHOREHAM AIRPORT (EXEMPT CATEGORY 3)**

130.1 **RESOLVED:** That the information in the report be noted.

**131 PART TWO PROCEEDINGS**

131.1 **RESOLVED:** That the information contained Part Two, Item 130 remain exempt from disclosure to the press and public

The meeting concluded at 7.25pm

Signed

Chair

Dated this

day of

2018



|                          |  |
|--------------------------|--|
| <b>Subject:</b>          | <b>UNITE Construction Charter – Notice of Motion</b> |
| <b>Date of Meeting:</b>  | <b>14 June 2018</b>                                  |
| <b>Referred from:</b>    | <b>Council 19 April 2018</b>                         |
| <b>Ward(s) affected:</b> | <b>All</b>   |

### **UNITE CONSTRUCTION CHARTER**

This council resolves to support the Unite the Union Construction Charter and request that a report come to the Policy, Resources & Growth Committee regarding signing up to the Charter, recognising that:

- As a Local Authority we are responsible for the procurement of construction projects.
- It is therefore appropriate that as a responsible client we sign up to this Charter, and commit to working with the appropriate trade unions, in order to achieve the highest standards in respect of; direct employment status, Health & Safety, standard of work, apprenticeship training and the implementation of appropriate nationally agreed terms and conditions of employment.
- As more local authorities support the Charter this may lead to policy change at a national level leading to improved minimum standards in local authority procurement of construction projects.

Supporting information:

Unite has members across many different sectors of the economy and following the merger with UCATT last year, now represents a significant number of workers in the construction industry.

A priority campaign within this sector is addressing the shoddy practices by some firms that compromise employment protections from which workers should benefit.

Unite are contacting all Council Leaders across the country regarding the Unite Construction Charter and seeking support to have these terms nationally agreed as minimum standards in any local authority procurement policy.

Once the Charter is signed and rolled out, Unite believe that any requirements of abiding by this will soon become an expectation and will actually put authorities in a strengthened position.

The Unite Construction Charter covers 12 requirements for all contractors and their supply chain engaged by a local authority.





|                          |  |
|--------------------------|--|
| <b>Subject:</b>          | <b>UNITE Construction Charter – Notice of Motion</b> |
| <b>Date of Meeting:</b>  | <b>14 June 2018</b>                                  |
| <b>Referred from:</b>    | <b>Council 19 April 2018</b>                         |
| <b>Ward(s) affected:</b> | <b>All</b>   |

### **WOMEN IN GOVERNMENT AND POLITICS**

This Council resolves to:

- 1) Request the Chair of the Policy, Resources & Growth Committee to call for a report detailing the options for how Brighton & Hove City Council can implement the relevant recommendations for Local Authorities (where not already in place) listed in the Fawcett Society/LGiU report: *'Does Local Government Work for Women?'* (1)
- 2) Request the Chief Executive write to the Secretary of State for Communities and Local Government, supporting the introduction of a statutory maternity, paternity, adoption and parental leave policy for Councillors;
- 3) Request the Chair of the Policy, Resources & Growth Committee, to call for a report detailing options for how the council can implement its own formal maternity, paternity, adoption and parental leave policy for Councillors;
- 4) Request the Chief Executive writes to the Secretary of State for Communities and Local Government calling for guidance to be issued to local remuneration panels to promote the Fawcett model for a comprehensive dependent carers' allowance scheme, so that all childcare and adult dependent care costs are covered,
- 5) Request that as part of its next review of the Members Allowances Scheme, the Independent Remuneration Panel consider options to update the Scheme, changing the hourly child and dependent care allowance to the Brighton Living Wage (£8.75); and longer term, to seek to more accurately reflect the true cost of Ofsted registered childcare and adult care (2)
- 6) Request that Audit & Standards Committee consider adding Sexual Harassment and Sex Discrimination policies to the Code of Conduct.

### **Supporting Information**

(1) The Fawcett Society and Local Government Information Unit report, *'Does Local Government Work for Women?'* found that structural and cultural barriers hold back women's participation in local government. The practices and protocols of local government create unnecessary barriers to participation particularly for women with caring responsibilities. <https://bit.ly/2q7odbx>

(2) Only 4% of local authorities have a formal maternity, paternity, or adoption policy in place for councillors. Although BHCC will pay Ofsted registered childcare, these costs can range up to £10-£12 per hour, whereas the living wage maximum rate covered by the council is £7.65, leaving parents to subsidise costs themselves.



|                          |   |   |                     |
|--------------------------|---|---|---------------------|
| <b>Subject:</b>          | <b>Targeted Budget Management (TBM) Provisional Outturn 2017/18</b> |   |                     |
| <b>Date of Meeting:</b>  | <b>14 June 2018</b>   |   |                     |
| <b>Report of:</b>        | <b>Executive Director of Finance &amp; Resources</b>                |   |                     |
| <b>Contact Officer:</b>  | <b>Name:</b>  | <b>Nigel Manvell</b>                      | <b>Tel: 29-3104</b> |
|                          | <b>Email:</b>   | <b>Nigel.manvell@brighton-hove.gov.uk</b> |                     |
| <b>Ward(s) affected:</b> | <b>All</b>  |   |                     |

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

- 1.1 The Targeted Budget Monitoring (TBM) report is a key component of the council's overall performance monitoring and control framework. This report sets out the provisional outturn position (i.e. Month 12 year-end) on the council's revenue and capital budgets for the financial year 2017/18.
- 1.2 The final outturn position is subject to the annual external audit review of the council's accounts. The final position will be shown in the council's financial statements which must be signed by the Chief Finance Officer (CFO) by 31 May 2018 and the audited set approved by the Audit & Standards Committee by 31 July 2018.
- 1.3 In summary, the council has achieved a provisional outturn underspend of £0.008m on its General Fund services, which also enables release of the available risk provision of £1.384m held for 2017/18 but not required. The full release of the risk provision was assumed to be achievable when setting the 2018/19 budget as at month 9. The provisional outturn therefore represents an improved resource position of £0.008m. The improvement relates to a small number of significant movements detailed in the report and appendices.
- 1.4 The position demonstrates that the council continues to plan and manage its resources effectively and remains financially resilient without resorting to the use of reserves. This is in an environment of significant financial challenges, including the achievement of over £17m savings during the year. This is important in the context of growing pressures on demand-led services, the requirement to achieve further substantial savings, and uncertainties over funding in future years, particularly concerning business rates and the longer term funding of health and social care with health partners. An outturn position within budget is also important to satisfy external scrutiny including the opinion of the external auditor on the council's financial resilience and arrangements for effective medium term financial planning.

**2 RECOMMENDATIONS:**

- 2.1 That the Committee note that the provisional General Fund outturn position is an underspend of £1.392m (including release of the risk provision) and that this

represents an improvement in resources of £0.008m compared to the projected and planned resource position at Month 9 taken into account when setting the 2018/19 budget.

- 2.2 That the Committee note the provisional outturn includes an overspend of £0.219m on the council's share of the NHS managed Section 75 services.
- 2.3 That the Committee note the provisional outturn for the separate Housing Revenue Account (HRA), which is an underspend of £0.644m.
- 2.4 That the Committee note the provisional outturn position for the ring-fenced Dedicated Schools Grant, which is an underspend of £0.201m.
- 2.5 That the Committee approve carry forward requests totalling £1.578m as detailed in Appendix 4 and included in the provisional outturn.
- 2.6 That the Committee approve the Parking Virement detailed in paragraphs 6.2 and 6.3.
- 2.7 That the Committee approve the creation of 3 earmarked reserves as set out in paragraph 6.44.
- 2.8 That the Committee note the provisional outturn position on the capital programme which is an underspend variance of £4.429m.
- 2.9 That the Committee approve the capital budget variations and slippage requested in Appendix 6 and new capital schemes detailed in Appendix 7.

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

#### **Change in resources since Month 9 (Budget Setting)**

- 3.1 The forecast outturn position at Month 9 was an overspend of £0.428m against which there were available risk provisions of £1.384m, giving a net position of £0.956m underspend. When setting the 2018/19 revenue budget, the overspend was assumed to improve to a break-even position meaning that the amount of one-off resources available to support the budget was £1.384m i.e. equivalent to the release of the full risk provision. This assumed resource was fully allocated in the setting of the 2018/19 budget.
- 3.2 In essence therefore, when considering the provisional outturn position, only the movement from the assumed position of a £1.384m underspend is relevant. The table in paragraph 3.7 below shows that, after releasing the risk provision, the provisional outturn on the General Fund is an underspend of £1.392m which is an improvement in available resources of £0.008m since the 2018/19 budget was set at Month 9.
- 3.3 Subject to approval of the carry forward requests in this report, this means that £0.008m additional one-off resources are available compared with Month 9.
- 3.4 The remainder of this report is in the standard TBM format and compares the movement from Month 9 to outturn as normal.

## Targeted Budget Management (TBM) Reporting Framework

- 3.5 The TBM framework focuses on identifying and managing financial risks on a regular basis throughout the year. This is applied at all levels of the organisation from Budget Managers through to Policy, Resources & Growth Committee. Services monitor their TBM position on a monthly or quarterly basis depending on the size, complexity or risks apparent within a budget area. TBM therefore operates on a risk-based approach, paying particular attention to mitigation of growing cost pressures, demands or overspending together with more regular monitoring of high risk 'demand-led' areas as detailed below.

### General Fund Revenue Budget Performance (Appendix 1/2/3)

- 3.6 Appendix 1 provides a high level RAG (Red/Amber/Green) rating of financial performance for each major service heading. The table below shows the provisional outturn for Council controlled revenue budgets within the General Fund. These are budgets under the direct control and management of the Executive Leadership Team. More detailed explanation of the variances can be found in Appendices 2 and 3.
- 3.7 The General Fund includes general council services, corporate budgets and central support services. Corporate budgets include centrally held provisions and budgets (e.g. insurance). Note that General Fund services are accounted for separately to the Housing Revenue Account (Council Housing). Note also that although part of the General Fund, financial information for the Dedicated Schools Grant is shown separately as this is ring-fenced to education provision (i.e. Schools).

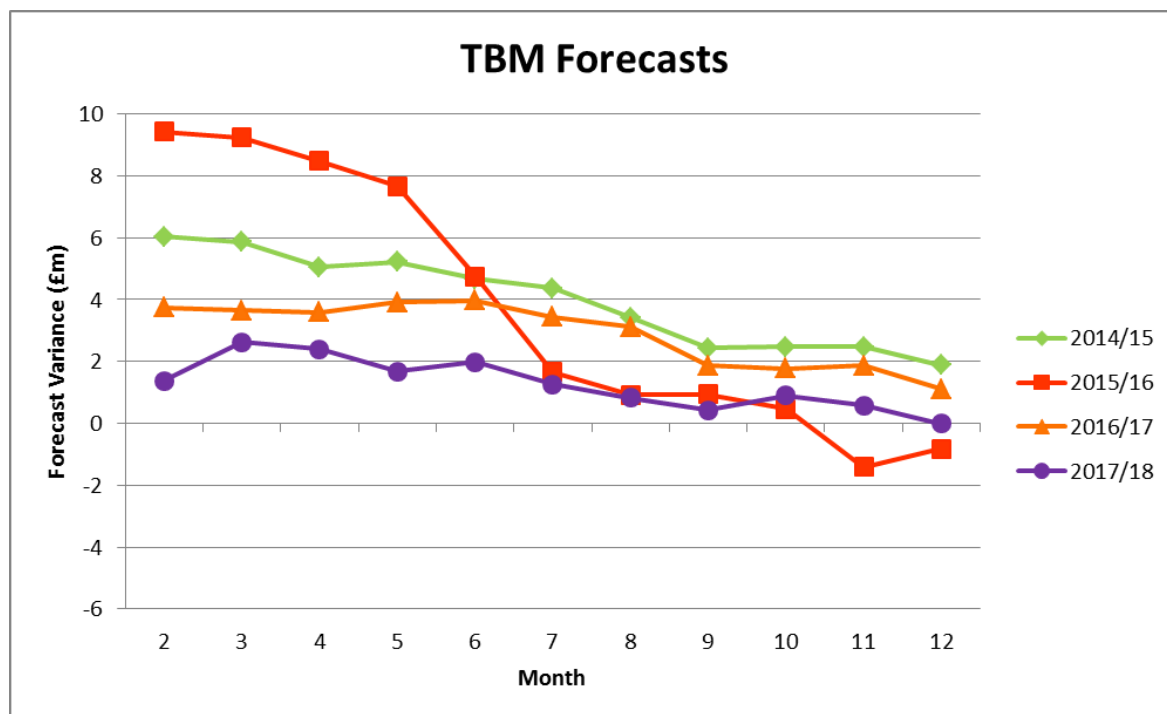
| Forecast<br>Variance<br>Month 9<br>£'000 | Directorate                          | 2017/18<br>Budget<br>Month 12<br>£'000 | Actual<br>Outturn<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>% |
|--|--------------------------------------|--|--|---|-------------------------------------|
| 2,609                                    | Families, Children & Learning        | 82,020                                 | 84,606                                 | 2,586                                   | 3.2%                                |
| 304                                      | Health & Adult Social Care           | 48,331                                 | 48,492                                 | 161                                     | 0.3%                                |
| (1,210)                                  | Economy, Environment & Culture       | 21,043                                 | 19,990                                 | (1,053)                                 | -5.0%                               |
| (80)                                     | Neighbourhood, Communities & Housing | 12,119                                 | 11,662                                 | (457)                                   | -3.8%                               |
| (301)                                    | Finance & Resources                  | 20,198                                 | 19,912                                 | (286)                                   | -1.4%                               |
| (150)                                    | Strategy, Governance & Law           | 5,532                                  | 5,288                                  | (244)                                   | -4.4%                               |
| 1,172                                    | Sub Total                            | 189,243                                | 189,950                                | 707                                     | 0.4%                                |
| (744)                                    | Corporate Budgets                    | 3,351                                  | 1,252                                  | (2,099)                                 | -62.6%                              |
| 428*                                     | Total General Fund                   | 192,594                                | 191,202                                | (1,392)                                 | -0.7%                               |

\* Position before release of £1.384m available risk provisions.

- 3.8 Note, at Month 9 available risk provisions of £1.384m had not been released. Therefore, as discussed above, the comparable position for Month 9, including

available risk provisions, was a forecast underspend of £0.956m. The provisional outturn underspend of £1.392m therefore represents an improvement of £0.436m on the Month 9 position. The large 'Corporate Budgets' underspend in the table above at Month 12 includes the release of the aforementioned risk provision of £1.384m. Further details of the Corporate Budgets outturn are provided in Appendices 2 and 3.

3.9 The chart below shows the monthly forecast variances for 2017/18 and the previous 3 years for comparative purposes. To ensure a like for like comparison of the underlying position, the data for the three years excludes the allocation of risk provisions.

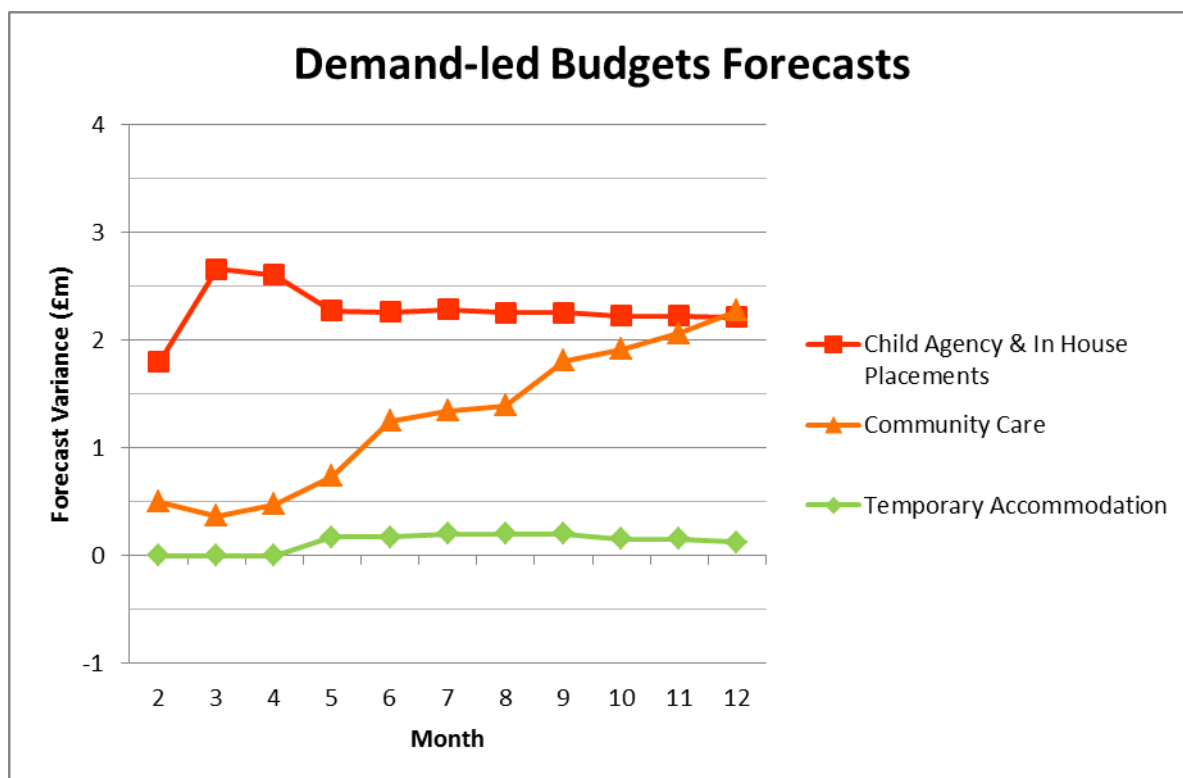


### Demand-led Budgets

3.10 There are a number of budgets that carry potentially higher financial risks and therefore could have a material impact on the council's overall financial position. These are significant budgets where demand or activity is difficult to predict and where relatively small changes in demand can have significant implications for the council's budget strategy. These therefore undergo more frequent and detailed analysis.

| Forecast Variance Month 9 £'000 | Demand-led Budget                  | 2017/18 Budget Month 12 £'000 | Actual Outturn Month 12 £'000 | Actual Variance Month 12 £'000 | Actual Variance Month 12 % |
|---------------------------------|------------------------------------|-------------------------------|-------------------------------|--------------------------------|----------------------------|
| 2,253                           | Child Agency & In House Placements | 20,886                        | 23,096                        | 2,210                          | 10.6%                      |
| 1,806                           | Community Care                     | 55,294                        | 57,567                        | 2,273                          | 4.1%                       |
| 200                             | Temporary Accommodation            | 2,647                         | 2,770                         | 123                            | 4.6%                       |
| 4,259                           | Total Demand-led Budget            | 78,827                        | 83,433                        | 4,606                          | 5.8%                       |

3.11 At this stage of the year it is important to monitor underlying trends in the context of the 2018/19 budget for which £9.268m service pressure funding for demand-led budgets was provided, reflecting the pressures on these budgets indicated above. The chart below shows the monthly forecast variances on the demand-led budgets for 2017/18.



### Summary of the position at Outturn

The main pressures reported at outturn continue to be across Children's and Adults Social Care and Homelessness (Temporary Accommodation) as follows:

3.12 **Children's Services:** The initial forecast budget risk across Families, Children & Learning was £3.024m primarily resulting from increased demand pressures on services for Children in Care, particularly adolescents with very complex needs and adults with learning disabilities. Some of the social work cost pressures continued through from last year. Subsequently the directorate put together a financial recovery plan to address the financial risks. There still remain significant financial pressures on services for Children in Care and adults with learning disabilities. In addition there are a number of significant financial risks in: supported employment; respite services for children with disabilities; legal fees, supporting families with no recourse to public funds and day services for adults with learning disabilities. These have been closely monitored but have had an adverse impact on the Families, Children and Learning Directorate 2017/18 outturn position.

There have been a substantial number of children being successfully placed with adoptive families. Where children are adopted through a third party (inter-agency adoption) a standard fee of £0.027m is applied. This has resulted in a significant

pressure on this budget. However, it is estimated that in the recent cases the lifetime saving to the Council of these children not being in foster care would amount to £0.163m per child based on current placement costs.

There is also a budget pressure within Learning Disability Provider services. The rate of pay for staff sleep-ins (night duty in care homes) has increased to keep the overall pay for these staff in line with minimum wage legislation. In addition, advice has been received that these payments should be backdated for 6 years, resulting in a significant budget pressure in 2017/18.

The final position shows an overspend of £0.906m on services for adults with learning disabilities, £0.311m on legal fees and £2.303m on placement budgets. Together with other underspending budgets of £0.934m, this results in the final outturn position of £2.586m overspent.

**Adults Services:** The service faced significant challenges in 2017/18 in mitigating the risks arising from increasing demands from client needs, supporting more people to be discharged from hospital when they are ready and maintaining the provider market. This was alongside delivering a significant budget savings programme and developing integration plans through the Better Care Fund.

- The outturn position is an overspend of £0.143m at year end after the implementation of a number of initiatives to improve the financial stability of the directorate in previous years, which have helped to contain the risk. The recovery measures focused on attempting to manage demands on and costs of community care placements across Assessment Services and making the most efficient use of available funds.
- There was a focus nationally on improving rates of hospital discharge in preparation for winter leading to increasing financial pressure. There are also continued potential forecast risks concerning increased complexity of need, pressures on the in house older people resource centres and Deprivation of Liberty Safeguards (DoLS) cases. Service pressure funding and improved Better Care funding have partly mitigated the risk for this financial year.
- The outturn includes the fee uplifts agreed at Health & Wellbeing Board on 31<sup>st</sup> January 2017 across care in the community and residential care. In order to manage the local market and address the significant under-supply of providers in the city who will accept publicly funded residents, fee increases were essential.
- At the end of the financial year, £1.074m of the total approved budget savings of £4.873m were unachievable.
- Service pressure funding of over £3m, including the Adult Social Care precept, has been applied in 2017/18 and used to fund budget pressures resulting from the increased demands and complexity, DoLS, the national living wage and fee rates.

The funding of all care packages is scrutinised for Value for Money, ensuring that eligible needs are met in the most cost-effective manner which will not always meet people's aspirations. This forms a key part of the savings implementation



plan. Adult Services are also using benchmarking information to support improved unit costs but are faced with increased complexity and demand (demographic) growth which is also a national picture. Through regional and other social care networks the service has been looking at best practice in delivering cost effective services in order to influence future direction - this includes demand management strategies and identifying opportunities through Housing provision.

Housing Services and Temporary Accommodation: Last year, Temporary Accommodation was overspent by over £1m. This was driven by a combination of external factors including a large decant programme, a shortage of alternative contracted accommodation and high replacement housing costs. In 2017/18, the Temporary Accommodation budget has been supported by additional council funding and government grants to address the budget pressures and transform the service. The Homelessness Service (which includes both Temporary Accommodation and Housing Options) has also delivered £1.152m of savings (cost avoidance).

The outturn position for 2017/18 is an overspend of £0.123m for this service (Month 9 £0.200m overspend). The main reason for this is higher than budgeted repairs and voids costs. This is the result of a greater volume of households moving on into permanent housing which creates more voids and subsequently higher than budgeted associated costs. This overspend is met from underspends elsewhere in the Housing Service.

The service has changed the void management process for temporary accommodation and early indications are that this will also reduce the pressure on void and repairs costs going forward. Following the introduction of the new housing allocation policy and plan, both the costs and volumes of spot purchasing of emergency accommodation have significantly reduced. There has however been a small increase in the number of households in temporary accommodation of 47 during the year from 1,874 at 1/4/17 to 1,921 at 31/3/18. This has remained relatively stable given that the council accepted a full housing duty to 487 households.

Housing Benefit for households in temporary accommodation changed this year so that the £60 per week management element has been replaced by the Flexible Homelessness Support Grant. The number of households in temporary accommodation required £4.420m of this grant in 2017/18 to replace this management fee. The amount of grant used has been reduced as a result of costs being offset by underspends elsewhere in the housing service.

The £1.300m trailblazer project has delivered initial reductions in accommodation volumes by the end of 2017/18 and there is forecast to be a further reduction of households in temporary accommodation by the end of 2018/19 which should deliver the service's target budget savings. However, the whole Housing Service still has an unmet savings target of £0.300m (full year effect) for 2018/19.

As part of the Autumn 2017 Budget, the government has announced that from 1 April 2018 the housing costs element of Universal Credit for people in temporary accommodation will continue to be paid separately and direct to the local authority. However this does still represent a risk for the service due to the

potential negative impact on households in private sector rented accommodation who may become homeless as a result.

### **Carry Forward Requests (Appendix 4)**

- 3.13 Under the council's Financial Regulations, the Director of Finance<sup>1</sup> may agree carry forwards of up to £0.050m per member of the Corporate Management Team (up to a maximum of £1m in total) if it is considered that this incentivises good financial management. Given the council's challenging financial position, carry forwards are only allowed where there is clear evidence of a prior commitment that was not able to be completed or undertaken by the end of the financial year. Fortuitous underspends have not been allowed as carry forwards. Under this Financial Regulation, a total of £0.371m has been agreed for 13 service areas to ensure planned commitments can be met in 2018/19.
- 3.14 Policy, Resources & Growth Committee approval is required for carry forward requests in excess of £0.050m. These include grant funded and non-grant funded carry forwards totalling £1.578m and have been assumed in the outturn figures above. The principles outlined in paragraph 3.13 above also apply. An analysis of these is provided in Appendix 4 split into two categories as follows.
- i) The non-grant funded element of carry forwards totals £0.723m. These items have been proposed where funding is in place for existing projects or partnership working that crosses over financial years and it is therefore a timing issue that this money has not been spent in full before the year-end.
  - ii) The grant funded element of carry forwards totals £0.855m. Under current financial reporting standards, grants received by the council that are unringfenced or do not have any conditions attached are now recognised as income in the financial year in which they are received rather than in the year in which they are used to support services. Carry forward is therefore required to ensure the grants are available to fund the commitments against them next year. Within the total of £0.855, a sum of £0.201m relates to the Dedicated Schools Grant. Under the Schools Finance Regulations, the unspent part of the DSG must be carried forward to support the schools budget in future years.

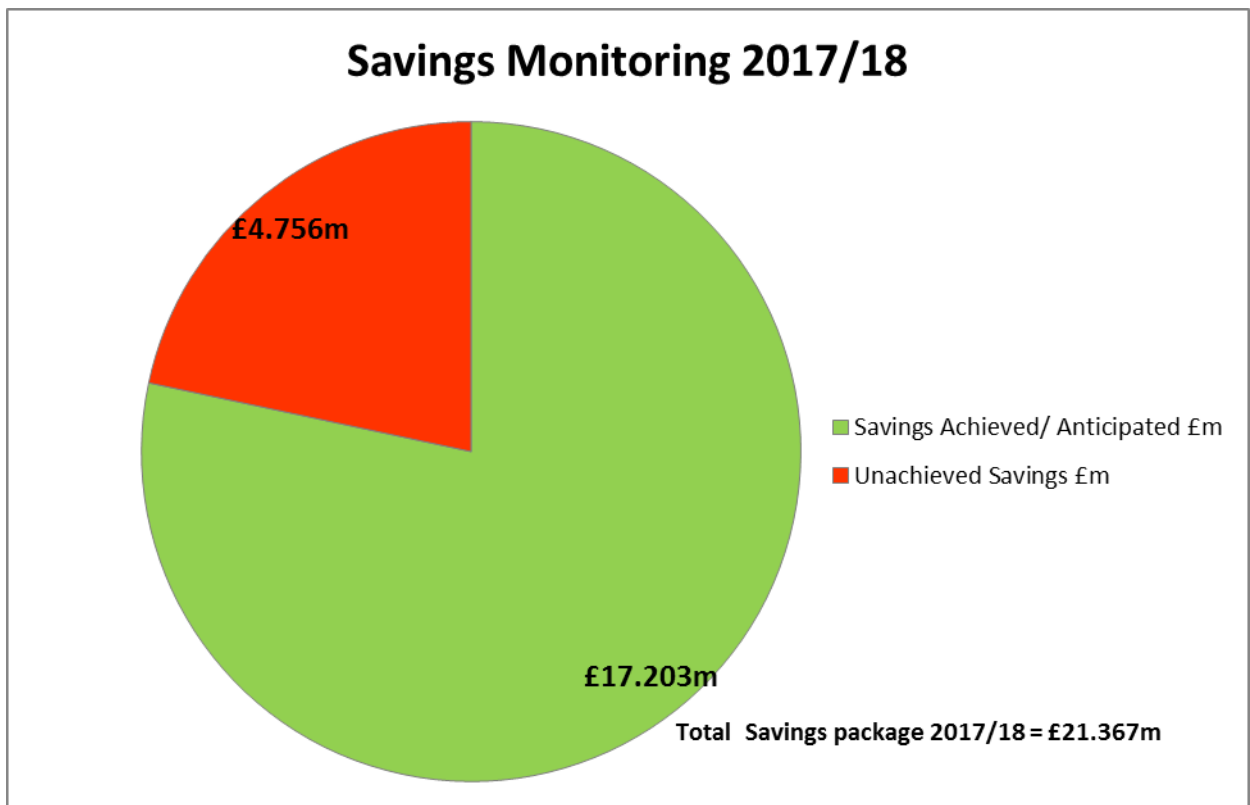
### **Monitoring Savings**

- 3.15 The savings package approved by full Council to support the revenue budget position in 2017/18 was £21.367m following directly on from a similar-sized savings package in 2016/17. This is very significant and follows 6 years of substantial packages totalling nearly £119m that have been essential to enable unavoidable cost and demand increases to be funded.
- 3.16 Appendix 3 provides a summary of savings in each directorate and indicates in total what was achieved or underachieved. Appendix 5 summarises the position across all directorates and presents the entire savings programme. The graph below provides a summary of the position at outturn. This shows that approximately £17.203m (78%) savings were achieved with £4.756m (22%) unachieved. The areas where savings were most at risk were Children's and

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<sup>1</sup> Director of Finance is a generic term used in Financial Regulations meaning the Chief Financial Officer or S151 Officer, which in this council is the Executive Director Finance & Resources

Adults social care and Learning Disability services. Service pressure funding in the 2018/19 budget recognises the underlying issues on these services.



*Note: Savings achieved/unachieved includes an overachievement of savings of £0.592m.*

### **Housing Revenue Account Performance (Appendix 3)**

- 3.17 The Housing Revenue Account (HRA) is a separate ring-fenced account which covers income and expenditure related to the management and operation of the council's housing stock. Expenditure is primarily funded by Housing Benefits (Rent Rebates) and Council Tenants' rents. The provisional outturn is an underspend of £0.644m and more details are provided in Appendix 3.

### **Dedicated Schools Grant Performance (Appendix 3)**

- 3.18 The Dedicated Schools Grant (DSG) is a ring-fenced grant which can only be used to fund expenditure on the schools budget. The schools budget includes elements for a range of services provided on an authority-wide basis including Early Years education provided by the Private, Voluntary and Independent (PVI) sector, and the Individual Schools Budget (ISB) which is divided into a budget share for each maintained school. The provisional outturn is an underspend of £0.201m and more details are provided in Appendix 3. Under the Schools Finance Regulations any underspend must be carried forward to support the schools budget in future years.

## **NHS Managed S75 Partnership Performance (Appendix 2)**

- 3.19 The NHS Trust-managed Section 75 Services represent those services for which local NHS Trusts act as the Host Provider under Section 75 Agreements. Services are managed by Sussex Partnership Foundation Trust (SPFT) and include health and social care services for Adult Mental Health and Memory and Cognitive Support Services.
- 3.20 This partnership is subject to separate annual risk-sharing arrangements and the monitoring of financial performance is the responsibility of the respective host NHS Trust provider. Risk-sharing arrangements result in financial implications for the council where a partnership is underspent or overspent at year-end and hence the performance of the partnership is included within the forecast outturn for the Health & Adult Social Care directorate. The council's contribution to the risk share for 2017/18 is £0.219m and more details are provided in Appendix 3.

### **Capital Programme Performance and Changes**

- 3.21 The Capital programme spans more than one financial year and therefore monitoring is different to that of the revenue budget. Performance needs to be looked at from five different viewpoints at the end of the year as follows:
- i) Variance: The 'variance' for a scheme or project indicates whether it has broken-even, underspent or overspent. Information on how forecast overspends will be mitigated is given in Appendix 6. If the project is completed, any underspend or overspend will be an outturn variance. Generally, only explanations of significant forecast variances of £0.100m or greater are given.
  - ii) Budget Variations: These are changes to the project budget within year, requiring members' approval, and do not change future year projections. The main reason for budget variations is where capital grant or external income changes in year.
  - iii) Slippage: This indicates whether or not a scheme or project is on schedule. Slippage of expenditure from one year into another will generally indicate overall delays to a project although some projects can 'catch up' at a later date. Some slippage is normal due to a wide variety of factors affecting capital projects, however substantial amounts of slippage across a number of projects could result in the council losing capital resources (e.g. capital grants) or being unable to manage the cashflow or timing impact of later payments or related borrowing. Wherever possible, the council aims to keep slippage below 5% of the total capital programme.
  - iv) Reprofiling: Reprofiling of budget from one year into another is requested by project managers when they become aware of changes or delays to implementation timetables due to unforeseeable reasons outside the council's control. Reprofiling requests are checked in advance by Finance to ensure there is no impact on the council's capital resources before they are recommended to Policy, Resources & Growth Committee.
  - v) IFRS changes: These accounting changes are necessary for the council to comply with International Financial Reporting Standards (IFRS) for the Statement of Accounts. This concerns the determination of items of expenditure as either capital or revenue expenditure. Only items meeting

the IFRS definition of capital expenditure can be capitalised; expenditure not meeting this definition must be charged to the revenue account. This accounting exercise is undertaken as part of the closure of accounts process and therefore IFRS changes only appear in the outturn TBM report. Where significant changes have occurred an explanation is contained in Appendix 6.

3.22 The table below provides a summary of capital programme performance by Directorate and shows that there is an overall underspend of £4.429 m which is detailed in Appendix 6.

| Forecast Variance Month 9 £'000 | Capital Budgets                | 2017/18 Budget Month 12 £'000 | Provisional Outturn Month 12 £'000 | Provisional Variance Month 12 £'000 | Provisional Variance Month 12 % |
|---------------------------------|--------------------------------|-------------------------------|------------------------------------|-------------------------------------|---------------------------------|
| 0                               | Families Children & Learning   | 5,658                         | 5,653                              | (5)                                 | -0.1%                           |
| 0                               | Health & Adult Social Care     | 700                           | 700                                | 0                                   | 0.0%                            |
| 0                               | Economy Environment & Culture  | 29,840                        | 28,561                             | (1,279)                             | -4.3%                           |
| 0                               | Neighbourhood Comm's & Housing | 3,985                         | 3,839                              | (146)                               | -3.7%                           |
| (2,410)                         | Housing Revenue Account        | 39,047                        | 36,048                             | (2,999)                             | -7.7%                           |
| 0                               | Finance & Resources            | 571                           | 571                                | 0                                   | 0.0%                            |
| 0                               | Strategy Governance & Law      | 5                             | 5                                  | 0                                   | 0.0%                            |
| 0                               | Corporate Services             | 0                             | 0                                  | 0                                   | 0.0%                            |
| (2,410)                         | Total Capital                  | 79,806                        | 75,377                             | (4,429)                             | -5.5%                           |

3.23 Appendix 6 shows the changes to the budget and Appendix 7 provides details of new schemes added to the Capital Programme after TBM Month 9 still to be approved and new schemes for 2018/19. Policy, Resources & Growth Committee's approval for these changes is required under the council's Financial Regulations. The following table shows the movement in the capital budget since approval in the Month 9 report.

| <b>Capital Budget Movement</b>  | <b>2017/18<br/>Budget<br/>£'000</b> |
|---|-------------------------------------|
| <b>Summary</b>  |                                     |
| Budget Approved at TBM Month 9  | 95,451                              |
| Reported at other Policy, Resources & Growth Committee meetings since Month 9 | 0                                   |
| IFRS Changes (to be noted)  | (896)                               |
| Variations (to be approved - see Appendix 6)                                  | 1,257                               |
| Reprofiles (to be approved - see Appendix 6)                                  | (14,019)                            |
| Slippage (to be approved - see Appendix 6)                                    | (1,987)                             |
| <b>Total Capital Budget at Outturn</b>  | <b>79,806</b>                       |

- 3.24 Appendix 6 also details any slippage into next year. In total, project managers have forecast that £1.987m of the capital budget may slip into the next financial year and this equates to 2.49% of the capital budget.

### **Implications for the Medium Term Financial Strategy (MTFS)**

- 3.25 The council's MTFS sets out resource assumptions and projections over a longer term. It is periodically updated including a major annual update which is included in the annual revenue budget report to Policy, Resources & Growth Committee and full Council. This section highlights any potential implications for the current MTFS arising from in-year TBM monitoring above and details any changes to financial risks together with any impact on associated risk provisions, reserves and contingencies. Details of Capital Receipts and Collection Fund performance are also given below because of their potential impact on future resources.

#### ***Capital Receipts Performance***

- 3.26 Capital receipts are used to support the capital investment programme. For 2017/18 a total of £35.871m capital receipts (excluding 'right to buy' sales) have been received. Disposals during the year include the sale of Kings House, 2 and 3 Greenways Cottages at Ovingdean Grange, and 54 London Road. Receipts were received in connection with the land disposals at Circus Street and Preston Barracks associated with the regeneration projects on those sites. Other receipts included some small disposals of land plots and lease extensions at the Marina and Rowan Avenue
- 3.27 The Government receives a proportion of the proceeds from 'right to buy' sales with a proportion required by the council to repay debt; the remainder is retained by the council and used to fund the capital investment programme. The total net usable receipts for 'right to buy' sales in 2017/18 is £6.870m including £5.631m available for replacement homes.

#### ***Collection Fund Performance***

- 3.28 The collection fund is a separate account for transactions in relation to council tax and business rates. Any deficit or surplus forecast on the collection fund relating to council tax is distributed between the council, Sussex Police and Crime Commissioner and East Sussex Fire Authority, whereas any forecast deficit or surplus relating to business rates is shared between the council, East Sussex Fire Authority and the government.

- 3.29 The collection fund for council tax at 31st March 2018 has a surplus of £2.836m which is an improvement of £0.399m (council share = £0.342m) from the forecast surplus of £2.437m in January. The improved surplus arose from lower than anticipated exemption costs for students.
- 3.30 The collection fund for business rates at 31st March 2018 has an overall deficit of £3.770m compared to the forecast deficit of £3.448m in January. The increased deficit was mainly from higher than anticipated empty relief. The council share of the deficit after allowing for Section 31 grant funding and a tariff adjustment is £0.599m which is higher than the January forecast by £0.136m.
- 3.31 The council's share of the combined net surplus across both collection funds that has not been factored into the 2018/19 budget is £0.206m and this will therefore be included in the budget forecast for 2019/20.

#### **4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 The provisional outturn position on council controlled budgets is an underspend of £1.392m including release of the risk provision and the council's risk-share of the provisional overspend on NHS managed Section 75 services of £0.219m. The overall underspend position will not therefore require the use of reserves and will enable the council to maintain its recommended working balance of £9.000m. The improved resource position since the February Budget Council releases one off resources of £0.008m that can be used to aid budget management and planning for 2018/19.

#### **5 COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 No specific consultation has been undertaken in relation to this report.

#### **6 CONCLUSION AND COMMENTS OF THE DIRECTOR OF FINANCE (S151 OFFICER)**

- 6.1 The resource position at outturn has improved by £0.436m compared with the position at month 9 and is £0.008m better than the position assumed in the 2018/19 Revenue Budget report to Policy, Resources & Growth Committee and Budget Council in February 2018. This indicates a favourable position for the financial year and demonstrates effective financial management and resilience in order to satisfy external scrutiny by partners, external auditors and other stakeholders. The position indicates underlying pressures on Children's and Adults social care and Learning Disability Services that have been addressed in the 2018/19 budget through further service pressure funding. However, the position on these budgets will need close monitoring during 2018/19 to avoid further growth in cost pressures beyond the additional funding provided.

#### **Other Approvals under Financial Regulations**

- 6.2 A business case for the future structure of Parking Services within City Transport has been developed to enable the service to address increased workloads and activity, modernise the service to optimise business opportunities, and ensure that new schemes introduced last year are adequately resourced on an ongoing basis. It will enable the priority parking scheme timetable up to 2020/21 to be delivered, improve the response to resident permit fraud, Blue Badge fraud and concessionary travel fraud, as recommended by an audit of the service, as well

as safeguard suspension payments from developments in the City. The key elements will ensure that the Traffic Control Centre is resourced to enable full 24x7 operation following the increase in CCTV cameras in the City from 3 to 24. It will also enable handling of the significant increase in Penalty Charge Notices (PCN's) arising from this, and new and future parking schemes. The resource within the Customer Facing Service Teams will also be increased to manage increased workloads and responsibilities (including increased PCN appeals) and management of fraud which will in turn ensure we are safeguarding income. A small Parking Projects Team is also being established to ensure we meet the digital needs of the service and investigate future technology options.

6.3 These changes will modernise and stabilise the Parking Service and enable it to increase its focus on tackling fraud. A virement (budget transfer) is required to realign budgets within the service to accommodate these changes. The net cost of the restructure is £550,000 which will be funded from the increase in income generated in 2017/18 (including the full-year ongoing effect). This restructuring does not impact on the overall budget for the service which will be able to meet its 2018/19 budget target, including approved savings targets. The gross value of the virement, including realignment of existing staffing budgets is £867,000. Approval of this virement by Policy, Resources & Growth Committee is required in accordance with Section A.2.1.3 of the council's Standard Financial Procedures as this is above the delegation level provided to the Chief Finance Officer.

6.4 On a separate matter, in accordance with sections B.3.1 and B.3.5 of Standard Financial Procedures, the committee is required to approve the creation of new earmarked reserves. The table below details proposed earmarked reserves, which will support ongoing projects that span financial years and which have already been accounted for in the outturn position:

| <b>Directorate</b>                   | <b>Description</b>                                 | <b>Reason for Reserve</b>   | <b>£'000</b> |
|--------------------------------------|--|---|--------------|
| Health & Adult Social Care           | Better Care Fund Risk Reserve                      | Carried forward ASC Better Care funding to be transferred to a Better Care risk provision for disability adaptations and community equipment.   | 470          |
| Economy, Environment & Culture       | Environmental Enforcement Reserve                  | Enforcement income is raised through fixed penalties to address anti-social and illegal behaviour to improve the environment and minimise waste clean-up and disposal costs. Any surplus which is generated for the council is re-invested in bins, education and communication as required by legislation. | 26           |
| Neighbourhood, Communities & Housing | Additional Private Sector Housing Licensing Scheme | Licence fees cover a 5 year period and the proposed reserve is to earmark resources to fund the council's annual inspection and administration costs over the period.   | 339          |
| <b>Total</b>                         |  |   | <b>835</b>   |



## 7 FINANCIAL AND OTHER IMPLICATIONS

### Financial Implications:

- 7.1 The financial implications are covered in the main body of the report. Financial performance is kept under review on a monthly basis by the Executive Leadership Team and cross-party Budget Review Group and the management and treatment of strategic financial risks is considered by the Audit & Standards Committee.

Finance Officer Consulted: Jeff Coates Date: 18/05/2018

### Legal Implications:

Decisions taken in relation to the budget must enable the council to observe its legal duty to achieve best value by securing continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. The council must also comply with its general fiduciary duties to its Council Tax payers by acting with financial prudence, and bear in mind the reserve powers of the Secretary of State under the Local Government Act 1999 to limit Council Tax & precepts. The use of any surplus income from civil parking enforcement is governed by Section 55 of the Road Traffic Regulation Act 1984 as amended. This allows any surplus to be used for specified transport and highways related purposes, including meeting the cost of provision of parking operations and relevant improvement projects.

Lawyer Consulted: Elizabeth Culbert Date: 18<sup>th</sup> May 2018

### Equalities Implications:

- 7.2 There are no direct equalities implications arising from this report.

### Sustainability Implications:

- 7.3 Although there are no direct sustainability implications arising from this report, the council's financial position is an important aspect of its ability to meet Corporate Plan and Medium Term Financial Strategy priorities. The achievement of a break-even position or better is therefore important in the context of ensuring that there are no adverse impacts on future financial years from performance in 2017/18.

### Risk and Opportunity Management Implications:

- 7.4 In 2017/18 the council's revenue budget and Medium Term Financial Strategy contained risk provisions to accommodate emergency spending, even out cash flow movements and/or meet unexpected changes in demands. The council maintains a recommended minimum working balance of £9.000m to mitigate these risks. The council also maintains other general and earmarked reserves and contingencies to cover specific project or contractual risks and commitments.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Revenue Budget Performance RAG rating
2. Revenue Budget Movements since Month 9
3. Revenue Budget Performance by Service Directorate
4. Carry Forward Requests
5. Summary of 2017/18 Savings Progress
6. Capital Programme Performance
7. New Capital Schemes

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

None.

### **Background Documents**

None.

## Appendix 1 – Revenue Budget RAG Ratings

| RAG Rating Key: | RAG for Service Areas  | RAG for Directorates <sup>(1)</sup>  | RAG for General Fund   |
|-----------------|--|--|--|
| <b>Red</b>      | Forecast overspend of 5% or more or £0.100m whichever is lower               | Forecast overspend of 5% or more or £0.250m whichever is lower               | Forecast overspend of 0.5% or more or £1.000m whichever is lower               |
| <b>Amber</b>    | Forecast overspend of less than 5% of budget or £0.100m, whichever is lower. | Forecast overspend of less than 5% of budget or £0.250m, whichever is lower. | Forecast overspend of less than 0.5% of budget or £1.000m, whichever is lower. |
| <b>Green</b>    | Breakeven or forecast underspend   | Breakeven or forecast underspend   | Breakeven or forecast underspend   |

| Service   | 2017/18<br>Budget<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>% | RAG<br>Rating<br>Month 12 |
|---|--|---|-------------------------------------|---------------------------|
| Director of Families, Children & Learning             | 262                                    | (188)                                   | -71.8%                              | Green                     |
| Health, SEN & Disability Services                     | 36,281                                 | 884                                     | 2.4%                                | Red                       |
| Education & Skills                                    | 5,151                                  | (110)                                   | -2.1%                               | Green                     |
| Children's Safeguarding & Care                        | 38,897                                 | 2,100                                   | 5.4%                                | Red                       |
| Quality Assurance & Performance                       | 1,429                                  | (100)                                   | -7.0%                               | Green                     |
| <b>Total Families, Children &amp; Learning</b>        | <b>82,020</b>                          | <b>2,586</b>                            | <b>3.2%</b>                         | Red                       |
| Adult Social Care                                     | 31,459                                 | 394                                     | 1.3%                                | Red                       |
| Integrated Commissioning                              | 3,453                                  | (452)                                   | -13.1%                              | Green                     |
| S75 Sussex Partnership Foundation Trust (SPFT)        | 12,844                                 | 219                                     | 1.7%                                | Red                       |
| Public Health   | 575                                    | 0                                       | 0.0%                                | Green                     |
| <b>Total Health &amp; Adult Social Care</b>           | <b>48,331</b>                          | <b>161</b>                              | <b>0.3%</b>                         | Amber                     |
| Transport   | (8,119)                                | (1,924)                                 | -23.7%                              | Green                     |
| City Environmental Management                         | 21,513                                 | 998                                     | 4.6%                                | Red                       |
| City Development & Regeneration                       | 2,698                                  | 21                                      | 0.8%                                | Amber                     |
| Culture   | 4,238                                  | (159)                                   | -3.8%                               | Green                     |
| Property  | 713                                    | 11                                      | 1.5%                                | Amber                     |
| <b>Total Economy, Environment &amp; Culture</b>       | <b>21,043</b>                          | <b>(1,053)</b>                          | <b>-5.0%</b>                        | Green                     |
| Housing General Fund                                  | 3,371                                  | (2)                                     | -0.1%                               | Green                     |
| Libraries   | 3,285                                  | (270)                                   | -8.2%                               | Green                     |
| Communities, Equalities & Third Sector                | 2,717                                  | 8                                       | 0.3%                                | Amber                     |
| Regulatory Services                                   | 1,553                                  | (177)                                   | -11.4%                              | Green                     |
| Community Safety                                      | 1,140                                  | (16)                                    | -1.4%                               | Green                     |
| Digital First   | 53                                     | 0                                       | 0.0%                                | Green                     |
| <b>Total Neighbourhood, Communities &amp; Housing</b> | <b>12,119</b>                          | <b>(457)</b>                            | <b>-3.8%</b>                        | Green                     |
| Finance   | 10,444                                 | 150                                     | 1.4%                                | Red                       |
| Housing Benefit Subsidy                               | (835)                                  | (456)                                   | -54.6%                              | Green                     |
| HR & Organisational Development                       | 2,794                                  | (108)                                   | -3.9%                               | Green                     |
| IT&D  | 7,795                                  | 128                                     | 1.6%                                | Red                       |
| <b>Total Finance &amp; Resources</b>                  | <b>20,198</b>                          | <b>(286)</b>                            | <b>-1.4%</b>                        | Green                     |

## Appendix 1 – Revenue Budget RAG Ratings

| Service                                     | 2017/18<br>Budget<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>% | RAG<br>Rating<br>Month 12 |
|---|--|---|-------------------------------------|---------------------------|
| Corporate Policy                            | 664                                    | (36)                                    | -5.4%                               | Green                     |
| Legal Services                              | 1,364                                  | (76)                                    | -5.6%                               | Green                     |
| Democratic & Civic Office Services          | 1,691                                  | (54)                                    | -3.2%                               | Green                     |
| Life Events                                 | (218)                                  | 3                                       | 1.4%                                | Amber                     |
| Performance, Improvement & Programmes       | 1,319                                  | (15)                                    | -1.1%                               | Green                     |
| Communications                              | 712                                    | (66)                                    | -9.3%                               | Green                     |
| <b>Total Strategy, Governance &amp; Law</b> | <b>5,532</b>                           | <b>(244)</b>                            | <b>-4.4%</b>                        | <b>Green</b>              |
| <b>Sub Total</b>                            | <b>189,243</b>                         | <b>707</b>                              | <b>0.4%</b>                         |                           |
| Bulk Insurance Premia                       | 0                                      | (2)                                     | 0.0%                                | Green                     |
| Concessionary Fares                         | 10,931                                 | (174)                                   | -1.6%                               | Green                     |
| Capital Financing Costs                     | 6,543                                  | (280)                                   | -4.3%                               | Green                     |
| Levies & Precepts                           | 205                                    | (1)                                     | -0.5%                               | Green                     |
| Unallocated Contingency & Risk Provisions   | 1,386                                  | (1,386)                                 | -100.0%                             | Green                     |
| Unringfenced Grants                         | (16,540)                               | (380)                                   | -2.3%                               | Green                     |
| Other Corporate Items                       | 826                                    | 124                                     | 15.0%                               | Red                       |
| <b>Total Corporately-held Budgets</b>       | <b>3,351</b>                           | <b>(2,099)</b>                          | <b>-62.6%</b>                       | <b>Green</b>              |
| <b>Total General Fund</b>                   | <b>192,594</b>                         | <b>(1,392)</b>                          | <b>-0.7%</b>                        | <b>Green</b>              |

|  |            |              |               |              |
|--|------------|--------------|---------------|--------------|
| Individual Schools Budget (ISB)              | 124,583    | 0            | 0.0%          | Green        |
| Early Years Block (inc delegated to Schools) | 12,548     | (512)        | -4.1%         | Green        |
| High Needs Block (exc delegated to Schools)  | 19,372     | 291          | 1.5%          | Red          |
| Exceptions and Growth Fund                   | 3,846      | 20           | 0.5%          | Amber        |
| Grant Income                                 | (159,764)  | 0            | 0.0%          | Green        |
| <b>Total Dedicated Schools Grant (DSG)</b>   | <b>585</b> | <b>(201)</b> | <b>-34.4%</b> | <b>Green</b> |

|   |          |              |             |              |
|---|----------|--------------|-------------|--------------|
| Capital Financing                       | 32,021   | (50)         | -0.2%       | Green        |
| Head of Housing HRA                     | 3,568    | 124          | 3.5%        | Red          |
| Head of City Development & Regeneration | 309      | (125)        | -40.5%      | Green        |
| Housing Strategy                        | 751      | (100)        | -13.3%      | Green        |
| Income Involvement Improvement          | (46,204) | (308)        | -0.7%       | Green        |
| Property & Investment                   | 7,874    | (2)          | 0.0%        | Green        |
| Tenancy Services                        | 1,681    | (183)        | -10.9%      | Green        |
| <b>Total Housing Revenue Account</b>    | <b>0</b> | <b>(644)</b> | <b>0.0%</b> | <b>Green</b> |

*(1) In the above tables the Dedicated Schools Grant and Housing Revenue Account are treated as Directorates for the purposes of RAG rating.*

**Appendix 2 – Revenue Budget Movement Since Month 9**

| <b>Service</b>                                 | <b>Forecast<br/>Variance<br/>Month 9<br/>£'000</b> | <b>Actual<br/>Variance<br/>Month 12<br/>£'000</b> | <b>Movement<br/>£'000</b> | <b>Explanation of Main Movements</b>  |
|--|--|---|---------------------------|---|
| Director of Families, Children & Learning      | (105)  | (188)   | (83)                      | Revised allocation of Modernisation funding.  |
| Health, SEN & Disability Services              | 1,050  | 884   | (166)                     | Revised allocation of Modernisation funding and lower than projected disability agency placements in the final quarter.   |
| Education & Skills                             | 74   | (110)   | (184)                     | Improvement in supported employment, council nurseries and children's centre costs.   |
| Children's Safeguarding & Care                 | 2,222  | 2,100   | (122)                     | Various small cost recovery measures  |
| Quality Assurance & Performance                | (63)   | (100)   | (37)                      | Forward achievement of some 2018/19 budget savings and staff turnover.  |
| Further Financial Recovery Measures            | (569)  | 0   | 569                       | Reflected in the Movements shown above.   |
| <b>Total Families, Children &amp; Learning</b> | <b>2,609</b>                                       | <b>2,586</b>                                      | <b>(23)</b>               |   |
| Adult Social Care                              | 167  | 394   | 227                       | Principally due to increasing unit costs across the care provider market.   |
| Integrated Commissioning                       | (96)   | (452)   | (356)                     | Due to delays in recruitment and in development of the HCA funded supported accommodation service.  |
| S75 Sussex Partnership Foundation Trust (SPFT) | 233  | 219   | (14)                      |   |
| Public Health                                  | 0  | 0   | 0                         |   |
| <b>Total Health &amp; Adult Social Care</b>    | <b>304</b>   | <b>161</b>  | <b>(143)</b>              |   |
| Transport                                      | (1,641)  | (1,924)   | (283)                     | <ul style="list-style-type: none"> <li>Income exceeded forecast: Section 74 fines £0.040m, Trench Inspection Fees £0.045m, Temporary Traffic Regulation Orders £0.030m and Highways licensing £0.044m;</li> <li>Transport Policy and Strategy resource costs were less than forecast by £0.119m.</li> </ul> |
| City Environmental Management                  | 377  | 998   | 621                       | <ul style="list-style-type: none"> <li>Higher than forecast staff and agency costs in Cityclean £0.072m and vehicle costs such as fuel and tyres of £0.157m;</li> <li>An adverse movement for commercial waste due to</li> </ul>  |

**Appendix 2 – Revenue Budget Movement Since Month 9**

| <b>Service</b>                                  | <b>Forecast<br/>Variance<br/>Month 9<br/>£'000</b> | <b>Actual<br/>Variance<br/>Month 12<br/>£'000</b> | <b>Movement<br/>£'000</b> | <b>Explanation of Main Movements</b>   |
|---|--|---|---------------------------|--|
|   |  |   |                           | <p>less income than anticipated £0.039m, higher waste disposal costs £0.080m and higher staff costs £0.026m;</p> <ul style="list-style-type: none"> <li>• An overspend on private contractor costs for weed spraying and Neat Streets Campaign of £0.071m;</li> <li>• In Fleet, internal vehicle repairs and maintenance recharges lower than previously forecast by £0.143m, higher expenditure on vehicle parts and external repairs &amp; maintenance £0.062m and higher staff cost £0.039m;</li> <li>• Partly offset by an improvement in CityParks Operations of £0.095m for salaries, grounds maintenance income and vehicle costs.</li> </ul> |
| City Development & Regeneration                 | 22   | 21  | (1)                       | Minor net movement.  |
| Culture   | (144)  | (159)   | (15)                      | Minor net movement.  |
| Property  | 176  | 11  | (165)                     | <ul style="list-style-type: none"> <li>• Only £0.108m of the £0.210m Carbon Reduction Commitment Funding was allocated during 2017/18;</li> <li>• Cluttons contract costs lower than forecast by £0.093m;</li> <li>• Higher security costs than forecast at TBM month 9;</li> <li>• Other minor net movements.</li> </ul>  |
| <b>Total Economy, Environment &amp; Culture</b> | <b>(1,210)</b>                                     | <b>(1,053)</b>                                    | <b>157</b>                |  |
| Housing General Fund                            | 200  | (2)   | (202)                     | A range of off-setting under and overspends and a one-off release of Flexible Support Homelessness Grant has delivered a balanced position for the Housing General Fund (details of which are set out below).  |
| Libraries                                       | 0  | (270)   | (270)                     | Libraries underspent in-year (salaries, buildings and IT costs) in order to renew public library self-service facilities via a carry forward of budget to 2018/19. This is now being funded from the Modernisation Fund.   |

## Appendix 2 – Revenue Budget Movement Since Month 9

| Service   | Forecast<br>Variance<br>Month 9<br>£'000 | Actual<br>Variance<br>Month 12<br>£'000 | Movement<br>£'000 | Explanation of Main Movements  |
|---|--|---|-------------------|--|
| Communities, Equalities & Third Sector                | 0  | 8                                       | 8                 |  |
| Regulatory Services                                   | (80)                                     | (177)                                   | (97)              | This further underspend is the result of posts which have been held vacant ahead of the in-year directorate restructure/service reconfiguration. |
| Community Safety                                      | (0)                                      | (16)                                    | (16)              |  |
| Digital First   | 0  | 0                                       | 0                 |  |
| Further Financial Recovery Measures                   | (200)                                    | 0                                       | 200               | The financial recovery measures are reflected in the outturn position for Housing General Fund above.  |
| <b>Total Neighbourhood, Communities &amp; Housing</b> | <b>(80)</b>                              | <b>(457)</b>                            | <b>(377)</b>      |  |
| Finance   | (35)                                     | 150                                     | 185               | Cost pressures on corporate systems licences and essential upgrades.   |
| Housing Benefit Subsidy                               | (294)                                    | (456)                                   | (162)             | Mainly due to lower than anticipated levels of overpayments in the final quarter of the year.  |
| HR & Organisational Development                       | (42)                                     | (108)                                   | (66)              | Underspends against corporate training costs.  |
| IT&D  | 70                                       | 128                                     | 58                | Repayment of some modernisation funding.   |
| <b>Total Finance &amp; Resources</b>                  | <b>(301)</b>                             | <b>(286)</b>                            | <b>15</b>         |  |
| Corporate Policy                                      | (10)                                     | (36)                                    | (26)              | Further management of vacancies.   |
| Legal Services  | (70)                                     | (76)                                    | (6)               |  |
| Democratic & Civic Office Services                    | (14)                                     | (54)                                    | (40)              | Further management of vacancies.   |
| Life Events   | (29)                                     | 3                                       | 32                | Underachievement against Registrars' income target.  |
| Performance, Improvement & Programmes                 | (15)                                     | (15)                                    | 0                 |  |
| Communications  | (12)                                     | (66)                                    | (54)              | Further management of vacancies and reduced overspend against supplies and services.   |
| Further Financial Recovery Measures                   | 0  | 0                                       | 0                 |  |
| <b>Total Strategy, Governance &amp; Law</b>           | <b>(150)</b>                             | <b>(244)</b>                            | <b>(94)</b>       |  |
| Bulk Insurance Premia                                 | 0  | (2)                                     | (2)               |  |
| Concessionary Fares                                   | (140)                                    | (174)                                   | (34)              | Lower trips numbers through the winter months.   |
| Capital Financing Costs                               | (222)                                    | (280)                                   | (58)              | Increased investment income.   |

**Appendix 2 – Revenue Budget Movement Since Month 9**

| <b>Service</b>                            | <b>Forecast<br/>Variance<br/>Month 9<br/>£'000</b> | <b>Actual<br/>Variance<br/>Month 12<br/>£'000</b> | <b>Movement<br/>£'000</b> | <b>Explanation of Main Movements</b>  |
|---|--|---|---------------------------|---|
| Levies & Precepts                         | 0  | (1)   | (1)                       |   |
| Unallocated Contingency & Risk Provisions | 0  | (1,386)   | (1,386)                   | Release of the risk provision.  |
| Unringfenced Grants                       | (392)  | (380)   | 12                        | Reduced S31 business rates retention scheme multiplier grant.   |
| Other Corporate Items                     | 10   | 124   | 114                       | Increased provision for holiday pay partly offset by reduced corporate contribution to bad debt provisions. |
| <b>Total Corporate Budgets</b>            | <b>(744)</b>                                       | <b>(2,099)</b>                                    | <b>(1,355)</b>            |   |
| <b>Total General Fund Revenue Budget</b>  | <b>428</b>   | <b>(1,392)</b>                                    | <b>(1,820)</b>            |   |



## Families, Children &amp; Learning

## Revenue Budget Summary

| Forecast<br>Variance<br>Month 9<br>£'000 | Service                                       | 2017/18<br>Budget<br>Month 12<br>£'000 | Actual<br>Outturn<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>% | 2017/18<br>Savings<br>Proposed<br>£'000 | Savings<br>Achieved/<br>Anticipated<br>£'000 | Savings<br>At<br>Risk<br>£'000 |
|--|---|--|--|---|-------------------------------------|---|--|--------------------------------|
| (105)                                    | Director of Families, Children & Learning     | 262                                    | 74                                     | (188)                                   | -71.8%                              | 0                                       | 0  | 0                              |
| 1,050                                    | Health, SEN & Disability Services             | 36,281                                 | 37,165                                 | 884                                     | 2.4%                                | 1,731                                   | 1,132  | 775                            |
| 74                                       | Education & Skills                            | 5,151                                  | 5,041                                  | (110)                                   | -2.1%                               | 1,710                                   | 1,923  | 0                              |
| 2,222                                    | Children's Safeguarding & Care                | 38,897                                 | 40,997                                 | 2,100                                   | 5.4%                                | 2,039                                   | 536  | 1,678                          |
| (63)                                     | Quality Assurance & Performance               | 1,429                                  | 1,329                                  | (100)                                   | -7.0%                               | 0                                       | 0  | 0                              |
| 3,178                                    | Total Families, Children & Learning           | 82,020                                 | 84,606                                 | 2,586                                   | 3.2%                                | 5,480                                   | 3,591  | 2,453                          |
| (569)                                    | Financial Recovery Measures<br>(Month 9 only) | -                                      | -                                      | -                                       | -                                   | -                                       | -  | -                              |
| 2,609                                    | Position After Financial Recovery<br>Measures | 82,020                                 | 84,606                                 | 2,586                                   | 3.2%                                | 5,480                                   | 3,591  | 2,453                          |

## Explanation of Key Variances (Note: FTE/WTE = Full/Whole Time Equivalent)

| Key<br>Variances<br>£'000                 | Service Area  | Variance or Financial Recovery Measure Description  |
|---|---|---|
| Director of Families, Children & Learning |   |   |
| (84)                                      | Troubled Families   | Mainly due to greater achievement of payment by results income for the Troubled Families programme than originally anticipated in the budget.   |
| (100)                                     | Modernisation Funding   | Revised allocation of Modernisation Funding for Directorate-wide support re the Service Development Manager and Customer Insight Support Officer.   |
| (4)                                       | Other   |   |
| Health, SEN & Disability Services         |   |   |
| 318                                       | Children's Disability In-house residential and respite services | Increasing use of overtime and agency staff providing residential and respite care for disabled children with complex needs. These services are however contributing to the reduced spending on Disability Agency Placements. |
| 690                                       | Demand Led - Learning   | There has been an increase in the level of clients presenting with greater complexity of  |

**Appendix 3 – Revenue Budget Performance**

| <b>Key Variances<br/>£'000</b>            | <b>Service Area</b>                                     | <b>Variance or Financial Recovery Measure Description</b>  |
|---|---|--|
|   | Disability Adults - Community Care                      | need. This has resulted in an increase in the average unit costs for Learning Disability Care packages. The overspend predominantly relates to Supported Accommodation and Day Services which have shown a significant increase in activity since April 2015. Following a CCG review of clients' health needs, some have been assessed as no longer being eligible for continuing health care funding.   |
| 331                                       | Learning Disability Adults - In house provider services | There has been a significant cost assigned to the in-house provider services as a result of the backdated sleep-in allowances. This covers a 6 year period and is estimated at £0.146m.  |
| (93)                                      | Children's Disability Agency Placements                 | The increased use of in-house residential and respite services for children with disabilities has meant fewer than anticipated agency placements have been made  |
| (114)                                     | Learning Disability Adults - Assessment teams           | Temporary vacancies across the service that were not recruited to in financial year.   |
| (57)                                      | Ex-health homes maintenance                             |  |
| (191)                                     | Other   | Other budgets net to an underspend of £0.191m. These are mainly comprised of underspends in staffing budgets across SEN and Children's Disabilities and the application of council modernisation funding.  |
| <b>Education &amp; Skills</b>             |   |  |
| (210)                                     | Early Years, Youth & Family Support                     | This is comprised of council nurseries, children's centres, youth provision and the integrated team for families. There is an overspend on the council nurseries budget caused by pressures as a result of the cost of maternity cover and staff sickness, apprentices, costs of agency staff to maintain statutory ratios, and the reduction in income due to the introduction of 30 hours free childcare. The overspend was less than forecast because of an increase in occupancy and a reduction in the use of agency staff. The restructure of the Integrated Team for Families took account of the savings needed for 2018/19 and has achieved these savings in 2017/18. The underspends in all areas increased because of vacancy controls including not appointing to administrative posts, not covering maternity leave cover and delays in the recruitment to new posts. |
| 54  | Home To School Transport                                | The overspend is due to additional recouplement travel costs and increased costs in 16-19 travel.  |
| 162                                       | Supported Employment                                    | Due to underachievement of income targets in Able and Willing.   |
| (116)                                     | Other   |  |
| <b>Children's Safeguarding &amp; Care</b> |   |  |
| 1,599                                     | Demand-Led - Residential Agency Placements              | The number of residential placements in 2017/18 (39.42 FTE) is broken down as 35.09 FTE social care residential placements (children's homes), 4.33 FTE schools placements   |

Appendix 3 – Revenue Budget Performance

| Key Variances<br>£'000 | Service Area   | Variance or Financial Recovery Measure Description   |
|------------------------|--|--|
|                        |  | and 0.00 FTE family assessment placements. The budget allowed for 25.60 FTE social care residential care placements, 3.50 FTE schools placements and 0.30 FTE family assessment placements. The average unit cost of these placements is lower than the budgeted level for both residential and boarding school placements. However, the number of children placed is 10.02 FTE above the budgeted level resulting in the overspend of £1.599m.                      |
| 683                    | Demand-Led - Independent Foster Agency (IFA) Placements  | The number of children placed in Independent Foster Agency placements has decreased in recent years. During 2016/17 there were 132.14 FTE (compared with 158.06 FTE for 2015/16). The final number of placements in 2017/18 was 118.68 FTE, a reduction of 10.2%. The budget for IFA placements included significant levels of savings and was set at 101.00 FTE. The numbers being higher than the budget by 17.68 FTE results in a projected overspend of £0.683m. |
| (197)                  | Demand-Led - Secure Accommodation  | During 2017/18 there were 1.01 FTE secure (welfare) placements and 0.44 FTE secure (justice) placements. The budget allowed for 1.45 FTE welfare and 1.15 FTE justice placements during the year. As at 31st March there were no children in a secure (welfare) placement and one in a secure (criminal) placement resulting in a projected underspend of £0.197m.   |
| 686                    | Demand-Led - Semi-independent/Supported placements   | The number of semi-independent and supported living placements was 34.93 FTE in 17/18 and this is 5.93 FTE above the budgeted level. However, the average unit cost of these placements has increased considerably recently and is now £197.43 per week higher than the budget and this results in an overspend of £0.686m.  |
| (812)                  | Demand-Led - In-House Fostering  | As at the 31st March 2018 there were 150 children placed with 'in-house' foster carers and 151.25 FTE for the year. The budget, based on an increasing trend over the last few years and the drive to increase recruitment of in-house carers, was set at 180.00 FTE placements. This has resulted in the underspend of £0.812m.   |
| 188                    | Demand-Led - Family & Friends placements, Child Arrangement Orders and Special Guardianship Orders | The budget allows for 282.00 FTE placements of these types. In 2017/18 there were 309.33 FTE children in these placements and this results in the overspend of £0.188m.  |
| 9                      | Demand-Led - Care Leavers  | The final number of care leaver placements in 2017/18 was 105.16 FTE. The budget allowed for 93.90 FTE placements. The increase in numbers of unaccompanied asylum seeking children in recent years has resulted in a rise in the number of ex-asylum seeking care leavers. This has now passed the threshold to be eligible for the grant and £0.099m grant funding will be received for 2017/18. This together with lower than anticipated unit                    |

Appendix 3 – Revenue Budget Performance

| Key Variances<br>£'000 | Service Area  | Variance or Financial Recovery Measure Description   |
|------------------------|---|--|
|                        |   | costs has off-set the increasing numbers and results in the overspend of £0.009m.  |
| 147                    | Demand-Led Unaccompanied Asylum Seeking Children (UASC) Grant | The numbers of unaccompanied asylum seeking children has increased considerably in the last 12 months. The costs of looking after these children is funded by a grant from the Home Office, however a number of asylum seekers have now left care (see above) and there has been an increase in other, non accommodation costs resulting in the overspend of £0.147m.  |
| (154)                  | Social Work teams   | Use of agency social workers continued into 2017/18 but at a significantly lower level than 2016/17. Spend to year end was £0.418m. The Social Work agency budget was £0.139m and was reduced by £0.092m as one-off funding in 2016/17 was not available in 2017/18. At outturn there are no agency workers employed resulting in a full year spend of £0.418m so an overspend against the agency budget of £0.279m. The underspend against permanent staffing budgets was £0.393m and non-staff costs underspent by £0.040m. It should be noted that a contributory factor to the overall underspend in social work cost was the level of Teaching Practice income (£0.066m) - (£0.040m) Trailblazer funding and the recoding of Care Leaver staff to the UASC budget.  |
| 311                    | Legal Fees  | <p>High levels of legal costs continue throughout 2017/18 resulting in a year end overspend of £0.311m. The number of care proceedings has increased and the overspend relates, predominantly, to the high costs of court and counsel fees attributable to these cases. The following measures were initiated with the aim of better controlling spend against these areas:</p> <ul style="list-style-type: none"> <li>• Review of all budget codes to identify and areas for savings in short and long term and establish oversight of large budget commitments and monitoring;</li> <li>• Establish policy of approval levels for expenditure;</li> <li>• Increasing staff hours to provide more in house advocacy capacity;</li> <li>• Streamlining work processes with expectation that lawyers undertake own advocacy on minimum of 10 hearings each per year;</li> <li>• Review of level of Counsel instructed when out sourcing required;</li> <li>• Case supervision of lawyers prior to hearings to ensure that evidence is scheduled on time and level of evidence required for care plan is met;</li> <li>• Training for Pod Managers re evidential threshold and filing process to support social workers in meeting evidential and court timescales;</li> </ul> |

**Appendix 3 – Revenue Budget Performance**

| Key<br>Variances<br>£'000                  | Service Area                                    | Variance or Financial Recovery Measure Description  |
|--|---|---|
|  |   | <ul style="list-style-type: none"> <li>• Expert reports – Head of Service to agree all expert reports commissioned;</li> <li>• Legal services to push back other party request for expert assessments;</li> <li>• Any expert assessment requested that is not supported as evidentially required by legal services to be raised with Assistant Director for decision.</li> </ul> <p>It should be noted that spend in 2017/18 is relatively consistent with levels experienced in 2016/17 equating roughly to 100 cases with an average of five court hearings per case.</p> |
| 159  | Adoption Payments                               | A number of additional Inter-Agency adoption placements were agreed in January and February. There is a one-off cost when children are placed with adoptive families that have been recruited by other agencies, however, long term savings are accrued to the fostering budget in subsequent years.  |
| (136)                                      | Fostering and Adoption Teams                    | Following the restructure of the Fostering and Family & Friends teams an underspend of £0.136m is reported as a result of vacant posts being held throughout the review process.  |
| (125)                                      | Youth Offending Service                         | A number of vacant posts were held by the Head of Service throughout the review and restructure of the YOS and Extended Adolescent Service. Additionally, there was turnover against the Operational Manager post and further underspend against a number of non-staffing budgets in 2017/18.   |
| (115)                                      | Specialist Assessment & Domestic Violence       | Staff turnover, maternity leave and a permanent reduction in the number of Psychiatric assessments chargeable to this budget have resulted in a year end underspend of £0.115m against the three services within this area (LWV, Clermont and Therapeutic Services).  |
| (143)                                      | Other   |   |
| <b>Quality Assurance &amp; Performance</b> |   |   |
| (88)                                       | Independent Reviewing Officer/Safeguarding Team | Early achievement of 2018/19 budget savings and staff turnover.   |
| (12)                                       | Other   |   |

## Health &amp; Adult Social Care (HASC)

## Revenue Budget Summary

| Forecast<br>Variance<br>Month 9<br>£'000 | Service   | 2017/18<br>Budget<br>Month 12<br>£'000 | Actual<br>Outturn<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>% | 2017/18<br>Savings<br>Proposed<br>£'000 | Savings<br>Achieved/<br>Anticipated<br>£'000 | Savings<br>At<br>Risk<br>£'000 |
|--|---|--|--|---|-------------------------------------|---|--|--------------------------------|
| 167                                      | Adult Social Care                                 | 31,459                                 | 31,853                                 | 394                                     | 1.3%                                | 2,285                                   | 1,317  | 968                            |
| (96)                                     | Integrated Commissioning                          | 3,453                                  | 3,001                                  | (452)                                   | -13.1%                              | 147                                     | 147  | 0                              |
| 233                                      | S75 Sussex Partnership Foundation<br>Trust (SPFT) | 12,844                                 | 13,063                                 | 219                                     | 1.7%                                | 293                                     | 187  | 106                            |
| 0  | Public Health                                     | 575                                    | 575                                    | 0                                       | 0.0%                                | 2,148                                   | 2,148  | 0                              |
| 304                                      | Total Health & Adult Social Care                  | 48,331                                 | 48,492                                 | 161                                     | 0.3%                                | 4,873                                   | 3,799  | 1,074                          |

## Explanation of Key Variances (Note: FTE/WTE = Full/Whole Time Equivalent)

| Key<br>Variances<br>£'000 | Service Area   | Variance or Financial Recovery Measure Description   |
|---------------------------|--|--|
| Adult Social Care         |  |  |
| (26)                      | Demand-Led Community Care -<br>No Recourse to Public Funds | The average unit cost is slightly lower than the budgeted unit cost and the number of clients being supported is less than budgeted resulting in the underspend of £0.026m.  |
| 1,301                     | Demand-Led Community Care -<br>Physical & Sensory Support  | There are increasing numbers of 'new' older people being discharged from hospital requiring social care services for the first time, as well as increased community demand. This additional financial pressure is being partly met by the Improved Better Care fund for 2017/18. |
| 90                        | Demand-Led Community Care -<br>Substance Misuse            | There are relatively small numbers of clients within this service and this is in line with the expected demand. The average unit cost is higher than the budgeted unit cost resulting in the overspend of £0.090m.   |
| 128                       | In house residential provision -<br>Older people           | This is due to increased agency spend within the in house residential units  |
| (847)                     | Assessment<br>teams  | This is due to a number of vacancies across the Assessment teams.  |

**Appendix 3 – Revenue Budget Performance**

| <b>Key Variances</b>                                  |                                       |  |
|---|---------------------------------------|--|
| <b>£'000</b>  | <b>Service Area</b>                   | <b>Variance or Financial Recovery Measure Description</b>  |
| (467)   | In house home care provision          | The homecare service has experienced severe difficulty with recruiting to vacant posts. Due to this, the service has been in a position where it has had to close some care runs while recruitment takes place. A new redesigned recruitment advertising process is imminent and will assist with recruitment. |
| 199   | Community Equipment Store             | The Community Equipment Store has reported an overspend of £0.275m to the Better Care Board. The £0.199m overspend reflects the capped risk share with the CCG.  |
| <b>Integrated Commissioning</b>                       |                                       |  |
| (175)   | Commissioning Support Team            | Due to temporary vacancies within the Commissioning teams.   |
| (229)   | Contracts                             | This underspend is due to the delays in development of the Homes & Communities Agency (HCA) funded supported accommodation service.  |
| <b>S75 Sussex Partnership Foundation Trust (SPFT)</b> |                                       |  |
| 187   | Demand-Led - Memory Cognition Support | There are higher numbers of care packages than are provided for in the budget; the unit costs are also higher than had been anticipated resulting in the overspend of £0.187m. This is due to a current lack of affordable residential and nursing home placements within the city.                            |
| 34  | Demand-Led - Mental Health Support    | There is an increasing need and complexity within this client group and this results in the overspend of £0.034m.  |
| (2)   | Demand-Led - Staff teams              |  |

## Economy, Environment &amp; Culture

## Revenue Budget Summary

| Forecast<br>Variance<br>Month 9<br>£'000 | Service                              | 2017/18<br>Budget<br>Month 12<br>£'000 | Actual<br>Outturn<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>% | 2017/18<br>Savings<br>Proposed<br>£'000 | Savings<br>Achieved/<br>Anticipated<br>£'000 | Savings<br>At<br>Risk<br>£'000 |
|--|--------------------------------------|--|--|---|-------------------------------------|---|--|--------------------------------|
| (1,641)                                  | Transport                            | (8,119)                                | (10,043)                               | (1,924)                                 | -23.7%                              | 1,238                                   | 1,238  | 0                              |
| 377                                      | City Environmental Management        | 21,513                                 | 22,511                                 | 998                                     | 4.6%                                | 1,025                                   | 521  | 504                            |
| 22                                       | City Development & Regeneration      | 2,698                                  | 2,719                                  | 21                                      | 0.8%                                | 420                                     | 420  | 0                              |
| (144)                                    | Culture                              | 4,238                                  | 4,079                                  | (159)                                   | -3.8%                               | 335                                     | 335  | 0                              |
| 176                                      | Property                             | 713                                    | 724                                    | 11                                      | 1.5%                                | 1,668                                   | 1,668  | 0                              |
| (1,210)                                  | Total Economy, Environment & Culture | 21,043                                 | 19,990                                 | (1,053)                                 | -5.0%                               | 4,686                                   | 4,182  | 504                            |

## Explanation of Key Variances

| Key<br>Variances<br>£'000 | Service Area     | Variance or Financial Recovery Measure Description   |
|---------------------------|------------------|--|
| (1,582)                   | Parking Services | <p>An over-achievement of permit fee income of £0.987m and pay &amp; display fee income of £0.129m due to 5 new parking schemes starting in October 2017 and one new scheme starting in March 2018 which was brought forward at committee. Additional income has been received from Areas M &amp; N by changing under-utilised shared bays. Area C (Queens Park) and the seafront in particular have also been exceeding income expectations. The former may be due to a number of residents purchasing resident and visitor permits following the introduction of the larger schemes around the Hanover area (less unrestricted roads). Extra income of £0.384m has also been received from contractors for 'parking suspensions' due to a number of major developments in the city.</p> <p>There is also an underspend on bank charges and contract costs of £0.416m due to reduced card processing transaction fees as the result of a new contract which started during the 2017/18 financial year. The cost per transaction has reduced significantly under the new contract.</p> <p>There is an underspend of £0.292m on unsupported borrowing costs due to the delayed Pay &amp; Display machine replacement programme and repayment of borrowing in 2016/17.</p> |



**Appendix 3 – Revenue Budget Performance**

| Key<br>Variances<br>£'000            | Service Area                       | Variance or Financial Recovery Measure Description   |
|--------------------------------------|------------------------------------|--|
|                                      |                                    | <p>These are offset by Direct Revenue Funding (DRF) of £0.745m of new scheme capital costs which includes the installation of new CCTV cameras and the introduction of new parking schemes. This includes implementation costs for the West Hove parking schemes and should be seen as offsetting some of the additional permit fee income above. Use of DRF significantly reduces ongoing revenue costs.</p> <p>Other net variances totalling an underspend of £0.055m.</p> <p>The outturn variance represents 5.46% of the parking income budget.</p>  |
| (417)                                | Traffic Management                 | <p>An overachievement of income from skips &amp; scaffold, tables and chairs, hoardings and A boards of £0.226m. The hoarding income (£0.191m) reflecting increased development activity in the City.</p> <p>An overachievement of income of £0.088m from Section 74 fines from street-works and £0.064m from Trench Inspection Fees.</p> <p>An overachievement of income from Temporary Traffic Regulation Orders of £0.061m. These are offset by Safety Maintenance - Traffic Signals and Traffic Information Systems exceeding budget by £0.044m.</p> |
| (100)                                | Transport Policy & Strategy        | <p>Transport Policy and Strategy resource costs were £0.119m less than budgeted. This is due to slower progress with recruitment to a number of posts within the group than originally anticipated.</p>  |
| 178                                  | Transport Projects and Engineering | <p>Bus Shelter income shortfall of £0.049m due to the tender for bus shelter advertising being delayed, where revised tenders were not compliant.</p> <p>An overspend of £0.077m on legal fees for the supported buses service contract.</p> <p>Reactive Safety Maintenance of the public highways exceeded budget by £0.094m due to the severe winter weather experienced in the latter part of the financial year</p>  |
| (3)                                  | Other Variances                    |  |
| <b>City Environmental Management</b> |                                    |  |
| 718                                  | Cityclean Operations               | <p>An overspend on staff costs of £0.342m due to an additional worked bank holiday, higher level of agency staff costs due to covering sickness absence &amp; vacancies and increased resource for special events.</p> <p>An overspend on vehicle repairs and maintenance of £0.243m and other vehicle costs of £0.229m.</p> <p>These are partly offset by reduced expenditure on materials and equipment such as bin replacements £0.129m.</p>  |
| 209                                  | Fleet & Maintenance                | <p>Unachieved external income for vehicle repairs and maintenance of £0.377m due to staff vacancies for workshop fitters.</p>  |

**Appendix 3 – Revenue Budget Performance**

| Key<br>Variances<br>£'000                  | Service Area                     | Variance or Financial Recovery Measure Description  |
|--|----------------------------------|---|
|  |                                  | <p>An underspend on staff salary costs of £0.074m also due to difficulty recruiting workshop fitters.</p> <p>An overspend on vehicle parts and external repairs and maintenance costs of £0.234m.</p> <p>An overspend on vehicle contract hire costs of £0.059m.</p> <p>Lower unsupported borrowing costs than budgeted due to delayed vehicle purchases in previous years (£0.354m).</p>   |
| 236  | Strategy & Projects              | <p>An overspend on the Public Conveniences cleaning contract of £0.052m.</p> <p>For commercial waste, an overachievement of the income target of £0.168m offset by overspends on waste disposal costs £0.131m, staff costs £0.100m and bins purchases £0.089m resulting in unachieved savings of £0.170m overall.</p>   |
| (165)                                      | Other variances                  |   |
| <b>City Development &amp; Regeneration</b> |                                  |   |
| 288  | Applications                     | <p>An underachievement of building control income of £0.140m partly offset by salary underspends.</p> <p>An underachievement of development control income due to projects continuing into 2018/19 partly offset by salary underspends and advertising costs.</p> <p>Other minor variances of £0.032m.</p>  |
| (171)                                      | Planning Policy & Major Projects | <p>Staffing underspend due to continuing vacancies of £0.016m.</p> <p>Underspends on third party fees of £0.078m.</p> <p>An overachievement of income of £0.060m.</p> <p>An underspend on supplies and services of £0.027m.</p>   |
| (96)                                       | Other Variances                  |   |
| <b>Culture</b>                             |                                  |   |
| (101)                                      | Venues                           | <p>An overspend on staff costs of £0.032m predominantly due to a contingent liability.</p> <p>An overachievement of income for shows at the Brighton Centre including War Horse and Holiday on Ice.</p>   |
| (58)                                       | Other Variances                  |   |
| <b>Property</b>                            |                                  |   |
| 221  | Rents                            | <p>There was a shortfall in rental income mainly associated with the Contracted Property Portfolio (CPP) such as New England House.</p> <p>Although there was an overachievement of rental income at Hove Town Hall the building was revalued, resulting in a much increased NNDR bill.</p> <p>There is an ongoing CPP budget pressure due to the variance between the year on year inflated rental income figure compared to the income actually received from the council's</p> |

**Appendix 3 – Revenue Budget Performance**

| Key<br>Variances<br>£'000 | Service Area      | Variance or Financial Recovery Measure Description  |
|---------------------------|-------------------|---|
|                           |                   | <p>property advisors Cluttons. Also included within this is the £0.050m saving applied to the CPP budget.<br/>The pressure was partly offset by the Clutton's Contract fees for the year being lower than anticipated.</p>  |
| (210)                     | Property Services | <p>Property Services had additional pressures of £0.080m following the loss of a security contract and additional security provision at some sites. For 2018/19 the Security Budget pressure has been realised in the budget.<br/>The pressures were offset by various underspends including Corporate Landlord utilities and responsive repairs (£0.182m).<br/>Only £0.108m of the £0.210m Carbon Reduction Commitment Funding was allocated during 2017/18 leaving an additional underspend of £0.119m.</p> |

## Neighbourhood, Communities &amp; Housing

## Revenue Budget Summary

| Forecast<br>Variance<br>Month 9<br>£'000 | Service                                    | 2017/18<br>Budget<br>Month 12<br>£'000 | Actual<br>Outturn<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>% | 2017/18<br>Savings<br>Proposed<br>£'000 | Savings<br>Achieved/<br>Anticipated<br>£'000 | Savings<br>At<br>Risk<br>£'000 |
|--|--|--|--|---|-------------------------------------|---|--|--------------------------------|
| 200                                      | Housing General Fund                       | 3,371                                  | 3,369                                  | (2)                                     | -0.1%                               | 1,689                                   | 1,466  | 223                            |
| 0  | Libraries                                  | 3,285                                  | 3,015                                  | (270)                                   | -8.2%                               | 142                                     | 142  | 0                              |
| 0  | Communities, Equalities & Third Sector     | 2,717                                  | 2,725                                  | 8                                       | 0.3%                                | 480                                     | 480  | 0                              |
| (80)                                     | Regulatory Services                        | 1,553                                  | 1,376                                  | (177)                                   | -11.4%                              | 220                                     | 220  | 0                              |
| (0)                                      | Community Safety                           | 1,140                                  | 1,124                                  | (16)                                    | -1.4%                               | 71                                      | 71   | 0                              |
| 0  | Digital First                              | 53                                     | 53                                     | 0                                       | 0.0%                                | 0                                       | 0  | 0                              |
| 120                                      | Total Neighbourhood, Communities & Housing | 12,119                                 | 11,662                                 | (457)                                   | -20.8%                              | 2,602                                   | 2,379  | 223                            |
| (200)                                    | Financial Recovery Measures (Month 9 only) | -                                      | 0                                      | 0                                       | -                                   | -                                       | -  | -                              |
| (80)                                     | Position After Financial Recovery Measures | 12,119                                 | 11,662                                 | (457)                                   | -3.8%                               | 2,602                                   | 2,379  | 223                            |

## Explanation of Key Variances

| Key<br>Variances<br>£'000 | Service Area                   | Variance or Financial Recovery Measure Description   |
|---------------------------|--------------------------------|--|
| Housing General Fund      |                                |  |
| 222                       | Head of Housing (General Fund) | This overspend relates to the unmet savings during 2017/18. This was originally going to be funded in-year by the Flexible Homelessness Support Grant but has instead been offset by other underspends within the Housing service. |
| (220)                     | Housing Options                | The underspend is due to high staff turnover and difficulty in filling vacancies.  |

**Appendix 3 – Revenue Budget Performance**

| <b>Key Variances<br/>£'000</b> | <b>Service Area</b>     | <b>Variance or Financial Recovery Measure Description</b>   |
|--------------------------------|-------------------------|---|
| 125                            | Seaside Community Homes | There is an overspend driven substantially by the insurance costs which have in the past been mitigated by underspends on voids and maintenance budgets. However, this has not been possible this year. This is an unavoidable cost as a direct result of the terms of the council's contractual arrangement with Seaside Community Homes approved by the former Cabinet in September 2011. |
| 123                            | Temporary Accommodation | The net overspend is lower than forecast due to a range of factors including lower than forecast spot purchasing costs. As reported during the year, the overspend is driven by, for example, the ongoing pressure of voids and repairs costs (the result of more households moving into permanent accommodation via the new allocations policy).   |
| (195)                          | Travellers              | There is higher than forecast income for the permanent travellers site and lower than forecast costs (mainly waste collection and clearance). There have been a reduced number of unauthorised encampments.   |
| <b>Libraries</b>               |                         |   |
| (270)                          | Libraries               | Libraries underspent in-year (salaries, buildings and IT costs) in order to keep funds available to fund the renewal of public library self-service facilities via a carry forward of budget to 2018/19. However, this work will now be funded in 2018/19 from the Modernisation Fund enabling the underspend to contribute the directorate's overall position.                             |
| <b>Regulatory Services</b>     |                         |   |
| (177)                          | Regulatory Services     | The underspend is the result of posts which have been held vacant ahead of an in-year directorate restructure/service reconfiguration.  |

## Finance &amp; Resources

## Revenue Budget Summary

| Forecast<br>Variance<br>Month 9<br>£'000 | Service                         | 2017/18<br>Budget<br>Month 12<br>£'000 | Actual<br>Outturn<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>% | 2017/18<br>Savings<br>Proposed<br>£'000 | Savings<br>Achieved/<br>Anticipated<br>£'000 | Savings<br>At<br>Risk<br>£'000 |
|--|---------------------------------|--|--|---|-------------------------------------|---|--|--------------------------------|
| (35)                                     | Finance                         | 10,444                                 | 10,594                                 | 150                                     | 1.4%                                | 1,102                                   | 1,102  | 0                              |
| (294)                                    | Housing Benefit Subsidy         | (835)                                  | (1,291)                                | (456)                                   | -54.6%                              | 120                                     | 120  | 0                              |
| (42)                                     | HR & Organisational Development | 2,794                                  | 2,686                                  | (108)                                   | -3.9%                               | 354                                     | 304  | 50                             |
| 70                                       | IT&D                            | 7,795                                  | 7,923                                  | 128                                     | 1.6%                                | 657                                     | 319  | 338                            |
| (301)                                    | Total Finance & Resources       | 20,198                                 | 19,912                                 | (286)                                   | -1.4%                               | 2,233                                   | 1,845  | 388                            |

## Explanation of Key Variances

| Key<br>Variances<br>£'000 | Service Area            | Variance or Financial Recovery Measure Description  |
|---------------------------|-------------------------|---|
| Finance                   |                         |   |
| 30                        | Revenues & Benefits     | There is a forecast shortfall in court costs income of £0.215m arising from Enforcement Officer vacancies. Additional grant income offsets this by £0.110m, and further staff vacancies account for another £0.060m. There are overspends on non-staffing budgets of £0.015m.   |
| 120                       | Finance Services        | The overspend in Finance relates primarily to cost pressures on corporate system licenses managed by the Business Operations team resulting from essential maintenance and security upgrades. This is offset by a small underspend of £0.035m in Internal Audit relating to staffing vacancies.   |
| Housing Benefit Subsidy   |                         |   |
| (456)                     | Housing Benefit Subsidy | There is an expected surplus of £0.225m in the recovery of overpaid council tax benefits, based on receipts to date. On the main subsidy budgets there is currently a forecast surplus of £0.069m which is a reduction of £0.231m from a previous forecast due to lower recovery of overpayments (especially of rent rebates) and increased costs relating to a specific type of benefit payment to vulnerable tenants which is not subsidised at 100%. |

Appendix 3 – Revenue Budget Performance

| Key Variances                   |                                 |  |
|---------------------------------|---------------------------------|--|
| £'000                           | Service Area                    | Variance or Financial Recovery Measure Description   |
| HR & Organisational Development |                                 |  |
| (108)                           | HR & Organisational Development | The service underspent by £0.108m. There was an underspend against corporate and adult social care training costs and an overachievement on non-attendance fees which resulted in a combined underspend of £0.088m. Health and Safety service also underspent by £0.032m due to an over-achievement of training income and additional support provided internally, and other service areas had a small overspend of £0.012m. Throughout the year there was an on-going pressure from union facilities time but this was covered through vacancies. |
| IT&D                            |                                 |  |
| 128                             | IT & Digital                    | IT&D have had budget pressures in some areas, particularly ICT contracts, the Microsoft Enterprise contract and ICT income targets. Some funding was identified to minimise this pressure including appropriate use of the IT&D Reserve and capitalisation of legitimate costs. However, available funding towards the Hove Town Hall server room upgrade was lower than anticipated. This led to a final outturn position of £0.128m  |

## Strategy, Governance &amp; Law

## Revenue Budget Summary

| Forecast<br>Variance<br>Month 9<br>£'000 | Service                                  | 2017/18<br>Budget<br>Month 12<br>£'000 | Actual<br>Outturn<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>% | 2017/18<br>Savings<br>Proposed<br>£'000 | Savings<br>Achieved/<br>Anticipated<br>£'000 | Savings<br>At<br>Risk<br>£'000 |
|--|--|--|--|---|-------------------------------------|---|--|--------------------------------|
| (10)                                     | Corporate Policy                         | 664                                    | 628                                    | (36)                                    | -5.4%                               | 60                                      | 60   | 0                              |
| (70)                                     | Legal Services                           | 1,364                                  | 1,288                                  | (76)                                    | -5.6%                               | 120                                     | 120  | 0                              |
| (14)                                     | Democratic & Civic Office Services       | 1,691                                  | 1,637                                  | (54)                                    | -3.2%                               | 87                                      | 87   | 0                              |
| (29)                                     | Life Events                              | (218)                                  | (215)                                  | 3                                       | 1.4%                                | 251                                     | 237  | 14                             |
| (15)                                     | Performance, Improvement &<br>Programmes | 1,319                                  | 1,304                                  | (15)                                    | -1.1%                               | 113                                     | 113  | 0                              |
| (12)                                     | Communications                           | 712                                    | 646                                    | (66)                                    | -9.3%                               | 76                                      | 76   | 0                              |
| (150)                                    | Total Strategy, Governance & Law         | 5,532                                  | 5,288                                  | (244)                                   | -4.4%                               | 707                                     | 693  | 14                             |

## Explanation of Key Variances

| Key<br>Variances<br>£'000          | Service Area                        | Variance or Financial Recovery Measure Description   |
|------------------------------------|-------------------------------------|--|
| Corporate Policy                   |                                     |  |
| (36)                               | Policy & Partnerships               | Underspends due to vacancies (£0.025m), other net underspends (£0.011m).   |
| Legal Services                     |                                     |  |
| (76)                               | Legal Services                      | Overachievement of income.   |
| Democratic & Civic Office Services |                                     |  |
| (54)                               |                                     | A result of vacancy management pending the conclusion of a restructuring of the team which has finally been completed and a reduction on print costs with the distribution of electronic papers for officers and the cost-effective use of casual staff for civic engagements. |
| Life Events                        |                                     |  |
| 90                                 | Bereavement & Registration Services | £0.290m income shortfall due to falling numbers of service users, including burials and cremations, and Registration Service customers. This is partially offset by vacancy management savings of £0.076m, supplies and services underspends of £0.038m within                 |



**Appendix 3 – Revenue Budget Performance**

| <b>Key Variances</b>                             |                     |   |
|--|---------------------|---|
| <b>£'000</b>                                     | <b>Service Area</b> | <b>Variance or Financial Recovery Measure Description</b>   |
|  |                     | the Coroner's service, reduced maintenance costs of £0.034m and various other underspends of £0.052m.<br>The service has implemented a training programme for Bereavement managers and to improve business management and will continue to look at on-going service redesign which is hoped, amongst other things, to improve marketing of the service and increase customer numbers. |
| 18   | Local Land Charges  | Underachievement of Land Charge fee income.   |
| (105)  | Elections           | The underspend was caused by a surplus of Individual Electoral Registration (IER) funding and underspending in casual staff costs.  |
| <b>Performance, Improvement &amp; Programmes</b> |                     |   |
| (15)   | Performance Team    | Minor underspends.  |
| <b>Communications</b>                            |                     |   |
| (66)   | Communications      | Vacancy savings of £0.090m offset by supplies and services overspends of £0.024m.   |

## Corporately-held Budgets

## Revenue Budget Summary

| Forecast<br>Variance<br>Month 9<br>£'000 | Service                                   | 2017/18<br>Budget<br>Month 12<br>£'000 | Actual<br>Outturn<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>% | 2017/18<br>Savings<br>Proposed<br>£'000 | Savings<br>Achieved/<br>Anticipated<br>£'000 | Savings<br>At<br>Risk<br>£'000 |
|--|---|--|--|---|-------------------------------------|---|--|--------------------------------|
| 0  | Bulk Insurance Premia                     | 0                                      | (2)                                    | (2)                                     | 0.0%                                | 0                                       | 0  | 0                              |
| (140)                                    | Concessionary Fares                       | 10,931                                 | 10,757                                 | (174)                                   | -1.6%                               | 250                                     | 250  | 0                              |
| (222)                                    | Capital Financing Costs                   | 6,543                                  | 6,263                                  | (280)                                   | -4.3%                               | 0                                       | 0  | 0                              |
| 0  | Levies & Precepts                         | 205                                    | 204                                    | (1)                                     | -0.5%                               | 0                                       | 0  | 0                              |
| 0  | Unallocated Contingency & Risk Provisions | 1,386                                  | 0                                      | (1,386)                                 | -100.0%                             | 0                                       | 0  | 0                              |
| (392)                                    | Unringfenced Grants                       | (16,540)                               | (16,920)                               | (380)                                   | -2.3%                               | 0                                       | 0  | 0                              |
| 10                                       | Other Corporate Items                     | 826                                    | 950                                    | 124                                     | 15.0%                               | 195                                     | 123  | 100                            |
| (744)                                    | Total Corporate Budgets                   | 3,351                                  | 1,252                                  | (2,099)                                 | -62.6%                              | 445                                     | 373  | 100                            |

## Explanation of Key Variances

| Key<br>Variances<br>£'000                 | Service Area        | Variance or Financial Recovery Measure Description  |
|---|---------------------|---|
| Concessionary Fares                       |                     |   |
| (174)                                     | Concessionary Fares | Forecast trip numbers and reimbursements are lower than previously anticipated in part due to a colder winter this year.          |
| Capital Financing Costs                   |                     |   |
| (280)                                     | Investment Income   | A combination of increases in cash balances and increases in short term investment rates as a result of an increase in Base Rate. |
| Unallocated Contingency & Risk Provisions |                     |   |
| (1,385)                                   | Risk Provision      | This relates to the release of the unused corporate risk provision.   |
| Unringfenced Grants                       |                     |   |

**Appendix 3 – Revenue Budget Performance**

| <b>Key<br/>Variances<br/>£'000</b> | <b>Service Area</b>                             | <b>Variance or Financial Recovery Measure Description</b>  |
|------------------------------------|---|--|
| (372)                              | Section 31 grant for Small Business Rate Relief | The basis of allocation for Section 31 grant on small business rates relief threshold changes was announced in December and this results in an additional allocation to that allowed for at the time the budget was set.   |
| <b>Other Corporate Items</b>       |   |  |
| 128                                | Vacancy management savings                      | There is a £0.128m overspend due to vacancy management savings not having been identified as specifically being allocated against this corporate budget saving relating to review of executive and personal assistant support to Chief Officers, Corporate Management Team and potentially lower management tiers. |
| 140                                | Provision for Holiday Pay                       | A provision of £0.140m was made to cover holiday back-pay for staff who have worked additional hours or non-contracted overtime but have not yet received pro-rata holiday pay.  |
| (59)                               | Corporate Bad Debt provision                    | Reduction in the corporate bad debt provision needed at 31/3/18. This is based on an aged debt analysis of outstanding debts managed by different services across the council.   |
| (58)                               | Corporate pension costs                         | £0.030m underspend relating to overpayments identified in respect of 2016/17 and £0.028m in respect of an in year reduction.   |
| (30)                               | Out of date cheques                             | Written back out of date cheques.  |

## Housing Revenue Account (HRA)

## Revenue Budget Summary

| Forecast<br>Variance<br>Month 9<br>£'000 | Service                                 | 2017/18<br>Budget<br>Month 12<br>£'000 | Actual<br>Outturn<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>% | 2017/18<br>Savings<br>Proposed<br>£'000 | Savings<br>Achieved/<br>Anticipated<br>£'000 | Savings<br>At<br>Risk<br>£'000 |
|--|---|--|--|---|-------------------------------------|---|--|--------------------------------|
| (50)                                     | Capital Financing                       | 32,021                                 | 31,971                                 | (50)                                    | -0.2%                               | 0                                       | 0  | 0                              |
| 0  | Head of Housing HRA                     | 3,568                                  | 3,692                                  | 124                                     | 3.5%                                | 106                                     | 106  | 0                              |
| (50)                                     | Head of City Development & Regeneration | 309                                    | 184                                    | (125)                                   | -40.5%                              | 0                                       | 0  | 0                              |
| (80)                                     | Housing Strategy                        | 751                                    | 651                                    | (100)                                   | -13.3%                              | 0                                       | 0  | 0                              |
| (250)                                    | Income Involvement Improvement          | (46,204)                               | (46,512)                               | (308)                                   | -0.7%                               | 181                                     | 181  | 0                              |
| 0  | Property & Investment                   | 7,874                                  | 7,872                                  | (2)                                     | 0.0%                                | 570                                     | 570  | 0                              |
| (0)                                      | Tenancy Services                        | 1,681                                  | 1,498                                  | (183)                                   | -10.9%                              | 75                                      | 75   | 0                              |
| (430)                                    | Total Housing Revenue Account           | 0                                      | (644)                                  | (644)                                   | 0.0%                                | 932                                     | 932  | 0                              |

## Explanation of Key Variances

| Key<br>Variances<br>£'000               | Service Area                             | Variance or Financial Recovery Measure Description   |
|---|--|--|
| Capital Financing                       |  |  |
| (50)                                    | Financing costs                          | Actual borrowing costs were slightly less than budgeted.   |
| Head of Housing HRA                     |  |  |
| 124                                     | Employees costs                          | The net overspend is the result of higher than anticipated actuarial pension costs offset by underspends on training and legal costs for the HRA. Note that actuarial pension costs could have been charged to the HRA's Restructure & Redundancy Reserve but the level of underspend in 2017/18 means that costs can be met from in-year revenues as is usual. This means that the Restructure & Redundancy Reserve can be preserved at its current level to meet future potential restructuring costs. |
| Head of City Development & Regeneration |  |  |
| (102)                                   | Staffing and supplies and services costs | Increase in capitalisation of salaries (£0.079m) compared to budget as well as reduced employee costs and underspends against supplies and services.   |

## Appendix 3 – Revenue Budget Performance

| <b>Key Variances</b>                  |   |   |
|---------------------------------------|---|---|
| £'000                                 | Service Area                                | Variance or Financial Recovery Measure Description  |
| <b>Housing Strategy</b>               |   |   |
| (98)                                  | Transfer Incentive Scheme                   | Lower than budgeted spending on this scheme, as reported previously. This scheme aims to incentivise tenants to move in order to free up high demand accommodation and to incentivise those who are subject to the under-occupancy charge to downsize. This process can take many months.   |
| <b>Income Involvement Improvement</b> |   |   |
| (225)                                 | Contribution to bad debt provision          | Later than planned implementation of Universal Credit means that this budget is underspent.   |
| (247)                                 | Employees costs                             | The underspend is due to staffing vacancies, mainly within the income management and customer services teams where the service has had difficulties recruiting.   |
| 144                                   | Rents & Service Charges                     | Actual income was slightly less than budget assumptions. This is offset by other underspends.   |
| <b>Property &amp; Investment</b>      |   |   |
| 417                                   | Responsive Repairs and Empty Property works | At Month 2, budget of £0.600m was transferred to provide increased investment in the HRA capital programme. This was in recognition of the ongoing reduced spend on responsive repairs, owing to the significant capital investment in major and planned works and whilst losing homes to RTB, homes that are coming into management are new build.<br>In-year issues, including poor weather conditions, have resulted in spend being higher than forecast at Month 2. However, spend was lower than the original budget allocated and the average job value is largely unchanged.<br><br>The permanent reduction in budget for 2018/19 has been reviewed and amended to reflect this. |
| (129)                                 | Supplies and Services                       | Lower than budgeted spending on service contracts (for example, the gas servicing contract).  |
| (135)                                 | Employees costs                             | Underspend pending agreement of options around the re-procurement of the repairs contract.  |
| (90)                                  | Leaseholder Service Charges                 | Actual income was slighter more than budget assumptions.  |
| (67)                                  | Right to Buy Administration                 | Administration costs income from Right to Buy sales.  |
| <b>Tenancy Services</b>               |   |   |
| (89)                                  | Utility costs                               | An underspend of £0.089m for electricity and gas costs.   |
| (94)                                  | Other running costs                         | Lower than budgeted costs against supplies and services, premises and transport across the service.   |

## Appendix 3 – Revenue Budget Performance

### Dedicated Schools Grant (DSG)

#### Revenue Budget Summary

| Forecast<br>Variance<br>Month 9<br>£'000 | Service  | 2017/18<br>Budget<br>Month 12<br>£'000 | Actual<br>Outturn<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>£'000 | Actual<br>Variance<br>Month 12<br>% |
|--|--|--|--|---|-------------------------------------|
| 0  | Individual Schools Budget (ISB)  | 124,583                                | 124,583                                | 0                                       | 0.0%                                |
| (531)                                    | Early Years Block (including delegated to Schools)<br><i>(This includes Private Voluntary &amp; Independent (PVI)<br/>Early Years 3 &amp; 4 year old funding for the 15 hours free<br/>entitlement to early years education)</i> | 12,548                                 | 12,036                                 | (512)                                   | -4.1%                               |
| 302                                      | High Needs Block (excluding delegated to Schools)  | 19,372                                 | 19,663                                 | 291                                     | 1.5%                                |
| (32)                                     | Exceptions and Growth Fund   | 3,846                                  | 3,866                                  | 20                                      | 0.5%                                |
| 0  | Grant Income   | (159,764)                              | (159,764)                              | 0                                       | 0.0%                                |
| (261)                                    | <b>Total Dedicated Schools Grant (DSG)</b>   | <b>585</b>                             | <b>384</b>                             | <b>(201)</b>                            | <b>-34.4%</b>                       |

#### Explanation of Key Variances

| Key<br>Variances<br>£'000                          | Service Area                                     | Variance Description  |
|--|--|---|
| Early Years Block (including delegated to Schools) |  |   |
| (639)  | Payments for 2,3 & 4 year olds                   | Underspend is based on the Autumn Term census. All of the underspend will need to be carried forward to 2018/19 as the DfE will recoup the funding based on the January 2018 census.              |
| 108  | Additional Support Funding for 2,3 & 4 year olds | Significant increase in the number of children receiving additional support funding in the Summer term and impact of increased free entitlement available to working parents from September 2017. |
| 19   | Other  | Balance of variances on other cost centres.   |

Appendix 3 – Revenue Budget Performance

| Key Variances                                     |  |   |
|---|--|---|
| £'000   | Service Area                             | Variance Description  |
| High Needs Block (excluding delegated to Schools) |  |   |
| 159   | High Needs top-up for Special Schools    | Additional support packages for several pupils to avoid more expensive agency placements.         |
| 114   | High Needs top-up for mainstream Schools | Additional costs for Primary of £0.123m and Secondary of £0.008m.                                 |
| 160   | Inclusion Support Service                | Loss of exception funding previously received for the Behaviour & Inclusive Learning Team (BILT). |
| 17  | Other                                    | Balance of variances on other cost centres.   |
| (30)  | Educational Agency Placements            | Fewer cases than anticipated.   |
| (42)  | SEN support Services                     | Underspends in SEN support services supporting schools  |
| (87)  | FE Colleges High Needs payments          | Changes in legislation leading to increased costs.  |
| Exceptions and Growth Fund                        |  |   |
| 54  | Staff Suspension                         | Payments to Primary & Secondary schools for suspended staff                                       |
| 31  | Historic pension costs                   | Historic pension liabilities.   |
| (21)  | Other                                    | Balance of variances on other cost centres.   |
| (44)  | Access to Education                      | Increase in fines income.   |





**Appendix 4 – Carry Forward Requests 2017/18**

| Directorate                   | Service Area                    | Details  | Carry Forward Amount £'000 |
|-------------------------------|---------------------------------|--|----------------------------|
| <b>Non-Grant Funded Areas</b> |                                 |  |                            |
| HASC                          | Adult Social Care               | 'Protecting Social Care' is a key objective of the Better Care Section 75 Funding Pool managed by the Brighton & Hove Clinical Commissioning Group. This includes funding from the improved Better Care Fund (iBCF), part of which provides funding for additional Senior Social Workers to meet the growing demands and complexity of need across the service. The social workers were recruited during 2017/18. This funding sits within the Community Care budget and it is requested to carry this committed funding forward to ensure ongoing funding of the full-year effect of the recruited social workers.  | 282                        |
| HASC                          | Integrated Commissioning        | The Safeguarding Adults Board (SAB) is a multi-agency funded partnership. Carrying forward the underspend of this funding will enable a number of initiatives to continue to be supported in 2018/19. We are looking to commission in the next financial year (from work undertaken this financial year) including working with trauma and understanding the neuro-developmental implications of abuse, neglect and trauma as well as training offers in relation to vulnerability, violence and extremism. These are offers which will require the commissioning of specialist providers, with financial implications, Furthermore, the SAB will commission a Learning Review on a case regarding significant harm to an adult with care and support needs, which will also incur costs. In addition there is the possibility of two further reviews being commissioned in 2018/19. | 68                         |
| EEC                           | Transport                       | For consultancy support and engagement of partners in connection with the development of a large Greater Brighton City Region Transforming Cities proposal to Government. The first bid deadline is 8th June and this work has the potential to attract over £50m of funding for the City.   | 65                         |
| EEC                           | City Environmental Management   | Funding for improvements to parks and playgrounds was approved by this committee in July 2017 and a programme of play works was prepared with the aim of completing work during 2017/18. Developing the ideal procurement route for the play element took longer than anticipated but this package has now been tendered to suitably qualified providers and works will take place during May/June 2018 due to the lead time for the manufacture of the equipment.   | 65                         |
| EEC                           | City Development & Regeneration | This budget is used to facilitate the Greater Brighton Economic Board and delivery of its workplan, which includes implementation of the Greater Brighton City Deal, the Greater Brighton Investment Programme and development of the City Region's Devolution Bid. This budget comprises monies from funding contributing Greater Brighton Economic Board members. Partners would expect Brighton & Hove City Council, as the Lead Authority, to carry forward the funding to enable the continued delivery of the Greater Brighton Economic Board and its workplan.  | 120                        |
| NCH                           | Community Safety                | Restricted funding from strategic partners. Projects to be completed in 2018/19.   | 65                         |
| SGL                           | Policy, Partnerships & Scrutiny | The underspend in this service needs to be retained to accommodate cyclical projects such as 2030 Vision , City Tracker, support for theme groups, live music venues programme, Creation of a Policy Framework for the City and support for the Policy network. All of these programmes involve city wide  | 58                         |

**Appendix 4 – Carry Forward Requests 2017/18**

| Directorate                         | Service Area            | Details  | Carry Forward Amount £'000 |
|-------------------------------------|-------------------------|--|----------------------------|
|                                     |                         | partners, most of whom contribute to this pot of money. Carry forward is requested to enable these cyclical and partnership programme commitments to be undertaken.  |                            |
| <b>Non-Grant Funded Areas Total</b> |                         |  | <b>723</b>                 |
| <b>Grant Funded Areas</b>           |                         |  |                            |
| FCL                                 | Dedicated Schools Grant | Under the Schools Finance Regulations the unspent part of the DSG must be carried forward to support the Schools Budget in future years.   | 201                        |
| HASC                                | Public Health           | Several different factors have contributed to this money being carried forward into 2018/19. Because of the additional financial pressures facing Public Health during 2018/19 and 2019/20 from both the Public Health grant cuts and from required council savings, where possible, filling vacancies has been delayed and programme spend tightened. In addition, during 2017/18 there were savings from lower than projected activity on locally commissioned services by GP practices and pharmacies. The implementation of some short-term initiatives planned for 2017/18 has also been delayed into 2018/19. The money being carried forward will be used to provide contingency for the first year of the planned significant reduction to the budget for sexual health services, as well as supporting health improvement activities. | 441                        |
| NCH                                 | Community Safety        | Funding is received from the Home Office to support the Syrian Refugee Programme and costs will continue to be incurred in 2018/19, which will be set against the grant.   | 85                         |
| F & R                               | HROD                    | DfE Teaching Partnership grant funding - funding provided via East Sussex County Council (Lead Partner) to support the South Coast Regional Centre for Social Work Education Teaching Partnership (SCRC TP). Partners in the SCRC TP are ESCC, BHCC, University of Brighton and University of Sussex.  | 44                         |
| F & R                               | HROD                    | DfE Step Up Cohort 5 grant funding - funding provided to BHCC (Lead Partner) for the Brighton & East Sussex Regional Partnership (B&ESRP) to support provision of the DfE funded Step Up to social work qualifying route to 13 trainees in BHCC (7) and ESCC (6). Partners in the B&ESRP are BHCC, ESCC and University of Sussex. Programme to start April 2018. Funding provided in 2017/18 to support management and administration of the programme which will run to June 2019.  | 40                         |
| F & R                               | HROD                    | This is a year-on-year request in respect of the Student Social Work Placement programme. Of the £0.091m grant income from the Department of Health (DoH) Daily Placement Fee funding (claimed on our behalf by Universities of Brighton and Sussex) we have paid supported social work professionals to attain practice education qualifications. We will need to continue to fund additional Professional Education Consultant (PEC) posts in Adults' and Children's services to the end of May 2018 to meet academic cycles on student placements that cross financial years.   | 44                         |
| <b>Grant Funded Areas Total</b>     |                         |  | <b>855</b>                 |
| <b>Total Carry Forward Requests</b> |                         |  | <b>1,578</b>               |

## Savings Monitoring 2017/18

## General Fund

| Directorate                          | 2017/18<br>Savings<br>Proposed<br>£'000 | Savings<br>Achieved<br>£'000 | Savings<br>Not Achieved<br>£'000 |
|--------------------------------------|---|------------------------------|----------------------------------|
| Families, Children & Learning        | 5,480                                   | 3,591                        | 2,453                            |
| Health & Adult Social Care           | 4,873                                   | 3,799                        | 1,074                            |
| Economy, Environment & Culture       | 4,686                                   | 4,182                        | 504                              |
| Neighbourhood, Communities & Housing | 2,602                                   | 2,379                        | 223                              |
| Finance & Resources                  | 2,233                                   | 1,845                        | 388                              |
| Strategy, Governance & Law           | 707                                     | 693                          | 14                               |
| Corporate Budgets                    | 445                                     | 373                          | 100                              |
| <b>Total Directorate Savings</b>     | <b>21,026</b>                           | <b>16,862</b>                | <b>4,756</b>                     |
| Tax Base Savings                     | 341                                     | 341                          | 0                                |
| <b>Total General Fund Savings</b>    | <b>21,367</b>                           | <b>17,203</b>                | <b>4,756</b>                     |

## Housing Revenue Account

| Directorate              | 2017/18<br>Savings<br>Proposed<br>£'000 | Savings<br>Achieved<br>£'000 | Savings<br>Not Achieved<br>£'000 |
|--------------------------|---|------------------------------|----------------------------------|
| Housing Revenue Account  | 932                                     | 932                          | 0                                |
| <b>Total HRA Savings</b> | <b>932</b>                              | <b>932</b>                   | <b>0</b>                         |



## Families, Children &amp; Learning – Capital Budget Summary

| Forecast Variance Month 9 £'000 | Service  | 2017/18 Budget Month 9 £'000 | Reported at other Committees £'000 | 2017/18 IFRS Changes £'000 | Variation, Slippage/ reprofile £'000 | 2017/18 Budget Month 12 £'000 | Provisional Outturn Month 12 £'000 | Provisional Variance Month 12 £'000 | Provisional Variance Month 12 % |
|---------------------------------|--|------------------------------|------------------------------------|----------------------------|--------------------------------------|-------------------------------|------------------------------------|-------------------------------------|---------------------------------|
| 0                               | Children's Safeguarding & Care                 | 40                           | 0                                  | 0                          | (40)                                 | 0                             | 0                                  | 0                                   | 0.0%                            |
| 0                               | Health & Disability Services                   | 66                           | 0                                  | 0                          | (63)                                 | 3                             | 3                                  | 0                                   | 0.0%                            |
| 0                               | Education & Skills                             | 6,487                        | 0                                  | (604)                      | (284)                                | 5,599                         | 5,594                              | (5)                                 | -0.1%                           |
| 0                               | Schools  | 178                          | 0                                  | 0                          | (122)                                | 56                            | 56                                 | 0                                   | 0.0%                            |
| 0                               | Stronger Families Youth & Communities          | 0                            | 0                                  | 0                          | 0                                    | 0                             | 0                                  | 0                                   | 0.0%                            |
| <b>0</b>                        | <b>Total Families, Children &amp; Learning</b> | <b>6,771</b>                 | <b>0</b>                           | <b>(604)</b>               | <b>(509)</b>                         | <b>5,658</b>                  | <b>5,653</b>                       | <b>(5)</b>                          | <b>-0.1%</b>                    |

Details of Variation requests and explanations of significant Forecast Variances, Slippage or Reprofiles are given below:

| Detail Type                               | £'000 | Project                            | Description  |
|---|-------|------------------------------------|--|
| <b>Children's Safeguarding &amp; Care</b> |       |                                    |  |
| Budget Reprofile                          | (40)  | Contact Supervision Centres        | Reprofile of budget less than £0.100m.   |
| <b>Health &amp; Disability Services</b>   |       |                                    |  |
| Budget Reprofile                          | (63)  | Short Breaks for Disabled Children | Reprofile of budget less than £0.100m.   |
| <b>Education &amp; Skills</b>             |       |                                    |  |
| IFRS                                      | (604) | Various                            | Please see paragraph 3.23 (v) of the main report for a general explanation of IFRS |

## Appendix 6 – Capital Programme Performance

| Detail Type      | £'000 | Project | Description  |
|------------------|-------|---------|--|
| Changes          |       |         | changes. For the refurbishments within school buildings some of the costs are of a day-to-day servicing nature and are not capital expenditure. It would be impractical for an authority to assess every item of expenditure when it is incurred as to whether or not it has enhanced an asset. The practical situation is instead, at the year-end an assessment is made by programme managers and Finance to make sure that expenditure is correctly classified as capital or revenue. The capital budgets are reduced by the same amount as the items that are subsequently charged to revenue. |
| Budget Reprofile | (284) | Various | Reprofiles of budget less than £0.100m including:<br><br>Devolved Capital Adjustments (£0.004m);<br>New Pupil Places/Basic Need (£0.041m);<br>Devolved Formula Capital (£0.016m);<br>Capital Maintenance (£0.060m);<br>Devolved Formula Capital 2017/18 (£0.077m);<br>Capital Maintenance 2017/18 (£0.087m);<br>Structural Maintenance £0.001m.  |
| Variance         | (5)   | Various | Underspends of less than £0.100m on various schemes.   |
| <b>Schools</b>   |       |         |  |
| Budget Reprofile | (122) | Various | Reprofiles of budget less than £0.100m including:<br><br>Portslade Community Academy (£0.037m);<br>Fairlight Primary Solar Panels (£0.042m);<br>Hillside School Extension (£0.028m);<br>Hertford Junior Interactive TV's (£0.006m);<br>Carlton Hill Improvement Works (£0.009m).   |

## Health &amp; Adult Social Care – Capital Budget Summary

| Forecast Variance Month 9 £'000 | Service                                     | 2017/18 Budget Month 9 £'000 | Reported at other Committees £'000 | 2017/18 IFRS Changes £'000 | Variation, Slippage/ reprofile £'000 | 2017/18 Budget Month 12 £'000 | Provisional Outturn Month 12 £'000 | Provisional Variance Month 12 £'000 | Provisional Variance Month 12 % |
|---------------------------------|---|------------------------------|------------------------------------|----------------------------|--------------------------------------|-------------------------------|------------------------------------|-------------------------------------|---------------------------------|
| 0                               | Adult Social Care                           | 266                          | 0                                  | 0                          | 434                                  | 700                           | 700                                | 0                                   | 0.0%                            |
| 0                               | Integrated Commissioning                    | 2                            | 0                                  | 0                          | (2)                                  | 0                             | 0                                  | 0                                   | 0.0%                            |
| 0                               | Provider Services                           | 0                            | 0                                  | 0                          | 0                                    | 0                             | 0                                  | 0                                   | 0.0%                            |
| 0                               | Public Health                               | 0                            | 0                                  | 0                          | 0                                    | 0                             | 0                                  | 0                                   | 0.0%                            |
| <b>0</b>                        | <b>Total Health &amp; Adult Social Care</b> | <b>268</b>                   | <b>0</b>                           | <b>0</b>                   | <b>432</b>                           | <b>700</b>                    | <b>700</b>                         | <b>0</b>                            | <b>0.0%</b>                     |

Details of Variation requests and explanations of significant Forecast Variances, Slippage or Reprofiles are given below:

| Detail Type                     | £'000 | Project                                | Description  |
|---------------------------------|-------|--|--|
| <b>Adult Social Care</b>        |       |  |  |
| Budget Variation                | 470   | Better Care Fund – Community Equipment | The Disabled Facilities Grant (DFG) forms part of the Better Care Fund and the spend is shared between Housing and Adult Social Care. This variation is due to this share of spend changing through the year in order to achieve the best outcomes for residents. All spend is funded by the DFG grant allocated for the year 2017/18. |
| Budget Reprofile                | (36)  | Various                                | Reprofile of budget less than £0.100m including:<br><br>Adaptations for the Disabled (£0.031m);<br>Telecare (£0.005m).   |
| <b>Integrated Commissioning</b> |       |  |  |
| Budget Reprofile                | (2)   | Autism Innovation                      | Reprofile of budget less than £0.100m  |

## Economy, Environment &amp; Culture (excluding Housing Revenue Account) – Capital Budget Summary

| Forecast Variance Month 9 £'000 | Service   | 2017/18 Budget Month 9 £'000 | Reported at other Committees £'000 | 2017/18 IFRS Changes £'000 | Variation, Slippage/ reprofile £'000 | 2017/18 Budget Month 12 £'000 | Provisional Outturn Month 12 £'000 | Provisional Variance Month 12 £'000 | Provisional Variance Month 12 % |
|---------------------------------|---|------------------------------|------------------------------------|----------------------------|--------------------------------------|-------------------------------|------------------------------------|-------------------------------------|---------------------------------|
| 0                               | City Development & Regen                        | 6,991                        | 0                                  | 0                          | (3,573)                              | 3,418                         | 3,418                              | 0                                   | 0.0%                            |
| 0                               | City Environmental Management                   | 6,252                        | 0                                  | 0                          | (394)                                | 5,853                         | 4,579                              | (1,279)                             | -21.8%                          |
| 0                               | Culture   | 12,448                       | 0                                  | 0                          | (6,225)                              | 6,223                         | 6,223                              | 0                                   | 0.0%                            |
| 0                               | Planning & Building Control                     | 0                            | 0                                  | 0                          | 0                                    | 0                             | 0                                  | 0                                   | 0.0%                            |
| 0                               | Property  | 1,780                        | 0                                  | 0                          | (201)                                | 1,579                         | 1,579                              | 0                                   | 0.0%                            |
| 0                               | Transport                                       | 14,273                       | 0                                  | 0                          | (1,511)                              | 12,762                        | 12,762                             | 0                                   | 0.0%                            |
| <b>0</b>                        | <b>Total Economy, Environment &amp; Culture</b> | <b>41,744</b>                | <b>0</b>                           | <b>0</b>                   | <b>(11,904)</b>                      | <b>29,835</b>                 | <b>28,561</b>                      | <b>(1,279)</b>                      | <b>-4.3%</b>                    |

Details of Variation requests and explanations of significant Forecast Variances, Slippage or Reprofiles are given below:

| Detail Type                                | £'000   | Project                               | Description   |
|--|---------|---------------------------------------|---|
| <b>City Development &amp; Regeneration</b> |         |                                       |   |
| Budget Reprofile                           | (3,130) | Preston Barracks Central Research Lab | Demolition of the site has nearly completed and infrastructure works have now commenced. A contractor for the site has now been appointed and construction of the main building will commence once the infrastructure works have been completed, this is profiled during 2018/19. |
| Budget Reprofile                           | (322)   | Circus Street Development - LGF       | Construction work on The Dance Space will be undertaken between August 2018 – August 2019, with payment from the council to Cathedral (Brighton) of the South East Dance £322,200 contribution also being made over this period.  |



## Appendix 6 – Capital Programme Performance

| Detail Type      | £'000 | Project  | Description  |
|------------------|-------|--|--|
| Budget Reprofile | (100) | Madeira Terraces Crowd Funding                     | Council's contribution toward the Madeira Terrace Crowd funding project as agreed at Budget Council.   |
| Budget Reprofile | (130) | Various  | Reprofiles of budget less than £0.100m including:<br><br>Circus Street Development (£0.077m);<br>Improvements to New England House (£0.050m);<br>Full Fibre Network (£0.040m);<br>Preston Barracks Site (£0.019m);<br>Open Market (£0.007m);<br>Madeira Terraces Regeneration (£0.005m);<br>Falmer Released Land (£0.004m);<br>Providence Place Improvements (£0.004m);<br>King Alfred Redevelopment £0.046m;<br>Waterfront Redevelopment £0.030m. |
| Budget Slippage  | (305) | Seafront Investment – Landscaping                  | The main reason for slippage is extended user consultation. There was a delayed start to the project to allow a free summer trading season (2016) for new seafront businesses directly adjacent to the area. A January 2017 start instead and July 2017 finish has left the defects period and final account running into the next financial year.   |
| Budget Variation | 180   | Super Connected Cities Programme Wireless Hotspots | A reserve was set aside to meet the hosting costs of the 3 year programme for this contract. A budget is required from this reserve to meet these costs.   |
| Budget Variation | 130   | Affordable Housing Delivery Options                | The legal fees for the Joint Venture increased due to the complexity of the legal documents and negotiations associated with this project. However they only represent a very small percentage of the overall project value.   |
| Budget Variation | 92    | Various  | Variations to budgets for Strategic Investment Fund (SIF) projects for Legal Fees:<br><br>Improvements to New England House £0.015m;<br>Preston Barracks Site £0.005m;<br>King Alfred Swimming Pool Development £0.015m;<br>Waterfront Redevelopment £0.050m;<br>Royal Pavilion Estate £0.007m.  |
| Budget           | 12    | Digital Catapult                                   | Variation to budget less than £0.100m.   |

**Appendix 6 – Capital Programme Performance**

| <b>Detail Type</b>                   | <b>£'000</b> | <b>Project</b>                     | <b>Description</b>   |
|--------------------------------------|--------------|------------------------------------|--|
| Variation                            |              |                                    |  |
| <b>City Environmental Management</b> |              |                                    |  |
| Budget Reprofile                     | (474)        | Various                            | Reprofiles of budget less than £0.100m including:<br><br>Volks Railway HLF - Delivery Stage (£0.085m);<br>Sheepcote Valley Household Waste (£0.075m);<br>Downland Initiative Project (£0.059m);<br>Eastbrook Allotments (£0.057m);<br>Stanmer Depot Relocation (£0.050m);<br>Prince Regent - Mechanical Equipment (£0.050m);<br>City Clean Modernisation Scheme (£0.040m);<br>Manor Road Gym S106 (£0.030m);<br>Woodingdean Allotments (£0.028m).  |
| Budget Slippage                      | (216)        | Various                            | Budget slippage of less than £0.100m including:<br><br>Prince Regent - Glazing Works (£0.068m);<br>Hove Park 3G Pitch (£0.047m);<br>Saunders Park Playground (£0.023m);<br>Preston Park Cycle Track (£0.023m);<br>Hove Lagoon Play Area S106 (£0.014m);<br>Tarnor Park S106 (£0.012m);<br>Queens Park Playground (£0.009m);<br>St Anne`s Wells Gardens S106 (£0.007m);<br>East Brighton Park Parking Controls (£0.006m);<br>S106 Withdean Park (£0.006m);<br>Stanmer Estate Access Improve Works (£0.001m).  |
| Budget Variation                     | 265          | Volks Railway HLF - Delivery Stage | The Volk's Railway Heritage Lottery Fund project has generated an overspend of £0.265m with the majority of these costs attributed to the building contract. The project faced significant delays early in the programme following the discovery of a redundant underground gas pipe. Works on the site were halted for a few months while the utility company undertook works to decommission the supply. This extended the length of the project and resulted in loss and expense claims. Various adjustments were also made during the project to improve the design and accommodate unforeseen factors. There was an uplift to some provisional sums |

## Appendix 6 – Capital Programme Performance

| Detail Type      | £'000   | Project                         | Description  |
|------------------|---------|---------------------------------|--|
|                  |         |                                 | notably a significant increase in the estimated cost of the cast iron elements of the project due to the amount of work required and the lack of available companies willing to undertake the works. There was also a minor uplift in the anticipated costs for the refurbishment of 3 of the original train carriages and associated works to bring these back into service.          |
| Budget Variation | 31      | Various                         | Variations to budget less than £0.100m as follows:<br><br>Woodingdean Skate Park £0.010m;<br>S106 Withdean Park £0.008m;<br>Stanmer Park Restoration HLF £0.005m;<br>William Clarke Park S106 £0.004m;<br>Mikvah to Studio Conversion Prince Regent Swimming Complex £0.004m.  |
| Variance         | (1,296) | Procurement of Vehicles         | The vehicle replacement programme will be moved forward another year to ensure that revenue costs are reduced. Replacing vehicles at the optimum time is critical. An estimated life is given to vehicles, which will be increased or decreased, depending on wear and running costs.  |
| Variance         | 17      | Various                         | Variances of less than £0.100m as follows:<br><br>Hove Rec Rugby Pitch Improvements (£0.004m);<br>Wheeled Bins for Recycling (£0.003m);<br>Withdean Athletics Track (£0.001m);<br>Garden Waste Collection Trial £0.021m;<br>Communal Bin Replacement £0.003;<br>Woodingdean Skate Park £0.001m.  |
| <b>Culture</b>   |         |                                 |  |
| Budget Reprofile | (6,194) | Royal Pavilion Estate (Phase 1) | The project works have experienced delays relating to a number of issues including completing Party Wall Awards with neighbouring properties, finds in the ground including human remains in a former Quaker burial ground, a BT cable and old wells, removal of lead based paint from the Corn Exchange roof joists and significant timber repairs to the Corn Exchange wooden frame. |
| Budget Reprofile | (31)    | Various                         | Reprofiles of budget for less than £0.100m including:  |

## Appendix 6 – Capital Programme Performance

| Detail Type      | £'000 | Project  | Description   |
|------------------|-------|--|---|
|                  |       |  | New Historical Records Office (£0.028m);<br>ACE Ready to Borrow (£0.003m).  |
| <b>Property</b>  |       |  |   |
| Budget Reprofile | (243) | Hove Town Hall - South End Office Refurb       | This project is completed, however, there are some final works toward the fit out on the new ground floor which have yet to start. Any additional underspend would reduce the borrowing.  |
| Budget Reprofile | (100) | GP Surgery – 62/63 Old Steine & 3 Palace Place | This project was delayed due to the GPs not signing the lease. It is hoped the project will start in June 2018.   |
| Budget Reprofile | (161) | Various  | Reprofiles of budget less than £0.100m including:<br><br>Asbestos Surveys (£0.045m);<br>Solar Panel Implementation Plan (£0.041m);<br>Hollingdean Depot Footbridge (£0.034m);<br>External Improvement Works (£0.025m);<br>Stanmer Park Agricultural Buildings (£0.017m);<br>Corporate Fire Risk Assessments (£0.014m);<br>Stanmer Traditional Agricult. Buildings £0.010m;<br>Legionella Works £0.005m. |
| Budget Reprofile | 155   | Workstyles Phase 4                             | Project resource costs associated with the Phase 4 project for Workstyles are to be from the 2017/18 AMF contribution and underspend from the Phase 3 budget.   |
| Budget Slippage  | (41)  | Various  | Budget slippage of less than £0.100m as follows:<br><br>Statutory Disability Act (DDA) Access Works Fund (£0.017m);<br>Kings Rd Toilet Roof (£0.010m);<br>Fire Safety Improvements (£0.010m);<br>Barts Cladding & Window Replace (£0.004m).   |
| Budget Variation | 189   | Various  | Variations to budget less than £0.100m as follows:<br><br>Hollingdean Depot Capital Costs £0.035m;<br>Misc Internal Refurbishments £0.027m;<br>Workstyles Phase 3 - Building Works £0.025m;   |

## Appendix 6 – Capital Programme Performance

| Detail Type      | £'000 | Project  | Description   |
|------------------|-------|--|---|
|                  |       |  | Mechanical Boiler Replacements £0.008m;<br>Workstyles Phase 3 - Accommodation Strategy £0.086m;<br>Hove Town Hall BMS £0.004m;<br>Hollingdean Depot £0.002m;<br>Preston Manor Ext Repair & Redec £0.001m;<br>Brighton Centre- Chiller Units £0.001m.  |
| <b>Transport</b> |       |  |   |
| Budget Reprofile | (284) | Bike Share\Hire Scheme (LTP)                         | The underspend of Local Transport Plan (LTP) funding for the Brighton Bikeshare project is being carried forward to 2018/19 to assist with the expansion of the scheme to the west of the city. This has been agreed with Coast to Capital LEP as the main funders of the project through the Local Growth Fund. It is anticipated the underspend will be spent in 2018/19.   |
| Budget Reprofile | (101) | Central Hove and Portslade Property Level Protection | Environment Agency grant approved for a new scheme which was added to the capital programme after month 9. The majority of works are to take place in 2018/19.  |
| Budget Reprofile | (309) | Various  | Reprofile of budgets less than £0.100m including:<br><br>Street Lighting Maintenance (LTP) (£0.090m);<br>Safer Routes to Schools (£0.073m);<br>A259\West Street Shelter Hall (£0.062m);<br>Valley Gardens (LTP) (£0.045m);<br>Intelligent Transport Systems 2 (LTP) (£0.022m);<br>North St Environmental Improvement (£0.014m);<br>Brighton Marina to River Adur Works (£0.014m);<br>Integrated Transport Schemes (LTP) £0.011m.                |
| Budget Slippage  | (374) | Major Projects (LTP)                                 | Delays in progressing the early development stages had arisen due to slower progress than originally anticipated with recruitment to posts within the City Transport Division which would have provided the officer time required to lead the development of a project brief and tender process to enable the appointment of consultants. This slippage has now been addressed and the project is progressing in line with a revised programme. |
| Budget Slippage  | (327) | Maintenance of Principal Roads                       | Due to an extended period of cold weather, contractors were unable to complete programmed improvements. Tarmac products cannot be implemented in  |

## Appendix 6 – Capital Programme Performance

| Detail Type      | £'000 | Project  | Description  |
|------------------|-------|--|--|
|                  |       |  | temperatures below 3 degrees. The project implementation timetable has now been revised and work is underway. There was also a vacancy of the Asset Manager post which further delayed spend. The Asset Manager is now in post following a successful recruitment process and the project is now progressing.  |
| Budget Slippage  | (228) | Bridge Strengthening and Assessment                  | This was delayed due to an extended market tender process to appoint the appropriate external technical expertise. The Project has now started and a revised timetable agreed.   |
| Budget Slippage  | (200) | Valley Gardens Phase 3 (LTP)                         | Delays in progressing early development of the scheme had arisen due to slower progress than originally anticipated with recruitment to posts within the City Transport Division which would have provided the officer time required to lead the development of a project brief and tender process to enable the appointment of consultants. This slippage has now been addressed and the project is progressing in line with a revised programme.   |
| Budget Slippage  | (169) | Local Safety Schemes (LTP)                           | There was a slippage in delivery due to collecting additional data and revising designs. Projects are now finalising the design phase.   |
| Budget Variation | 233   | Intelligent Transport Systems (LTP)                  | External Coast 2 Capital Scheme funding of £0.268m has been secured and along with BHCC match funding of £0.047m plus the existing budget, will be used to purchase and install 24 cameras. The majority of spend will be in year one on equipment with only maintenance costs incurred in years 2 and 3. This contract will support the council in meeting one of the main objectives of the Traffic Management Act 2004 to reduce congestion and disruption on the road network by actively managing the road networks and assist the council in securing a significant level of external funding for investment in its transport network. |
| Budget Variation | 136   | Central Hove and Portslade Property Level Protection | Environment Agency grant approved for new scheme which was added to the capital programme after month 9. Majority of works to take place in 2018/19.   |
| Budget Variation | 112   | Various  | Variations to budget less than £0.100m as follows:<br><br>Maintenance of Principal Roads £0.094m;<br>Controlled Parking Schemes £0.018m.   |

## Appendix 6 – Capital Programme Performance

### Neighbourhood, Communities & Housing (excluding Housing Revenue Account) – Capital Budget Summary

| Forecast Variance Month 9 £'000 | Service   | 2017/18 Budget Month 9 £'000 | Reported at other Committees £'000 | 2017/18 IFRS Changes £'000 | Variation, Slippage/ reprofile £'000 | 2017/18 Budget Month 12 £'000 | Provisional Outturn Month 12 £'000 | Provisional Variance Month 12 £'000 | Provisional Variance Month 12 % |
|---------------------------------|---|------------------------------|------------------------------------|----------------------------|--------------------------------------|-------------------------------|------------------------------------|-------------------------------------|---------------------------------|
| 0                               | Comms Equalities & 3 <sup>rd</sup> Sector       | 0                            | 0                                  | 0                          | 0                                    | 0                             | 0                                  | 0                                   | 0.0%                            |
| 0                               | Community Safety                                | 0                            | 0                                  | 0                          | 0                                    | 0                             | 0                                  | 0                                   | 0.0%                            |
| 0                               | Housing - GF                                    | 2,548                        | 0                                  | 0                          | (601)                                | 1,947                         | 1,806                              | (141)                               | -7.3%                           |
| 0                               | Libraries                                       | 65                           | 0                                  | 0                          | 6                                    | 71                            | 71                                 | 0                                   | 0.0%                            |
| 0                               | Digital First                                   | 3,148                        | 0                                  | 0                          | (1,186)                              | 1,962                         | 1,962                              | 0                                   | 0.0%                            |
| 0                               | Regulatory Services                             | 5                            | 0                                  | 0                          | 0                                    | 5                             | 0                                  | (5)                                 | -100.0%                         |
| <b>0</b>                        | <b>Total Neighbourhood, Comms &amp; Housing</b> | <b>5,766</b>                 | <b>0</b>                           | <b>0</b>                   | <b>(1,781)</b>                       | <b>3,985</b>                  | <b>3,839</b>                       | <b>(146)</b>                        | <b>-3.7%</b>                    |

Details of Variation requests and explanations of significant Forecast Variances, Slippage or Reprofiles are given below:

| Detail Type         | £'000 | Project                                      | Description  |
|---------------------|-------|--|--|
| <b>Housing – GF</b> |       |  |  |
| Budget Reprofile    | (291) | Local Delivery Vehicle - On-Going Costs      | This capital scheme relates to capital works on Brighton & Hove Community Seaside Homes properties, subsequent to development works and under the management of Temporary Accommodation. This scheme is funded by a management fee paid to the council from Seaside Homes and managed within the funding limits. |
| Budget Variation    | (320) | Better Care Fund – Disabled Facilities Grant | The DFG forms part of the Better Care Fund and the spend is shared between Housing and Adult Social Care. This variation is due to this share of spend changing through the year in order to achieve the best outcomes for residents. All spend is funded by the DFG Grant allocated for the year 2017/18.       |

## Appendix 6 – Capital Programme Performance

| <b>Detail Type</b>         | <b>£'000</b> | <b>Project</b>                                    | <b>Description</b>   |
|----------------------------|--------------|---|--|
| Budget Variation           | 10           | Various   | Variations to budget less than £0.100m as follows:<br><br>Renovation Grants (£0.004m);<br>Permanent Travellers Site (£0.001m);<br>HAOT Major Adaptations £0.015m.  |
| Variance                   | (141)        | Local Delivery Vehicle - Post Lease Refurbishment | This budget is for the refurbishment of the properties leased to Brighton & Hove Community Seaside Homes and includes the works programmed for the final batch which were less than anticipated.   |
| <b>Libraries</b>           |              |   |  |
| Budget Variation           | 6            | Various   | Variations to budget less than £0.100m as follows:<br><br>Hollingbury Library £0.005m;<br>Libraries Extra £0.001m.   |
| <b>Digital First</b>       |              |   |  |
| Budget Reprofile           | (1,133)      | Digital First programme                           | While significant progress has been made this year, Digital First investment relies on the organisation's change readiness and support services. It is expected that pace will increase in 2018/19 as many schemes are now reaching the point of implementation. |
| Budget Variation           | (53)         | Digital First programme                           | Variation to budget due to funding of revenue costs incurred.  |
| <b>Regulatory Services</b> |              |   |  |
| Variance                   | (5)          | Clean Bus Transport Fund                          | Underspend on project which has now ended.   |



## Housing Revenue Account (HRA) – Capital Budget Summary

| Forecast Variance Month 9 £'000 | Service                              | 2017/18 Budget Month 9 £'000 | Reported at other Committees £'000 | 2017/18 IFRS Changes £'000 | Variation, Slippage/ reprofile £'000 | 2017/18 Budget Month 12 £'000 | Provisional Outturn Month 12 £'000 | Provisional Variance Month 12 £'000 | Provisional Variance Month 12 % |
|---------------------------------|--------------------------------------|------------------------------|------------------------------------|----------------------------|--------------------------------------|-------------------------------|------------------------------------|-------------------------------------|---------------------------------|
| 0                               | City Development & Regen             | 12,969                       | 0                                  | (292)                      | 62                                   | 12,739                        | 12,738                             | (1)                                 | 0.0%                            |
| (2,410)                         | Housing - HRA                        | 27,056                       | 0                                  | 0                          | (748)                                | 26,308                        | 23,310                             | (2,998)                             | -11.4%                          |
| <b>(2,410)</b>                  | <b>Total Housing Revenue Account</b> | <b>40,025</b>                | <b>0</b>                           | <b>(292)</b>               | <b>(686)</b>                         | <b>39,047</b>                 | <b>36,048</b>                      | <b>(2,999)</b>                      | <b>-7.7%</b>                    |

Details of Variation requests and explanations of significant Forecast Variances, Slippage or Reprofiles are given below:

| Detail Type                         | £'000 | Project                                 | Description  |
|-------------------------------------|-------|---|--|
| <b>City Development &amp; Regen</b> |       |   |  |
| IFRS Changes                        | (225) | Land Appropriation at Kensington Street | Accounting adjustment in relation to the appropriation of land from the General Fund to the HRA.   |
| IFRS Changes                        | (67)  | Various                                 | IFRS Accounting entries relating to the s106 contribution for the following schemes:<br>Kensington Street (£0.044m);<br>Lynchet Close (£0.023m). |
| Budget Reprofile                    | 404   | Guinness Garage Sites                   | Works costs were higher than anticipated in 2017/18 requiring reprofile of budget <u>from</u> 2018/19.   |
| Budget Reprofile                    | (154) | Selsfield Drive                         | Works costs were lower than anticipated in 2017/18 requiring reprofile of budget <u>into</u> 2018/19.  |
| Budget Reprofile                    | (61)  | Various                                 | Reprofile of budget less than £0.100m as follows:  |

## Appendix 6 – Capital Programme Performance

| Detail Type        | £'000 | Project                    | Description  |
|--------------------|-------|----------------------------|--|
|                    |       |                            | Hobby Place - Wellsbourne (£0.069m);<br>Lynchet Close £0.008m.   |
| Budget Slippage    | (127) | Feasibility                | Feasibility studies work lower than anticipated in 2017/18.  |
| Variance           | 237   | Kite Place (Findon Road)   | Overspend as a result of strengthening fire safety measures.   |
| Variance           | 44    | Various                    | Overspends of less than £0.100m as follows:<br><br>Brooke Mead £0.040m;<br>Manor Place & Preston Road £0.004m.   |
| Variance           | (282) | Hobby Place (Wellsbourne)  | Agreed Maximum Price (AMP) lower than anticipated against the approved budget.   |
| <b>Housing HRA</b> |       |                            |  |
| Budget Reprofile   | (263) | Home Purchase Scheme       | Residual budget to be re-profiled into 2018/19, as the sale of a second property under the scheme is due to complete in 2018/19 rather than 2017/18 as first anticipated.                      |
| Budget Reprofile   | (135) | Cyclical Decorations       | This reprofile of budget to 2018/19 relates to work already in progress in 2017/18 that will now be finished in 2018/19.   |
| Budget Reprofile   | (103) | Stonehurst Court           | The final costs were anticipated to be incurred in 2018/19, as opposed to 2017/18. The homes have subsequently been completed in May 2018.   |
| Budget Reprofile   | (94)  | Various                    | Reprofiles of budget less than £0.100m as follows:<br><br>Oxford Street (£0.044m);<br>Housing Management ICT system (£0.050m).   |
| Budget Variation   | (153) | Estates Development Budget | The Estates Development Budget is included within the capital programme and the funding split between capital and revenue is adjusted at year-end depending on the types of works carried out. |
| Variance           | (135) | Windows                    | Savings delivered against Major Projects has resulted in an underspend against 2017/18 budget.   |
| Variance           | (140) | Domestic & Communal Rewire | Underspend against 2017/18 budget.   |

## Appendix 6 – Capital Programme Performance

| <b>Detail Type</b> | <b>£'000</b> | <b>Project</b>                           | <b>Description</b>  |
|--------------------|--------------|--|---|
| Variance           | (228)        | Condensation & Damp Works                | Major works investment has resulted in a reduced spend against this budget.   |
| Variance           | (238)        | Communal Fire Alarms                     | Programme review has resulted in a reduced spend against this budget.   |
| Variance           | (330)        | Lifts                                    | Contingency funding was removed for the replacement of a possible 2 lifts.  |
| Variance           | (157)        | Water Tanks                              | Programme review has resulted in a reduced spend against this budget.   |
| Variance           | (258)        | Fire Safety                              | Fire Safety continues to be prioritised, with progress monitored and measures undertaken through our joint Housing Fire Health & Safety Board with East Sussex Fire & Rescue Service (ESFRS). Additional funding was added to this budget in year and consultation on enhanced fire safety measures such as installation of sprinkler systems has delayed some elements of spend. |
| Variance           | (304)        | Converting Spaces in Existing Buildings  | Planned conversions not completed this financial year.  |
| Variance           | (201)        | Structural Repairs                       | Savings delivered against Major Projects has resulted in an underspend against 2017/18 budget.  |
| Variance           | (857)        | Cyclical Decorations                     | Due to some delivery issues there is a large underspend against this year's budget. This matter has been raised with the contractor and measures are being put in place to address issues arising are being monitored going forward through regular contract review and partnership senior manager meetings.  |
| Variance           | (212)        | Main Entrance Doors & Door Entry Systems | Programme review has resulted in a reduced spend against this budget.   |
| Variance           | 62           | Various                                  | Minor variances of less than £0.100m as follows:<br><br>ICT Fund (£0.084m);<br>Roofing (£0.054m);<br>Insulation (£0.048m);<br>Doors (£0.044m);<br>Asbestos (£0.040m);<br>Bathrooms & Kitchens (£0.025m);  |

**Appendix 6 – Capital Programme Performance**

| Detail Type | £'000 | Project | Description  |
|-------------|-------|---------|--|
|             |       |         | BHCC Projects (£0.022m);<br>Communal Boilers (£0.007m);<br>HRA Adaptations (£0.006m);<br>Minor Capital Works £0.091m;<br>Stonehurst Court £0.055m;<br>Loft Conversions £0.043m;<br>Capital Works assessment £0.037m;<br>Pre-lease conversion £0.036m;<br>Establishment costs £0.029m;<br>Feasibility & Design £0.026m;<br>Car Parks & Garages £0.023m;<br>Empty Properties £0.020m;<br>Block Conversions £0.009m;<br>Future proofing assets £0.009m;<br>Solar PV City-wide £0.007m;<br>Cladding £0.007m. |

## Appendix 6 – Capital Programme Performance

### Finance & Resources - Capital Budget Summary

| Forecast Variance Month 9 £'000 | Service                              | 2017/18 Budget Month 9 £'000 | Reported at other Committees £'000 | 2017/18 IFRS Changes £'000 | Variation, Slippage/ reprofile £'000 | 2017/18 Budget Month 12 £'000 | Provisional Outturn Month 12 £'000 | Provisional Variance Month 12 £'000 | Provisional Variance Month 12 % |
|---------------------------------|--------------------------------------|------------------------------|------------------------------------|----------------------------|--------------------------------------|-------------------------------|------------------------------------|-------------------------------------|---------------------------------|
| 0                               | Finance                              | 0                            | 0                                  | 0                          | 0                                    | 0                             | 0                                  | 0                                   | 0.0%                            |
| 0                               | HR Organisational Develop            | 0                            | 0                                  | 0                          | 0                                    | 0                             | 0                                  | 0                                   | 0.0%                            |
| 0                               | IT&D                                 | 871                          | 0                                  | 0                          | (300)                                | 571                           | 571                                | 0                                   | 0.0%                            |
| <b>0</b>                        | <b>Total Finance &amp; Resources</b> | <b>871</b>                   | <b>0</b>                           | <b>0</b>                   | <b>(300)</b>                         | <b>571</b>                    | <b>571</b>                         | <b>0</b>                            | <b>0.0%</b>                     |

Details of Variation requests and explanations of significant Forecast Variances, Slippage or Reprofiles are given below:

| Detail Type      | £'000 | Project                                 | Description   |
|------------------|-------|---|---|
| <b>IT&amp;D</b>  |       |   |   |
| Budget Reprofile | (278) | Internal Customer Access to Information | There has been a delay in the Office 365 migration program as a result of project reprioritisation following management changes, technical issues and significant personnel changes (which have all delayed the project timelines). |
| Budget Reprofile | (22)  | Information Management                  | Reprofile of budget less than £0.100m.  |

## Strategy Governance &amp; Law - Capital Budget Summary

| Forecast Variance Month 9 £'000 | Service                                    | 2017/18 Budget Month 9 £'000 | Reported at other Committees £'000 | 2017/18 IFRS Changes £'000 | Variation, Slippage/ reprofile £'000 | 2017/18 Budget Month 12 £'000 | Provisional Outturn Month 12 £'000 | Provisional Variance Month 12 £'000 | Provisional Variance Month 12 % |
|---------------------------------|--|------------------------------|------------------------------------|----------------------------|--------------------------------------|-------------------------------|------------------------------------|-------------------------------------|---------------------------------|
| 0                               | Comms                                      | 0                            | 0                                  | 0                          | 0                                    | 0                             | 0                                  | 0                                   | 0.0%                            |
| 0                               | Legal Services                             | 0                            | 0                                  | 0                          | 0                                    | 0                             | 0                                  | 0                                   | 0.0%                            |
| 0                               | Life Events                                | 6                            | 0                                  | 0                          | 0                                    | 6                             | 0                                  | (6)                                 | -100.0%                         |
| 0                               | Perf Improvement & Programmes              | 0                            | 0                                  | 0                          | 5                                    | 5                             | 5                                  | 0                                   | 0.0%                            |
| 0                               | Corporate Policy                           | 0                            | 0                                  | 0                          | 0                                    | 0                             | 0                                  | 0                                   | 0.0%                            |
| <b>0</b>                        | <b>Total Strategy Governance &amp; Law</b> | <b>6</b>                     | <b>0</b>                           | <b>0</b>                   | <b>5</b>                             | <b>11</b>                     | <b>5</b>                           | <b>(6)</b>                          | <b>-54.5%</b>                   |

Details of Variation requests and explanations of significant Forecast Variances, Slippage or Reprofiles are given below:

| Detail Type                              | £'000 | Project                       | Description   |
|--|-------|-------------------------------|---|
| <b>Life Events</b>                       |       |                               |   |
| Variance                                 | (6)   | Coroners Software System      | Underspend on scheme less than £0.100m.                                   |
| <b>Perf Improvement &amp; Programmes</b> |       |                               |   |
| Budget Reprofile                         | 5     | Carefirst Replacement Project | Reprofile of budget from 2018/19 to fund expenditure incurred in 2017/18. |

Note: There are currently no capital budgets to report on for Corporate Services.

**Appendix 7 – New Capital Schemes & Future Years Variation**

**New schemes added to the Capital Programme after TBM Month 9 requiring approval**

| <b>New Capital Project Approval Request</b>  |                                     |           |            |       |
|--|-------------------------------------|-----------|------------|-------|
| Unit:  | City Parks                          |           |            |       |
| Project title:   | Woodingdean Skatepark - New shelter |           |            |       |
| Total Project Cost (All Years):  | £9,920                              |           |            |       |
| <b>Purpose, benefits and risks:</b>  |                                     |           |            |       |
| Provision of a shelter for users of the skatepark on Bexhill Road, Woodingdean. This will give users and spectators somewhere to watch others using the skatepark. |                                     |           |            |       |
| <b>Capital expenditure profile (£'000):</b>  |                                     |           |            |       |
| Year   | This Year                           | Next Year | Year After | TOTAL |
| Revenue Contributions  | 1                                   |           |            | 1     |
| External Contribution (Section 106)  | 9                                   |           |            | 9     |
| Total estimated costs and fees   | 10                                  |           |            | 10    |
| <b>Financial implications:</b>   |                                     |           |            |       |
| The majority of this work is funded through Section 106 from development of the Nuffield Hospital.   |                                     |           |            |       |

**Appendix 7 – New Capital Schemes & Future Years Variation**

| <b>New Capital Project Approval Request</b>   |                     |           |            |       |
|---|---------------------|-----------|------------|-------|
| Unit:   | Parks Projects Team |           |            |       |
| Project title:  | Withdean Park       |           |            |       |
| Total Project Cost (All Years):   | £8,000              |           |            |       |
| <b>Purpose, benefits and risks:</b>   |                     |           |            |       |
| <p>The maintenance works to the Lilac area will revive this important collection of shrubs once recognised nationally. The work will also support the local friends group who are supporting Cityparks by undertaking regular maintenance in the park but are limited when it comes to undertaking larger scale clearance works. Not undertaking these works could loose the support of the friends group and the continued decline of this once prized collection.</p> |                     |           |            |       |
| <b>Capital expenditure profile (£'000):</b>   |                     |           |            |       |
| Year  | This Year           | Next Year | Year After | TOTAL |
| External Contribution (Section 106)   | 8                   |           |            | 8     |
| Total estimated costs and fees  | 8                   |           |            | 8     |
| <b>Financial implications:</b>  |                     |           |            |       |
| <p>The work is being funded by a Section 106 contribution.</p>  |                     |           |            |       |



## Appendix 7 – New Capital Schemes & Future Years Variation

| New Capital Project Approval Request  |  |           |            |       |
|---|--|-----------|------------|-------|
| Unit:   | Sport and Leisure  |           |            |       |
| Project title:  | Mikvah to Studio Conversion (Prince Regent Swimming Complex) |           |            |       |
| Total Project Cost (All Years):   | £199,025   |           |            |       |
| <b>Purpose, benefits and risks:</b>   |  |           |            |       |
| <p>The purpose of the project is to provide local residents with upgraded and modern facilities which will offer increased opportunities to participate in sport. It is anticipated that the project will increase the value of the asset, increase the extent to which the asset can be used, and will provide additional revenue due to the service improvement and potential operating model that can be explored.</p> |  |           |            |       |
| <b>Capital expenditure profile (£'000):</b>   |  |           |            |       |
| Year  | This Year  | Next Year | Year After | TOTAL |
| Revenue Contributions   |  | 86        |            | 86    |
| External Contribution (Section 106)   | 4  | 109       |            | 113   |
| Total estimated costs and fees  | 4  | 195       |            | 199   |
| <b>Financial implications:</b>  |  |           |            |       |
| <p>Once completed the new facility will be operated by Freedom Leisure as part of the Sports Facilities contract. There will be no direct financial implications for BHCC as all ongoing costs would sit with Freedom Leisure. The initial capital expenditure will be funded by Section 106 and planned revenue contributions.</p>   |  |           |            |       |

## Appendix 7 – New Capital Schemes & Future Years Variation

| New Capital Project Approval Request  |   |           |            |       |
|---|---|-----------|------------|-------|
| Unit:   | Transport   |           |            |       |
| Project title:  | Central Hove and Portslade Property Level Protection Scheme |           |            |       |
| Total Project Cost (All Years):   | £483,000  |           |            |       |
| <b>Purpose, benefits and risks:</b>   |   |           |            |       |
| To provide flood resilience measures to 63 properties at risk of surface water flooding. This is in accordance with the Surface Water Management Action Plan. |   |           |            |       |
| <b>Capital expenditure profile (£'000):</b>   |   |           |            |       |
| Year  | This Year   | Next Year | Year After | TOTAL |
| Grant (please state)  | 83  | 170       |            | 253   |
| Capital Reserves  | 53  | 177       |            | 230   |
| Total estimated costs and fees  | 136   | 347       |            | 483   |
| <b>Financial implications:</b>  |   |           |            |       |
| Grant funding of £0.253m has been requested from the Environment Agency's Southern Regional Flood and Coastal Committee Local Levy.                           |   |           |            |       |
| The remaining estimated cost of £0.230m will be funded from the Surface Water Management reserve held by the Transport department for this purpose.           |   |           |            |       |

**Appendix 7 – New Capital Schemes & Future Years Variation**

**New schemes to be added to the Capital Programme for 2018/19 to be approved**

| <b>New Capital Project Approval Request</b>  |                        |           |            |       |
|--|------------------------|-----------|------------|-------|
| Unit:  | Parks Projects Team    |           |            |       |
| Project title:   | Preston Park, Brighton |           |            |       |
| Total Project Cost (All Years):  | £99,961                |           |            |       |
| <b>Purpose, benefits and risks:</b>  |                        |           |            |       |
| <p>Works to be carried out include play area improvements works. There will also be works to the Coronation Garden, making the garden more accessible with pathway improvements, offering more recreational benefits to the park users and an increase in biodiversity. Improvements to the Coronation Garden shelter will enable the shelter to be used for more activities, such as enjoying the gardens in all weathers. Design and resoiling works of the historic Rose Garden Borders, with the design being done by well known landscape architect Dominic Cole.</p> |                        |           |            |       |
| <b>Capital expenditure profile (£'000):</b>  |                        |           |            |       |
| Year   | This Year              | Next Year | Year After | TOTAL |
| External Contribution (Section 106)  | 100                    |           |            | 100   |
| Total estimated costs and fees   | 100                    |           |            | 100   |
| <b>Financial implications:</b>   |                        |           |            |       |
| <p>Funding of the capital works to be done will come from Section 106 contributions.</p>   |                        |           |            |       |



**Subject:** EDUCATION BASIC NEED – ALLOCATION £15MILLION PREVIOUSLY EARMARKED FOR PURCHASE OF A SITE FOR A NEW FREE SCHOOL  
Extract from the proceedings of the Children, Young People & Skills Urgency Sub-Committee meeting held on the 30<sup>th</sup> April 2018

**Date of Meeting:** 14 June 2018

**Report of:** Executive Lead Officer for Strategy, Governance & Law

**Contact Officer Name:** Lisa Johnson Tel: 01273 291228  
E-mail: [lisa.johnson@brighton-hove.gov.uk](mailto:lisa.johnson@brighton-hove.gov.uk)

**Wards Affected** All

**FOR GENERAL RELEASE**

***Action Required of the Committee:***

To receive the item referred from the Children, Young People & Skills Urgency Sub-Committee for approval:

**Recommendation:**

- (1) That the agreed allocation of the final School Condition Allocation and the Healthy Pupil Capital Allocation as detailed in paragraphs 3.17 to 3.22 of the report (detailed below); be included within the Council's Capital Investment Programme 2018/19; and
- (2) That delegated authority be granted to the Assistant Director of Property & Design to procure the works and enter into contracts within these budgets, as required, in accordance with Contract Standing Orders in respect of the entire Educational Capital Programme.

**Extract from the report on Education Basic Need – Allocation £15million Previously Earmarked for Purchase of a Site for a New Free School:**

**School Condition Funding**

3.17 Since the preparation of the original report to CYPS the Department for Education has finalised the School Condition Allocations for all Local Authorities. This funding is allocated on a formulaic basis and therefore changes in pupil numbers can have an impact on the final amounts. We were anticipating approximately £4.815 million however we received £5.008 million, an increase of £192,682. This additional funding will be used to address the next most urgent priorities within the school estate.

### **Healthy Pupils Capital Funding**

- 3.18 In addition to this we have also been advised of a one off capital allocation for 2018/19 only. The government has made available capital funding generated from the Soft Drinks Industry Levy. The funding (the Healthy Pupil Capital Fund) is intended to improve children and young people's mental and physical health by improving and increasing availability to facilities for physical activity, healthy eating, mental health and wellbeing and medical conditions. This funding is available to support children of all ages.
- 3.19 We have been allocated £305,658 under this funding stream. Guidance on its use has been published and can be found at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/686163/Healthy\\_pupils\\_capital\\_fund\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686163/Healthy_pupils_capital_fund_guidance.pdf) It is intended to use this funding to undertake refurbishment of the ventilation system to Surrenden Pool which supports school swimming for 12 primary and secondary schools in the city.
- 3.20 Any residual funding will be used to support other school play space refurbishments.

### **Services to Schools Buy Back Option**

- 3.21 In the March reports it was detailed that the Services to Schools buy back option for the strategic property function was anticipated to raise £475,000 for the 2018/19 financial year. We are anticipating that the majority of schools will purchase this service and the income is now anticipated to be in the order of £550,000. As reported at the last CYP&S committee the additional funding will be used to ensure more works are carried out.
- 3.22 The additional funding ensures that the city can continue to maintain its education estate to a high standard and mitigates the risk of unanticipated and significant structural faults. At a time of significant pressure on school revenue budgets and following a number of years of reduced capital allocations this supports schools and will avoid greater deterioration as a result of short term funding decisions.

### **NOTE:**

In addition the Urgency Sub-Committee agreed the recommendations set out in paragraph 4.9 of the minutes below and that following further work to identify longer term capital need a report will come to the PR&G committee later in the financial year.

**BRIGHTON & HOVE CITY COUNCIL**  
**CHILDREN, YOUNG PEOPLE & SKILLS URGENCY SUB-COMMITTEE**

**5.00pm 30 APRIL 2018**

**HOVE TOWN HALL**

**MINUTES**

**Present:** Councillors Chapman (Chair), Brown and Phillips

**PART ONE**

**3 PROCEDURAL BUSINESS**

**3(a) Declarations of substitutes**

3.1 There were none.

**3(b) Declarations of interest**

3.2 There were none.

**3(c) Exclusion of press and public**

3.3 In accordance with section 100A of the Local Government Act 1972 ("the Act"), the Committee 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 business to be transacted or the nature of proceedings, that if members of the press and 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 100(l) of the Act).

3.4 **RESOLVED-** That the press and public not be excluded

**4 EDUCATION BASIC NEED - ALLOCATION £15MILLION PREVIOUSLY EARMARKED FOR PURCHASE OF A SITE FOR A NEW FREE SCHOOL**

4.1 The Managing Principle Lawyer, outlined the basis for the convening the urgency sub-committee. She noted that the sub-committee was requested to approve recommendations 2.1 to 2.4 which would then be referred to the Policy Resources & Growth Committee in June.

4.2 The Head of School Organisation gave a brief overview of the report brought before the sub-committee and stated the following:

- The timing of the recommendations did not allow significant discussion of the City's secondary schools;
- Concerns had been raised by Cardinal Newman Catholic School, the Diocese of Arundel and Brighton and 5 of the City's Chairs of Governors in relation to the lack of clarity and the inequality of the circumstances that resulted in the recommendations;
- The funding would not be for maintenance work or for funding previous expansions rather it was to ensure additional places in future and that as BHCC would not be receiving an additional grant until 2020, a long term view must be taken to finalise any considerations;
- Consideration had been given to which schools would be provided with additional places, which areas are expected to meet rising demand and which schools were operating near their capacity limit;
- This report ultimately provided an indicative allocation basic need capital funding and works to accommodate the "misplaced 38."

4.2 Councillor Brown stated that she felt the report did not have enough detail. She noted that not all schools had been considered fully and emphasised that it was necessary to consider every school before making any final decisions.

4.3 Councillor Phillips agreed and supported Councillor Brown's statement.

4.4 Councillor Chapman noted that the report had been produced in a short amount of time and agreed that further detail and consideration of all schools in the City was paramount. He recommended an amendment to recommendation 2.2 to read, "The Committee agree the indicative allocation of the balance of the Government funded £15million on the remainder of the school estate as shown in Paragraphs 3.8 to 3.16 and in addition consider the needs of all other schools in the City and recommend this to the PR&G Committee for inclusion within the council's Capital Investment Programme 2018/19."

4.5 Councillor Brown agreed with the amendment on the grounds that enough time was given to prepare a more thorough report.

4.6 The Executive Director for Families Children & Learning stated the following:

- In relation to capital moneys, there was a recommendation that emphasised the urgent need to resolve expansions for the Summer;
- It was suggested that the report be brought to a subsequent PR&G Committee in the autumn to ensure that the report be comprehensive.

4.7 The Chair confirmed the amended recommendation to read, "That Committee agree the indicative allocation of the balance of the Government funded £15million on the remainder of the school estate as shown in Paragraphs 3.8 to 3.16 and in addition



consider the needs of all other schools in the City and recommend this to a subsequent PR&G Committee for inclusion within the council's Capital Investment Programme 2018/19."

4.8 Natasha Watson confirmed that based on the wording of the amended recommendation; one would anticipate an additional consideration to all other schools in the City and a more thorough report would be brought to a subsequent PR&G Committee.

4.9 **RESOLVED:**

- (1) That the necessary building, adaptation and other associated works at Dorothy Stringer School following the amendment agreed at the Policy, Resources & Growth Committee on 29 March 2018 be approved;
- (2) That the indicative allocation of the balance of the Government funded £15million on the remainder of the school estate as shown in Paragraphs 3.8 to 3.16 be agreed; and in addition consider the needs of all other schools in the City and recommend this to a subsequent Policy, Resources & Growth Committee for inclusion within the Council's Capital Investment Programme 2018/19;
- (3) That the allocation of the final School Condition Allocation and the Healthy Pupil Capital Allocation as detailed in Paragraphs 3.17 to 3.22 be agreed and recommended to Policy, Resources & Growth Committee for inclusion within the Council's Capital Investment Programme 2018/19; and
- (4) That the Policy, Resources & Growth Committee be recommended to grant delegated authority to the Assistant Director of Property & Design to procure the works and enter into contracts within these budgets, as required, in accordance with Contract Standing Orders in respect of the entire Educational Capital Programme.



|                          |  |   |                          |
|--------------------------|--|---|--------------------------|
| <b>Subject:</b>          | <b>CHARTER FOR THE CONSTRUCTION SECTOR</b>         |   |                          |
| <b>Date of Meeting:</b>  | <b>14 June 2018</b>                                |   |                          |
| <b>Report of:</b>        | <b>Executive Director, Finance &amp; Resources</b> |   |                          |
| <b>Contact Officer:</b>  | <b>Name:</b>                                       | <b>Clifford Youngman</b>                      | <b>Tel: 01273 291408</b> |
|                          | <b>Email:</b>                                      | <b>clifford.youngman@brighton-hove.gov.uk</b> |                          |
| <b>Ward(s) affected:</b> | <b>All</b>   |   |                          |

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 A Notice of Motion relating to the Unite Construction Charter was passed at the Full Council meeting on 19 April 2019.
- 1.2 In order to adopt the provisions of the Charter, Committee consideration is required.

**2. RECOMMENDATIONS:**

- 2.1 That Committee notes the provisions (see Appendix 1) of the UNITE Union Construction Charter.
- 2.2 That Committee notes the aims of Charter.
- 2.3 That Committee delegates the power to the Executive Director, Finance & Resources, after consultation with the Procurement Advisory Board, to take all steps necessary for the implementation of the Construction Charter provided those steps are consistent with the advice or recommendations of the Procurement Advisory Board.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 The council maintains a commitment to social value, and as such reviews its procurement processes on an ongoing basis. In doing so officers explore opportunities trialled elsewhere, including work undertaken by Preston and other authorities.
- 3.2 Separately, the UNITE union has members across many sectors of the economy, and following its merger with the Union of Construction, Allied Trades & Technicians (UCATT) in January 2017, now represents a significant number of its members in the construction industry.
- 3.3 A priority campaign in the sector involved challenging poor practice within the industry that compromises the welfare of workers.

3.4 The Charter covers eleven requirements for contractors and their supply chain. It has been adopted by a number of councils on the basis that it supports increased fairness for workers.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

4.1 The council has a strong commitment to social value and sustainability (overall approach summarised in Appendix 2). It adopted its Social Value Framework with local partners (including the Clinical Commissioning Group, the University of Brighton, and Community Works). This has since been replicated by a number of other local authorities.

4.2 The council maintains a commitment to review its approach to contracting and procurement on an ongoing basis, and the Notice of Motion passed by Council provides a further opportunity to do this.

4.2 Appendix 1 sets out the provisions of the Unite Union Charter.

4.3 Several of these are already explicitly or partly adhered to and form part of the council's standard contracting procedures. For example those relating to health & safety (number 2 in Appendix 1), evidence of competence (number 4), and apprenticeships (number 5). With some further clarification, these provisions can be adopted in a straight forward fashion.

4.4 In addition, there are other provisions where adoption is equally straight forward and which would be beneficial by clearly increasing fairness:

- Fair and transparent recruitment practice (number 8).
- Commitment against any form of blacklisting (number 9).

4.5 There are areas of the Charter that require further analysis in order to ensure that, for example, procurement processes becoming less attractive to SMEs because of additional requirements / additional costs. This type of outcome could hinder ambitions to capture social value within the city, and also the council's ambition to capture community wealth, along the lines of the *Preston Model*.

4.6 Once this further work is completed, the Charter will be adopted in an appropriate form, i.e. one that avoids any unintended consequences.

4.7 Procurement officers will work with Orbis Public Law to update standard terms in construction contracts as appropriate.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

5.1 As part of the work to implement the Charter, consultation will take place with trade unions and representatives from the local construction sector.

5.2 In addition, to support effective implementation, intelligence will be sought from councils that have already implemented the Charter.

## 6. CONCLUSION

- 6.1 It is recognised there are benefits to applying the Charter; furthermore some of its provisions are covered by existing practices, or can be easily implemented. There are however certain complexities that need to be analysed and worked through in order to avoid unintended consequences, for example concerning access to council contracts for SMEs.
- 6.2 This work will be the responsibility of the Executive Director, Finance & Resources with member oversight through the Procurement Advisory Board.

## 7. FINANCIAL & OTHER IMPLICATIONS:

### Financial Implications:

- 7.1 The costs of implementing the Charter are confined to the time of officers in the Procurement and Orbis Public Law teams.
- 7.2 Although not possible to quantify, changes to requirements stipulated for companies that contract with the council may build in extra contractual costs.

*Finance Officer Consulted: David Kuenssberg* *Date: 28/5/18*

### Legal Implications:

- 7.3 In order to comply with EU public procurement directives and domestic regulations we need to ensure that the implementation of the principles in the Charter do not breach our obligations to ensure non-discrimination, equal treatment and transparency when conducting procurements. The legal implications relating to the implementation of the principles will be reported to the Procurement Advisory Board and will assist them in making recommendations.

*Lawyer Consulted: Alice Rowland* *Date: 16/05/18*

### Equalities Implications:

- 7.4 None.

### Sustainability Implications:

- 7.5 None.

### Any Other Significant Implications:

- 7.6 None.

## **SUPPORTING DOCUMENTATION**

### **Appendices**

1. Provisions of the Unite Union Charter.

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

None.

### **Background Documents**

None.

**PROVISIONS OF THE UNITE UNION CONSTRUCTION CHARTER**

1. All parties recognise that the highest level of compliance with current HMRC regulations must be achieved where public funds are utilised. It is therefore a contractual requirement that all operatives are directly employed on a PAYE basis under a contract of employment. Furthermore the use of intermediary pay roll company will be prohibited on all contracts.
2. Health and Safety of workers on all of our construction projects is paramount. It is a requirement that all contractors rigorously implement and adhere to our minimum standards for health and safety, as set out in our procurement documents. In addition we require all contractors to provide quality welfare facilities fit for purpose in accordance with the Construction Design and Management Regulation of 2015.
3. It is a recognised fact that the presence of trade union safety representatives significantly improves safety in the workplace. Contractors and their supply chain are required to work collaboratively with the appropriate trade unions to identify and implement reasonable real-world initiatives.
4. The Authority requires all projects to be completed to the highest standard. so as to meet the aspirations of the residents of this Authority. In order to achieve this it is recognised that it is necessary that all workers are competent and have the appropriate level of skill to carry out the work they are employed to do. To assist in the achievement of this goal the Authority's contractors and their supply chain will ensure they retain documented evidence that all workers are competent to carry out the work they have been employed to do. They will ensure that such evidence is retained in a way as to allow the Authority or its nominee's to audit the documentation. Possession of the recognised industry' skills / grade card such as JIB or CSCS will be considered acceptable evidence
5. The Authority is mindful of the industry skills shortage and the need to address this through appropriate apprenticeships, including adult training in up skilling. The Authority's contractors and supply chain will in consultation with the Authority and other interested parties develop and implement a programme that addresses the skills shortage and provides training opportunities to local residents.
6. The Authority recognises the right of all construction workers to be employed under and to be protected by the appropriate national industry' collective agreement. The Authority requires full compliance with all appropriate national agreements applicable to the construction industry.
7. All contractors and their supply chain will accept the right of any trade union that is a signatory to an appropriate national agreement, to appoint shop stewards, workplace health & safety representatives and Union Learning Reps. All trade union accredited representatives will be granted appropriate time and facilities to carry out their responsibilities.

8. The Authority, its contractors and their supply chain are committed to a fair and transparent recruitment policy. All contractors and their supply chain will actively ensure that the engagement of labour is based on the individual's ability to meet the needs of the project and the specific tasks for which they are recruited to undertake.
9. The Authority its contractors and their supply chain agree it's not acceptable for anyone to use or make reference to any form of blacklist.
10. The Authority recognises the benefit trade unions bring to the workplace and the rights of workers to hear from trade union representative. The Authority's contractors and their supply chain are required to allow access to nominated trade union officer from trade unions that are signatories to the appropriate national agreements. Access shall mean access to welfare facilities during working times so as to allow them to consult with their members and potential members.
11. The Authority supports the Get Britain Building campaign, which is aimed at supporting and sustaining the British construction industry. Consequently, all relevant construction contracts will be required to comply with our Authority's Sustainable Buying Standard for Highways and Construction Materials, which requires structural steel and other relevant materials to be covered by BES 6001 Responsible Sourcing of construction product certification or equivalent.



|                          |   |  |                          |
|--------------------------|---|--|--------------------------|
| <b>Subject:</b>          | <b>Brighton i360 update</b>                                 |  |                          |
| <b>Date of Meeting:</b>  | <b>14 June 2018</b>   |  |                          |
| <b>Report of:</b>        | <b>Executive Director Economy Environment &amp; Culture</b> |  |                          |
| <b>Contact Officer:</b>  | <b>Name:</b>  | <b>Mark Ireland</b>  | <b>Tel: 01273 292705</b> |
|                          | <b>Email:</b>   | <a href="mailto:mark.ireland@brighton-hove.gov.uk">mark.ireland@brighton-hove.gov.uk</a> |                          |
| <b>Ward(s) affected:</b> | <b>All</b>  |  |                          |

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 At a Special Policy & Resources Committee on 6 March 2014 Members agreed that the council could loan the i360 a maximum sum of £36.222m at the relevant Public Works Loan Board (PWLB) interest rate plus a margin of 3.75% to reflect market risk at that time. In the event the full loan facility was used by the i360.
- 1.2 The i360 opened to the public on 4 August 2016 and has since carried over 750,000 visitors. It has also generated approximately £2.4m net direct additional income for the council so far which has been reinvested in the seafront in particular in the landscaping of the council owned land around the i360, contributions towards the refurbishment of the Madeira Terraces and festoon lighting along the seafront. The i360 is due to generate a further £33.3m over the next 24 years from the margin charged on the loan, 50% of the business rates income and a 1% share of ticket revenue from the S.106 agreement.
- 1.3 The i360 may have acted as a catalyst for other major new developments and investment not just in the immediate vicinity of the i360 but across the city. For example since the i360 has opened redevelopment deals valued at over £250m at Circus Street and Preston Barracks have been concluded and work has begun on both sites, The Grand Hotel multi-million pound refurbishment and the creation of a new lane as part of the redevelopment of the Hannington's estate by Redevco. Around the i360 the public realm has been transformed, the arches now offer a wide ranging shopping and dining experience and Preston Street has been revitalised.
- 1.4 However, visitor numbers have been lower than anticipated and now stand at the lower end of the long term financial viability modelled in the original business case. This report sets out:
  - A review of the performance of the i360 to date and its impact upon the seafront.
  - Action taken already by the i360 to reduce costs, increase visitors and introduce new revenue generating activities.
  - Further proposals by the i360 to boost visitor numbers and revenues.

- Proposals to improve the medium term financial sustainability of the i360 by amending the loan agreement, re-profiling the loan margin and changing the agreement between i360 and the LEP.

## 2. RECOMMENDATIONS:

2.1 That the Committee:-

2.1.1 Notes the action so far taken by the i360 to reduce costs, increase visitor numbers and increase revenue generating capacity.

2.1.2 Agrees the proposed amendments to the loan agreement set out in paragraphs 3.17 to 3.22 subject to the approval of changes to the LEP loan by the LEP Board on 4 July 2018.

2.1.3 Authorises the Executive Lead Officer – Strategy Governance & Law to complete all necessary actions to effect completion of the proposed revised loan agreement.

## 3. CONTEXT/ BACKGROUND INFORMATION

### Brighton i360 performance

3.1 Brighton i360 Limited have produced a detailed report which is included as a confidential appendix 1 to this report because of the commercial sensitivity of much of the content. The report covers the financial background, benefits to the city, challenges to the business so far, 2017 business restructuring, the present financial situation and the debt restructuring proposals. One of the appendices to the report includes a wide range of supportive statements from businesses and organisations across the city.

3.2 The actual capital construction costs including rolled up interest and costs of finance were 7.1% higher than expected, however, all the overspend was met by additional contributions from the equity shareholders. The cost overrun was largely due to the higher costs of the base building and immediate landscaping of the West Pier Trust owned land where the costs had not been finalised at the start of the contract and a provisional sum had been included. There were also some additional costs associated with unexpected underground obstructions when the main sewer was diverted around the site.

| <b>Table A: Capital construction costs</b> | Forecast<br>£ million | Final<br>£ million | Variation<br>£ million |
|--|-----------------------|--------------------|------------------------|
| Senior loan from the council               | 36.2                  | 36.2               | -                      |
| Junior loan from the LEP                   | 4.0                   | 4.0                | -                      |
| Equity from shareholders towards funding   | 6.0                   | 9.3                | +3.3                   |
| Total                                      | 46.2                  | 49.5               | +3.3                   |

- 3.3 The original median visitor forecasts anticipated over 800,000 in the first year and just over 700,000 thereafter. However the Policy & Resources report stated that the i360 would generate sufficient cash to pay the PWLB loan costs and the council margin if visitor numbers were 440,000 or more and just the PWLB loan costs if visitor numbers were 332,500 or more. As long as the PWLB loan costs are met there is no impact on council tax payers.
- 3.4 The attraction opened on 4 August 2016 just over a month later than originally anticipated and despite adverse weather and some well publicised technical hitches, has now been open for over 22 months. It meant that the very financially lucrative operational month of July was lost which has had an ongoing detrimental impact on cash flows. It became apparent that operating the ride every 20 minutes was not only technically unfeasible but detrimental to customer experience. The subsequent extension of ride times by cutting the number of rides to every 30 minutes only potentially impacts upon visitor numbers on the busiest of days. Although it was anticipated that weather would play an important role in visitor numbers it has proved to be critical particularly at weekends and school holidays. The i360 Board have recognised the need to develop strategies to boost numbers on poor weather days.
- 3.5 Visitor numbers in the first full year of operation were just over 500,000 but have subsequently declined with the annual total for the second year of operation based on current performance is likely to be in the 350,000 to 400,000 range. The i360 has so far continued to make full payments due to the council but a further cash injection was required from the shareholders to ensure these payments were made and to cover some unexpected one-off costs. If the proposals summarised in 3.17 are agreed by the council the shareholders will make a further cash contribution before the end of June to enable payment of the full PWLB amount due then. This will bring to nearly £1m the amount they have invested since funding the capital cost overspend. However, there will not be sufficient cash available to meet the loan margin payment due on 30 June.
- 3.6 As initially happened at the London Eye a number of different technical issues have arisen since opening causing some stoppages but most related to software programming and sensors. These have had an impact on visitor numbers but although minor problems do arise these are quickly resolved with no or minimal impact on visitors.
- 3.7 The i360 has directly created 116 new jobs on site of which 75% live locally. It is a living wage employer and does not offer zero hours contracts. There is an apprenticeship scheme in place and training opportunities are available for all staff.
- 3.8 The i360 has so far won 19 awards from a wide variety of organisations. Visit England said it was “a triumph of innovation” and RICS said it was “an innovative project that has created an iconic landmark on a famous British seafront”.
- 3.9 In the first year of operation free tickets were given to all state aided school children in the city and free tickets are given each subsequent year to primary year of entry children. Over 20,000 have so far taken advantage of this offer. Ticket price discounts of 50% are also offered to local residents at off peak times as well as discounts in the restaurant, shop and for friends and family. The i360 has supported or partnered a wide range of charities and charity events including

the Rockinghorse Charity, Paddle Round the Pier, Wembley to Soweto foundation, Martlets Snail Campaign, the Trust for Developing Communities, Chestnut Tree House Charity, Team Domenica, Save Madeira Terraces, Argus community awards and the launch of the Mayor's Charity Bike ride.

- 3.10 The council has already benefited directly from the following cash payments made by the i360 so far:

| <b>Table B: Council net income received</b>                 | £                |
|---|------------------|
| Arrangement fees  | 543,300          |
| Utilisation fees  | 417,330          |
| Margin received on debt payments made so far*               | 1,282,268        |
| Retained business rates 49% of 2016/17 and 2017/18 payments | 201,790          |
| <b>Total direct surplus</b>                                 | <b>2,444,688</b> |
| *Currently margin due of £570k every 6 months               |                  |

- 3.11 The surplus has funded the i360 landscaping works, a £1.1m contribution to Madeira Terraces, festoon lighting along the seafront and a small part of the general fund budget from the retained business rates. There have been other indirect financial benefits from increased rents and business rates from the adjacent seafront arches and increased business rates from businesses that have expanded in the vicinity such as the 25% increase in covers at The Regency fish restaurant. Income from the Regency Square car park has increased by over £0.25m or 22.5% in the year since the i360 opened although an element of this increase is due to increased parking charges. The council also receives over £5,000 per annum in sitting out licences. Further S106 funding of 1% of ticket revenues will be paid by the i360 from November 2018 annually part of which will be used to initiate local projects and part to repay the loan on the council i360 landscaping works.
- 3.12 Performance of the shop has been below target but has improved through the second year of operation as improved design and layout has been implemented and knowledge has been gained about the product lines that sell well. However, the Sky-Bar has operated consistently above target and the decision to open the Sky-Bar all day has meant that overall income has been higher than expected despite the reduced visitor numbers.

#### **Action taken by the i360 during the year**

- 3.13 As soon as it became apparent that visitor numbers would be lower than expected action was taken to improve the financial performance of the attraction. Since Steve Bax started as Executive Director of the i360 last summer he has:
- Thoroughly reviewed and restructured all the operational and back office functions delivering ongoing savings of more than £450,000 per annum. It should be noted that operational and technical staffing costs increased after opening to reflect initial demand so savings achieved mean that the number of posts now reflects the original business plan.
  - Reviewed and tightly controlled all expenditure.
  - Reviewed and renegotiated where possible all external supplier contracts resulting in annual savings of £40,000.

- 3.14 New initiatives have been introduced to boost visitor numbers. For example a “kids go free” promotion in February not only boosted numbers by 36% but increased revenues by 8% and an experiment with “sky dining” in early March was a huge success and has been added into the diary with the next 2 events already fully sold out. Abseiling from the i360 pod known as the iDrop was launched by a charity event in April. The event raised almost £50,000 to help Rockinghorse buy a specialist X-ray machine for premature babies at the Trevor Mann Baby unit in the Royal Sussex County Hospital. The iDrop will operate before normal opening times at weekends and is expected to generate a new income stream of about £24,000 per annum.
- 3.15 A new website has been launched to improve the customer experience and make it easier to buy tickets online. A significant joint investment was made with the catering contractor in the restaurant which has improved the ambiance and takings. A new ice cream concession for sales on the outside terrace for busy days has been signed.

#### **Further Proposals by the i360 to boost visitor numbers and revenues**

- 3.16 There are a number of new initiatives which should increase visitor numbers which include:
- A partnership offer with Govia Thameslink starting in the summer.
  - Working closely with the Universities of Sussex and Brighton on graduate packages, student discounts and a student’s night on a Monday.
  - Developing closer links to the conference trade and developing conference packages.
  - Developing offsite ticket sales potentially at Brighton Railway Station and / or close to the sea end of West Street.

#### **Proposals to amend the Loan Agreement with the i360**

- 3.17 The terms of the loan agreement were agreed by Policy & Resources Committee on 6 March 2014. The key terms of the Loan Agreement are set out below:
- A loan facility of £36.222m which was fully drawn down.
  - The loan would be for 25 years from the opening of the i360 (i.e. it would be repaid by 2041).
  - The i360 would pay the council arrangement and utilisation fees of just under £1m.
  - The i360 would pay the council the full costs of servicing the Public Works Loans Board (PWLB) every 6 months on 30 June and 31 December each year so that the council is never out of pocket – each payment is just over £0.9m.
  - The i360 would pay a commercial margin of 3.75% on the loan to the council at the same time the PWLB payments are made – each payment is £0.57m or £1.14m per annum.
- 3.18 To date the i360 has made payments due to council in full and on time, however, this has required an additional cash injection from the shareholders in order to make the full December 2017 payment. Due to lower than anticipated visitor numbers the i360 will not have sufficient cash to make both the PWLB and

margin payments in full on 30 June 2018 and a further cash injection from the shareholders may be required to make the PWLB payment in full.

- 3.19 A successful and financially sustainable i360 could generate about £33.26m for the council over the next 24 years bringing the total net cash benefit to over £35m.

| Table C: Income source               | £ million |
|--------------------------------------|-----------|
| Margin on the loan                   | 27.36     |
| 50% of Business Rates                | 4.84      |
| 1% of ticket sales – S.106 agreement | 1.06      |
| Total                                | 33.26     |

- 3.20 The i360 is seeking to renegotiate the mezzanine loan they have with the LEP and to reschedule the payments of the margin to the council. The council as senior lender is acting as any commercial lender would, seeking to protect its investment by maintaining a viable business over the long term. The proposed rescheduling would mean that:

- The council would continue to be paid the semi-annual costs of servicing the PWLB loan so there would be no impact on local taxpayers.
- The council would receive £25,000 margin payment every 6 months with the rest of the margin deferred until sufficient money has been set aside to repay the LEP loan, except for June 2018 when there would be no payment and the December 2018 payment would be £50,000.
- The council will still receive the full margin payments subject to visitor number being at current levels or higher. If the visitor number should fall below 360,000 margin payments maybe deferred beyond 2041 but will attract interest on any payments made after 2041. The table below shows when key milestones will be reached for different visitor numbers. Officers will continue to negotiate an improved return beyond 2041 and will report the outcome of those discussions to the Committee.

| Table D: Visitor numbers                              | LEP loan and interest fully repaid                | Full margin payments start to council | Deferred margin fully repaid to council |
|---|---|---------------------------------------|---|
| 360,000 (current annual forecast to end of June 2018) | 2025 (full repayment not made but repayments end) | 2026                                  | 2041                                    |
| 412,400 (15% increase)                                | 2024  | 2025                                  | 2035                                    |
| 453,640 (25% increase)                                | 2022  | 2023                                  | 2028                                    |

- The margin and a proportion of the S.106 payment (estimated to be £45k in November 2018) would be sufficient to cover the cost of financing the £0.8m internal loan for the landscaping works estimated to be £60k pa and fund commitments made to the Regency Square Association. However, there would not be money available to fund the £50k annual maintenance of the festoon lighting which would become a service pressure on the 2019/20 revenue budget.
- Any deferred margin not repaid to the council by the end of the loan period would attract accumulated interest after 2041.
- The council should only agree to the permanent rescheduling of payments if the LEP reach a satisfactory outcome of the renegotiation of their loan which will be considered by the LEP Board in July.

3.21 The financial projections contained in appendix 1 are commercially sensitive and therefore confidential. They are based on a visitor target of 412,400 which is 15% above the current forecast for the year ending 30 June. Scaling down the revenue projections to reflect visitor numbers at current levels the i360 would still be financially viable long term meeting all its commitments to the council but over a longer timeframe as shown in Table D.

### **Performance reporting**

3.22 The council already receives daily visitor numbers and is represented at the monthly Board meetings in an observation role. Using this information from these sources regular performance reports will be prepared for Leaders meetings so that they are kept fully informed.

## **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

4.1 The i360 Board have offered an alternative restructuring proposal where the council could exchange payment of the margin for an equity share. It is possible that this proposal would not be State Aid compliant. It could result in greater overall payments to the council if visitor numbers are much higher than currently projected. However, overall payments would be significantly lower if visitor numbers do not increase as any surplus would be shared with the other shareholders once the repayments to the LEP end.

4.2 Another alternative would be to invoke the clauses in the loan agreement arising from the failure to make the full payments due to the council on 30 June 2018. These would allow the council to invoke step in rights and take over the operation of the i360. This would result in the loss of all investment funding for both the LEP and shareholders.

## **5. COMMUNITY ENGAGEMENT & CONSULTATION**

5.1 The i360 has received a wide range of supportive statements from local businesses, charities and other organisations. Businesses have focussed on the beneficial impact on tourism to the city and the improvements made to a previously run down part of the seafront.

- 5.2 The council is due to receive 1% of ticket sales in perpetuity to spend on local initiatives with about 25% of this sum allocated to fund part of the landscaping works and discussions continue with local organisations about how to spend the remainder.

## **6. CONCLUSION**

- 6.1 Despite the lower than anticipated visitor numbers the i360 has been a major revenue generator with over £12m gross income and £3m net profit achieved to date before financing costs are taken into account. A rescheduling of the council margin payments and changes to the LEP loan should secure the long term financial security of the i360 and ensure that the council receives over time the full amounts due under the original loan agreement and that the LEP loan is repaid.

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

### Financial Implications:

- 7.1 The proposed amendments to the loan agreement will provide a sustainable financial plan for the i360 based on at least the current level of visitors being maintained and, at a minimum, sufficient funding to cover the councils loan repayments to the PWLB relating to this project of £1.84m pa. In addition it will provide a small margin of £0.050m to meet existing commitments relating to the landscaping works around the i360. This means that the net margin repayments deferred will be approximately £1.09m per annum.
- 7.2 The proposal relies on a successful renegotiation with the LEP and any margin above the councils minimum payments will be set aside to repay the LEP in the first instance. Based on the current forecast usage, this will be in 2041, however, with a 15% increase in patronage the LEP loan will be repaid in 2024. Once the LEP loan is repaid any additional profit will be used to make full margin repayments to the council and commence repayment of the deferred margin payments. Any deferred margin would not be subject to interest charges as part of this amendment unless the debt continues beyond the agreed loan period.
- 7.3 At this stage the funding amendments represent a viable option for the ongoing operation of the i360 and provides for the deferred margin to be repaid. However the reliance on the visitor numbers being maintained as a minimum represents a financial risk to the council. The continued focus of the i360 to boost visitor numbers and revenue will help to mitigate this risk and council oversight of performance will be crucial in managing the risk. Ultimately if agreed payments are not made to the council then the council has step in rights to take over the running of the attraction.
- 7.4 As part of the 2017/18 budget, £0.050m pa of the margin was earmarked to fund seafront festoon lighting and maintenance and therefore this resource will not be available until full margin payments resume and this shortfall will need to be taken into account in budget projections for future years.
- 7.5 The additional business rates generated from the attraction and increased parking income from Regency Square Carpark have been included in the council budget assumptions.



*Finance Officer Consulted:* James Hengeveld

*Date:* 25/05/18

Legal Implications:

- 7.6 Loans such as this comply with state aid law if they meet the market economy operator principle (MEOP). The key question is whether a commercial lender would agree to these restructuring proposals. Council Finance Officers have confirmed that the restructuring of the loan does meet this test.
- 7.7 The council's legal team and external solicitors will advise on the drafting of the revised legal documents.

*Lawyer Consulted:* Alice Rowland

*Date:* 4/06/2018

Equalities Implications:

- 7.8 The i360 is accessible throughout to people with disabilities and has improved access to the seafront lower promenade by the building of a new lift to the east. Unisex toilets are open to members of the public who are not necessarily using the centre or visiting the attraction. The i360 has introduced a range of concessions for local residents and free tickets for local schools. The i360 is a living wage employer and does not offer zero wage contracts. There is an apprenticeship scheme in place and training opportunities for staff at all levels of the organisation.

Sustainability Implications:

- 7.4 The i360 is low energy use with energy recovery when the pod is descending. The installation of heat pumps provides air heating and cooling in the pod and main building and will provide an estimated 30% of the total thermal heating energy use. All electricity is purchased from renewable energy sources. Grey water and rainwater recycling has been included. Purchasing policies are based on sourcing environmentally friendly local products particularly the sky bar, café and restaurant.

Any Other Significant Implications:

- 7.5 All significant implications are dealt with in the body of the report.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. British Airways i360 Limited – Restructure Proposal – Exempt Category 3

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

None

### **Background Documents**

None



|                         |  |  |                          |
|-------------------------|--|--|--------------------------|
| <b>Subject:</b>         | <b>Update on Royal Pavilion and Museums Governance</b>       |  |                          |
| <b>Date of Meeting:</b> | <b>14 June 2018</b>  |  |                          |
| <b>Report of:</b>       | <b>Executive Director, Economy Environment &amp; Culture</b> |  |                          |
| <b>Contact Officer:</b> | <b>Name:</b>   | <b>Val Birchall</b>                      | <b>Tel: 01273 292571</b> |
|                         | <b>Email:</b>  | <b>val.birchall@brighton-hove.gov.uk</b> |                          |
| <b>Wards affected:</b>  | <b>All</b>   |  |                          |

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The Policy, Resources and Growth Committee (PRG) agreed at its meeting on 25<sup>th</sup> January 2018 to transfer the Royal Pavilion & Museums service (RPM) into a charitable trust, which would also manage the Brighton Dome, Brighton Festival and Brighton Music and Arts Service.
- 1.2 Following concerns expressed by staff, and in discussion with trade unions, the process of transfer has not progressed and an external expert review has been commissioned to further explore of all of the options and allow time for further meaningful engagement with staff and unions.
- 1.3 During the project process, some operational issues have been identified in the service, and the period of review will also enable some of these challenges to be addressed through a “ready for change” programme.
- 1.4 This report sets out the proposed timescale and process for the external review and content of the “ready for change” programme, and seeks authority for these proposals. It is anticipated that this will ensure a sustainable future for the service, while protecting and caring appropriately for the city’s assets and collections. In turn it will ensure future generations can fully benefit from what is an internationally renowned heritage and cultural offer.

**2. RECOMMENDATIONS:**

- 2.1 That the Committee defers the implementation of its decision taken on 25<sup>th</sup> January 2018 to allow for further review of the governance options for the RPM.
- 2.2 That the Committee notes the timescales and process for the review as set out in Section 3 below.

**3. BACKGROUND INFORMATION**

- 3.1 The RPM comprises 5 museums, including nationally and internationally significant collections, and associated activities. It is an Arts Council England “National Portfolio Organisation” under a four year funding agreement, and also leads museum development services for South East England.

- 3.2 A modernisation project has examined how to safeguard the future of the service in the changing operational context and challenging financial environment of reduced council budgets and growing social care cost pressures. The work looked at alternatives to the City Council directly managing the service in order to achieve a sustainable future, to enable all the sites and the services within the RPM to continue to deliver on the priorities for the city and to maintain and build on the success of the RPM as a nationally significant museum service.
- 3.3 Work was commissioned in 2016 to explore the options for future management of the RPM. The report provided by PwC recommended moving the service to a charitable third party operator, as this model offers the best opportunities to address the planned budget reductions by enabling increased income to be generated from charitable and private sources, and taking advantage of the benefits of Gift Aid, together with savings from business rate relief.
- 3.4 In January 2018 the council's Tourism Development & Culture (TDC) and PRG Committees approved the necessary steps to transfer the RPM service, to be managed under contract as part of a trust based on the existing Brighton Dome & Festival Ltd (a charitable company established by the Council) under a twenty-five year arrangement. This proposal carried the confidence of the Council's key stakeholders and would have enabled the reunification of the Royal Pavilion Estate.
- 3.5 However, a significant proportion of staff, supported by their Trade Unions, were unhappy with this proposal to the point where they considered taking industrial action. This clearly demonstrated that despite a strong case being made, efforts to engage the staff team in the process of developing and owning the model had been insufficiently compelling and that staff did not have confidence in the council's proposals. At the same time, while the service has been engaged in developing plans for change, managers have identified a number of key issues for the service, some of which are outside its control, which need to be addressed regardless of the future governance option.
- 3.6 As a result, the decision of TDC and PRG Committees has not yet been implemented, while proposals for an external expert review, together with an exercise to review the RPM and ensure it is ready for future changes, have been developed. Together these will ensure that Members and staff have a comprehensive view on a like-for-like comparison basis of the various possible delivery models, informed by the most up to date management information, and that the service is fit for purpose in any event.
- 3.7 The external expert review will take place over the period to September 2018, alongside the "ready for change" interventions, and will include a full programme of engagement with staff, to inform and be informed by work to evaluate all possible options and to develop financial models for a small number of preferred options for consideration by committee in Autumn 2018.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 To proceed to implement the decision of PRG in January 2018; this is likely to cause industrial relations issues which in turn could make the implementation

difficult to complete and risk the confidence of other stakeholders.

- 4.2 To close the project, and keep the service in-house without further review; this is likely to miss opportunities to increase earned and contributed income and to benefit from reduced costs, as well as delaying plans to reunify the Royal Pavilion Estate, meaning planned savings would be more difficult to deliver.

## 5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 n/a

## 6. CONCLUSION

- 6.1 Taking time to review all the possible options and permutations of options together on an equal footing, with involvement of stakeholders and engagement of staff, will ensure that the option chosen is the most sustainable and robust approach, and can carry the confidence of partners. Reviewing the operational issues which are constraining the service (such as its information technology) alongside the options, will create a focussed period during which the service can prepare itself for the future. This will include supporting the staff with their professional development, and build good relations with staff and a shared sense of purpose.

## 7. FINANCIAL & OTHER IMPLICATIONS:

### Financial Implications:

- 7.1 Modernisation funding is available to finance the additional due diligence work as detailed above and facilitate the modernisation of the service. The savings target of £0.392m identified in the 4 Year Integrated Service & Financial Plan has already been deferred until the financial year 2021/22 and the impact of the delay in implementation will need to be taken into account in the financial modelling for presentation to Committee in due course. Officers will continue to develop the zero-based budgeting approach as previously reported.

*Finance Officer Consulted: Michelle Herrington Date: 01/06/18*

### Legal Implications:

- 7.2 The report taken to PRG in January set out the legal implications relating to the transfer of the RPM service. The Committee has the power to agree the recommendation contained in this report.

*Lawyer Consulted: Alice Rowland Date: 01/06/18*

### Equalities Implications:

- 7.3 n/a

### Sustainability Implications:

- 7.4 n/a

Any Other Significant Implications:

7.5 n/a

## **SUPPORTING DOCUMENTATION**

### **Background Documents**

1. Royal Pavilion and Museums Trust Arrangements – Progress Update Report to TDC Committee 11 January 2018
2. Royal Pavilion and Museums Trust Arrangements Report to PRG Committee 25 January 2018

|                          |   |   |                          |
|--------------------------|---|---|--------------------------|
| <b>Subject:</b>          | <b>Our People Promise – Developing Our Employer Offer</b> |   |                          |
| <b>Date of Meeting:</b>  | <b>14<sup>th</sup> June 2018</b>                          |   |                          |
| <b>Report of:</b>        | <b>Executive Director Finance &amp; Resources</b>         |   |                          |
| <b>Contact Officer:</b>  | <b>Name:</b>  | <b>Alison McManamon</b>   | <b>Tel: 01273 290511</b> |
|                          | <b>Email:</b>   | <b><a href="mailto:Alison.mcmanamon@brighton-hove.gov.uk">Alison.mcmanamon@brighton-hove.gov.uk</a></b> |                          |
| <b>Ward(s) affected:</b> | <b>All</b>  |   |                          |

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The purpose of this report is to update the Committee on the development of the council's People Promise, a programme of work to develop a clear offer to current and future staff that will retain and attract the workforce we need to serve the city, both now and into the future.

**2. RECOMMENDATIONS:**

- 2.1 That the Committee approve the on-going programme of work to improve our employer offer, and provide member endorsement for Our People Promise as our employer brand.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 The council is one of the largest employers in Brighton and Hove with approximately 4,300 staff directly employed, and a further 4,600 in schools.

- 3.2 The council's need to create a reputation as an exemplar employer in the city is important to ensure:

- we are able to recruit and retain the staff needed to deliver services and meet the diverse needs of the city's residents and visitors
- the council is a high performing organisation;
- an inclusive working environment where there is equality of opportunity is in place; and
- there is a culture that supports staff to be their best.

- 3.3 Reduced budgets mean that we will increasingly achieve results by collaborating with our partners, sharing services, and enabling citizens and as an employer we need to ensure we are developing our staff to meet these challenges. With a more diverse workforce we have the potential to engage better with a wider range of communities.

3.4 Whilst there are a number of positive indicators related to our employer performance (such as some improving staff survey results and a negative gender pay gap), our workforce data shows that there remain issues that need to be addressed. These have been further analysed through staff focus groups and facilitated sessions with the Executive Leadership Team.

3.5 The key issues are as follows:

- Feedback from the staff survey that tells us it is important:
  - To have a clearer sense of direction;
  - For staff to feel more valued;
  - To manage change more effectively; and
  - To challenge silo working.
- An above average sickness rate for 2017/18 of 10.57 days against a target of 9.7 days and a significant proportion of sickness attributable to mental health issues (see appendix 1).
- Recruitment and retention issues in some roles across the council (e.g. social work and planning) and evidence to show this has links to our pay and benefits package.
- Our workforce equalities profile is not reflective of the community we serve, and whilst some improvements have been made these have been slow and have not kept pace with the changing make-up of our community (see appendix 2).
- We have an ageing workforce who may require additional health and wellbeing support, and we find it more difficult to attract younger staff through our recruitment processes (see appendix 3).

3.6 The LGA peer review (April 2017) acknowledged the important role that our Trade Unions play in the future of the organisation, but the need to improve relationships was recognised by all. The development of Our People Promise through co-creation (see paragraph 3.9) is key to this. We are working jointly with our Trade Unions on shared aims such as improving the wellbeing of our workforce, and increasing the informal resolution of disputes through early intervention and the use of mediation.

3.7 By drawing together a planned programme of work to address these issues we will match the ambitions outlined in paragraph 3.2.

3.8 In addition, to provide clarity and effective communication of our employer offer we have developed a branding that reflects our commitment to staff, and runs parallel to the council's Customer Promise. Our People Promise (see below) is based on 5 key commitments to staff and will provide a structure for communicating the changes we are making:





- 3.9 A key under-pinning for this work has been its co-creation with staff and other stakeholders to ensure we are creating something sustainable and meaningful, rather than a 'top down' programme that staff may struggle to buy into. Stakeholders here include officers from the front-line and 'back office', managers, representatives from both trade unions and the Workers Forums, and representatives from the communications and public health teams.
- 3.10 Significant changes have already been delivered, and some examples are as follows:
- Rated appraisal supported by 360 degree feedback for senior managers providing clearer performance management processes;
  - Organisational Development training for key managers and Business Partners to support better change management;
  - A workplace mediation offer to encourage informal resolution of issues and reduce formal grievances and disputes;
  - A new market supplement policy that has addressed some of our recruitment and retention issues in key roles (e.g.in Building Control, Social Work);
  - Establishment of a staff wellbeing steering group and the completion of a well workforce survey to inform future wellbeing support for staff;
  - Provision of mental health training for HR advisors (training for managers to follow);
  - Implementation of First Care which has supported improvements in the completion of return to work processes and provided immediate access to medical advice for staff;
  - Community engagement on recruitment to key roles to encourage applications from diverse groups (this started with the Field Officer roles and will be used in future recruitment processes).
- 3.11 Supporting the health and wellbeing of our workforce has been progressed as a particular priority in response to our staff survey result in this area with 89% of our workforce seeing this as an important area, and only 53% providing a positive response to statement: 'I believe the organisation cares about employee health and wellbeing'.
- 3.12 The wellbeing survey has identified the following areas as most important to our staff and these areas will therefore be prioritised:
- NHS health checks
  - Pensions advice
  - Physical activity
  - Addressing mental health and stress (all more than 60%)
  - The physical working environment
- 3.13 The success of Our People Promise will be measured by a number of indicators as outlined in 3.16 below, but additional benefits are also being realised such as:
- an increase in the number of grievances resolved informally over the last year following the roll-out of mediation from 35% in 16/17 to 40% in 17/18;

- An increase in the rate of return to work interviews recorded as completed following the implementation of First Care from 62% to 89%.
- 3.14 Further activity is planned for the near future, and some key examples are as follows:
- A new staff benefits portal that will offer a range of discounts for shopping, holidays and days out, financial advice and many other benefits all available on an easy to access portal;
  - Re-launch of the council's volunteering policy offering support for staff to get involved in volunteering as part of our approach to wellbeing;
  - A package of support for staff that have caring responsibilities.
- 3.15 Whilst there has been significant progress there is still much to do to and there are many other projects that are either underway or planned as detailed in the project plan (see appendix 4).
- 3.16 The success of Our People Promise (see appendix 5) will be reported to Committee periodically, and measured through:
- An improvement in our well workforce survey results (January 2019);
  - An improvement in our staff survey results (April / May 2019);
  - A reduction in our sickness rates;
  - A reduction in our agency spend;
  - An improvement in our workforce diversity profile.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 Our People Promise is supported by modernisation funding (see financial implications), HR resource, and support from other teams across the council. The possibility of engaging external support was considered, but this option would be more costly and less sustainable. In addition, our commitment to co-creation with staff is seen as vital to its success. Our People Promise is not intended as a one-off piece of work, rather a programme that will continue and iterate in response to new challenges that emerge over time.
- 4.2 The option of leaving our employer offer as it is currently does not address the issues identified in section 3.5, and would have a detrimental impact on the delivery of other modernisation work streams.
- 4.3 It is therefore concluded that this work should be progressed with existing resources, supplemented as necessary with regard to specific projects by modernisation funding. Any additional funding is subject to a business case and ongoing governance by the Corporate Modernisation Delivery Board and Members Modernisation Oversight Group.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 Engagement has taken place with staff via focus groups, our recognised Trade Unions, our workers forums and the council's leadership teams.

- 5.2 Further engagement is currently being planned to help us understand the views of prospective staff and applicants so that we can further shape our offer and reputation as an employer.

## 6. CONCLUSION

- 6.1 To support the council as a high performing organisation it is vital that we are a great employer, and that we build our reputation to ensure we can attract and retain the right staff.

## 7. FINANCIAL & OTHER IMPLICATIONS:

### Financial Implications:

- 7.1 During 2018/19 the development of 'Our People Promise' will be supported by up to £200K modernisation funding within the available funding envelope approved by full Council in February 2018. Any support will be subject to approval of a business case by the Corporate Modernisation Delivery Board (CMDDB) as required by full Council. The business case will identify the performance measures and indicators by which success will be monitored, and are summarised in appendix 5. There are no other financial implications arising from this work which will be supported from existing resources across the organisation.

*Finance Officer Consulted: Nigel Manvell*

*Date: 14/05/18*

### Legal Implications:

- 7.2 The Council is under a statutory duty to promote equality of opportunity and to eliminate discrimination (Public Sector Equality Duty). The implementation of 'Our People Promise', would be evidence of BHCC's compliance with that duty.

*Lawyer Consulted: Carol Haynes*

*Date: 24/5/18*

### Equalities Implications:

- 7.3 Our People Promise will support the council to deliver its commitments and obligations to be a fair employer, and to have a workforce that reflects the community we serve.

*Sarah Tighe-Ford*

### Sustainability Implications:

- 7.4 None identified

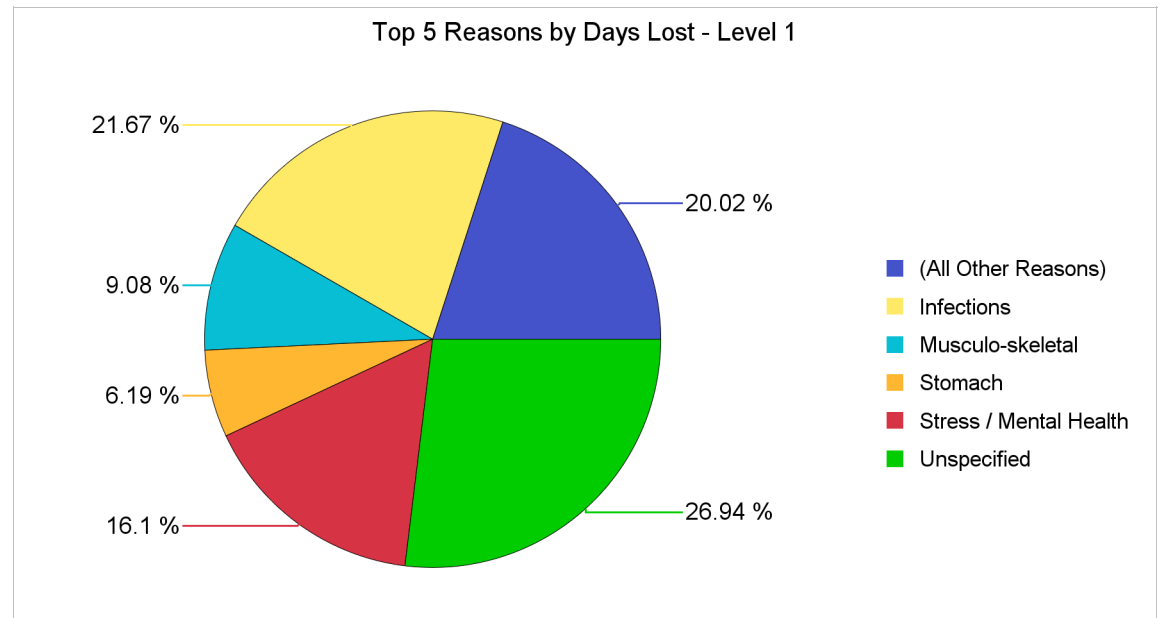
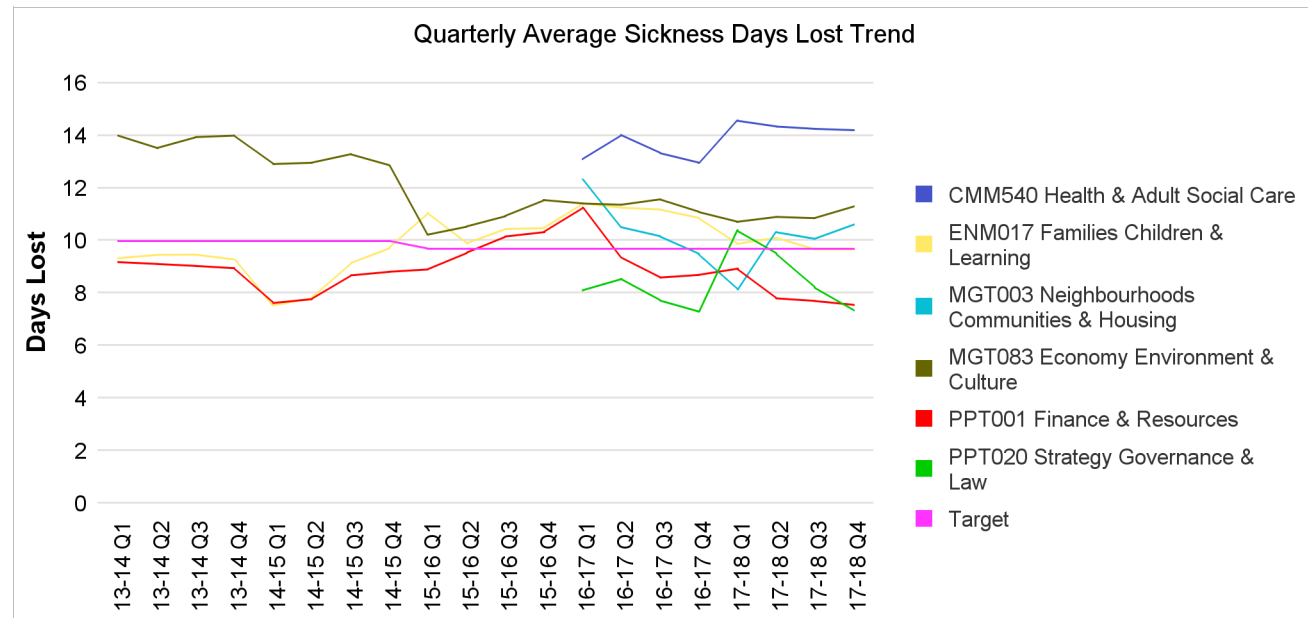
## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. 2018/19 Sickness Data
2. Workforce Equalities Profile
3. Workforce Age Profile
4. Our People Promise project plan
5. Measures document

Sickness Report for the period: 01/01/2018 to 31/03/2018

| Level 1                                     | Previous Quarter | Previous Year End | Projected Outcome | Ave Days Lost | Short Term % | Long Term % | Workforce absent | Average HC | Average FTE |
|---|------------------|-------------------|-------------------|---------------|--------------|-------------|------------------|------------|-------------|
| <b>B&amp;HCC</b>                            | 10.4             | 10.59             | 10.57             | 2.94          | 49.98%       | 50.02%      | 44.14%           | 4,298      | 3,750.57    |
| Level 2                                     | Previous Quarter | Previous Year End | Projected Outcome | Ave Days Lost | Short Term % | Long Term % | Workforce absent | Average HC | Average FTE |
| CMM540 Health & Adult Social Care           | 14.26            | 12.97             | 14.21             | 3.8           | 41.36%       | 58.64%      | 47.14%           | 717        | 595.87      |
| ENM017 Families Children & Learning         | 9.67             | 10.87             | 9.67              | 2.61          | 56.73%       | 43.27%      | 44.16%           | 1,254.5    | 1,001.52    |
| MGT003 Neighbourhoods Communities & Housing | 10.07            | 9.5               | 10.62             | 3.28          | 52.61%       | 47.39%      | 49.26%           | 570.5      | 521.43      |
| MGT083 Economy Environment & Culture        | 10.86            | 11.1              | 11.31             | 3.38          | 38.88%       | 61.12%      | 40.10%           | 1,030      | 955.21      |
| PPT001 Finance & Resources                  | 7.71             | 8.7               | 7.56              | 1.94          | 76.67%       | 23.33%      | 43.54%           | 553.5      | 508.27      |
| PPT020 Strategy Governance & Law            | 8.22             | 7.3               | 7.35              | 1.34          | 80.85%       | 19.15%      | 37.27%           | 190.5      | 168.28      |

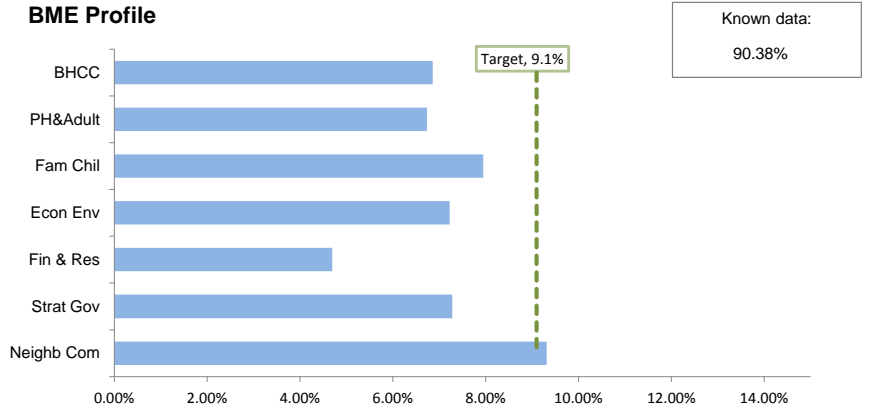




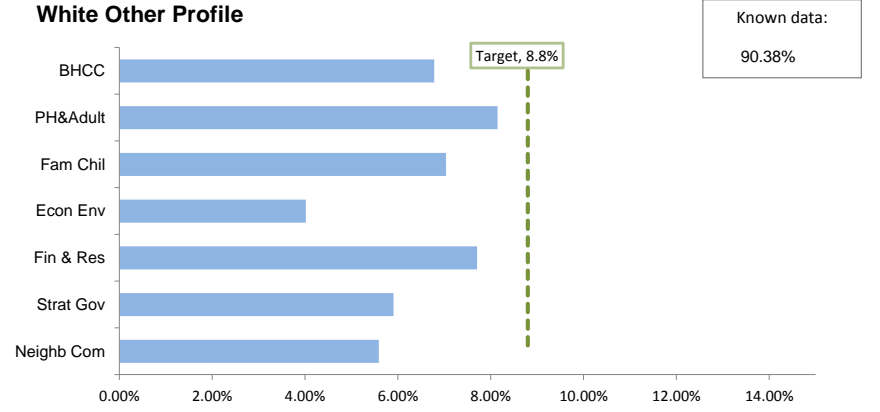
## Workforce Equality Profile - As at end of March 2018 - BHCC

### Ethnicity Profile

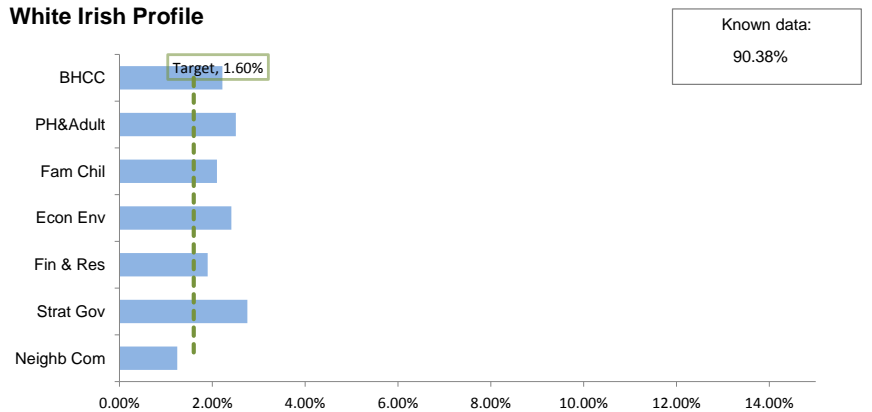
#### BME Profile



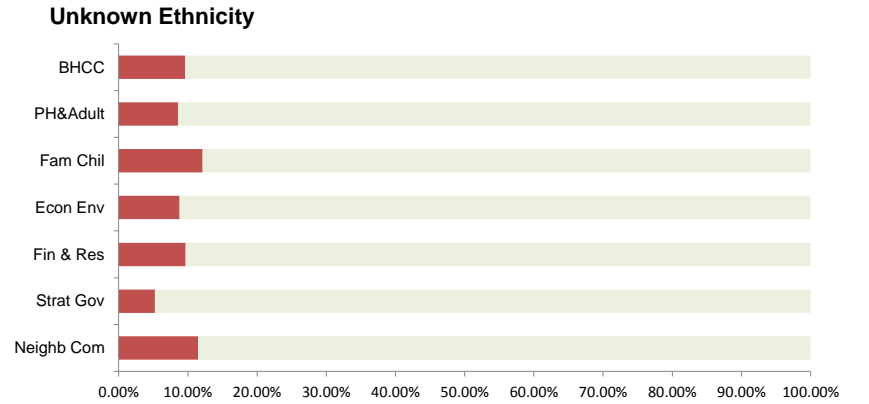
#### White Other Profile



#### White Irish Profile



#### Unknown Ethnicity

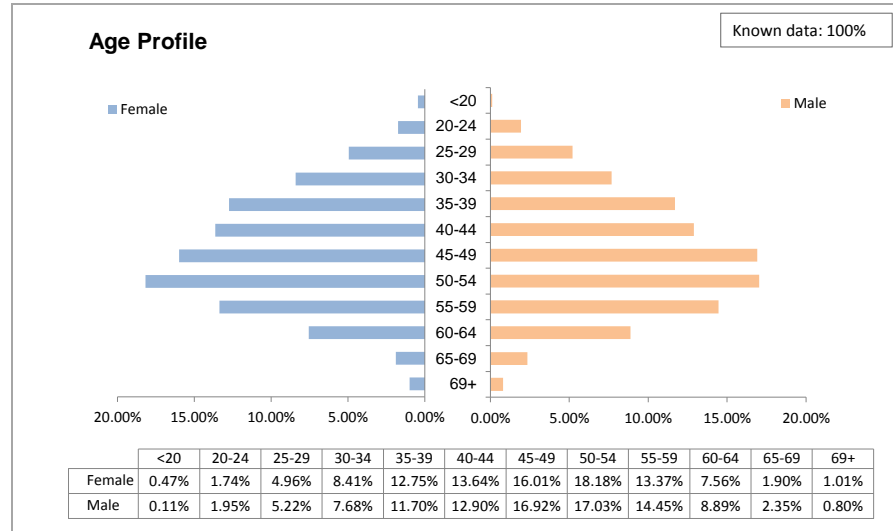
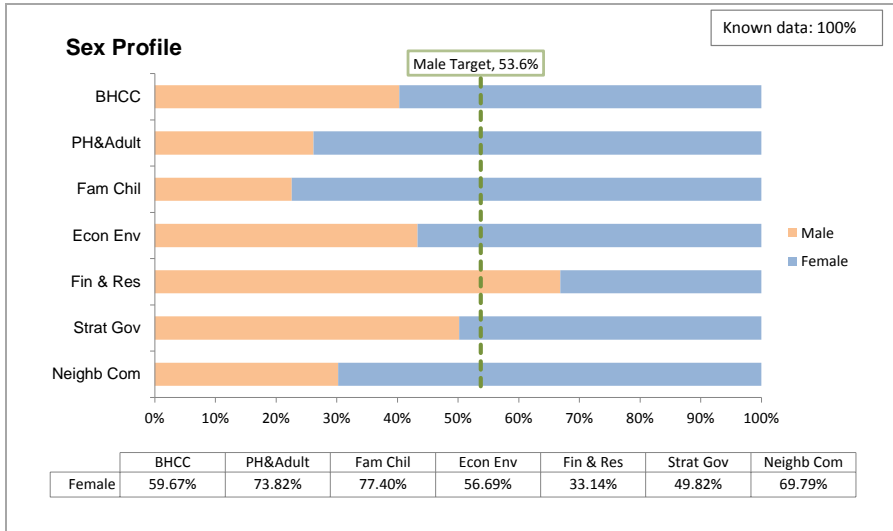




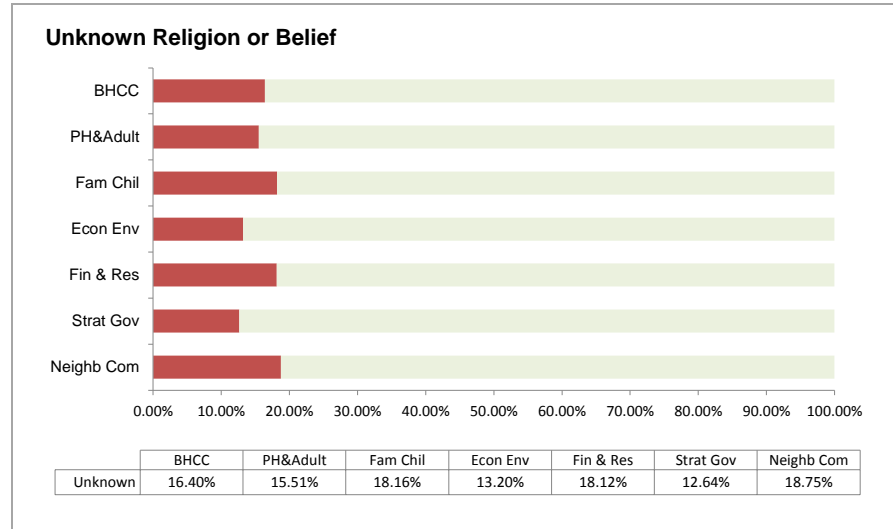
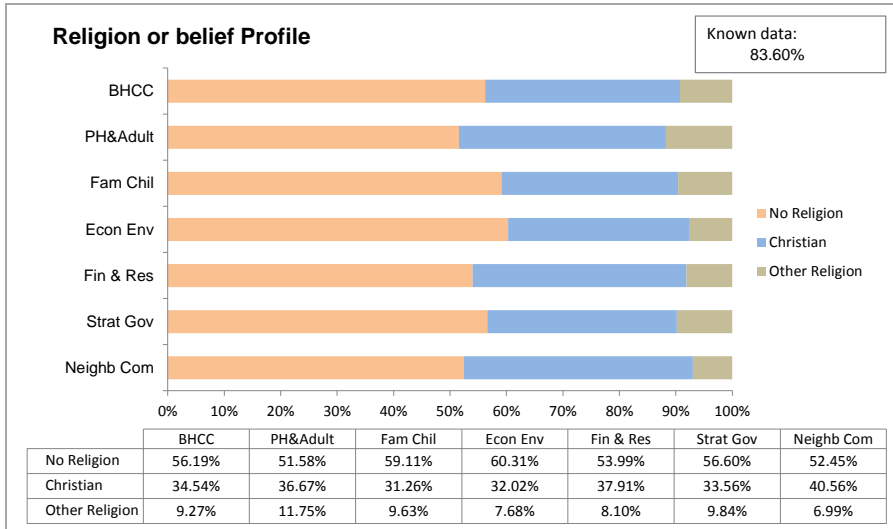


## Workforce Equality Profile - As at end of March 2018 - BHCC

### Sex Profile and Age Profile



### Religion or Belief Profile





| Our People Promise Programme Plan   | DEC  | JAN  | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | JAN  | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC |   |
|---|------|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|---|
|   | 2017 | 2018 |     |     |     |     |     |     |     |     |     |     |     | 2019 |     |     |     |     |     |     |     |     |     |     |     |   |
| <b>CULTURE &amp; BRAND</b>  |      |      |     |     |     |     |     |     |     |     |     |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Our People Promise Development - focus groups, engagement, branding, communications             | █    | █    | █   | █   | █   | █   | █   | █   |     |     |     |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| <b>HEALTH &amp; WELLBEING</b>   |      |      |     |     |     |     |     |     |     |     |     |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Implementation of First Care and 12 month review  | █    |      |     |     |     |     |     |     |     |     |     |     | █   | █    | █   | █   |     |     |     |     |     |     |     |     |     |   |
| Attendance Management Procedure Review including reasonable adjustment guidance changes         |      |      |     | █   | █   | █   | █   | █   | █   | █   | █   | █   |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Workplace Wellbeing Survey  |      | █    |     |     |     |     |     |     |     |     |     |     |     | █    |     |     |     |     |     |     |     |     |     |     |     |   |
| Wellbeing Calender of Events and implementation of initiatives following the survey             |      |      | █   | █   | █   | █   | █   | █   | █   | █   | █   | █   | █   |      | █   | █   | █   | █   | █   | █   | █   | █   | █   | █   | █   | █ |
| Mental Health Training for managers   |      |      |     |     |     |     | █   |     |     | █   | █   |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Re-launch of the volunteering policy for staff  |      |      |     |     |     |     | █   | █   | █   | █   |     |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Launch of Carers passport for staff   |      |      |     |     |     |     | █   | █   |     |     |     |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Menopause Support   |      |      |     |     |     |     |     |     |     | █   | █   | █   |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| <b>PERFORMANCE &amp; TALENT MANAGEMENT</b>  |      |      |     |     |     |     |     |     |     |     |     |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Rated & Moderated Reviews Tiers 1-4   |      | █    |     |     |     |     | █   | █   |     |     |     | █   | █   |      |     |     |     |     | █   | █   |     |     |     |     | █   | █ |
| Rollout of Behaviour framework and new Performance development process                          |      |      |     |     |     | █   | █   | █   |     |     |     |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Review of Corporate Learning Programme offer (tier 5 and below)                                 |      |      |     |     |     |     |     |     |     | █   | █   | █   | █   |      |     |     |     |     |     |     |     |     |     |     |     |   |
| New Induction Programme   |      |      |     |     |     |     | █   |     |     |     |     |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Coaching and mentoring offer  |      |      |     |     |     |     |     |     |     | █   | █   | █   | █   |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Leadership Development Programme  |      |      |     |     |     | █   | █   | █   | █   | █   | █   | █   | █   | █    | █   | █   | █   |     |     |     |     |     |     |     |     |   |
| Future Leaders Programme  |      |      |     |     |     |     |     |     |     | █   | █   | █   | █   | █    | █   | █   | █   | █   | █   | █   | █   | █   | █   | █   | █   | █ |
| <b>RESOURCING, REWARDS &amp; BENEFITS</b>   |      |      |     |     |     |     |     |     |     |     |     |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Implementation of agreed principles for effective Change & organisational development           |      |      |     |     |     |     | █   | █   | █   | █   | █   | █   | █   |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Implementation of new staff benefits portal   |      |      |     |     |     |     |     |     |     | █   | █   | █   |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Recruitment - implementation of new recruitment system and more flexible methods of recruitment |      |      |     |     |     |     | █   | █   | █   | █   | █   | █   | █   | █    | █   | █   |     |     |     |     |     |     |     |     |     |   |
| <b>EQUALITY &amp; INCLUSION</b>   |      |      |     |     |     |     |     |     |     |     |     |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Staff Survey 2019   |      |      |     |     |     |     |     |     |     |     |     |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Mediation / early resolution of disputes  | █    |      |     |     |     |     | █   | █   |     |     |     |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Global HPO review of equality practices   |      |      |     |     |     | █   | █   | █   | █   | █   |     |     |     |      |     |     |     |     |     |     |     |     |     |     |     |   |
| Implementation of Global HPO recommendations  |      |      |     |     |     |     |     |     |     |     | █   | █   | █   | █    | █   | █   |     |     |     |     |     |     |     |     |     |   |



## Appendix 5

| Benefit                               | Measurement  | Baseline                                  | Baseline explanation                                 | 2017/18 Target | Target explanation                        | Owner            | Measurement Frequency | Where reported |
|---------------------------------------|--|---|--|----------------|---|------------------|-----------------------|----------------|
| <b>Increase in staff satisfaction</b> | Staff Survey :<br>“I feel there is a clear sense of direction in the organisation”                           | 37%                                       | 2017 figure  | 47%            | 10% identified as significant shift       | Alison McManamon | Bi-Annual             | Staff Survey   |
|                                       | Staff Survey:<br>“Changes in my service are led, managed and supported in an open way”                       | 46%                                       | 2017 figure  | 56%            | 10% identified as significant improvement | Alison McManamon | Bi-Annual             | Staff Survey   |
|                                       | Staff Survey:<br>“The council feels like one big team working collaboratively for the good of our customers” | 23%                                       | 2017 figure  | 33%            | 10% identified as significant improvement | Geoff Raw        | Bi-Annual             | Staff Survey   |
| <b>Improved staff wellbeing</b>       | Days lost to sickness per year   | 10.95                                     | Days per employee per annum at the end of Q4, 16/17. | 9.3            | 15% reduction                             | Dave Kuenssberg  | Quarterly             | FirstCare/PIER |
|                                       | Improved results in staff wellbeing  | TBC following survey analysis – June 2018 |  |                |   |                  |                       |                |

## Appendix 5

| Benefit   | Measurement                                     | Baseline  | Baseline explanation  | 2017/18 Target | Target explanation   | Owner            | Measurement Frequency               | Where reported   |
|---|---|---|---|----------------|--|------------------|-------------------------------------|--|
|   | survey  |   |   |                |  |                  |                                     |  |
| <b>A more diverse workforce</b>                                     | Improvement in workforce diversity              | Various diversity targets                           | These are set out in our Corporate Performance Indicator Report | As already set | Council's workforce is monitored against targets set in relation to the make-up of the city's population | Alison McManamon | Annual (& quarterly in OPD reports) | Corporate Performance Indicator Report to ELT & annual Workforce Equalities Report |
| <b>Reduction in use of agency staff to cover hard to fill posts</b> | Reduction in spend and in length of assignment  | £7,5m   | 2016-17 figure  | £6.1m          | 20% reduction<br>Is significant shift  | Katie Ogden      | Quarterly                           | Quarterly MI report  |
| <b>Improved effectiveness of leadership and management</b>          | Staff survey management effectiveness indicator | TBC following discussion with Ixia (September 2018) |   |                |  | Alison McManamon | Bi-annual                           | Staff Survey   |

|                          |  |  |                          |
|--------------------------|--|--|--------------------------|
| <b>Subject:</b>          | <b>Taking of Lease for primary healthcare centre at Preston Barracks</b> |  |                          |
| <b>Date of Meeting:</b>  | <b>14 June 2018</b>  |  |                          |
| <b>Report of:</b>        | <b>Executive Director Economy Environment &amp; Culture</b>              |  |                          |
| <b>Contact Officer:</b>  | <b>Name:</b>   | <b>Angela Dymott</b>   | <b>Tel: 01273 291450</b> |
|                          |  | <b>Robert Crossan</b>  | <b>01273 291442</b>      |
|                          | <b>Email:</b>  | <a href="mailto:angela.dymott@brighton-hove.gov.uk">angela.dymott@brighton-hove.gov.uk</a>   |                          |
|                          |  | <a href="mailto:robert.crossan@brighton-hove.gov.uk">robert.crossan@brighton-hove.gov.uk</a> |                          |
| <b>Ward(s) affected:</b> | <b>Hollingdean &amp; Stanmer</b>   |  |                          |

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 Further to the recent disposal of the Preston Barracks regeneration site to the developer Cathedral (U+I) and the University of Brighton (UoB), the council has been working with the development partners and NHS Brighton & Hove Clinical Commissioning Group (BHCCG) to secure the delivery of a new primary healthcare centre on the site.
- 1.2 The regeneration project is at a critical point with the developer requiring certainty but where the Clinical Commissioning Groups are unable to enter an Agreement for Lease on behalf of their service providers. In order to now secure the premises to enable detailed design work to begin and a further planning application to be made to facilitate alterations to the original layout of the site, it is proposed that the council signs an agreement to take a lease prior to completion of the construction, to then either assign this lease, or sublet the premises to the GP practices for occupation.

**2. RECOMMENDATIONS:**

That the Committee:-

- 2.1 Authorises entering into an agreement for lease which commits the council to taking a lease of the proposed primary healthcare centre on market terms subject to securing an indemnity from BHCCG to cover any costs which the council incurs, including rent, arising from the taking of the lease.
- 2.2 Grants delegated authority to the Executive Director for Economy, Environment & Culture and the Assistant Director of Property & Design to negotiate and enter into the agreement for lease, the lease and the indemnity from BHCCG and take any other necessary steps to secure the delivery of a new primary healthcare centre.

### **3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 The council sold the Preston Barracks site to development partners Cathedral (U+I) and UoB in February of this year to deliver a £150 million regeneration scheme. The site was sold after planning committee was minded to approve planning permission in September 2017 subject to a Section 106 Agreement being signed and planning permission was granted in December 2017.
- 3.2 The delivery of the new primary healthcare centre on the Preston Barracks site forms part of the Greater Brighton One Public Estate Programme's project portfolio. Established in November 2016, the Programme aims to facilitate and enable the range of local, regional and national public sector partners to work jointly on public property and land initiatives to get more from their collective estate through sharing and collaboration. The objectives of the Programme are to:
- Deliver more integrated and customer-focused services
  - Generate efficiencies (capital receipts, income and reduced running costs)
  - Create economic growth (new homes, employment space and jobs)
- 3.3 To date, the Programme has secured over £1.6m in Government funding to support the development and delivery of 13 projects located across the Greater Brighton City Region. This includes a £45,000 award to the primary healthcare centre at Preston Barracks, to fund the progression of the healthcare brief, stakeholder consultation and the development of the business case necessary to secure BHCCG and wider NHS approvals. As the lead authority for the Programme, the council is taking a principal role in facilitating closer co-ordination and partnership working between the public sector partners, developers and stakeholders to support the successful delivery of the project.
- 3.4 Through the partnership working of the developers it was agreed as a condition of the planning consent to use best endeavours to reach an agreement with a medical provider within three months of the planning decision and to, within two months of this, re-submit plans for the delivery of a D1 Medical Centre on site with a floor space of circa 900 – 1,000 sq.m. The area earmarked for the proposed primary healthcare centre is at ground floor level of residential Blocks C and D, these forming the central row of development on the Preston Barracks site. A site plan is attached as Appendix 1.
- 3.5 Whilst these deadlines have not been met, Cathedral (U+I) are continuing to work with all parties to reach agreement. It is now imperative that terms are agreed for the space, to enable Cathedral (U+I) to instruct detailed design so as not to impact on the delivery of the wider regeneration programme.
- 3.6 Under the current programme, construction of the primary healthcare centre is due to start on site in Q2 2019 with completion anticipated in Q2 2021.
- 3.7 In order for this to proceed, Cathedral (U+I) have indicated that they need certainty of healthcare provision at the site in order to incur the additional costs associated with detailed design, planning and construction.
- 3.8 BHCCG is proceeding through the NHS due diligence and approvals processes



in order to secure the necessary approvals in respect of NHS revenue funding for the primary healthcare centre. However, the NHS and the commercial timelines do not align and as a result the GP practices are currently unable to execute an agreement for lease.

- 3.9 In order to reach an agreement to give the developer certainty about the build project and ultimately to ensure that there is space made available for primary healthcare on this site, it is recommended that the council undertakes the necessary negotiation to agree terms for the lease of the premises.
- 3.10 The council would enter an agreement for lease, committing it to entering a lease of the premises when built. This would mean that the council is responsible for all obligations under the lease including costs of rent, service charge and other property costs.
- 3.11 By the time the premises is built, the council working with BHCCG will aim to agree terms for a GP practice(s) to occupy the space taking either an assignment of the council's lease or a sub lease of the premises meaning the GP practice(s) will take on the cost liability in full.
- 3.12 These terms will need to be underwritten by BHCCG to ensure that the council does not accept any financial liability in the unlikely event that a GP practice(s) does not take on the lease, meaning BHCCG will cover all costs incurred by the council arising from the lease.
- 3.13 Details of the associated costs that are known at this point are included in the Heads of Terms which are appended to Part 2 of this report. The council has instructed the district valuer to certify that these terms are reflective of the market and can be recommended.
- 3.14 The inclusion of a purpose built health premises for general practice with the flexibility by design to accommodate comprehensive primary and community health and care services at Preston Barracks will provide BHCCG with a long awaited opportunity to align national and local strategic health and care service plans with clear, identified health need.
- 3.15 Projections indicate that by 2036, an additional 15 consulting/treatment rooms will be required in this area where population growth is anticipated to be the highest of any area of the city – from circa 45,000 to 69,000 in under 20 years. The Preston Barracks primary healthcare centre will go a long way to enabling Brighton and Hove to benefit from a primary care estate that offers the physical capacity to provide integrated primary care and community services at scale and to support workforce development and retention for the longer term.
- 3.16 Redevelopment of Preston Barracks and the surrounding areas will create major demand for additional health services from general practice, which are already extremely stretched in meeting local need and which will struggle to be met from current practices in their existing premises.
- 3.17 Two practices have been identified by BHCCG to expand into the Preston Barracks premises, increasing patient capacity from 11,000 to 16,000 (a 45% increase) creating broader and better access to health and care for the local

community.

- 3.18 This will form part of a wider strategy in this area as well as delivering flexibility to provide increasing capacity based on new models of care and more efficient use of space.
- 3.19 Moving to purpose built, appropriately sized accommodation with space for growth and flexibility of use – including accommodating community based services whenever required – will mean all-round and community focused primary care (including preventative services, proactive management of long term conditions and integrated multidisciplinary team working to keep patients out of hospital amongst many others) will be available at scale.
- 3.20 The significant workforce challenges in Brighton and Hove and throughout the country means it is challenging to train, recruit and retain general practice and community healthcare personnel from doctors through physician associate and nurses to healthcare assistants. The co-location of the UoB and the Preston Barracks primary healthcare centre offers a wealth of opportunity for innovation and learning. Joint work is now underway between the UoB, BHCCG and the GP practices and the council to develop a new model of integrated care that facilitates training and development and recruitment and retention of primary care staff. This will form part of BHCCG's Primary Care Strategy and the current intention is to 'pilot' this at the Preston Barracks primary healthcare centre.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

##### **4.1 Do Nothing**

- 4.2 BHCCG is reliant on GP practices, as healthcare providers, to enter into the lease agreements as clinical commissioning groups are not permitted to take on leases on behalf of providers.
- 4.3 The individual practices are unable to enter these agreements as the time required to complete the necessary due diligence and obtain the required NHS approvals for the reimbursement of their rent and rates do not align with those of the wider development programme.
- 4.4 This gives rise to a risk that no GP practice will sign the necessary agreements meaning that the space will not be used for healthcare provision.
- 4.5 This will not address current identified unmet need for primary healthcare delivered via general practice or increased identified future need resulting from housing developments at Preston Barracks as well as Moulsecoomb and the surrounding area.
- 4.6 However, it will not disrupt the delivery of Preston Barracks, as the proposed medical space will be built out as per the current planning consent as A1/A3 and B1 uses.

#### 4.7 **Other Public Sector Body takes the head lease**

- 4.8 Discussions have been had with other NHS provider trusts but have not resulted in a solution that is deliverable within the timescales required due to their own governance processes.
- 4.9 The council is working to deliver on its city leadership role by co-ordinating partners for the delivery of future priority services and is the lead authority for the One Public Estate programme, which has helped to fund and take forward work to facilitate delivery of the primary healthcare centre on the site.
- 4.10 If terms cannot be agreed and recommended then there is still a risk to the delivery of health premises on this site, however, all parties are currently working to reach an agreement.

### 5. **COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 There is no requirement for community consultation in relation to the proposals of this report. Any future development of the site on which these recommendations are premised will be subject to public consultation as part of the planning process which is currently ongoing and future engagement with patients of either current or new practices that are proposed to occupy the space will be undertaken by the practices and BHCCG in the usual manner.

### 6. **CONCLUSION**

- 6.1 Agreement of the recommendations of this report will ensure the future delivery and expansion of primary healthcare from modern, fit for purpose premises and ensure that this opportunity is not lost. Primary healthcare services are particularly at risk given the low number of GP practices that serve this area from variable size, suitability and quality of premises with no room for expansion as they are already full. Without suitable health provision sited at Preston Barracks, the situation will worsen and so have an even greater negative impact on the health of the local communities.
- 6.2 The Preston Barracks primary healthcare centre will increase the supply of primary and community healthcare service floor space in the city, addressing the recent significant decline and, through partnership working, deliver and secure a robust healthcare premises plan for the foreseeable future.

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

#### Financial Implications:

- 7.1 In order to facilitate the development and ensure that there is healthcare provision at the site the council will enter an agreement for the lease of the premises. This will commit the council to be responsible for all obligations under the leases including costs of rent, service charge and other property related costs. Prior to this the council will need to secure an agreement with the BHCCG which will indemnify the council against any financial loss and therefore ensure

the proposal is cost neutral to the council. Details of the costs are included within the Part 2 report.

*Finance Officer Consulted: Rob Allen*

*Date: 18/05/18*

Legal Implications:

- 7.2 The council has the power to enter into the agreement for lease and subsequent lease by virtue of S120 of the Local Government Act 1972. The indemnity from BHCCG will be the subject of legal advice to ensure that there is no risk that the council will have to bear any costs or pay any rent if it is unable to assign or sub-let the lease.

*Lawyer Consulted: Alice Rowland*

*Date: 16/05/18*

Risk and Opportunity Management Implications:

- 7.3 There is a risk that the council may suffer reputational risk if a sub-tenant is not sought, or for void periods during the term of the lease (if the lease is not assigned). We have sought to mitigate this risk by agreeing a wide health user within the heads of terms and agreeing a Memorandum of Understanding with the BHCCG to confirm that both parties use reasonable endeavours to ensure that the site is occupied for the proposed use.

Public Health Implications:

- 7.6 The local neighbourhood is characterised by higher than average deprivation (including child poverty) and physical and mental health needs; and the most concentrated student population. 45% of residents in the local neighbourhood live in the 20% most deprived areas in England. The most recent Health Impact Assessment states that primary health services are particularly at risk in this area given the low number of GP practices with variable size, suitability and quality of premises and no room for expansion as they are already full. Access to primary care is important to support a proactive approach to preventing ill health and managing long term conditions and development of a new primary care centre will benefit public health outcomes.

Corporate / Citywide Implications:

- 7.7 Caring Together, the BHCCG's local response to the NHS Five Year Forward View (FYFV) which forms part of the local Sustainable Transformation Programme (STP), commits the BHCCG to the planning and delivery of healthcare systems that meet need now and for the future through new models of care and integrated health and social care systems.

The need for primary care and community services, together with workforce growth, means that the BHCCG, working in partnership with the University of Brighton and Brighton and Hove City Council, is committing to the provision of healthcare services and workforce development that contribute towards meeting identified local population need for the next 25 years by supporting the Preston Barracks primary care centre.

Should the practices at any point decide to withdraw from the proposed move or give notice to leave the primary care centre at Preston Barracks before the end of the 25 year lease term, the BHCCG or its successor organisation will commission health services to fill the space according to the identified population need at the time.

As set out elsewhere in this report, this recommendation presents an opportunity to continue to facilitate the delivery of the modern fit for purpose premises for the delivery of primary healthcare in an area that meets the needs of some of the most deprived population as well as new residents from nearby developments. This opportunity may be lost if the council does not take action to secure the premises for future use.

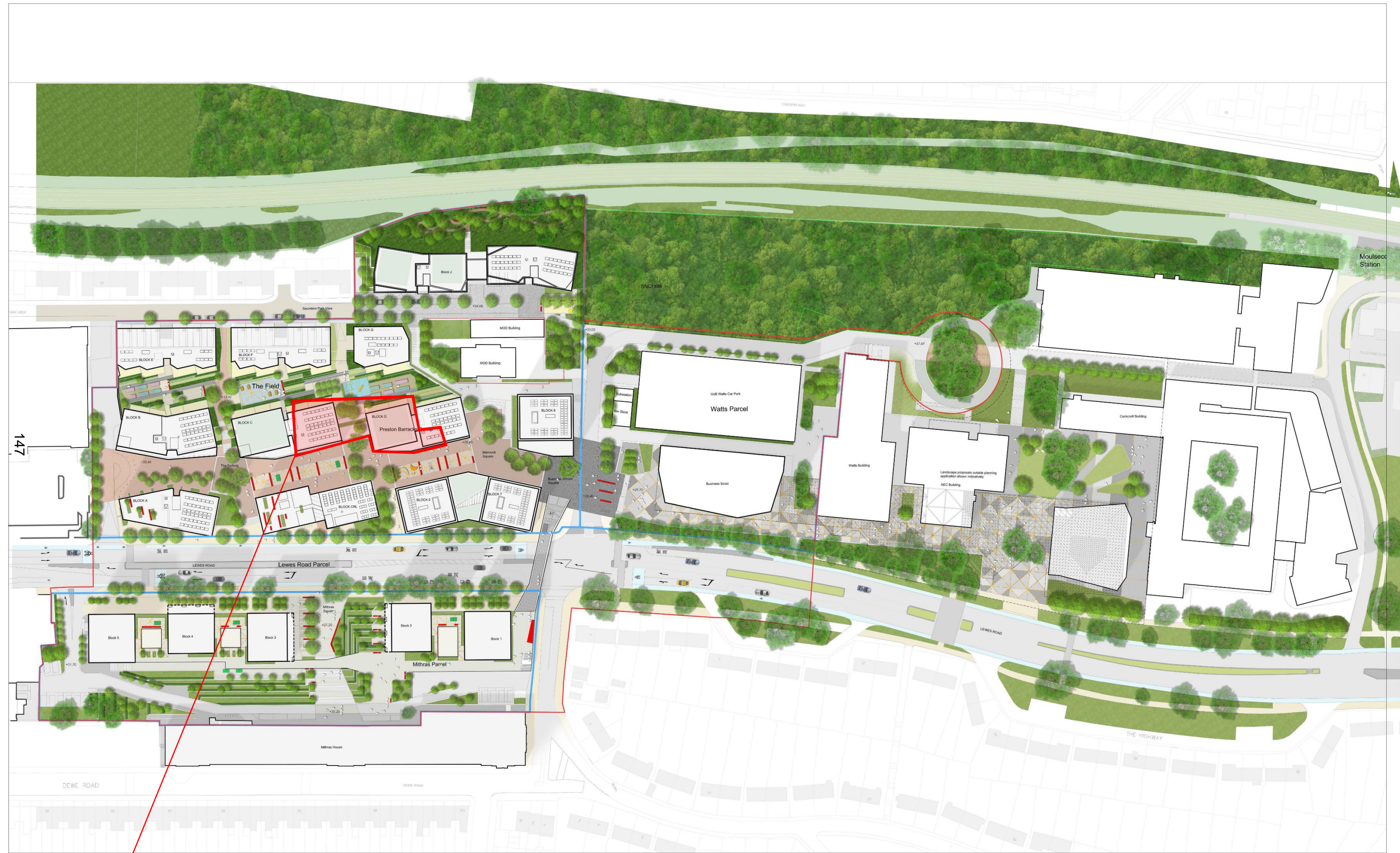
## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Plan to show approximate location GP Medical Centre within wider development. The site is shown edged red and will be located on the ground floor with access from 'The Furlong' and podium car park .







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- SNCI Boundary
- Planning Boundary
- Parcel Boundary

The area earmarked for the proposed Primary Healthcare Centre is at ground floor level of residential Blocks C and D, these forming the central row of development on the Preston Barracks site.







|                          |  |                                       |                          |
|--------------------------|--|---------------------------------------|--------------------------|
| <b>Subject:</b>          | <b>Longley Industrial Estate and New England House</b>           |                                       |                          |
| <b>Date of Meeting:</b>  | <b>14 June 2018</b>  |                                       |                          |
| <b>Report of:</b>        | <b>Executive Director for Economy, Environment &amp; Culture</b> |                                       |                          |
| <b>Contact Officer:</b>  | <b>Name:</b>   | <b>Alan Buck</b>                      | <b>Tel: 01273 293451</b> |
|                          | <b>Email:</b>  | <b>alan.buck@brighton-hove.gov.uk</b> |                          |
| <b>Ward(s) affected:</b> | <b>St. Peter's &amp; North Laine</b>                             |                                       |                          |

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The committee is being asked to agree to the council signing an agreement for lease and ultimately grant a new long lease with Legal & General in respect of the Longley Industrial Estate. This would secure a premium for the council and enable Legal & General to build a mixed use residential and office development on the site.
- 1.2 The intention is that the premium received by the council will contribute towards funding the refurbishment and expansion of New England House. Combined with the employment floorspace delivered on the Longley site, this will help to deliver key outputs of the Greater Brighton City Deal. Additional strategic benefits will also be delivered through the substantial number of new residential dwellings constructed on the Longley site (100% for rent, including an affordable element) and the wider regeneration of the local area.

**2. RECOMMENDATIONS:**

- 2.1 That the committee:-
- 2.1.1 approves the Heads of Terms appended to this report for an agreement for lease and new lease on the Longley Industrial Estate;
- 2.1.2 grants delegated authority to the Executive Director for Economy, Environment & Culture, Assistant Director Property & Design and the Executive Lead Officer – Strategy, Governance & Law to enter into an agreement for lease and a lease with Legal & General that will secure a premium in respect of the Longley Industrial Estate;
- 2.1.3 grants delegated authority to the Executive Director for Economy, Environment & Culture, Assistant Director Property & Design and the Executive Lead Officer – Strategy, Governance & Law to make minor amendments to the Heads of Terms, settle all the legal documents and take any other necessary steps required to implement the recommendation at 2.1.2;

- 2.1.4 appropriates the Longley Industrial Estate for planning purposes, agrees in principle that the council will authorise the use of S203 and delegates the final decision to authorise the use of S203 powers to the Executive Director for Economy, Environment & Culture;
- 2.1.5 agrees to ring-fence the premium received for the extension and refurbishment of New England House;
- 2.1.6 notes the work which is progressing in relation to New England House and notes that there will be a further report brought to Committee to seek approvals in relation to that project.

### **3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 The council has been seeking a viable delivery route to meet its Greater Brighton City Deal outputs in respect of New England House (NEH) to consolidate the building's role as a flagship hub for Creative, Digital and IT (CDIT) businesses. Under the City Deal the council received a grant of £4.9 million towards delivering the building's refurbishment and to enable the council to deliver a minimum net additional 7,090 square metres of new employment floorspace.
- 3.2 The council owns the freehold of the adjacent Longley Industrial Estate (Longley). The current lease has over 90 years left to run and is held by Maplebright. Over the last few years the council has been seeking a land deal with Maplebright that will help to secure City Deal outputs for NEH across the two sites (Longley and NEH).

#### ***Current proposal***

- 3.3 Following discussions between the council and Maplebright, Maplebright entered into an agreement with Legal & General (L&G) in 2017 to bring forward a development proposal and associated land deal for Longley. Since last spring three-way negotiations have progressed between the council, L&G and Maplebright to seek an outcome whereby all three parties can secure their objectives relating to the site. If successfully concluded, the following outcomes will be achieved:
- The council receiving a capital sum from L&G (payment conditional on L&G receiving planning permission).
  - Maplebright securing a capital sum from L&G (conditional on L&G receiving planning permission).
  - L&G obtaining Maplebright's leasehold interest on Longley (which will then be surrendered).
  - The council granting L&G a revised and enhanced 250 year lease on the Longley site.
  - L&G delivering a mixed use redevelopment on the Longley site, including 200 (or more) units of 'build to rent' residential units managed by L&G and 3,000 sq metres of new office floorspace, owned by L&G

but contributing to the City Deal NEH target of 7,090 sq m of net additional employment floorspace.

- The council combining its capital receipt with the £4.9 million secured through City Deal and additional borrowing to provide for its remaining City Deal outputs – i.e. the refurbishment of NEH and a minimum 4,090 sq m of net additional floorspace. These proposals are still being developed and a further report will be brought back to Committee for a decision on the NEH site.

3.4 L&G and Maplebright have already signed a contract (to which the council is not a party). All three parties will sign an Agreement for Surrender and Lease. The parties have agreed the Heads of Terms for this agreement and the lease, the key terms of which are as follows: once L&G has secured planning permission, Maplebright will assign their existing lease to L&G. L&G will then surrender that lease and BHCC will grant a new 250 year lease to L&G at a peppercorn rent. The Heads of Terms in respect of the agreement for lease and the lease form appendix 3 to this committee report. The Premium will be adjusted once planning has been obtained. If L&G secure more residential units than expected, the premium will be adjusted accordingly.

3.5 GVA under instruction by the council have been undertaking the necessary valuation exercises and negotiations with Maplebright's agents in respect of the agreement for lease, the new lease and the Premium payable to the council. The amount agreed is referenced in a separate Part 2 report on today's agenda and satisfies Section 123 Local Government Act requirements in terms of best consideration reasonably obtainable.

3.6 This deal does not place any legal obligation on L&G to build the proposed development. If the council was to place a legal obligation on L&G to build (i.e. if this was a development agreement) the contract would amount to a works contract which the council would have to procure. This would not have the agreement of Maplebright, so it would be very difficult to secure the surrender of the existing lease.

3.7 The deal is structured to ensure that, despite the absence of a legal obligation to build, it is highly likely that L&G will do so. They will be required to submit a planning application which meets the council's requirements (3,000 sq metres of employment space). They will have expended significant resources in obtaining planning permission so they have a strong commercial incentive to implement it. L&G will also have to demonstrate that they have sufficient funding to carry out the development. There will also be a longstop date in L&G's lease so that, if they have not carried out the building works within a reasonable time period, the council will have the right to break the lease and buy back the land.

3.8 L&G have requested that the council appropriates the site for planning purposes. Section 203 of the Housing and Planning Act 2016 provides that where land is

held for planning purposes and work is done in accordance with planning permission, third-party rights are overridden. Thus an effect of appropriation for planning purposes is to protect the council and developers from the risk of the development process being stopped once it has started. The rights of third parties whose private interests may be affected by development are protected to the extent that they have a right to compensation against the local authority. The council, however, will be indemnified against such claims for compensation by the developer of the site. Failure to appropriate the site for planning purposes will jeopardise the sale as the buyer would face the risk that the development would be delayed by legal proceedings by those with third party rights.

- 3.9 The council's power to appropriate land under s122 of the Local Government Act 1972 is exercisable on determination that the site "is no longer required for the purpose for which it is held immediately before appropriation". The council no longer requires the site be used for its current trade warehousing use, as the City has a significant need for additional B1 commercial space and housing. This is reflected in the site's inclusion as a strategic allocation within an identified development area (DA4) of the City Plan, for a mixed use commercial and residential development to include at least 3,000 sq m of B1 floorspace.
- 3.10 If the Committee agrees to the recommendation to appropriate the site for planning purposes, the appropriation will occur immediately upon the Committee reaching that decision. The Committee is also asked to authorise the use of the power contained in S203 Housing and Planning Act 2016. S203 is the power which allows the carrying out of building work even if it involves interfering with third party rights. The caselaw suggests that before exercising this power, the council should consider the third party rights which will be overridden and ensure steps have been taken to engage with those third parties. The indemnity which L&G have signed requires them to provide sufficient information to satisfy the council that it is appropriate to authorise the use of S203. This report therefore seeks delegated authority to the Executive Director for Economy, Environment & Culture to make the final decision to authorise the use of S203 once he has seen evidence of appropriate engagement with third parties.

### ***Planning and housing issues***

- 3.11 L&G have prepared a draft masterplan for the wider area to accompany their planning application. This includes a range of urban design information including indications of heights, massing, block layouts for Longley, NEH and other nearby City Plan site allocations and public realm proposals. The masterplan is intended to provide a context within which their proposal can be considered, demonstrating how it can integrate into a wider regeneration of the area - and assist the passage of the proposal through the planning system. The masterplan has been the subject of pre-application meetings and Design Review Panels. L&G have also been providing officer and member briefings to explain their model for delivering and managing 'build to rent' housing and how they might

accommodate an affordable element that addresses the council's identified needs and priorities. It is anticipated that they will be submitting their planning application for Longley this summer. A note provided by L&G setting out their approach to 'build to rent' developments forms appendix 3 to this report.

### ***New England House proposals***

- 3.12 Work on design options for delivering City Deal outputs for NEH was undertaken in 2017 by the council's architects, following the commissioning of a Heating and Ventilation Strategy. These conceptual options have been reviewed and refined on the basis that the L&G proposal would secure 3,000 sq m on the Longley site that can count towards the 7,090 sq metres minimum required under City Deal. Delivering a reduced amount of floorspace at NEH will assist the viability and deliverability of the scheme. It also has additional benefits of keeping development free of the car park area, which allows an appropriate gap to be retained between NEH and the proposed L&G development and reduces potential disruption and loss of amenities to existing NEH tenants. It is now proposed to explore extending the building to the south by adding new wings to its York Place façade, adding a two storey roof extension to the existing building and the possibility of infill developments on one, or possibly two, of the building's inset areas (on its western and eastern elevations). Along with the building's refurbishment these additions should be capable of meeting City Deal outputs (in conjunction with the 3,000 sq m delivered by L&G on Longley) with the final net total to be determined following more detailed design work.
- 3.13 Other aspects of the preferred concept design could include the following:
- Minimising changes to the interior of the existing building, retaining its essentially industrial nature and as far as possible its existing tenant mix.
  - Providing for greater thermal efficiency and mechanical and engineering (M&E) improvements, while allowing tenants flexibility to determine their own heating and ventilation options.
  - The potential to explore a modular form of cladding that can be applied in stages to reduce disruption to tenants.
  - Provision of kiosks for commercial rent at street level on the Elder Place frontage as part of wider street scene improvements.
  - Provision of a pedestrian ramp on York Place to replace the existing staircase and to improve access between Elder Place and New England Street.
  - Significant improvements and changes to the appearance of the building through replacement curtain walling - NB this would be explored further at a later stage of the design process (Stage 3 as set out in the RIBA Plan of Work, as widely used in the construction industry).

- 3.14 These concepts are being further explored through current work that will provide indicative floorplans to RIBA Stage 2. This will also allow for more accurate costings to be undertaken (see Finance section below). This report seeks approval to ring-fence the premium received from the disposal of the L&G site to enable the NEH refurbishment and extension to progress.

#### **4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 The development outcome of the proposed land deal constitutes an alternative means of delivering City Deal floorspace outputs for NEH, by extending the 7,090 sq m employment floorspace output across an area that incorporates Longley. The current proposal provides a more financially-viable development solution for delivering City Deal and would reduce potential disruption to existing NEH tenants. The development proposals for Longley and NEH combine to address a range of strategic economic, social and physical regeneration objectives in respect of the London Road/New England Quarter Development Area (DA4) as identified in the Brighton & Hove City Plan. The developments on these two sites can also be expected to have the added benefit of providing a critical mass and catalyst for further new development on other nearby DA4 sites. An alternative approach would be to 'do nothing' - but this would not provide the necessary finance to secure City Deal objectives, resulting in the continued decline physical decline of NEH (the curtain walling of which is in urgent need of replacement). In this instance City Deal outputs would be difficult to meet - the council would need to consider other options for seeking funding for NEH to combine with its £4.9 million and the leaseholder of Longley would need to consider alternative options for their site.

#### **5 COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 L&G have carried out early public consultation on their development proposal for Longley. Further public consultation will be carried out as part of the planning process following submission of their planning application later this year.
- 5.2 The council will be consulting with NEH tenants on its proposed plans for the building. A planning application will be required for NEH and wider public consultation will be carried out as part of the planning process.

#### **6. CONCLUSION**

- 6.1 The L&G proposal and payment of a premium to the council will help bring forward the development of both sites and help enable the council to deliver its City Deal outputs in respect of NEH.

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

##### Financial Implications:

- 7.1 The project has development funding from the Strategic Investment Fund (SIF). This money will be used to fund the further work outlined in this report including a

topographical survey, testing for contamination and further design work. A number of options are being considered to refurbish and extend NEH and preliminary costings have been undertaken but need refining through the further design work. The funding for the construction work and the potential costs of the works disrupting the existing tenants will predominantly come from the following sources:

- The £4.9m grant received from the government, currently held in capital reserves earmarked for NEH;
- The capital receipt from the new lease granted on the Longley site;
- New borrowing undertaken by the council where the financing costs are financed by increased rent (net of rent forgone from the Longley Industrial estate) from:
  - A modest increase in existing NEH rents to reflect the improved accommodation delivered by the refurbishment works to the existing NEH (rent increases would only be applied at the time of rent reviews and lease renewals, assuming they are not on tenancy at will arrangements);
  - Higher rents charged for the new build units in line with the upper quartile rents charged in the city.

7.2 Initial modelling shows that under these funding arrangements viability of the options requires the further design work to focus on reducing construction cost and maximising the new lettable floor space that is created.

7.3 The current rent received from the Longley site is £37,500 pa. There will be nil rent under the new lease for the site. The loss of this income stream has been included in the business case.

*Finance Officer Consulted: James Hengeveld*

*Date: 10/04/18*

#### Legal Implications:

7.4 The reasons why officers are recommending an agreement for lease and new lease to L&G (rather than entering into a development agreement) are set out in the body of the report. There are measures in place which make it highly likely that L&G will build the 3,000 sq m of office space which the council requires to help it meet its City Deal objectives but they are not under any legal obligation to build in accordance with the planning permission.

7.5 Under S122 of the LGA 1972 a council may appropriate land within its ownership that is no longer required for the purpose for which it is held, for any other purpose for which it is authorised by statute to acquire land. The council is authorised to acquire land by the Town & Country Planning Act 1990 provided that the authority believes that the acquisition will facilitate the carrying-out of development, re-development or improvement on - or in relation to - the land, but a local authority must not exercise the power unless they consider that the development etc is likely to promote or improve the economic, social or environmental well-being of their area. The reasons why the redevelopment is in the economic and social interests of the area are set out in the body of this report (including para. 3.9). The council therefore has the power to appropriate the land for planning purposes in order to facilitate the sale and redevelopment. The

council has received advice from its external solicitors and as a result recommends that the council follows the procedure outlined in paragraph 3.10 above to authorise the use of S203 Housing and Planning Act 2016.

- 7.6 Under s233 Town & Country Planning Act, the council is under an obligation to obtain the best consideration reasonably obtainable when disposing of land which has been appropriated for planning purposes. In this case the council has received advice from an external valuer who has confirmed that the premium and the mechanisms for adjusting the premium contained in the Heads of Terms will lead to a disposal which meets this best value test.

*Lawyer Consulted:*

*Alice Rowland*

*Date: 19/04/18*

Equalities Implications:

- 7.7 Entering into an agreement for lease and new lease with L&G will provide the mechanism to unlock the development potential of two sites (NEH and Longley). The subsequent development proposals will be the subject of separate planning applications. These will be assessed against policies in the City Plan, which has been the subject of an Equalities Impact Assessment.

Sustainability Implications:

- 7.8 Planning applications in respect of both NEH and the Longley site will need to meet a wide variety of sustainability principles as set out in building regulations, City Plan policies and national planning guidance.

Any Other Significant Implications:

- 7.9 As well as the benefits described elsewhere in this report (increased employment floorspace, realisation of City Deal targets for NEH and a significant element of residential development including affordable housing) new developments on both the Longley and NEH sites will provide for a much-improved and safer environment on Elder Place, a road that suffers from various forms of anti-social behaviour (including widespread graffiti) thereby helping to secure a number of objectives of the council's London Road Central Masterplan (SPD 10). Benefits arising from the developments will include an upgraded public realm, improved pedestrian access through the area and the introduction of 'active frontages' along Elder Place to enhance the local environment and strengthen the customer-draw and economic performance of the London Road district shopping centre.



## **SUPPORTING DOCUMENTATION**

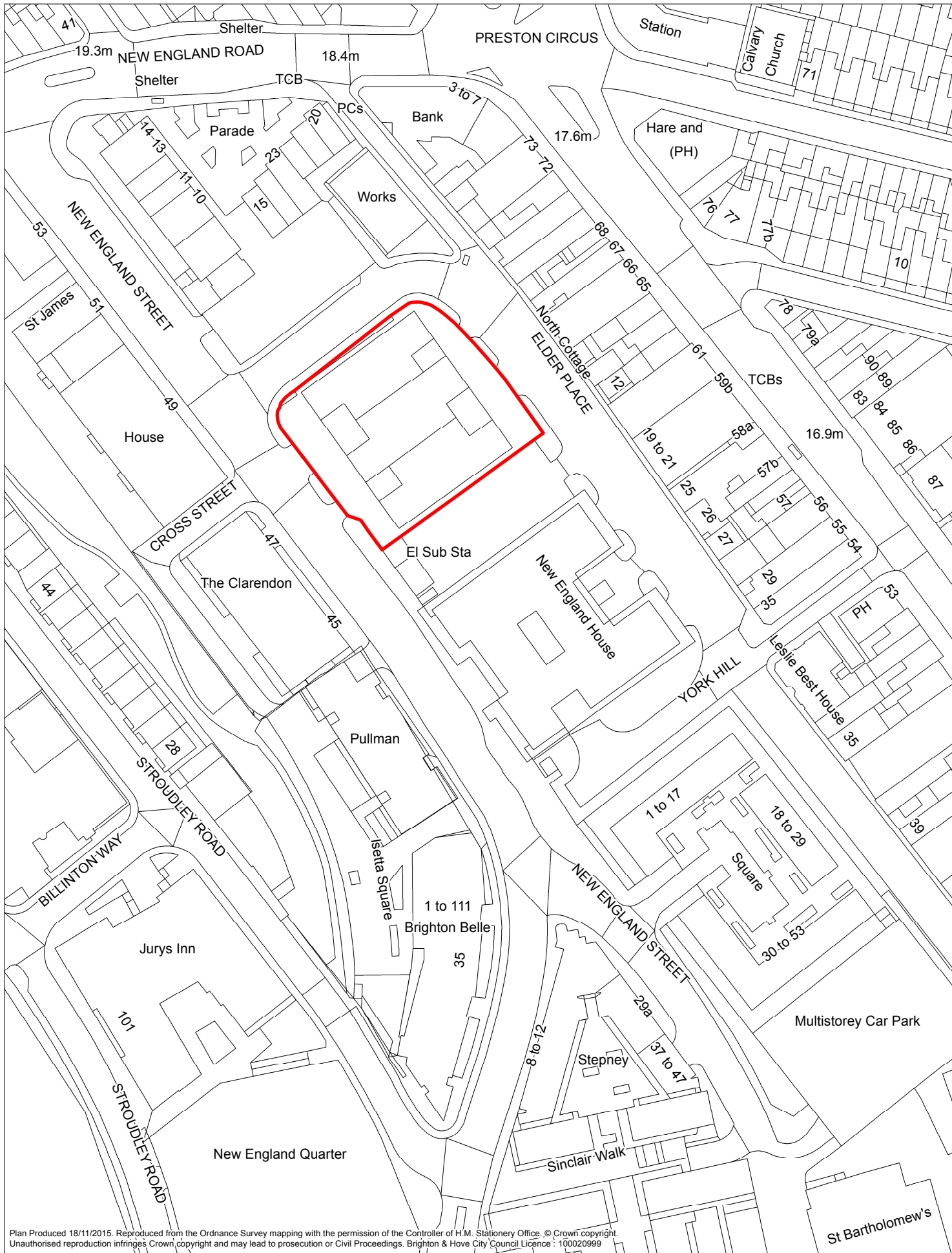
### **Appendices:**

1. Site plan of Longley Industrial Estate
2. Heads of Terms for Agreement of Lease on Longley Industrial Estate. Heads of Terms for New Lease on Longley Industrial Estate
3. Legal & General Build to Rent Strategy - Longley House Presentation

### **Background Documents**

1. Greater Brighton City Deal
2. Brighton & Hove City Plan
3. London Road Central Masterplan (SPD 10)





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## Longley Industrial Estate

 2,406 sq m

159 Scale 1:1,250



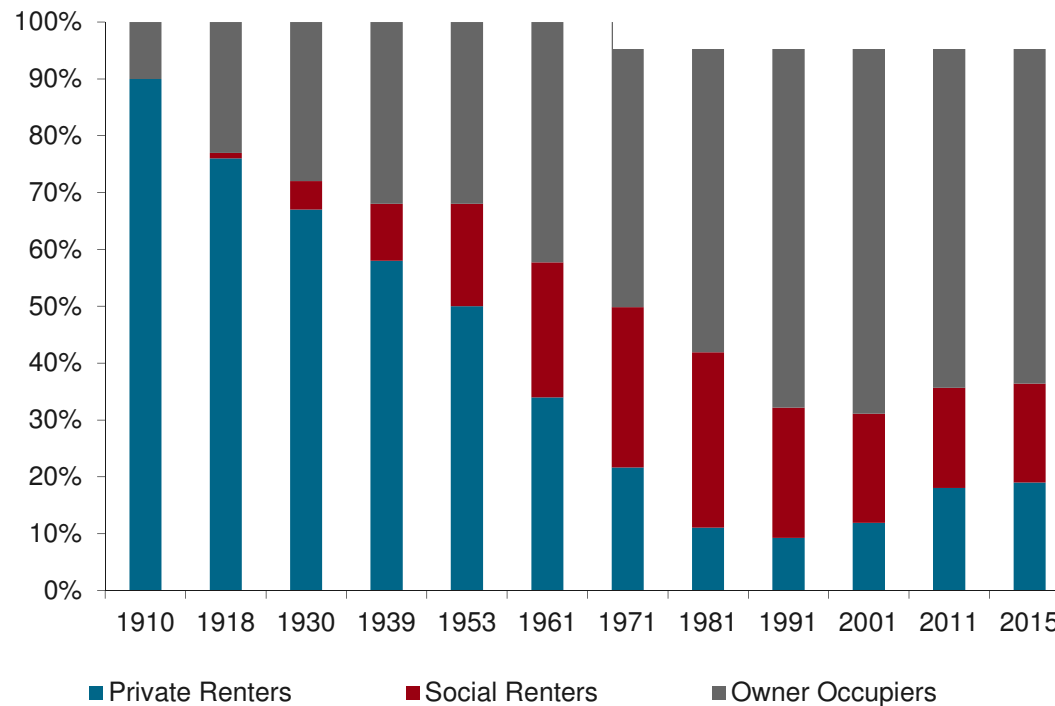


# Legal & General UK Build to Rent Fund.



# Private renting growing as a tenure but it remains a cottage industry

## HOUSING TENURE



Source: DCLG

## The Build to Rent Residential Market

- The UK residential rental market is currently dominated by private landlords and is inefficiently managed.
- Legal & General are accessing the market at scale with over £1bn already allocated
- The sector offers:
  - Higher occupancy levels than owner occupation – having a bigger impact on supply
  - High standards of service quality – raising the bar in a local area
  - Fit for purpose accommodation
  - Letting rate 7-10 times quicker than sales rates
  - Long term investors committing to invest into a location and community

## Legal and General Build to Rent Business Plan

- Create a long term stable cash flow for Pension Funds
- Build *fit for purpose* rental accommodation in areas of under supply:
  - Minimum of 200 units to allow for a high quality service
  - Target the “Mass Market / Squeezed middle”
- Develop high quality homes and hold for the long term:
  - Improved build quality to reduce on-going maintenance
  - Include resource saving technology where possible (Solar, rainwater harvesting etc)
  - Increased resident occupational security and flexibility
- We will provide homes suitable for a range of tenants, including families, sharers and individuals
- Disrupt the existing rental market by taking a long term view on every decision



## Management

Delivering an exceptionally run level of service which does not currently exist in the UK:

### Flexible living:



- On-site letting office
- Security of tenure
- One - five year tenancy agreements, no agency fees
- Range of unit sizes allowing for up or downsizing

### Pricing:



- Range of price points to maximise demand
- Targeted occupancy rate per scheme
- Focused on cost of living not cost of renting

### On site management:



- Concierge and security
- Maintenance
- Life style services:
  - car club
  - cleaning
  - gym
  - private dining
  - roof gardens

## Existing Build to Rent Assets

### Walthamstow

GDC: **£180m**  
**479** units

- Exceptional transport links - 14 minutes to Kings Cross station
- Outstanding views over reservoir
- Extensive on-site amenities



### Manchester

GDC: **£43m**  
**225** units

- River frontage opposite CBD
- Staged delivery of two buildings
- Part of wider regeneration area
- Live/work location



### Bristol

GDC: **£80m**  
**345** units

- Located in enterprise zone next to the main train station
- 2<sup>nd</sup> highest GDP per capita
- High population of target demographic



## L&G EXPERTISE IN UK REGENERATION & HOUSING.

Established  
**1836**



Over  
**9,000**  
employees



**£717b**  
AUM  
n

**£15bn**

direct investment programme in the UK,  
with **£7.0bn** invested to date

“ We’ve made multi-million pound investments into the residential sector over the last three years, funding high-quality developments driving local regeneration. Nigel Wilson, Group CEO ”



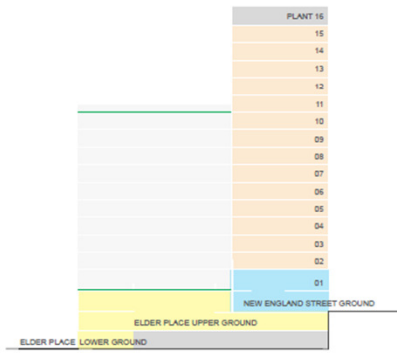


# Longley House, Brighton



# Longley House, Brighton

## Uses

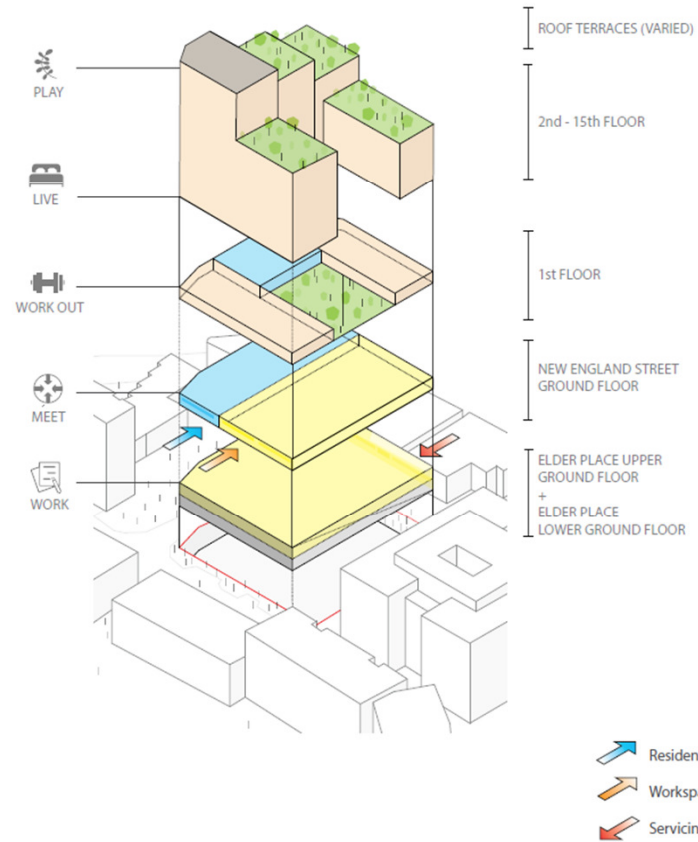


### Residential

- 01 Gym + Courtyard Garden
- New England Street Ground Floor Residential Hub + Workspace
- Elder Place Upper Ground Floor Workspace
- Elder Place Lower Ground Floor Commercial / Servicing

| Approximate Areas         |             |
|---------------------------|-------------|
| Accommodation (GIA)       | 17,460 sq m |
| Residents' Gym (GIA)      | 290 sq m    |
| Residents' Hub (GIA)      | 570 sq m    |
| B1 Commercial (NIA)       | 3010 sq m   |
| Retail / Commercial (GIA) | 300 sq m    |

| Apartment Mix    |                  |
|------------------|------------------|
| Studio Apartment | 22 (10%)         |
| 1-Bed Apartment  | 103 (46%)        |
| 2-Bed Apartment  | 72 (32%)         |
| 3-Bed Apartment  | 25 (11%)         |
| <b>Total</b>     | <b>222 units</b> |



- Residential Entrance
- Workspace Entrance
- Servicing Entrance



## **HEADS OF TERMS FOR SURRENDER OF THE EXISTING LEASE AND GRANT OF A NEW LONG LEASE AT LONGLEY**

**[DRAFT FOR DISCUSSION ONLY – BHCC FULLY RESERVES ITS POSITION IN RELATION TO ANY COMMERCIAL POINT SET OUT BELOW]**

### **SECTION A – AGREEMENT FOR SURRENDER AND LEASE**

- (a) Maplebright will assign the existing lease to L&G after L&G has secured satisfactory planning permission for the proposed development of the Property and L&G will then immediately surrender the existing lease and BHCC will accept the surrender.
- (b) BHCC will immediately following the surrender grant a new lease to L&G on the following heads of terms. These heads of terms are not intended to create any legally binding obligations. They are subject to contract.
- (c) The heads of terms are confidential to the intended parties to the proposed sale and to their professional advisors.
- (d) The documentation for the proposed sale may contain further terms as BHCC may require, including additional terms on matters that are covered in this document.

### **AGREED TERMS**

- 1. **SELLER: BRIGHTON & HOVE CITY COUNCIL OF HOVE TOWN HALL, NORTON ROAD, HOVE BN3 3BQ**
- 2. **BUYER: CETZA TRUSTEES V3 LIMITED AND CETZA TRUSTEES V4 LIMITED, EACH A COMPANY INCORPORATED UNDER THE LAWS OF JERSEY WITH REGISTERED NUMBERS 118521 AND 118522 RESPECTIVELY, AND EACH OF WHOSE REGISTERED OFFICE IS AT 11-15 SEATON PLACE, ST HELIER JE4 0QH IN THEIR CAPACITY AS JOINT TRUSTEES OF THE LONGLEY HOUSE UNIT TRUST**
- 3. **PROPERTY AND TENURE**
  - 3.1 The Property is the land contained within title number ESX81326.
  - 3.2 The Seller will grant a new 250 year lease to the Buyer.
- 4. **PREMIUM FOR THE NEW LEASE**
  - 4.1 The parties note that the premium which the Buyer will pay to Maplebright for the assignment of the lease is not covered by these HOT.

4.2 The premium which will be paid by the Buyer to the Seller for the new lease will be £[Redacted] , exclusive of any VAT (which is not due as the Property is not elected for VAT) that may be payable on the transaction, subject to any adjustment in accordance with paragraph 4.3, below.

4.3 [Redacted]

## **5. EXCHANGE AND COMPLETION**

5.1 The parties will endeavour to exchange contracts within 4 weeks of the Seller's conveyancer having received the contract documentation from the Buyer's conveyancer.

5.2 Completion will take place on or before 15 working days after the satisfaction of the Conditions Precedent (see below).

## **6. CONDITION(S) PRECEDENT**

6.1 Completion will be conditional upon the satisfaction of both of the following conditions prior to a longstop date to be set out in the contract:

- (a) the Buyer obtaining Satisfactory Planning Permission for the permitted use which remains in place after the expiry of the judicial review period
- (b) the provision by the Buyer to the Seller of evidence that the Buyer has internal or third party funding available, which is of an amount which would enable the development to be lawfully and fully constructed and occupied, and which is satisfactory to the Seller (acting reasonably)

Note, that there will be no provision for the condition(s) precedent to be waived by the Buyer.

6.2 If the Conditions Precedent are not satisfied within 18 months from the date of exchange, the Seller may terminate the agreement, save where the judicial review period has not expired or where there is an appeal that is in progress in which case the longstop date shall be extended until the appeal is finally determined and/or the JR period has expired and there have been no challenges or any challenges have been finally dealt with.

## **7. SURRENDER AND GRANT OF LEASE**

7.1 On the Completion Date:

- (a) the existing lease will be assigned by Maplebright to the Buyer;



- (b) the existing lease will immediately be surrendered by the Buyer and the Seller will accept the Surrender
- (c) the Seller will grant to the Buyer a new 250 year lease on the terms set out in Section B (below).

## **8. PLANNING PROVISIONS**

- 8.1 Within 2 months of the date of these Heads of Terms, the Buyer may submit the draft Planning Application to the Seller for approval.
- 8.2 Where the Buyer has submitted such draft Planning Application for approval, the Seller shall respond within 20 Working Days to approve the Planning Application (and if it doesn't respond within such period of time, it shall be deemed to have approved the Planning Application) and shall only withhold or delay giving approval to any draft planning application submitted to it if that draft planning application does not satisfy the Agreed Requirements.
- 8.3 The Agreed Requirements are that the scheme provides a minimum of 3000 sq m of lettable B1 employment space and 200 residential units. In all circumstances the draft Planning Application must clearly specify the areas in square feet that are to be subject to different use classes (B1, C3 etc).
- 8.4 Within 15 Working Days after the Seller has approved in writing the draft Planning Application, the Buyer shall submit the Planning Application to the Planning Authority and shall use their reasonable endeavours to obtain the grant of a Satisfactory Planning Permission as soon as reasonably possible. Satisfactory Planning Permission will have the same meaning as in the contract between the Buyer and Maplebright – to be provided separately.
- 8.5 If it appears necessary to obtain a Satisfactory Planning Permission, the Buyer may amend the Planning Application or withdraw and submit in substitution a revised Planning Application. Any such amendment, withdrawal and substitution shall be approved in writing by the Seller only where there is a change to any of the Agreed Requirements (such approval not to be unreasonably withheld or delayed and a response provided within 20 Working Days of a request for approval and the Seller shall be deemed to have approved the change if it does not respond within this period).
- 8.6 If requested by the Buyer, the Seller shall enter into any Planning Agreement in its capacity as landowner provided that the Planning Agreement does not contain any obligation or restriction which has the effect that the Development no longer meets the Agreed Requirements and any liabilities of the Seller in the Planning Agreement:

- (a) being expressed to be dependent on the implementation of the Planning Permission; and
- (b) ceasing on disposal of the Seller's interest in the Property.

8.7 The Buyer shall keep the Seller indemnified against all liabilities, proceedings, costs, claims, demands and expenses incurred or arising as a result of a Planning Agreement.

8.8 The Buyer shall have discretion as to whether they wish to submit a planning appeal following a refusal of the Planning Application, but the contract shall expire if there is no appeal.

## 9. COSTS

Each party is responsible for its own legal costs in connection with the transaction.

## Section B – Long Lease

**Landlord:** Brighton & Hove City Council

**Tenant:** CETZA 3 and CETZA 4

**Term:** 250 years

**Rent:** Peppercorn

**Alienation/Assignment:** the Tenant is not to assign, underlet, transfer, charge, share or part with possession of any part of the land, save that the Tenant shall be permitted to enter into Authorised Disposals until the development has been practically completed. After practical completion, the Tenant is free to deal with the Property as it sees fit and to assign, charge or underlet without the Council's consent provided that assignment of part is not permitted.

**Alterations:** the Tenant shall not make any alterations to the building which increase the height of the building by a further four storeys beyond the height of the building at the commencement of the lease.

**Authorised Disposals:** either the grant of an under lease to the purchaser of an individual residential unit, or the charging of the Property to a person, firm or company providing finance for the acquisition of the land and the construction of the

development or the grant of commercial leases at open market rent and on standard market terms.

**Development Requirements:** any development must be carried out in accordance with the Planning Permission and Section 106 Agreement, together with all other requisite consents.

**Force Majeure:**

- (a) the discovery of fossils or antiquities on or in excavating the Premises during the progress of the Development and any instructions issued in relation to them by the Landlord or any competent authority;
- (b) exceptionally adverse weather conditions (which shall mean weather conditions that occur on average less frequently than once in ten years at the Premises, assessed by reference to the Met Office's records);
- (c) fire, frost, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, epidemic, natural physical disaster, aircraft and other aerial devices or articles dropped therefrom;
- (d) physical obstructions in the ground at the Premises which would have been unforeseeable by a contractor experienced in carrying out works of a similar scope, complexity, value and nature to the Development;
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (f) the exercise by the United Kingdom Government of any statutory power which directly affects the execution of the Development;
- (g) except to the extent caused by the Tenant, any negligence, breach of contract, breach of statutory duty, breach of this Lease or other default by the Landlord or any person for whom it is responsible in connection with this Lease;
- (h) any delay arising in relation to rights of light;
- (i) epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions,

embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination, damage or destruction by an Insured Risk;

- (j) insolvency of the building contractor carrying out the Development;
- (k) preparation and submission of a new planning application and receiving planning permission for rebuilding following damage or destruction of the Development prior to practical completion;
- (l) except to the extent caused by the Tenant, any denial of use of, failure or shortage of power, fuel or transport and/or non-availability of labour, materials and/or plant and equipment to complete the Development in accordance with the Planning Permission which endures for a longer period than 4 hours in any 24 hour period;
- (m) any delay caused by the carrying out of work by any statutory undertaker, utility company, service provider or other entity discharging the rights and obligations of a statutory undertaker or utility company of work in pursuance of statutory obligations in relation to the Development and/or the carrying out of any work by any statutory undertaker or utility company or service provider or other entity in relation to the Development, or the failure to carry out such work or provide services.

**Forfeiture:** the Landlord shall be entitled to forfeit the lease if (1) there shall be a material breach, non performance or non observance of the terms of the lease which the Tenant shall fail to remedy within a reasonable period of time from service of a written notice specifying the same,

**Longstop Date:** five (5) years from the date of the Lease, extendable by Force Majeure and by agreement between the parties.

**Landlord's Options to break:**

Where the Tenant has not completed the building works (and received a certificate of practical completion in respect of the works) by the Longstop Date (subject to Force Majeure) the Landlord may by written notice break the lease.

In compensation for exercising either option the landlord shall pay to the tenant a sum being the lesser of: (1) the value of the site on the date on which the Option to Break notice is served or (2) the Premium.

**Permitted Use:** the lease will include a covenant by the Tenant, which will restrict the use of the property to a minimum of 3000 sq m of lettable B1 employment space and a minimum of 200 residential units and ancillary amenity space.

**Premium:** [Redacted] – this will be the premium (together with any adjustment) as calculated pursuant to the agreement for lease.

**Indemnity:** the Tenant will indemnify the Landlord against all claims, demands and liabilities arising from the use or occupation of the land, or its condition, or any breach by the Tenant of the provisions of the lease.

**Planning:** the Tenant is responsible for the discharge of all planning conditions and technical consents.

**Property:** the land edged red on the plan attached to the Agreement for Lease, with common rights of access (where applicable) as hatched in blue on the plan attached to the Agreement to Lease/Variation.

**Rights Reserved and Granted:** A right for the Tenant to carry out development works

**Legal Costs:** the Tenant to pay all of their own legal costs in connection with completing the Lease on completion of the Lease.

**Pre-Emption Right:** the Tenant is granted a right of first refusal should the Landlord wish to sell the freehold of the Property. The Landlord must first offer to dispose of the Property to the Tenant at the price it wishes to sell it for. If the Tenant fails to accept the offer within 20 working days the Landlord may then dispose of it on the open market at no less than 80% of the offered price provided that completion of the sale takes place within 6 months of the expiry of the 20 working day period.



|                          |   |  |  |
|--------------------------|---|--|--|
| <b>Subject:</b>          | <b>Update on options programme for future delivery of housing repairs and maintenance</b> |  |  |
| <b>Date of Meeting:</b>  | <b>14<sup>th</sup> June</b><br>13 <sup>th</sup> June 2018 – Housing & New Homes Committee |  |  |
| <b>Report of:</b>        | <b>Executive Director for Neighbourhoods,<br/>Communities &amp; Housing</b>               |  |  |
| <b>Contact Officer:</b>  | <b>Name:</b>  | <b>Glyn Huelin</b><br><b>Sharon Davies</b>   | <b>Tel:</b> <b>01273 293306</b><br><b>01273 291295</b> |
|                          | <b>Email:</b>   | <a href="mailto:glyn.huelin@brighton-hove.gov.uk">glyn.huelin@brighton-hove.gov.uk</a><br><a href="mailto:sharon.davies@brighton-hove.gov.uk">sharon.davies@brighton-hove.gov.uk</a> |  |
| <b>Ward(s) affected:</b> | <b>All</b>  |  |  |

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 This document updates Housing & New Homes Committee on progress with the options programme for delivering housing repairs, maintenance, improvements and capital works post April 2020 when the current contractual arrangements expire.
- 1.2 Brighton & Hove City Council (Housing) operates a ten year partnering contract with Mears Limited under which the following services and works are provided for the council's housing stock:
- Responsive repairs and empty properties maintenance
  - Planned maintenance and improvement programmes
  - Major capital works projects
- 1.3 An initial report initiating the programme was taken to Housing & New Homes Committee in March 2018.

**2. RECOMMENDATIONS:**

- 2.1 That committee notes progress with the options programme for the future delivery of repairs, planned maintenance and capital works for the council's housing stock, as detailed in the body of this report.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 A programme board is in place and led by the Executive Director, Neighbourhoods, Communities & Housing. The board includes representation from procurement, legal and finance alongside housing. Human Resources officers will also attend future programme board meetings.

### 3.2 Member and committee activity

- 3.3 An initial report initiating the programme was taken to Housing & New Homes Committee (H&NHC) in March 2018. This report detailed:
- The structure of the programme and the programme board in place led by the Executive Director, Neighbourhoods, Communities and Housing.
  - Arrangements for engaging members through Procurement Advisory Board (PAB) with additional attendance by lead members for housing.
  - The commissioning of consultants to develop an initial options and market research report.
  - The high level timetable for the programme and any resulting procurement activities.
  - Arrangements for engaging with residents and keeping both residents and members informed of progress with the programme.
  - High level risks associated with the programme.
- 3.4 This report above was also taken to Policy, Resources & Growth Committee following a request by PAB.
- 3.5 Members of the programme team have attended the Members Procurement Advisory Board (PAB) on three occasions since the commencement of the programme. The existing board members are joined by lead members for housing for this item.
- 3.6 PAB has been provided with further information on the structure of the options programme, timetable and critical dates, details of sub-contracting arrangements within the existing contract, lease arrangements for the Housing Centre, details of housing contracts that are not currently delivered through the existing contract and feedback from site visits undertaken by the programme team.
- 3.7 The April meeting of PAB received an options report commission by the council and was also attended by the consultants who developed this report. This was followed up with a further session on this item on 4<sup>th</sup> June. Further details of the options report are detailed in 3.22.
- 3.8 An aligned report detailing the independent review of the existing contract undertaken by 31ten consultancy in 2017 is scheduled for discussion at Housing & New Homes Committee on 13<sup>th</sup> June. The report contains a combination of recommendations for the final two years of the existing contract and lessons learned for consideration in the context of the options programme.
- 3.9 Where other related housing procurement reports are being taken forward to committee, officers are working with procurement colleagues to consider how these relate to this options programme. The forthcoming procurement report for fire alarms servicing, maintenance and installations includes details explaining why this procurement is moving forward as a stand-alone project.



3.10 Resident engagement activity

3.11 To date programme officers have attended the following resident meetings to provide an initial brief of the programme and next steps for resident engagement:

- Area Panels
- Home Service Improvement Group
- Leaseholder Action Group – Annual General Meeting

3.12 Residents at Area Panel meetings provided some initial feedback around the current contractual arrangements and raised some questions about delivery methods moving forward - feedback was included in the March 2018 report to Housing & New Homes Committee.

3.13 Representatives at the Home Service Improvement Group were keen to be updated at future meeting of the progress of the programme and gave appreciation around the scale of the programme.

3.14 The programme team presented on the programme at the Leaseholders Action Group (LAG) – Annual General Meeting in April 2018 and will work with the newly elected LAG representatives over the coming months to engage with leaseholders and collect feedback on the current arrangements.

3.15 Leaseholders fed back that they welcomed the opportunity to be engaged in the programme alongside the work being undertaken to improve engagement with leaseholders. Other feedback included that the council should ensure value for money is being delivered through major housing projects and that there should be a stronger focus on maintenance programmes through future delivery arrangements.

3.16 The programme team are currently in the process of developing the following activities for tenant and leaseholder engagement to take place up until September 2018:

- Independent sample of face to face surveys
- On-line questionnaire
- Social media / Homeing In updates
- Workshops for tenants and leaseholders

3.17 As well as formal leaseholder consultation and continued engagement with residents groups it is also of note that smaller a group of residents (representative of the demographic profile) will be engaged throughout any tender evaluation process.

- 3.18 Staff engagement activity
- 3.19 Staff have received regular updates on the programme through the initial phase. The programme team have presented on progress with the programme at the regular all staff meetings held for the Property & Investment team.
- 3.20 In addition the team have received email briefings alongside the development of reports and the release of any public reports on the programme.
- 3.21 The Programme Board now includes Human Resources representation and updates on the programme will be given to union representatives at forthcoming Departmental Consultation Group meetings alongside a specific workshop for staff to feedback on the current arrangements.
- 3.22 Initial options report
- 3.23 As detailed in 3.3 Trowers & Hamblins and Savills were commissioned to jointly produce an initial options report detailing the main options for the delivery of services currently undertaken under the existing contract. A copy of the report is included as Appendix 3.
- 3.24 This report is supported by a matrix which sets out the options available for the future delivery of the service (Appendix 1) and an executive summary of the options report (Appendix 2) which sets out the main advantages and disadvantages of the delivery models set out below in 3.26.
- 3.25 Rebecca Rees, Partner at Trowers & Hamblins LLP and John Kiely, Director at Savills (UK) Limited attended Procurement Advisory Board meetings on 30th April and 4<sup>th</sup> June to talk to the report and answer questions.
- 3.26 The report details four options for delivery of these services in the future. For clarity each option is not stand alone and the report details that the council may wish to use a combination of delivery options for different parts of the current service. The primary options detailed in the report are set out as follows:
- Direct delivery of the services
  - Outsourcing
  - Wholly-Owned Subsidiary/Managed Service model
  - Joint Venture company
- 3.27 Next steps
- 3.28 Key activities over the coming months include undertaking resident engagement activity and workshops for tenants, leaseholders, councillors and staff. The programme team will also carry out further visits of other providers and prepare summaries of these for both PAB and Housing & New Homes Committee.

3.29 A further report will be prepared for Housing & New Homes Committee in September where agreement will be sought for the preferred option(s) for the future delivery of the service. This report will include summary of the engagement activities and workshops undertaken as well as other work undertaken by the programme team.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

4.1 No alternative options to the delivery of the options programme are available. The provision of repairs and maintenance to council owned housing stock is a core landlord responsibility under housing legislation.

4.2 As detailed in 3.22 above a number of options are being considered for the future delivery of these services. A further report to Housing & New Homes Committee and Policy, Resources & Growth Committee in September/October 2018 will seek to identify the preferred option(s) for delivery following the end of the current contract arrangements in 2020.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

5.1 The report sets out engagement activities undertaken to date with residents in the city at 3.10 – 3.15. The report also sets out the broad engagement activity being undertaken over the coming months at 3.16 – 3.17.

#### **6. CONCLUSION**

6.1 The programme will cover the options for future delivery of a significant proportion of the council's investment in its housing stock. Future reports to committee will enable members to make decisions on the options and delivery strategy for 2020 onwards.

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

##### Financial Implications:

7.1 The Housing Revenue (HRA) budget for 2018/19 includes £0.250m for the preparation of the future delivery of housing repairs, planned maintenance and capital works once the Mears contract ends in March 2020.

7.2 A further report requesting member agreement on the preferred procurement option for this service will include the financial implications of each option.

*Finance Officer Consulted: Monica Brooks*

*Date: 16/05/18*

##### Legal Implications:

7.3 There are no direct legal implications arising out of this report which sets out a recommendation for noting.

*Lawyer Consulted:*

*Isabella Sidoli*

*Date: 29/05/18*

#### Equalities Implications:

- 7.4 An equalities impact assessment has not been carried out for this programme at this stage. Assessments are in place for any work carried out under the current contract arrangements. It is anticipated that a similar process will be appropriate here.
- 7.5 It is possible that options identified as a result of this programme will involve transfer of staff from the existing contractor.
- 7.6 Engagement with staff is detailed in section 3.18 – 3.21.

#### Sustainability Implications:

- 7.7 The work carried out under the existing contract arrangements in this area contribute significantly to the council owned stocks energy performance. Future arrangements will need to assess any potential providers ability to deliver services in a sustainable and energy efficient manner in line with the council's HRA energy strategy.

#### Any Other Significant Implications:

##### Risk and opportunity management implications

- 7.8 The programme includes a detailed risk management plan and register which is being maintained throughout the programme

##### Corporate/Citywide implications

- 7.9 There are a number of Corporate, Citywide and Housing strategies that are relevant to this programme. These are set out in full in the 14<sup>th</sup> March 2018 Housing & New Homes Committee report initiating the programme.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Matrix of options available for future delivery
2. Executive summary of options report
3. Options report for the delivery of responsive repairs services, planned maintenance and improvement programmes and large capital projects

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

None

### **Background Documents**

None

## Emerging client functions

- Programme management
- Overarching quality assurance
- Customer service
- Specification and identification of works
- Cost management
- Effective, proactive maintenance

## Proposed service objectives

- Excellent customer service (including the ability to self serve, improved customer engagement)
- Transparency
- Enhanced client side management
- Enhanced value for money
- Maximise social value

## Current service provider functions

### Revenue works

- Responsive repairs
- Empty property refurb
- Estate Development Budget
- 18/19 - £7 million

### Planned works (capital)

- Kitchens, bathrooms, doors, windows replacement
- Internal and external decs
- Roofing replacements
- 18/19 – £10.5 million

### Major works (capital)

- Larger whole estate works
- Refurbishments of blocks
- Cladding/structural works
- 18/19 - £12 million

## Future delivery options

Direct Delivery

Extension into planned works would need to be supplemented by outsourcing

Outsourced to one provider

Outsourced to one provider

Outsourced to one provider

Limited outsource model

- Customer contract – in house
- Works delivery – outsourced
- Quality assurance – in house

Outsourced through smaller lots

Outsourced through own framework for lots with ongoing competition\*

Outsourced through own framework for lots with ongoing competition

Outsourced through project by project tendering\*

\* Could also support business as usual delivery through contract end period

Wholly owned subsidiary

Extension into planned works would need to be supplemented by outsourcing

Joint Venture

Extension into planned works would need to be supplemented by outsourcing



### Executive Summary of Options<sup>i</sup>

| Option   | Advantages  | Disadvantages   |
|--|---|---|
| <p>Direct delivery i.e. no separate organisation – council provides services</p>             | <p>Council in control</p> <p>No private profit extracted</p> <p>Staff receive benefits of working for the council – likely to have union and staff support</p> <p>No risk of contractor insolvency</p> <p>No procurement necessary for DLO</p> <p>Ability to ensure positive relationships with tenants</p>   | <p>May not be realistic if incumbent’s management employees are not caught by TUPE or opt out of TUPE (council does not currently employ staff with the necessary experience)</p> <p>Significant start-up costs e.g. vans, IT as there is currently little/no infrastructure</p> <p>DLO will find it more difficult to meet fluctuating demands than a national contractor who can flex their workforce across geographic areas</p> <p>Lack of established ways of working and corporate experience of delivering services</p> <p>Significant resources required to undertake multiple procurements e.g. vans, IT, sub-contractors</p> <p>Will have to procure sub-contractors etc. in compliance with EU regulated public procurement regime and Contract Standing Orders</p> <p>Will need to procure some planned repairs and major works where the DLO does not have the capacity / skills</p> |
| <p>Outsourcing – either via a partnership contract, term contract or framework agreement</p> | <p>Successful bidder will supply vans and IT and will absorb start-up costs (though will be reflected in pricing)</p> <p>Likely to have established ways of working/procedures in place to deliver services</p> <p>Council will receive a contractor warranty in relation to the works</p> <p>Existing contract has worked well for responsive repairs. Separate tailored procurements e.g. for responsive repairs and major works would ensure right contract and contractor for different</p> | <p>Risk of contractor insolvency (but this risk can be reduced by robust consideration of financial standing in selection stage of procurement)</p> <p>Incumbent will have advantage in procurement process over other suppliers as no start-up costs and in-depth knowledge of councils requirements (though the council is under a duty to try and level the playing field if possible during the procurement process)</p> <p>Procurement process encourages low bids which may lead bidders to plan to reduce wages (despite constraints of TUPE)</p> <p>May not work as well for customer contact</p>   |

|                         | aspects of service  | where more control and interaction with tenants would be beneficial  |
|-------------------------|---|--|
| Wholly owned subsidiary | Council in control in relation to staff                           | <p>If contractor appointed to manage – will extract some profit</p> <p>High cost of establishing and administrative costs of supporting board etc</p> <p>Potentially difficult to navigate as staff employed by council but taking direction from contractor</p> |
| JV                      | May be able to win other work and benefit from economies of scale | <p>Competitive dialogue takes 12- 18 months.</p> <p>Incumbent has advantage</p> <p>Very high start-up costs e.g. legal work to support competitive dialogue and establish JV</p> <p>Ongoing costs of supporting board etc.</p>                                   |

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<sup>i</sup> This executive summary does not include all the advantages and disadvantages set out in the Trowers & Savills report but is intended to capture the most significant ones.





**dated 19<sup>th</sup> April 2018**

**Brighton & Hove City Council**

**Options Report for the delivery of responsive repairs services, planned maintenance and improvement programmes and large capital projects**

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**trowers & hamblins**

# Options Report for the delivery of responsive repairs services, planned maintenance and improvement programmes and large capital projects

## 1 Introduction

1.1 This document has been produced by Trowers & Hamlins LLP and Savills (UK) Limited and has been prepared for use by Brighton & Hove City Council (**BHCC**) with the aim of providing further detail on each appraised option and supporting information.

1.2 This document seeks to be an overall guide to each Option detailed below, and seeks to explore the key elements of each option.

## 2 Executive Summary

In compiling this Report, we have explored all of the delivery options current in the market-place. No option has been discounted at this stage and we have endeavoured to set out all of the advantages and risks of each option.

It is recognised in this Report that it is unlikely that one option will provide a perfect "fit" with all of BHCC's re-procurement priorities and it is more likely that, going forward, BHCC will need to explore a mixed-market approach: adopting two, or maybe three, of the Options discussed below across its responsive and planned works programmes. The key element of success will be the implementation by BHCC of a strong clienting-function, enabling it to manage, monitor and direct whichever delivery Option(s) it selects.

Value for money is a key priority for BHCC and we have indicated the advantages and risks of each of the Options discussed below in this respect. The report is based on the assumption that the splitting of responsive from planned works into two discrete programmes of works will not undermine the achievement of value for money; this is due to the approach taken by bidders to the pricing and delivery of such works: responsive being undertaken primarily through direct labour, versus planned works being delivered through sub-contracts and supply-chain arrangements.

## 3 Terms of Reference

3.1 BHCC requires an options appraisal of potential suitable delivery models which best align with its aspirations for its mid- to long-term requirement for the delivery of its repairs and maintenance programme to its current and future homes.

3.2 The delivery of an efficient maintenance service to its stock is an essential part of BHCC's overall objectives. Our approach to this options appraisal is with the key aim of maintaining and building on the benefits BHCC has achieved through its current relationship with its outsourced contractor, whilst addressing the identified areas of concern and improving contract performance.

3.3 In compiling this options appraisal, we have had the benefit of a wide-ranging discussion held at BHCC's housing office on 20<sup>th</sup> February 2018, attended by Sharon Davies and Glyn Huelin of BHCC and a further discussion on 29<sup>th</sup> March 2018 at Hove Town Hall, attended by Sharon Davies, Glyn Huelin, Martin Reid and Monica Brooks of BHCC. As discussed at those sessions, we have considered the options against a consistent set of requirements, including:

- (a) Increased contract/budget management;
- (b) Increased control and oversight of the works instructed (via control of the call-centre and quality-control audit checks); and
- (c) Attraction and commitment of the market-place; and
- (d) Integration of a wide variety of work types that form part of the overall maintenance package, broadly those comprising a series of planned projects (planned works) and those comprising tasks ordered cyclically or responsively (responsive works).

3.4 Throughout this options appraisal, we have assumed the following as givens for any options considered:

- (a) State Aid compliance (funding covenants etc); and
- (b) Governance compliance (vires and regulation); and
- (c) Legislative compliance (EU procurement, leaseholder consultation, tax, TUPE and pensions, etc); and
- (d) Policy and regulatory compliance (efficiency drivers).

3.5 Each Option will need to be considered further in light of BHCC's aspirations concerning IT and communication systems required to manage resident and officer information, stock archetypes, location and future potential growth. We note on this point that BHCC is currently undertaking a significant IT procurement which will result in an updating of all its current IT systems and packages. This will mean that its current housing management IT package will change. The IT procurement is scheduled to finish in September 2019, with any identified solutions being put in place during 2020 and beyond.

3.6 Primary Options (each an **Option**) addressed are as follows:

- 1 Direct delivery of the services (**Option 1**); and
- 2 Outsourcing (**Option 2**); and
- 3 Wholly-Owned Subsidiary/Managed Service model (**Option 3**); and
- 4 Joint Venture company (**Option 4**)

3.7 Each Option needs to provide BHCC with flexibility and choice in its re-procurement Options in the long-run and be deliverable (eg procured and mobilised) by April 2020. We also note that, while the current contract covers both responsive and planned/major capital works, it is possible that the future delivery could split the responsive from the planned/major works.

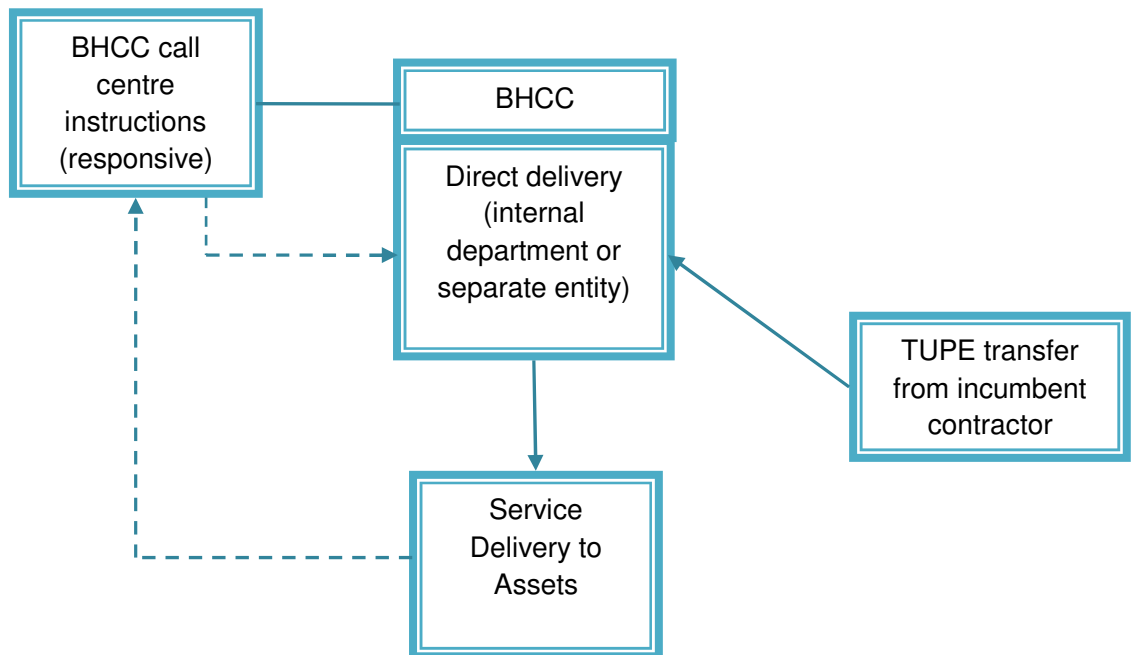
#### 4 **Option Appraisal**

Noted below is each of the Options explored in this Report. We have set out a diagram showing the corporate/contractual/delivery structure of each Option and noted beneath each diagram the perceived advantages/concerns/issues for each Option.

## 4.1 Option 1: Direct delivery of services

Establishment of an entirely new direct works department or organisation (referred to as a **DLO**) to serve all of the responsive repairs needs of BHCC, or a significant part of those needs, through self-delivery, engaging second-tier supply-chain members (subcontractors/suppliers/sub-consultants) as required. For clarity we have assumed that this model will not involve the creation of a new legal entity.

### 4.1.1 Diagram



### 4.1.2 Direct delivery Option – overview

### 4.1.3 Key advantages

- Establishes DLO as a dedicated resource.
- Values of the DLO mirror those of BHCC.
- Mitigates risk of contractor default/insolvency through greater use of in-house resources.
- Saves contractor profit margin.

### 4.1.4 Variant Options

- DLO undertakes only limited work types (eg., responsive repairs only).
- Support DLO with EU procurement of insourced private sector expertise.

#### 4.1.5 Key concerns

- Expense of setting up the DLO from scratch (see Section 12 for further information on current gaps and costs for establishing direct delivery service).
- Absence of contractor warranty of work.
- EU procurement of subcontractors/suppliers limits flexibility and supply-chain savings.
- Limited efficiency savings without commercial motivation of contractors.
- Limited commercial incentives/remedies of improved performance/productivity.

#### 4.1.6 Additional Considerations

- **Administration** – Opportunity for simple administration of ordering/payment, but complex administration of DLO itself.
- **Client controls over cost/time** - limited contractual controls at first tier level, so efficient cost/time management is wholly dependent on DLO management, including integration of multiple second-tier supply-chain members.
- **Financial/managerial commitments** – Significant direct investment required, particularly if establishing new "from scratch" (ie BHCC has not had an internal workforce before in relation to the wider repairs and maintenance works) and in resourcing this with appropriate management.
- **Budget management** - Significant demands on BHCC as regards all aspects of contract and budget management subject to obtaining external consultancy support, either permanently or during transitional process.
- **Flexibility** – Flexible redeployment of employees according to needs of BHCC, subject to employee rights and agreement of needs/priorities, but no flexibility to award work according to performance.
- **Improved Sustainability** - Limited opportunities to improve sustainability through re-engineering of contracts awarded, as subcontractors/suppliers/sub-consultants will need to be engaged direct by DLO under EU-compliant processes.
- **Opportunities to drive improved sustainability** dependent on internal management and through establishment of long-term relationships with second-tier supply-chain members.
- **Innovative/tried and tested** – Varied client experience of DLOs, heavily dependent on strength of DLO management. Potential for

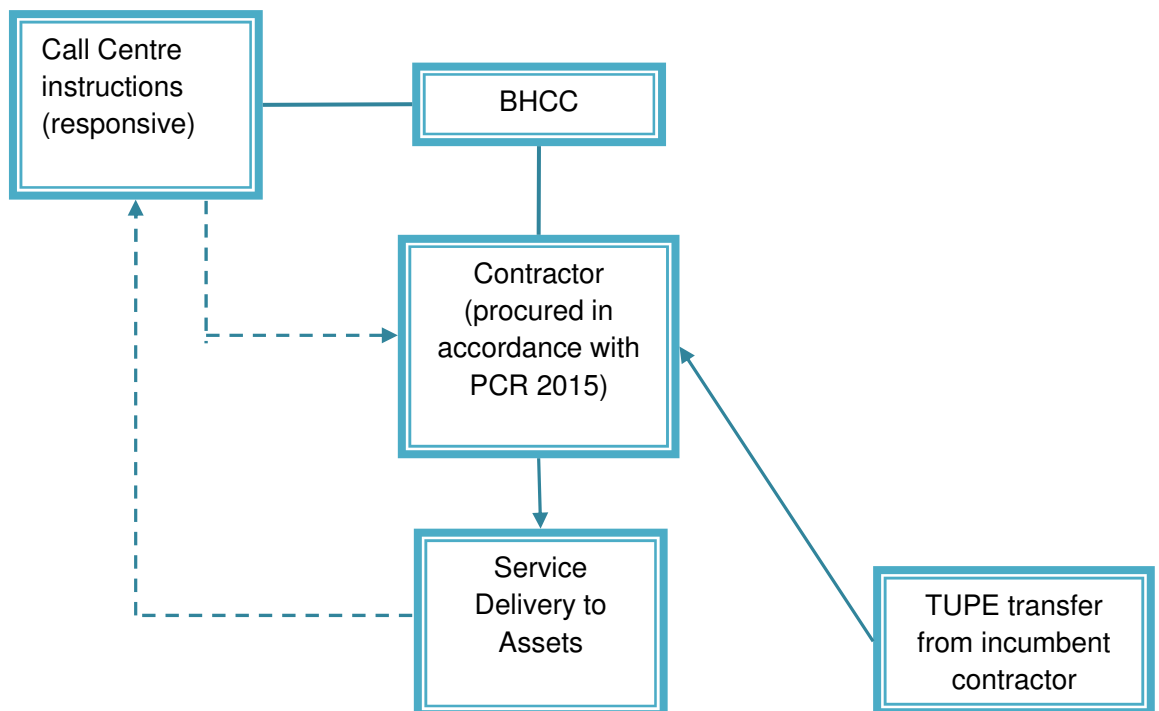
innovation in the structure of the DLO to integrate provision with any external contractors appointed for planned works. Potential for further innovation in the DLO second-tier supply constrained by need for series of EU procurement exercises.

- **Integration and consistency** – Requires integration of new management structure that will be required by BHCC and workforce inherited from current contractors, plus procurement of current DLO supply-chains.
- **Market response** – DLO Option means no engagement of first tier contractors. Second tier subcontractors/suppliers/sub-consultants will be accustomed to dealing with DLOs and should respond positively to appropriately packaged works and services. Potential for improved engagement with/increased responsiveness from some second-tier subcontractors/suppliers/sub-consultants to opportunities under long-term contracts.
- **Number of contractors** – No first tier contractors. Significant number of second-tier subcontractors/suppliers/sub-consultants.
- **Responsibility for employees** – Full client responsibility for employees including those inherited from current contractors.
- **Warranty of work** – Partial warranty available only from second-tier supply-chain members, and therefore fragmented.

#### 4.2 **Option 2: Outsourcing**

This Option involves the appointment of external contractors for the works under arms-length contracts, according to agreed scope as successors to the current contract. Variants on a theme would comprise a form of partnering contract or an amended form of standard contract to include partnering provisions or a more "traditional" form of standard term contract. The key differences between the partnering and traditional approaches are explained and discussed below and are highlighted in **Annex 3** (Comparison of standard forms of Term Contract).

#### 4.2.1 Diagram



#### 4.2.2 Outsourced Option - overview

- EU procurement of one, two or more contractors, divided on basis of scope (to be confirmed).
- All planned/cyclical/responsive works undertaken by contractors.
- Subcontractors/suppliers procured by contractors (non-EU) and reviewed/shared as appropriate.
- Current contractor staff TUPE transferred to new contractors.
- Potential co-operation of contractors through alliance with ability to award more/less work according to capacity/performance.
- Performance-based extension of contract.

#### 4.2.3 Key Advantages

- Full contractor warranty of work ("single point responsibility").
- Commercial incentives for contractor to improve performance/productivity.
- Commercial motivation and potential for supply-chain savings/efficiencies – compatible with open-book pricing approach.
- Investment/commitment of contractors to large-scale contracts.

#### 4.2.4 **Variant Options**

- Different contractors appointed for planned works and for cyclical/responsive works.
- Potential later evolution to establish Joint Venture or to bring workforces into Wholly-Owned Subsidiary.

#### 4.2.5 **Key Concerns**

- Alignment of contractor values with those of BHCC (eg profit versus performance).
- Capacity/capability of contractors to undertake large-scale contracts and deliver promises.
- Less direct influence over resident opportunities/achievement of added value.

#### 4.2.6 **Additional Considerations:**

- **Administration** – Contract management will be required in respect of each external provider. The larger the numbers of contractors appointed, the greater the challenges for integrating management of their performance.

Extent of contract administration will also depend on the cost model adopted. Administration of a schedule of rates or a full open-book approach is much more intensive than, for example, a price per property or annual price approach.

- **Client controls over cost/time** – The extent of the controls available to BHCC will depend on the contract type and duration. If contractors have invested in a long-term contract in line with BHCC's delivery model, then controls can be created through regular performance reviews and measurement of performance against clear targets. Thereby, there is a contractual incentive for contractors to improve performance and deliver agreed goals.

Additional controls can be exercised through choice of particular types of contract and these are particularly prevalent in "partnering" type contracts (such as BHCC's current contract with Mears), for example those that require:

- Programmed processes that BHCC can monitor over the duration of the contract.
- Early warning of problems and reference to a core group of client attendance.
- Advance evaluation of change.



- Advance evaluation of risk management.
  - Transparency of prices.
  - Client access to second-tier supply-chain arrangements.
  - Alternative dispute resolution.
- **Financial/managerial commitments by BHCC** – There is no capital investment required in contracts with external contractors or delivery partners, nor any client management input to a vehicle through which the works are delivered. BHCC's commitment will be linked directly to the extent of contract management and the coordination and integration of the contracts awarded to different contractors according to work type.
  - **Flexibility** – Flexibility can be achieved through capacity and performance-based reallocation of work and other contractual processes, for example under an alliance agreement signed by all contractors (eg planned and responsive).
  - **Innovative/tried and tested** - Appointment of external contractors is a tried and tested approach with opportunities for innovation. The marketplace will expect to respond to this model, although it is arguable that contractors have become complacent as to their obligation to deliver promises made at tender stage.
  - **Integration and consistency** – Whatever the number and range of contractors appointed, BHCC will have the opportunity to develop its own standard as the basis for procurement and to seek consistent specifications across new-build and existing homes. The extent to which there are variations from this standard to reflect the requirements of particular stock or other variable requirements will be a function of contract management. Management of these variables will be important so as to maintain the benefits of a common supply-chain across the appointed contractors and the economies that will come with the increased buying power that this creates.
  - **Market response** – Contractors are familiar with mid- to long-term contracts and the responsibility they will assume on a long-term basis. They are sometimes not familiar with the requirement for programmed improvements over the life of a long-term contract, and the machinery necessary to drive this and maintain motivation will need to be carefully considered and communicated during the procurement exercise and the formulation of the relevant contracts.
  - **Number of contractors** –The optimum number of contractors will attract maximum investment in/commitment to the Programme, while maintaining some element of ongoing competition to incentivise improved performance.

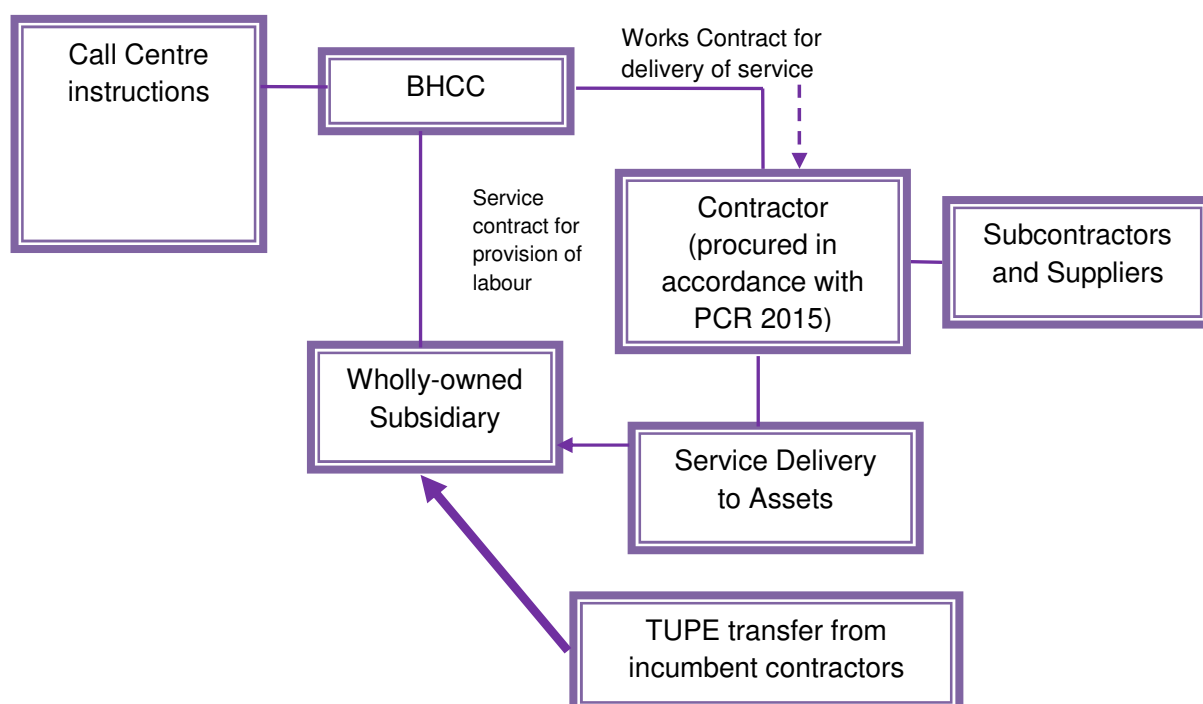
- **Responsibility for employees** – Under external delivery, the contractor will be wholly responsible for its employees, including those inherited from the outgoing contractors.
- **Tax**– we would expect that the VAT currently charged by the contractor is fully recoverable by BHCC if it falls within the following HMRC guidance: "providing domestic accommodation to people seeking housing (normally on a list maintained by the authority) or dispose of properties under the 'right to buy' legislation.... This is regardless of circumstances and whether they are acting under any special legal regime applicable to them".
- **Warranty of work** – The strength of the contractor warranty will be dependent on the terms of the relevant contracts. This model does not involve any dilution of that warranty.

### 4.3 Option 3: Wholly-Owned Subsidiary (and Managed Service)

This is an innovative option where employees are engaged by BHCC but treated as part of contractor's supply-chain and managed by the contractor. This Option is established in the competitive market as a means to improve employee loyalty and client controls, to minimise impact of contractor insolvency and to preserve the contractor's warranty of the workforce (which is more limited under the Managed Service Option).

The key difference between the Wholly-Owned Subsidiary Model and the Managed Service model tends to be the limited contractor warranty and liability under the latter model: under the Managed Service Option, the contractor will not assume "single point responsibility" and will generally not be responsible for the productivity levels of the Subsidiary employees/cost overruns etc.

#### 4.3.1 Diagram



#### 4.3.2 **Wholly-owned Subsidiary Option - overview**

- Creation of Wholly-owned BHCC Subsidiary to provide workforce for all planned/cyclical/responsive works.
- Current contractor staff TUPE transferred to Wholly-owned Subsidiary.
- EU procurement of external contractor(s) to undertake all planned/cyclical/responsive works using Subsidiary workforce.
- Subcontractors/suppliers procured by contractors (non-EU) and reviewed/shared as appropriate.
- Performance-based award/extension of contracts.

#### 4.3.3 **Key Advantages**

- Maintains full contractor warranty of work (NB: this would be diluted under the managed service model).
- Commercial incentive for contractors to improve performance/productivity (again, this would be diluted under the managed service model).
- Mitigates risk of contractor default/insolvency by bringing workforce "into" BHCC.
- Commercial motivation and potential for supply-chain savings and efficiency savings (more limited under the managed service model).
- Investment/commitment of contractors to a large-scale contract.
- Scope to create resident opportunities through subcontractors/suppliers and direct influence over the same.

#### 4.3.4 **Variant Options**

- More than one Wholly-owned Subsidiary for workforces of different work types (eg one for responsive repairs one for planned works).
- Wholly-owned Subsidiary only for cyclical/responsive workforce.

#### 4.3.5 **Key Concerns**

- Alignment of contractor values with those of BHCC.
- HR responsibility for Subsidiary employees will require robust management and incentivisation.
- Capacity/capability of contractors to undertake large-scale contracts and deliver promises.

#### 4.3.6 Additional Considerations

- **Client controls over cost/time** – Offers cost transparency as to employee costs, but need for clear contractor incentive to ensure productivity of Subsidiary employees.
- **Financial/managerial commitments** – Capital investment in Subsidiary should not be significant as it can share existing systems of BHCC (although note above regarding direct delivery and IT requirements). Need to align with BHCC's financial structure. Managerial commitment should also be relatively limited as Subsidiary does not involve shared management with private sector partner (as with the JV Model).

Most significant BHCC resource will be from HR in managing the interface between Subsidiary responsibilities as "employer" and contractor responsibilities for operational management.

- **Flexibility** – Potential flexibility in redeployment of BHCC Subsidiary employees if contractor agrees to supplement workforce as required and/or take secondments for other purposes, subject to employee rights.

Greater flexibility in event of contractor breach/insolvency as workforce remains within BHCC group.

- **Improved Sustainability** - Access via contractor to re-engineering of second-tier supply-chain to drive further savings/efficiencies and to address improvements in sustainability beyond those established at tender stage.
- **Innovative/tried and tested** - Previously seen as an innovative model but now accepted as a bona fide delivery Option in the current marketplace (although reduced number of contractors with demonstrated experience of this model). It addresses the risk of contractor insolvency, creates transparent structures that enable cost savings and preserves strong contractor warranty.
- **Integration and consistency** – Requires coordinated approach to integrate the workforces engaged by current contractors. More than one Subsidiary (eg one for planned and one for responsive) would impact on consistency (see below for "number of contractors").
- **Market response** – Will not be familiar to all contractors, but significant number of medium and major players are willing to adopt this approach. Extent of contractor commitment can be tested through procurement under Competitive Dialogue (NB. The Restricted Procedure is unlikely to be appropriate).
- **Number of contractors** – Subsidiary can serve more than one contractor, but would create tensions as to priorities in deployment of workforce and would need careful management.

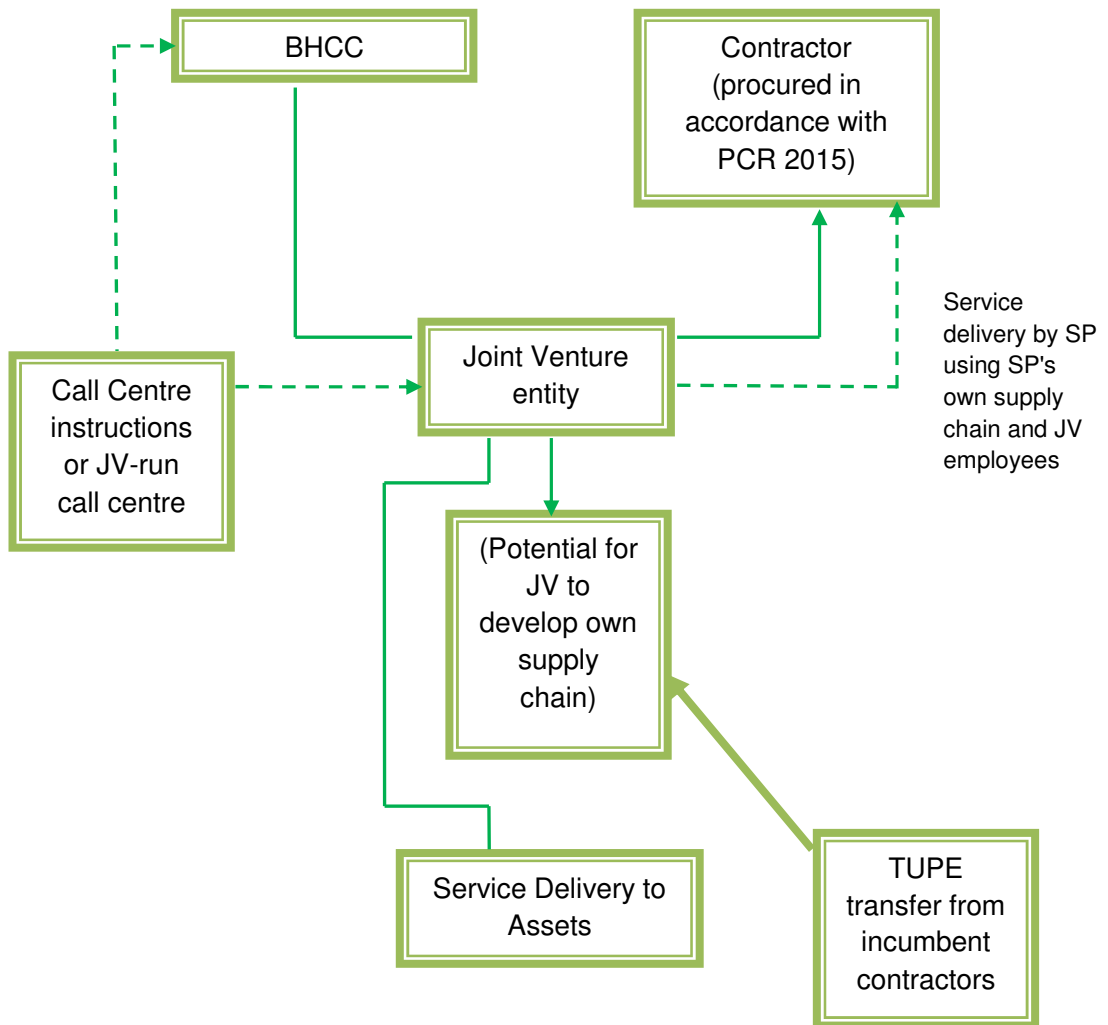
Not advisable to create multiple Subsidiaries unless justified on delivery grounds (eg due to work splits).

- **Responsibility for employees** – Employees are engaged and paid by Subsidiary, but contractual arrangements can establish operational responsibilities of contractor that include a wide range of employee matters.
- **Tax** – the overall VAT position would be the same as under Option 2. There is the likelihood of some corporation tax payable as the Subsidiary would be deemed to receive an arm's length price for its services which would be subject to corporation tax. The Subsidiary may be able to claim mutual trading status which would mean no corporation tax is payable. If BHCC was leasing office space to the Subsidiary then we would expect that the Subsidiary would be able to claim SDLT group relief if it is a company limited by shares.
- **Warranty of work** – Contractor's administration of separate contracts between BHCC/Subsidiary would enable BHCC to expect contractor to preserve full warranty of work as if employees were part of its own supply-chain.

#### 4.4 **Option 4: Joint Venture Option**

This is an innovative option whereby BHCC and its appointed contractor would jointly deliver works or certain resources through a jointly-owned entity. This Option is effective as a means to improve employee loyalty and client controls, to minimise impact of contractor insolvency and to preserve the contractor warranty of the workforce.

#### 4.4.1 Diagram



#### 4.4.2 Option 4: Joint Venture Option - overview

- EU procurement of private sector Joint Venture partner.
- All planned/cyclical/responsive works undertaken by Joint Venture.
- Current contractor staff TUPE transferred to Joint Venture.
- Performance-based award/extension of Joint Venture contract.

#### 4.4.3 Key Advantages

- Aligns contractor values with those of BHCC.
- Commercial incentive for Joint Venture to improve performance/productivity.
- Mitigates risk of contractor default/insolvency by bringing workforce and supply-chain into BHCC control (depending on shareholding of JV).
- Investment/commitment of contractor to Joint Venture.

- Opportunities for third party business.

#### 4.4.4 **Variant Options**

- More than one Joint Venture reflecting different types of work awarded.

#### 4.4.5 **Key Concerns**

- Mixed Joint Venture (BHCC and contractor) warranty of work.
- Management expertise/resource required for Joint Venture (by both BHCC and contractor).
- EU procurement of subcontractors/suppliers limits flexibility and supply-chain savings.
- Capacity/capability of contractor to undertake Joint Venture and deliver promises.

#### 4.4.6 **Additional Considerations**

- **Administration** – Increased administration of the Joint venture entity, given BHCC's involvement in the ownership and management of the Joint Venture. In terms of contract administration: reduced client administration depends on the cost model. For example, price per property or maximum price per annum models significantly reduce client administration and can be integrated with the Joint Venture model, if contractor is willing to take responsibility for cost of Joint Venture employees.
- **Client controls over cost/time** – Cost transparency as to employee costs, but need for clear incentives as to employee productivity.
- **Financial/managerial commitments** – Capital investment in Joint Venture could be significant dependent on range of business to be undertaken. Managerial commitment could also be significant in view of shared management with private sector partner. Significant resource will be from HR in managing the interface between Joint Venture responsibilities as employer and contractor responsibilities for operational management.
- **Flexibility** – Potential flexibility in redeployment of Joint Venture employees if contractor agrees to supplement workforce as required and/or take secondments for other purposes, subject to employee rights. Greater flexibility in event of contractor breach/insolvency as workforce remains within the direction of BHCC (assuming a BHCC-led Joint Venture).
- **Improved Sustainability** - Access via contractor to re-engineering of second-tier supply-chain to drive further savings/efficiencies and to address improvements in sustainability beyond those established at tender stage (flexible over lifetime of contract).

- **Innovative/tried and tested** – An innovative model that is being refined to reflect offers emerging in the marketplace, addresses client concerns as to risk of contractor insolvency, creates transparent structures that enable cost savings and shared contractor warranty (in support of Joint Venture). Also enhances the opportunities for third party business.
- **Integration and consistency** – Joint Venture structure would operate across BHCC's stock to support consistent integrated approach.
- **Market response** – Will not be familiar to all contractors, but significant number of major players will be willing to adopt this approach. Extent of contractor commitment can be tested through procurement under Competitive Dialogue (NB: the Restricted Procedure would not be appropriate here).
- **Number of contractors** – Due to initial cost and investment, not advisable to create multiple Joint Ventures unless justified on commercial grounds, but is possible, if desired (eg if BHCC wanted separate JVs to cover .
- **Responsibility for employees** – Employees are engaged and paid by Joint Venture, but contractual arrangements can establish operational responsibilities of contractor that include a wide-range of employee matters.
- **Tax** – the tax position is the same as under Option 3 although there is no possibility of claiming mutual trader status and no possibility of claiming SDLT group relief if BHCC owns less than 75% of the shares of the Joint Venture.
- **Warranty of work** – Shared warranty of work by BHCC/contractor through Joint Venture.

#### 4.5 **Mixed-market economy**

Given the mix of work to be procured by BHCC, it may be that it seeks to adopt a mixed-market economy and seeks to (for example) use a direct-delivery solution for the client function for the planned works (eg. strengthen the current client capability in-house so that BHCC can survey homes, scope planned works programme, compile a programme budget, consult tenants and leaseholders, establish and monitor value for money etc.) and/or for a portion of the repairs and maintenance works to be undertaken (eg on particular estates or in well-defined areas of the City), alongside an outsourced solution (either via Options 2, 3 or 4) for the remainder of the repairs and maintenance works and planned works. It should also be noted that framework agreements can be set up with one or many contractors, with the latter bringing the benefit of BHCC being able to move work around its framework contractors in the case of non-performance.

A mixed-market economy would allow BHCC to implement works-specific procurement solutions. It is unlikely that the achievement of an overall value for money solution would be undermined by adopting a mixed-market approach. Potentially, splitting out repairs and maintenance works from planned works could improve VFM if the planned work is properly programmed over a longer term, allowing economies of scale and efficiencies of delivery



to be achieved. The relevant contractor marketplace will deliver and price those works accordingly and will not cross-subsidise (eg) the repairs and maintenance works (delivered via TUPE'd and directly employed staff) through the planned works (usually delivered via sub-contractors and arms-length supply-chains) at the point of tender.

## 5 **Vires issues**

This section of the report explores vires considerations for each of Options 3 (Wholly Owned Subsidiary/Managed Service models) and 4 (Joint Venture model), where either a company limited by guarantee or limited by shares will need to be considered. A full analysis of vires issues in relation to Options 3 and 4 is set out in **Annex 1** of this Report.

## 6 **Tax position**

6.1 As a general comment, the tax position is broadly comparable across all of the Options and therefore we would not expect tax to heavily influence which Option is chosen.

6.2 In relation to VAT, the VAT should be fully recoverable if it relates to the provision of domestic accommodation to people seeking housing (normally on a list maintained by the authority). Therefore, if that is the case, BHCC should be able to recover VAT charged by the contractor under Option 2, by the Subsidiary under Option 3 and by the joint venture company under Option 4. Under Option 3, the Subsidiary should be in a full VAT recovery position as should the joint venture company under Option 4 and so we would not expect VAT to be an absolute cost under any of the Options. If VAT is not fully recoverable by BHCC then the VAT cost will be broadly the same under each of the Options.

6.3 In relation to corporation tax under Option 3, we would not expect this to be a material cost which would prevent this Option from being implemented, but advise that some modelling should be undertaken. The Subsidiary would be deemed to receive an arm's length price for the services it provides to BHCC and this would form part of its taxable profit for corporation tax purposes. The Subsidiary would be able to deduct various costs in calculating its taxable profit (e.g. staff costs, any rent). The corporation tax rate is currently 19% (reducing to 17% from 1 April 2020). It may be possible to claim mutual trader status which means no corporation tax would be payable although this can be commercially restrictive and is unusual. It would be difficult if the Subsidiary was a company limited by shares. Therefore, we would advise that clearance from HMRC is sought before relying on mutual trader status being available.

6.4 In relation to corporation tax under Option 4 (Joint Venture), the position is the same as under Option 3 (WOS and Managed Service) although there would not be any possibility of claiming mutual trader status.

6.5 In relation to stamp duty land tax (**SDLT**) under Option 3, we would expect SDLT group relief to be available on any land transactions between BHCC and the Subsidiary (e.g. leasing warehouse space) if the Subsidiary was a company limited by shares (but not if it was a company limited by guarantee). It would also not be available under Option 4 if the joint venture company was less than 75% owned by BHCC.

6.6 Under Options 3 and 4, the Subsidiary (in the case of Option 3) and the joint venture company (in the case of Option 4) would have various tax compliance obligations. This would include filing corporation tax returns, VAT returns and PAYE returns.

## 7 HR/Employment issues arising

- 7.1 The existing repairs and maintenance service is delivered by one contractor. Whichever of the proposed Options is adopted, it is likely that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**) will apply to those employees of the existing contractor where there is an organised team delivering those services and the employee are assigned to that group of employees whose principal purpose is the delivery of the services to BHCC.
- 7.2 Those employees who are subject to TUPE, and who do not object to transferring, will transfer to any BHCC direct labour entity (DLO), newly appointed contractor, wholly owned subsidiary or joint venture vehicle. The employees will transfer on their existing terms and conditions of employment, and with the benefit of all rights and obligations associated with their employment, other than in connection with an occupational pension scheme, except in certain circumstances where employees have membership of a public sector pension scheme. Changes to transferring employment terms will only be permissible in limited circumstances. The cost of transferring employment costs will be critical to the contract price that BHCC will need to pay to the new contractor. That new contractor will inherit all liabilities under the contract, whether known or not, and this risk will be priced for. In addition a tender may be predicated on changes being made to transferring terms, but if so it is likely that the associated risks of legal challenge would be factored into the price. For this reason although a private sector partner will be able to offer more competitive labour costs than BHCC itself could offer if it required to accept significant legal risk the savings may be less than expected. It is worth considering if there are indemnities from the existing contractors which could be relied upon by the new contractor which could help mitigate these risks and reduce costs. This may influence tender prices submitted during any tender process, or negotiated afterwards.
- 7.3 Depending upon the manner in which the current services are delivered, there may be circumstances in which TUPE does not strictly apply by operation of law, even though the employees of the existing contractors are engaged in delivering services for BHCC. This may arise if employees have been deployed over several contracts and this may also be relevant if more than one new contractor is appointed, when it may be possible to show that a service has fragmented so that it is impossible to map where any one employee's role has transferred to. This is unlikely to be relevant here however, unless within the leisure procurement a decision is taken to individually contract elements of the service.
- 7.4 There are restrictions imposed by TUPE on the ability of any new contractor, whether an outsourced third party or a wholly owned subsidiary/joint venture entity, to make changes to employees' terms and conditions or to dismiss employees by reason of a TUPE transfer. There is an exception in circumstances where there is an economic, technical or organisational (**ETO**) reason entailing a change in the numbers or function of the workforce. In the absence of such a reason, changes are likely to be unenforceable, and dismissals will be automatically unfair. Significantly the fact that current pay and benefits are not competitive in terms of the local market is not an ETO reason in most cases because there is no change to the numbers or functions of the workforce. A new contractor may be able to take on new staff on different terms and conditions but it is important to be wary of the savings which may be readily achievable in terms of transferring employees.

- 7.5 It should be noted that a new employer will also inherit trade union recognition and where there is both a recognised trade union and collective agreed terms incorporated into employees contracts, for example green/red book terms, there can be further hurdles to achieving any change of contract terms in light of the protection for collective agreements found in trade union legislation. Accordingly if a new contractor bases a tender on achieving significant employment cost savings it is appropriate to assess the feasibility of the legal and HR assumptions underpinning that tender, especially if it is the tender is based on risk sharing with BHCC.
- 7.6 If there is an ETO reason entailing a workforce change, or if changes are not by reason of the transfer, they may be implemented under normal principles. This would require employees either to have agreed to the new terms (but note comments above), or to have been dismissed and re-engaged. In the latter case, employees may be able to advance claims of unfair dismissal. (However, such a dismissal may trigger pension strain if the employee is over 55 and pensions costs must be considered). Any such claims may be capable of being defended if there is a legitimate business reason for the changes, and employees have been fully consulted with.
- 7.7 Furthermore, the full and fair consultation process which must be undertaken may include statutory obligations in relation to timing. If the proposals affect 20 or more employees within one establishment, collective consultation must begin at least 30 days before the first dismissal is to take effect; 45 days before if there are more than 100 affected employees. Consultation can now commence before transfer if certain conditions are met, but notice of dismissal must not be served until after transfer.
- 7.8 If employees transfer to a wholly owned subsidiary or joint venture entity (rather than an independent third party contractor), BHCC must be mindful of the potential for equal pay comparisons to be drawn between employees of BHCC and the new entity.
- 7.9 The law on equal pay is set out in the Equality Act 2010. A cross employer comparison is possible under the Equality Act if services are to be delivered by a wholly owned subsidiary if the employees are to be employed on the same terms and conditions (in a broad sense) to BHCC employees employed, quite likely if the employees transferred out of BHCC and terms and conditions have been preserved. In any event running in parallel to the UK Equal Pay Legal Framework is Article 157 of the Treaty on the Functioning of the European Union (formerly Article 141 of the EC Treaty) which has direct effect and which sets out the principle of equal pay for male and female workers if there is a single body is responsible for the inequality which can restore equal treatment. This is complex area and more detailed legal advice may be required but at this stage it is important to stress that there can be hurdles to achieving more market based terms and conditions of employment beyond simply TUPE. The law on equal pay is designed to prohibit differences in pay and benefits because of sex. If employees identify appropriate comparators, who are treated differently, it will necessary for the employer to advance a "genuine material factor" defence to an equal pay claim. Such a defence will need to demonstrate that the difference in pay is not by reason of the difference of sex, or, if the reason is tainted by discrimination, that it is objectively justified. Where differences in terms arise because of protection under TUPE, such a defence can ordinarily be advanced.
- 7.10 BHCC can manage the risk of an equal pay comparison arising out of the differences in terms and conditions between BHCC and any subsidiary by giving the subsidiary or JV

vehicle complete authority (subject to complying with TUPE) to make decisions about its respective terms and conditions for their employees so that BHCC does not have the power to "rectify" any differences in terms should one arise. This will provide the basis for a defence to any claim arising out of a "single source" argument and ensure that any changes to terms and conditions are supported by a fully developed business case with reasons which are not gender or gender-related.

## 8 Pensions issues arising

Each of the Options will require BHCC to consider any pensions liability in relation to the employees engaged in providing the services. A full analysis of the pensions implications for each Option is set out in **Annex 2** of this Report.

## 9 Form of Delivery Contract

9.1 To deliver the proposed programme via an external contractor, BHCC has two main options in terms of the type of contract:

9.1.1 Term Contract: This would involve BHCC and the selected service provider entering into a form of term contract, probably based on one of the industry standard forms. Term Contracts can be entered into for an unlimited period of time, subject to BHCC being able to demonstrate best value and any other requirements of its standing orders or internal procurement policy; or

9.1.2 Framework Agreement: This would comprise BHCC and one or more selected service providers entering into a framework agreement, which would establish the terms and conditions and prices under which BHCC could award individual works contracts to a selected service provider during a 4 period. Framework Agreements need to contain details of how contracts could be awarded: this is usually by direct selection of the service provider who ranked 1<sup>st</sup> in the tender exercise to set up the Framework Agreement, or via re-opening competition to all service providers who are capable of performing the works. It would also need to contain the terms and conditions of any delivery contract entered into, and the service provider's tendered prices for delivering the works. Framework Agreements are limited under the Public Contracts Regulations 2015 to 4 years' duration, though it is possible to award contracts that extend beyond the four year term.

9.2 If BHCC chose to select a Framework Agreement for the repairs and maintenance works too, this would mean that Options 3 (Wholly Owned Subsidiary/Managed Service) and 4 (Joint Venture) would be difficult to achieve.

9.3 Regardless of the choice of Term Contract or Framework Agreement, it will be important for BHCC to ensure that the specifications and prices governing the responsive repairs can be called off by BHCC by way of a "menu" of specific works (i.e. that BHCC can instruct both the responsive and planned works by reference to quoted and agreed prices) rather than by a further iterative process necessary to develop the brief and price for each project/task/element of work. Where a term contract is used, if there is insufficient clarity in that contract as to the nature of the works and their prices, then the new contracts would be treated legally as framework agreements and potentially subject to a 4 year limit and/or a challenge in respect of any attempt to create a longer term contract.

- 9.4 Under outsourcing (Option 2) or in a Joint Venture (Option 4) or Wholly-owned Subsidiary (Option 3), the contractor will invest significantly in its relationship with BHCC. In Option 4, the contractor is likely to forego a significant proportion of its profit so as to satisfy the structural requirements. It will therefore be fundamental to the contractor to have a long-term relationship with BHCC and the duration of the contract and related break clauses should reflect this. Clearly, once the maximum duration of that contract has expired, BHCC will need to undertake a further regulated procurement exercise and the contractor/Joint Venture partner will be put back into competition.
- 9.5 To facilitate effective contract management and control, the contracts used to implement the responsive and planned works under any Option should include the features set out below. It should be noted that these features are primarily associated with a "partnered" approach to contracting, although all or any of these features could be added to more traditional approach or form of term contract. The suggested features are:
- 9.5.1 a mobilisation period under which the contract is awarded on a conditional basis while the selected contractor prepares its workforce and equipment so as to be ready to take over on a designated date from the outgoing contractor (this assists in TUPE/IT and other practical arrangements);
  - 9.5.2 an open communication system with a "*core group*" of key individuals monitoring performance and troubleshooting problems, linked to an early warning system bringing issues to the notice of BHCC at the earliest opportunity;
  - 9.5.3 clear and simple KPIs with systems for measuring/reviewing performance linked to incentivisation so as to reward improved performance such as cost savings, reduced time on site, reducing accidents, reduced defects and improved resident satisfaction (whether by extension of the contract term and/or by additional payment);
  - 9.5.4 provisions for advance evaluation of change and exclusion of profit and overhead from any change claims so as to avoid misunderstandings and disputes;
  - 9.5.5 provisions governing development of improved working practices so as to minimise BHCC's need to commit its own resources to the programme;
  - 9.5.6 systems for non-adversarial problem-solving and dispute avoidance; and
  - 9.5.7 A contractually binding timetable governing deadlines for both mobilisation activities and ongoing implementation of the Programme including measures to achieve improved processes.
- 9.6 Prior to any procurement process proceeding, we would recommend that BHCC identifies its preferred form of contract(s) for both the responsive and planned works. The selected form of contract will need to be set out to bidders as part of the procurement procedure and will need to be aligned with both the agreed specifications and the chosen cost model.
- 9.7 In **Annex 3** of this Report, we have enclosed a comparison of forms of contracts to provide BHCC with an overview of the features of the different suites of standard form contracts (adopting both a partnered and a traditional approach).

9.8 Once any form(s) of Term Contract have been adopted, BHCC staff will need to be fully trained in the selected forms in order to achieve a single approach to contract management, in-depth awareness of all the client controls provided by the contract and all of the processes set out in the documents, even if they are familiar with the selected form(s) in order to achieve a standardised approach to the relevant works. If Option 1 (Direct Delivery) is selected, we would recommend that the service level agreement also adopts the key features of the selected form(s) of contract (or the SLA is in the form of the contract itself) so that the client-side asset management team is dealing with all contractors on an identical basis.

## 10 **ICT, call centres and data governance issues**

### 10.1 **General comments**

10.1.1 ICT can broadly be split into a requirement to support three functions:

- i Works ordering and completion: The systems to support the diagnosis and logging repairs, reporting of works, logging of work completions and processing of payments; and
- ii Stock information: The systems to hold stock records and identify future work requirements and completions; and
- iii Works management: The systems to support the logging of repair details, dynamic work scheduling, resource allocation, mobile working and progress updates, capture pricing information and invoicing.

10.1.2 In addition there is a requirement for systems to support HR and Finance needs. These are likely to be present within the existing client operation so we do not focus on these requirements in this Report.

10.1.3 Under Option 1 there will be a requirement for BHCC to have the ICT systems to support all three functions listed above. This is likely to result in a significant ICT investment if Option 1 is selected. We are aware that there is a project underway to replace the core housing ICT systems but it seems unlikely that this would cover the works management function at this stage. Consideration would need to be given to the extent to which the procurement of the new housing ICT system could provide the necessary works management functionality. Whilst such functionality is available in some core housing systems it does not always meet the full requirements of maintaining an efficient DLO.

10.1.4 In outsourced models the works management systems will be contractor-owned and typically the data and works ordering systems will be client owned. That said, there are a number of outsourced models where contractor systems are utilised, either in full or in part, to support these requirements. We understand that this is the case for the current BHCC contract.

10.1.5 For Option 3 (Wholly Owned Subsidiary/Managed Service) and 4 (Joint Venture) there is no typical approach and the use of ICT systems should be dependent upon finding the solution that best meets objectives. In any model where there is the involvement of an external contractor it is likely that that

contractor will have ICT to support some or all of the functions identified above. The use of existing contractor systems can help to reduce mobilisation and overhead costs. However, care needs to be taken to ensure that the systems are fit for purpose and that BHCC has appropriate access. There also needs to be appropriate mitigation of the risks associated with losing access to the systems at the end of the term. There are a number of issues around data in third party systems and some of these are discussed further below.

- 10.1.6 In our experience, while contractors often have strong works management systems, the quality of systems for works ordering and stock data is more varied. Where stock data, and particularly stock condition data, is held externally the risks associated with a single party identifying work requirements and subsequently undertaking them are amplified. Where external works ordering systems are utilised there is a risk that social objectives, including digital inclusion and the ability to access services electronically, become more difficult to achieve.
- 10.1.7 Whatever the ownership of the ICT systems it is essential that BHCC maintains the ability to interrogate and extract appropriate data from them. This is discussed further in the data section below.

## 10.2 **Call Centres**

- 10.2.1 There are a number of options for the handling of calls. These include a client hosted generic call centre, a client-hosted repairs specific call centre, a contractor hosted call centre or a third party call centre. We understand that under BHCC's current arrangement the call centre function is managed by the contractor.
- 10.2.2 There are a number of advantages to such an arrangement. These include:
- (a) Greater repairs specific skills and experience;
  - (b) Co-location with works planning and trades teams; and
  - (c) Better understanding of the contract requirements.
- 10.2.3 However, there are also a number of risks including:
- (a) Focus on the contractor's commercial objectives;
  - (b) Resource conflict between multiple contracts;
  - (c) Failure to embrace the clients service ethos; and
  - (d) Inability to deal with wider customer requests.

In our experience, clients need to work very closely where there is an external contact centre in place in order to ensure that service meets the required standard. It therefore should not be assumed that an externalised call centre function is free from client involvement or management.

- 10.2.4 The use of a generic call centre to handle repair requests is common in the sector. The key advantages of such an approach are around cost and efficiency. Smaller providers in particular may find that a repairs specific call centre could not achieve critical mass. The risks associated with generic call centres centre around lack of specialist knowledge resulting in unnecessary or inaccurate repair requests. The impact of this can be additional cost or poor customer service. In our experience, generic call centres that successfully handle repairs requests are usually backed up by strong technical support. This can be delivered through a combination of access to skilled technical resource and appropriate ICT systems.
- 10.2.5 In our experience it is important that, regardless of which party takes responsibility for the contact centre, there is an element of co-location between the works planning functions and the call centre. Where there are no or ineffective relationships between call centre and works planning functions, the risk of misdiagnosis and missed appointments are increased. This can result in increased costs and reduced customer satisfaction.

### 10.3 **Data**

- 10.3.1 The data impact of ICT and call centre decisions need to be carefully evaluated. Whilst not the topic of this Report, it is also essential that BHCC meets its requirements in respect of data protection.
- 10.3.2 Where ICT or call centres are provided externally, the risk of clients losing visibility of key data is increased. In terms of repairs, information around work value, volume, content and type are important to enable the client to understand cost and service drivers and challenge efficiency. In addition it may be difficult for a client to competitively retender the service at the end of the term as they will not be able to give the market insight into the requirements.
- 10.3.3 In respect of planned works, information on work completions, warranties and certification is also vital. Where stock condition data is held externally it is critical that BHCC maintains access to this and can export the data to incorporate into an alternative system at the end of the term. In a scenario where stock condition data is held externally, it is particularly important that the risks associated with a single party identifying requirements and subsequently undertaking works are very carefully managed. We have seen examples where providers have effectively lost control of work requirements/programmes as a result of outsourcing without maintaining effective governance.
- 10.3.4 Wherever the data is held, BHCC needs to be able to validate and interrogate it. In our experience this is a common problem where data is held externally. There is a particular risk where data used to calculate performance indicators that measure contractor performance against the contract is held by the contractor. The risk is perhaps greatest where there are incentives linked to those performance indicators.



## 11 **Section 20 (leaseholder consultation) issues**

- 11.1 Leaseholder consultation is an area of risk for BHCC in assessing Options insofar as any Option neglects such consultation or risks leaseholder challenge, for example by reason of insufficient cost information at the point of contractor selection.
- 11.2 Section 20 of the Landlord & Tenant Act and the provisions of the Service Charges (Consultation Requirements) (England) Regulations (the **Service Charges Regulations**) relate to consultation of any tenant whose variable service charges are affected by the costs incurred under the proposed agreements. BHCC is already aware that if it wishes to recover variable service charges from those affected residents it will need to issue appropriate notices to leaseholders, any assured tenants whose variable service charges are affected by the works or services and any recognised tenants' association that represents any of those leaseholders or assured tenants.
- 11.3 Moving forward, if BHCC decides to split the responsive repairs and planned works between two different contracts, it may decide that it does not need to consult on the former contract, if it is not seeking to recover costs for those works via the variable service charge.
- 11.4 Given that any procurement undertaken by BHCC will likely:
- i be procured by BHCC; and
  - ii be procured pursuant to the Regulations; and
  - iii be for an agreement for more than 12 months; and
  - iv have a value over the OJEU thresholds,

We expect that the form of consultation will be that prescribed by Schedule 2 of the Service Charges Regulations.

- 11.5 Schedule 2 avoids nominations of contractors by tenants (because the OJEU notice invites bids from any EU contractor) and allows the creation of a long term agreement ("Qualifying Long Term Agreements" (**QLTAs**)). The advantage of a QLTA is that the landlord does not have to provide more than one estimate for the costs of the works each time a new piece of work is carried out, because the price has been consulted upon at the time the agreement was entered into.
- 11.6 The Service Charges Regulations require that the initial service charges notice (the notice of intention to enter into a qualifying long term agreement) must be issued before the OJEU notice and this will need to be taken into account in the procurement programme.

## 12 **Market Research and Peer Review**

### 12.1 **General comments**

- 12.1.1 In this section we have considered how each of the Options identified at section 4 is being adopted in the sector. We have also provided some observations on the key opportunities and challenges facing organisations under each delivery model.

- 12.1.2 Based on our experience across the sector we would highlight a number of factors that are common to successful delivery regardless of the chosen delivery method:
- (a) A strong client- in particular clearly defining and articulating requirements and performance management.
  - (b) Detailed understanding of future works requirements derived from up to date stock information.
  - (c) Effective packaging of works for efficient delivery.
  - (d) A forum for regular communication between key players who are empowered to make decisions to meet objectives.
- 12.1.3 Innovative work has been done in recent years to establish systems for clients and their contractors to work more closely with second-tier supply-chain members comprising suppliers, subcontractors and sub-consultants. Although the client has no direct contractual relationship with these organisations (unless, in practice, it has an "in-house" DLO performing its Programme rather than a DLO that is a subsidiary of the client), they are responsible for a great deal of the works delivered and related supplies/services and have direct contact with residents and a significant impact on resident satisfaction.
- 12.1.4 Second tier supply-chain members also have the capacity to develop more sustainable products and solutions, as well as to generate employment and training opportunities for residents and others in the local area of the client.
- 12.1.5 Accordingly, systems have been developed through engaging with contractors so as to "*re-engineer*" supply-chain relationships under open-book systems whereby the main contractor/subcontractor relationships are reviewed after the main contractor has been appointed so as to seek savings or additional efficiencies or other added value.
- 12.1.6 Opportunities for working more closely with the supply-chain can generate not only savings and improved efficiencies, but also significant community benefits by way of employment and training and also the nurturing and encouragement of SME businesses in the relevant region and this links in directly to increasing the social value outcomes for BHCC's residents, staff and stakeholders alike.
- 12.1.7 In our view social value objectives can be met effectively under any of the delivery models. In terms of adding social value we would note that clarity around aims and objectives and effectively targeting and monitoring outcomes are more important than the delivery model. That said, there is an argument that contractors in outsourced models have often failed to evidence delivery against social value commitments made at tender stage. Clearly the models where there is most direct control will allow the client the most control over meeting social value goals.
- 12.1.8 It is common to see different delivery models adopted for different work streams, particularly where the volume of work can support a split without impacting on operational delivery. A number of providers of a similar size to

BHCC are effectively delivering services through a range of approaches and can effectively demonstrate the value from each approach. Those considering a move away from an outsourced model are predominantly doing so for repairs and maintenance works. Outsourcing remains the predominant model for the delivery of planned/capital works.

12.1.9 The service could be procured on a basis that would allow the option to progress between delivery models. Typically the contract would commence under Option 2 (Outsourced) with the option to move to Options 3 (Wholly Owned Subsidiary/Managed Service) or 4 (Joint Venture) during the term.

12.1.10 The table below shows the high level cost centres associated with works procurement, mobilisation and delivery. While BHCC will ultimately bear all of the cost it is useful to note how the individual responsibilities vary between the delivery options. Also included is a range of typical set up costs for each model. In our experience set up costs vary greatly. The variation is primarily driven by the extent to which existing infrastructure can be utilised or adapted and the need to restructure the transferring workforce. The examples below are indicative and should be treated with caution at this early stage.

| <b>Activity/Cost centre</b>   | <b>1) Direct</b> | <b>2) Outsourced</b> | <b>3) Wholly Owned Subsidiary/Managed Service</b> | <b>4) JV</b> |
|---|------------------|----------------------|---|--------------|
| <b>Restructuring</b>  | Client           | Contractor           | Client  | JV           |
| <b>Premises Fit Out</b>   | Client           | Contractor           | Contractor/<br>Either                             | Either       |
| <b>Premises Rent</b>  | Client           | Contractor           | Contractor/<br>Either                             | Either       |
| <b>ICT</b>  | Client           | Contractor           | Contractor/<br>Either                             | Either       |
| <b>Vehicles</b>   | Client           | Contractor           | Either/Client                                     | JV           |
| <b>Supply Chain Procurement and Management</b>                                | Client           | Contractor           | Contractor/<br>Client                             | Either       |
| <b>Procurement and Mobilisation Consultancy (Legal, Technical, Marketing)</b> | Client           | Client               | Client  | Client/JV    |
| <b>Branding</b>   | Client           | Contractor           | Client  | JV           |
| <b>Uniform</b>  | Client           | Contractor           | Either/Client                                     | JV           |
| <b>Materials (van stock) &amp; Plant</b>                                      | Client           | Contractor           | Contractor/<br>Client                             | JV           |
| <b>Insurance</b>  | Client           | Contractor           | Both/Client                                       | JV           |

|                                   |          |             |                   |           |
|-----------------------------------|----------|-------------|-------------------|-----------|
| <b>Staff- Direct</b>              | Client   | Contractor  | Client            | JV        |
| <b>Staff- Management</b>          | Client   | Contractor  | Client/Contractor | JV        |
| <b>Staff/Services-Overhead</b>    | Client   | Contractor  | Both              | JV        |
| <b>Typical Client Set Up Cost</b> | £1m-1.5m | £100k-£200k | £250k-£500k       | £500k-£1m |

## 12.2 Option 1

- 12.2.1 The use of DLOs has grown within the sector over recent years, particularly amongst larger housing providers. Among housing associations, the potential VAT saving available on labour has been a key factor in decisions to establish a DLO. For BHCC this is unlikely to be a consideration as VAT should be largely or fully recoverable.
- 12.2.2 There are a number of other reasons supporting the establishment of a DLO and a number of our clients highlight the value from having directly employed staff (who consider themselves part of the organisation delivering the service) as the primary benefit. In addition mitigation of the risk of contractor default/insolvency is another common driver.
- 12.2.3 In our experience the DLOs that have mobilised efficiently in recent years have made appropriate investment in staff and infrastructure at the outset and have often adopted a phased approach to mobilisation.
- 12.2.4 Operating a DLO requires different skills than those typically found in many public sector contract management teams. Where these commercial management skills do not exist, it is common to see ineffective productivity and time management. This is one of the key risks associated with this model. In our experience it is not uncommon to see examples of delivery costs inflated by 20% to 30% in organisations that fail to manage cost and productivity appropriately. Maintaining effective productivity management is therefore a fundamental requirement for successful delivery under this model. Although staff transferring via TUPE should ensure that the new DLO is adequately resourced, the lack of infrastructure and experience places this option in a high risk category as far as performance is concerned.
- 12.2.5 Generally speaking only the most efficient and commercial of DLOs will deliver works at or below current market rates. Amongst the DLOs that do, it is not unusual to see a conflict develop between delivery of service benefits and managing productivity and cost. It is therefore essential that realistic priorities and targets are agreed at the outset.
- 12.2.6 Generally in-house teams incur higher overhead costs than an equivalent private sector contractor as they do not have the same opportunity to spread those costs over a number of contracts.

- 12.2.7 Establishing a supply chain for materials and sub-contractors will require a parallel procurement at the same time as establishing the new DLO and this can prove quite challenging.
- 12.2.8 Responsive repairs remain the most common work stream for delivery via a DLO. It is less common, although not unusual, to see capital works delivered through this route. A clear understanding of requirements is necessary in order to ensure that workflow is adequate to keep the workforce productive. Where there is limited understanding and no regular workflow the result is often increased non-productive time and cost.
- 12.2.9 If BHCC chose to establish a DLO to deliver repairs work then the delivery of the capital programme would still need to be procured. In our experience a concurrent mobilisation can place a strain on resources and increase the likelihood of the risks associated with poor mobilisation materialising.
- 12.2.10 A summary of the gaps that we typically see when a provider moves to a direct delivery model are below:
- (a) Management staff - typically there is little or no experience of direct delivery management amongst existing teams and management staff do not always transfer.
  - (b) Delivery staff - again not all of the required resource may transfer. In addition the resource that does transfer may not fit future delivery plans.
  - (c) ICT - existing ICT systems rarely support direct works management effectively. In the case of BHCC this gap may be bigger as a result of some of the existing ICT being outsourced to the contractor.
  - (d) Supply chain - supplier and subcontractor arrangements are required and will need to be procured. An OJEU compliant process will likely be required.
  - (e) Premises - existing Council premises are unlikely to be able to support the direct works delivery.
  - (f) Vehicles and plant - these are unlikely to be in place and will need to be procured. An OJEU compliant process will likely be required.
  - (g) Processes and procedures - delivery processes and procedures (including risk assessments) will need to be developed. Whilst some may already be in place (for example lone working procedures) the majority are likely to need to be developed.
- 12.2.11 Owing to the extent of the existing infrastructure that could be used, it is difficult to establish the likely investment in mobilising a DLO with great accuracy at this stage. In our experience investment of between £1m and £1.5m are typical to effectively support the establishment of a medium size DLO. ICT investment is typically the largest cost item followed by external support (technical, procurement, legal, financial, marketing). Restructuring costs incurred following

any transfer of staff from the incumbent Service Provider can also be a major cost item but is commonly the most variable.

## 12.3 Option 2

- 12.3.1 Outsourcing, through either partnering or traditional approaches, remains a very common and well understood approach. We continue to see a large volume of works procured and delivered in this way.
- 12.3.2 In our experience the client organisations that provide greatest clarity around requirements/objectives, and have clear and simple performance monitoring systems continue to get the best out of outsourced arrangements. In addition clear pricing frameworks and appropriate incentivisation are common ingredients of approaches that deliver value of money.
- 12.3.3 Where an ongoing element of competition is maintained in an outsourced agreement, this is typically a strength, and can effectively support the delivery of performance improvements and value for money. However care needs to be taken that any mechanism for ongoing competition does not adversely impact the contractor's ability to invest in the relationship and mobilisation.
- 12.3.4 We see a number of outsourced arrangements which suffer as a result of failure to adequately resource mobilisation. In our experience this risk is particularly acute in relation to responsive repairs delivery and the provision of appropriate ICT. It is therefore essential that there is clarity around requirements at tender stage and that the duration of the contract reflects the need for the initial investment. We often observe operations suffering as a result of underdeveloped infrastructure leading to strained relationships.
- 12.3.5 There remains a split in the sector over the extent to which opportunities are divided in to lots. Single service provider models are not uncommon and we have recently worked with a number of providers who have procured works and services on this basis. However, in recent years our experience is that medium to large providers have more often split responsive and planned works under the outsourced delivery model. The expenditure forecasts and size and geography of BHCC's housing stock indicates that a split into Lots would be viable.
- 12.3.6 Whilst not the only option (and we understand in the past BHCC has engaged more than one contractor to deliver responsive works across the city), typically a single contractor model would be quite appropriate for a responsive works contract of this size/geography. The volumes of work orders and scale of work naturally fit into a bracket that would appeal to both national and larger regional contractors, all of whom would be expected to have the right infrastructure to manage such a contract.
- 12.3.7 At an estimated £88.9 million over the first 5 years it appears that the volume of planned works would support a multi contractor approach. The opportunity could be split in to lots (by work type) and, where appropriate, more than one contractor could be appointed a lot. Multi contractor frameworks remain a common mechanism in the sector and have been used effectively to maintain competition and contractor performance whilst providing the Client with more

flexibility than a term contract. Under this model, BHCC would need to ensure that the successful contractor(s) have an appropriate volume/term of work to invest appropriately in delivering the opportunity. Additionally, splitting works into specific lots that reflect the tenant/leaseholder mix can help ease leasehold consultation and aide recovery of costs.

#### 12.4 **Option 3 (Wholly Owned Subsidiary/Managed Service)**

- 12.4.1 The Wholly Owned Subsidiary/Managed Service model is perhaps the least common of the approaches outlined in this Report. There is, however, a growing interest amongst providers. This is driven primarily by the potential tax benefits and mitigation of the risks associated with contractor default/insolvency. Whilst the tax benefits are unlikely to be a key issue for BHCC (given the likely ability to largely or fully recover VAT) the potential to achieve some of the benefits of having a DLO, without all of the infrastructure and commercial management requirements, can be particularly attractive. As a result of recent high profile contractor failures the potential to mitigate the risks associated with contractor insolvency is regularly cited as a key consideration.
- 12.4.2 The Managed Service model has been considered by a number of providers-typically either to strengthen the management of or expand an existing DLO or as part of ensuring that a newly established DLO has the appropriate commercial management skills. Its application in the sector has been limited which, in our view, is primarily due to concerns over fragmented ownership/responsibilities. The contractor managing the service will have more limited responsibility than they would have in an outsourced model and this may create additional risk for the client. However, the contractor managing the service can be incentivised to help manage risks around service delivery, quality and productivity/cost control.
- 12.4.3 There is a growing interest in the Wholly Owned Subsidiary model on the basis that it has the potential to mitigate some of the risks of the managed service model. This is because the contractor warranty can be more akin to the outsourced model and the contractor has more of an incentive to effectively manage productivity. A key concern includes the potential for conflict between the HR role in managing the employees in the subsidiary and the contractor role in operational management. Additionally, it is difficult for contractors to retain existing management teams for their own projects with considerable movement of staff between contractors in recent years, let alone employ good teams to manage these types of model that offer only a limited return from the contractor's perspective.
- 12.4.4 Whilst a lack of familiarity may limit market response there are no obvious barriers to suggest that contractors would be unwilling to adopt the approach. There are however, only a limited number of contractors experienced in these models which in itself creates a risk for any provider and potentially reduces the scope of any procurement exercise. We are only aware of only one contractor currently marketing/operating under the Managed Service model.

## 12.5 **Option 4 (Joint Venture)**

- 12.5.1 The establishment of joint ventures to deliver day to day maintenance and major repairs has become more common since BHCC last procured the service. Notwithstanding this, there have been numerous instances in the last 2 years of relatively long standing JV's being disbanded and services brought in house (as per Option 1 above).
- 12.5.2 The primary drivers for housing providers choosing this approach is the potential VAT saving and increased control. The JV option can allow these to be achieved whilst retaining the commercial management strengths of a contractor. That said we have seen a number of JVs where the RP has failed to achieve the control, cost or service benefits they desired. The challenges of partner selection and maintaining appropriate management of the partnership should not be underestimated.
- 12.5.3 JVs with contractors can be an effective way to achieve many of the benefits of establishing an in-house function. Key advantages over the establishment of a DLO include lower setup costs as a result of being able to leverage the partner's delivery infrastructure, and the commercial and operational management skills that come from the contractor. That said, it is our experience that initial investment will be required to mobilise an effective service. Failure to invest at the outset, or reliance on contractor infrastructure that is not suitable, presents a risk to successful operation.
- 12.5.4 In our experience, a key success factor is a client that is active in the management of the JV. It is too easy to play a relatively 'hands-off' role thus effectively giving control to the contractor partner. In addition, clarity about objectives, the agreeing of commercial incentives for the partners, and an appropriate governance structure are all critical to JV successful models.
- 12.5.5 There may be a smaller number of potential JV partners than there would be bidders for a traditional outsourced arrangement. This is often as result of perceived complexity and resource issues. It is therefore typical for larger contractors to be the primary players in this space.

## 13 **Procurement and mobilisation recommendations**

- 13.1 The successful re-procurement of the contract will depend upon many factors, one of the most important being the comprehensive scoping and packaging of the works such that the market is clear about BHCC's requirements and is able to accommodate these within the tender submissions.
- 13.2 Our understanding of the current contract is that the response, void and cyclical aspects are delivered to high levels of customer satisfaction and are cost effective when analysed through the latest Housemark 2017 benchmark report. This side of the contract is delivered via the Nat Fed Schedule of rates and overall, costs are very competitive when compared against current tender levels. Notwithstanding this, the number of repairs per property is less than benchmark yet the expenditure proposed on capital planned works is higher than our expectations when compared to other social landlords (bearing in mind the extensive investment over the last 10 years). There is a possibility that the revenue pricing does not fully reflect the cost of service delivery and is partly subsidised by planned works.



- 13.3 The planned works are split between planned preventative maintenance and large scale major capital works. The former operates under bespoke composite rates for specific work items whilst the latter operates under a 'cost +' arrangement whereby Mears invite tenders from selected sub-contractors for all packages of the programme and subsequently manage the delivery, charging their agreed overhead and profit levy. This cost is then established as an Agreed Maximum Price. The capital works programme does not appear to operate as effectively as the revenue works and struggles to demonstrate value for money. There are high charges levied on leaseholders, which in some cases are as much as £30-40,000 with some cases at tribunal. Consideration of the type of cost model for the new contracts is vital to ensure that appropriate leaseholder cost recovery can be achieved.
- 13.4 Whilst a number of Local Authorities (LB Hammersmith and Fulham, Slough Borough Council) have recently procured all inclusive 'asset management' type contracts covering revenue and capital work similar to the current contract, we believe that this type of contract structure is unlikely to be suitable for BHCC going forward. The most common arrangement within the social housing sector splits revenue and capital work (as discussed in paragraph 4.5 and Section 12 above) and due to the respective volumes of work in these 2 categories, this is likely to deliver best value for BHCC whilst reducing its risk exposure.
- 13.5 The volume of capital work is extensive at £88.9 million (based on BHCC figures and subject to review) over the next 5 years and by careful packaging to suit market capabilities and capacity, we believe BHCC will be able to satisfy all its social and economic agenda requirements whilst also delivering better value for BHCC and leaseholders. To achieve this however, we recommend that a full investment plan is developed and used to inform construction of a new pricing model rather than a repeat of the existing.
- 13.6 The R&M (revenue) work would therefore form a separate procurement and there needs to be clarity over whether this would be the same as the current contract or also incorporate gas servicing and other cyclical maintenance works. Additionally, there will be a requirement for much greater digital inclusion in the new contract. Further consideration of this is required.
- 13.7 This will also be influenced by the delivery route chosen by BHCC. If an outsourced model is preferred, then it is possible to include all work requirements, either in one package (with single service provider) or a small number of providers that are simultaneously put out to tender (depending on specialisms). However, if an in-sourced solution is adopted, the full scope of the service delivered by the new DLO will need to be carefully considered and reflect the capability of the new organisation. Work sitting outside this capability will need to be outsourced through a tender until such time that it is capable of being delivered by the DLO. This applies to whichever DLO model is chosen – fully in-sourced, WOS or Managed Service.
- 13.8 Clear scoping of the procurement requirement is therefore essential before the actual process can even be determined. Based on our experience, this is likely to take about 3-4 months to achieve for the planned works, although will be dependent on the extent of consultation adopted with tenants, leaseholders, elected members and officers. However, clear scoping in advance requires robust data and will place greater programming responsibility on the client team. In order to achieve this, we believe significant

enhancement of current stock condition information is needed . For the R&M works, scoping the level of service delivery is more based on consulting and agreeing with members, residents, officers as to the agreed levels of service and could potentially be achieved in 2 months.

- 13.9 While it is possible to prepare some tender documentation in parallel, full documentation including pricing model will likely take a further 2 months to develop. The current BHCC Project Plan reflects the embryonic stage that the re-procurement project is at and is hence quite generic and high level. As the procurement model is further developed and refined, the Project Plan will need to be updated to reflect the agreed approach and the fact that there may be multiple and parallel timescales.
- 13.10 For the R&M contract it is imperative that the start date is 1<sup>st</sup> April 2020. The current project plan allows for successful contractor notification in late July 2019 which provides 8 months for mobilisation and this ought to be sufficient assuming a more traditional or partnered contract is adopted. This period would even facilitate a short competitive dialogue tender process as described elsewhere in this report as a shorter mobilisation period could form part of the dialogue. We believe that there are some advantages to this procurement route compared to the restricted procedure. This outsourced model would require the new contractor to bring a fully operational IT platform that would be up and running from day one, irrespective of BHCC's IT project, with IT integration between the 2 systems taking place at a time that suits BHCC's new IT platform.
- 13.11 For the planned/capital works, we consider that the pre tender phase is therefore likely to require an additional 1-2 months with a consequential extension of the tender timetable, assuming the restricted procedure as outlined. Whilst this has a knock-on effect to the actual contractor appointment date and start of the mobilisation phase, we believe BHCC still has sufficient time to plan and implement the contract mobilisation for planned works between September 2019 and contract start in April 2020 (in our experience, 3-4 months is usually adequate). It is also accepted practice that the first years planned capital works is at a reduced volume to allow for new processes and procedures to get established and trialled.
- 13.12 However, the current project plan does not reflect the alternative procurement solutions. Whilst a managed service/WOS or JV solution could most probably be delivered in a similar timeframe, establishing an in-house DLO would require a different approach. Under this scenario, none of the labour will be available until the TUPE process has been completed and the current contract ends – day 1 of the new contract. In the meantime, BHCC would need to undertake the following headline activities:
- 13.12.1 Establish a fully operational IT platform for repairs and compliance, including call centre.
  - 13.12.2 Develop all operational processes and procedures
  - 13.12.3 Establish the contract admin regime, HR/employment etc
  - 13.12.4 Establish a performance management regime
  - 13.12.5 Procure all sub contractors and materials suppliers – OJEU compliant
  - 13.12.6 Recruit a management team assuming they do not all transfer from Mears.

- 13.12.7 Arrange transport and all accommodation – depending on current arrangements
- 13.13 BHCC has experienced a number of challenges in managing the existing contract. The initial TUPE involved transfer of most of BHCC's in house technical and professional resource to Mears. This was common practice at the time but places extreme reliance and trust on the contractor to deliver without interference by the client. Over time this trust can break and the current situation is that there is mistrust between Mears and BHCC such that BHCC has employed additional staff to check work carried out by Mears, albeit still at a relatively modest level compared to most of our other projects.
- 13.14 This means that BHCC has a limited technical and professional resource available to have an involvement in the procurement and implementation of these new contracts. The mobilisation phase of any new contract is absolutely vital to its successful operation and it is preferable to be over resourced rather than under-resourced and BHCC will need to engage additional resource to deliver this. An example partnering timetable, including typical mobilisation and ongoing contract management tasks, is included for reference at **Annex 4**.
- 13.15 Whichever Option is chosen, BHCC will need to establish a fully resourced client team to manage both revenue and capital works. The size of the team will need to reflect the final contractor combination and will also differ between the various procurement models. In the case of setting up a DLO, the staff will TUPE back to BHCC and therefore provide an instant resource, albeit not potentially the right resource to meet BHCC's new requirements. For any of the managed solutions, the additional resource will need to reflect the extent of client engagement in managing the contracts and degree of trust placed in the managing party.
- 13.16 Option 2 (outsourced model) will require BHCC setting up a full client team to project manage the contracts which will need to again reflect the final contractor combinations and work scope. However, each of these scenarios requires further detailed consideration and development of a resource plan.
- 13.17 In **Annex 5**, we have set out a summary of the Restricted Procedure and Competitive Dialogue Procedure, which we consider would be the two most suitable procedures under the Public Contracts Regulations 2015 to use in a procurement exercise.

14 **Disclaimer and contact details**

14.1 This options appraisal Report has been prepared by Trowers & Hamlins LLP and Savills (UK) Limited for Brighton and Hove City Council for the purpose of considering procurement options for the delivery of BHCC's responsive repairs services, planned maintenance and improvement programmes and large capital projects. No liability is intended or should be inferred to any third parties or for any other purpose.

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**Trowers & Hamlins LLP/Savills (UK) Limited**  
**19th April 2018**

## Annex 1

### Vires considerations

#### 1 Option 3 - Powers to establish 'NewCo'

##### 1.1 Legislative regime

1.1.1 Section 1 of the Localism Act 2011 (the **2011 Act**) provides local authorities with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the general power of competence. BHCC may exercise the "general power of competence" for its own purpose, for a commercial purpose and/or for the benefit of others.

1.1.2 In exercising this power, BHCC is still subject to its general duties (such as the fiduciary duties it owes to its rate and local tax payers) and to the public law requirements to exercise the general power of competence for a proper purpose.

1.1.3 Section 2 of the 2011 Act limits the exercise of the general power of competence where it "overlaps" with a power which pre-dates it. This includes BHCC's trading powers under Section 95 of the Local Government Act 2003 (the **2003 Act**). When BHCC relies on the general power of competence and/or the power in Section 95 of the 2003 Act to trade, it is prudent for it to comply with the requirements and limitations to which Section 95 is subject. These are set out in Regulation 2 of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (the **2009 Order**) which effectively requires a business case to be prepared and approved by BHCC before a company starts trading.

1.1.4 Section 4 of the 2011 Act requires that where BHCC exercises/uses the general power of competence, then if it does so for a commercial purpose it must do this through a company.

1.1.5 It is our view therefore that BHCC can, subject to the matters referred to below rely upon the general power of competence to form a Wholly-owned Subsidiary for the purpose of it operating a business to provide the proposed planned and responsive works and repairs and maintenance services.

##### 1.2 Powers to trade

1.2.1 As stated above, Section 95 of the 2003 Act gives BHCC the power to trade, but is subject to restrictions contained within the 2009 Order.

1.2.2 Regulation 2 of the 2009 Order states that a best value authority (such as BHCC) is authorised to do, for any commercial purpose, anything which it is authorised to do for the purpose of carrying out its ordinary functions. The 2009 Order contains two important provisions:

- (a) before exercising the power, BHCC is required to prepare a business case in support of the proposed exercise of the power which must be approved by BHCC; and
- (b) if BHCC provides the Wholly-owned Subsidiary with assistance in the way of accommodation, supplies, staff, etc., BHCC must recover these costs.

1.2.3 Reviewing both the power in the 2009 Order and the 2011 Act, we would recommend that the general power of competence under Section 1 of 2011 Act is used, establishing a Wholly-owned Subsidiary in accordance with Section 4 of the 2011 Act. Whilst the requirement for BHCC to approve a business case before establishing a trading company is specific to the 2009 Order, it would be prudent for BHCC to prepare this in advance of setting up the Subsidiary to show that BHCC has given due regard to its duties.

### 1.3 **Company structures**

1.3.1 Where BHCC exercises its general power for a commercial purpose then it will be required to do so via a company (or alternatively via a community or co-operative benefit society). Although the provision of repairs and maintenance to BHCC properties is arguably not a commercial purpose, if the Subsidiary's business case is (even in part or in the long run) predicated on generating revenue from third parties, such activities would be, without doubt, commercial.

1.3.2 A company could be set up as either a company limited by shares (**CLS**) or a company limited by guarantee (**CLG**). We have discounted the use of a Limited Liability Partnership (**LLP**) or (not for profit) Community Benefit Society for the Wholly-owned Subsidiary as these corporate forms respectively raise additional vires issues or are not suitable for a profit distributing entity.

### 1.4 **A company limited by shares**

1.4.1 A company limited by shares (**CLS**) is the type of company which most people (and the private sector) are familiar with. The corporate structure is tried and tested and is underpinned by an established body of law and practice.

1.4.2 In terms of overall control and also financial and tax planning, the structure of a limited company provides considerable flexibility through the creation of different types of share and loan capital. It is also simple to admit new shareholders if BHCC wishes in the future to make the company a joint venture vehicle (for example, to introduce another local authority to create a joint company capable of providing similar services to that second authority or to enter into a joint venture with an outsourced contractor (as per Option 4)).

1.4.3 Key features of CLSs include:

- (a) A CLS can have very wide objects (unless these are limited in the company's articles);
- (b) A CLS is usually formed for the purpose of making and distributing profits to its shareholders;

- (c) As a separate legal entity, a CLS can own and deal in assets, sue and be sued, and contract in its own right;
- (d) A CLS has limited liability. The circumstances in which shareholders could be held legally liable for a company's debts (beyond their unpaid capital contribution) are extremely limited. This means that the liability of the shareholders of the CLS would be limited and protected;
- (e) Shares can be held by BHCC, employees, the private sector, equity investors and/or service users and the holding of shares is fluid and flexible. Shareholdings can change in order to take account of a change in circumstances and/or in accordance with the parties' requirements;
- (f) The shareholders' agreement would set out the relationship between BHCC and the Company in more detail.
- (g) In a CLS, the decision-making power of an organisation rests primarily with its board of directors, but some matters may be reserved to the shareholders (BHCC if any owned);
- (h) A CLS is intended to generate a commercial profit and distribute profits, and it is the most suitable form of vehicle for this purpose;
- (i) The administration process of a CLS is primarily governed by the Companies Act 2006 and the company's articles of association. This will involve holding board and general meetings and preparation and submission of accounts. CLSs are registered at Companies House, but there is no ongoing regulation by Companies House. Tax computations and returns would need to be filed within the required deadlines in addition to any payments of tax;
- (j) A CLS is subject to tax on any profits or gains generated from its activities;
- (k) For Corporation Tax purposes, all transactions with 'connected parties' would need to be undertaken on an arm's length basis;
- (l) Mutual trading status (see the Wholly Owned Subsidiary Option below) would be difficult to achieve therefore all income and gains would likely be taxable where a CLS is used;
- (m) To the extent that the CLS has any 75% owned subsidiaries, they would form a group for group relief purposes, allowing the sharing of tax losses between companies in the same accounting period.

## 1.5 A company limited by guarantee

- 1.5.1 A company limited by guarantee (**CLG**) is a company where the general members do not hold shares, but instead each member undertakes to pay a nominal figure (usually £1) in the event of the company becoming insolvent. If the company is to be a wholly-owned subsidiary, BHCC would initially be the sole member; but a company limited by guarantee can have many members

and different categories of members with different voting rights. Changing from a single member company to one with many members is also straightforward.

1.5.2 This form of company is often adopted for charitable or community interest activities. In our experience it is rarely used as a vehicle for undertaking commercial activity.

1.5.3 Key features of CLGs include:

- (a) As with a CLS, a CLG may have wide objects unless its member guarantors wish to limit them in the company's constitution. For example, BHCC may wish to limit the objects to certain purposes only;
- (b) CLGs are usually not for profit organisations but they do not have to be;
- (c) In the same way as a CLS, a CLG is a separate legal entity and has limited liability. However, instead of a capital contribution each member guarantor undertakes to pay a nominal figure (usually £1 (one pound)) in the event of any insolvency on the part of the company;
- (d) a CLG is similar in structure to a CLS except that its member guarantors do not hold shares in the company;
- (e) in constitutional terms a CLG has the benefit of similar levels of flexibility as a CLS;
- (f) if a CLG is established as a "for profit" organisation then it is possible to include a provision in its constitution which will describe how profits will be distributed to its member guarantors;
- (g) It is relatively inflexible and cannot be used to attract investment or external equity funding later in its life. This may limit the funding options available for a CLG, particularly in relation to funding working capital;
- (h) In the first instance, a CLG would be subject to tax on any profits or gains generated from its activities;
- (i) The main benefit over a CLS is that Mutual Trading Status may apply which would exempt from Corporation Tax any trading profits arising from services provided to BHCC;
- (j) The benefits of Mutual Trading Status will depend on the nature and role of the Company and, therefore, its level of profitability. It can only apply in relation to profits arising from services provided to BHCC and therefore could be outweighed by the commercial and operational disadvantages of a CLG set out above;
- (k) Tax computations and returns would need to be filed within the required deadlines in addition to any payments of tax;
- (l) To the extent that the Subsidiary has any 75% owned subsidiaries, we would expect that they would form a group for group relief purposes.



## 1.6 **Propriety Controls**

There is an extensive legal framework governing local authority companies, currently set out in Part 5 of the Local Government and Housing Act 1989. However it should be noted that section 216(1) of the Local Government and Public Involvement in Health Act 2007 does include a provision that would repeal Part 5 – section 216(1) is not yet in force, and there currently is no date set for when or if this will happen, but BHCC should be aware that the current regime may be subject to change. Any revised regime would be implemented by Statutory Instrument and would require prior consultation by the Secretary of State.

## 1.7 **Conclusion on the form of corporate body**

Based on the above analysis, we believe a company limited by shares is likely to be the most appropriate vehicle for the Subsidiary Company. A company limited by shares could be established within a week, using an 'off the shelf' articles of association, with BHCC as its sole shareholder. The articles can then be tailored to reflect BHCC's requirements in due course.

## 2 **Option 4 – Powers to establish a joint venture**

2.1 The vires position in relation to Option 4 is more complicated. And will depend, to a large extent, on BHCC's justification for establishing a joint venture relationship.

2.2 On the face of it, it would seem most likely that BHCC would chose to go down a joint venture route if the primary motivation for the project were to establish a commercial business which would then seek to trade (as a joint venture) with third parties - for example other councils or Registered Providers.

2.3 In this case, it would seem to us that it would be probable that BHCC would again seek to rely on section 1 of the 2011 Act and, as explained above, where BHCC exercises its general power under the 2011 Act for a commercial purpose then it is required to do so through a company.

2.4 As such, the most probable corporate form for a joint venture would be a joint venture company limited by shares.

2.5 However, we are aware that a number of providers in the market for repairs and maintenance services are keen to establish joint venture limited liability partnerships and, were this to be an Option which BHCC and potential contractors wish to pursue, a detailed consideration of BHCC's vires position would need to be considered.

2.6 Broadly, the Options would be to participate in an LLP structure via an intervening Wholly-owned Subsidiary of BHCC (so that BHCC's participation on the LLP was through its own company); in which case the difficulty presented by the restrictions on BHCC's use of the general power of competence under the 2011 Act fall away.

2.7 Alternatively, (and this depends heavily on BHCC's motivations for participating in the joint venture) it may be possible to arrive at a position where BHCC could participate directly in the LLP (with the obvious tax advantages that this brings) but this would require careful consideration; that said the judgement in the recent *Haringey* case sanctioned the direct involvement of Haringey in its JV with Lendlease as an LLP on the basis that Haringey's

purpose in entering into the LLP was *not* commercial. It had carefully articulated in various reports leading to the establishment of the JV, the socio-economic and other non-commercial public benefits the JV was established to achieve. As Haringey's participation was not for a commercial purpose it was permissible for it to be a direct participant in the LLP using the general power of competence under the 2011 Act.

## Annex 2

### Pensions considerations

#### 1 Option 1: Direct delivery of services

As employees of a Direct Delivery of services, those staff will be entitled to remain as members of the Local Government Pension Scheme (**LGPS**). The advantages of a Direct Delivery of services are consistent with those applicable to a Wholly-Owned Subsidiary or Managed Service Model (Option 3). The main disadvantage associated with the creation of a Direct Delivery of services is the potential additional cost for BHCC, in that, unlike other models of service delivery, new joiners are also required to be provided with LGPS membership. A further disadvantage of this model, which is also the same as for a Wholly-Owned Subsidiary is that an exit payment could arise in the (albeit highly unlikely) event that the last active LGPS member ceases membership of the LGPS.

#### 2 Option 2: Outsourcing

##### 2.1 Statutory requirements

BHCC is obliged to follow the Best Value Authorities Staff Transfers (Pensions Direction) 2007 (the **Direction**). Broadly, this requires that staff that were originally local authority staff and are transferred under a contract for services to a service provider retain rights to membership of an arrangement that is the same as or broadly comparable to their pension prior to their TUPE transfer. The obligation would be satisfied by staff remaining as LGPS members.

##### 2.2 Outsourcing

Generally, the position is that where a council is the commissioning body and enters into a contract for services with a provider to perform those services, as envisaged under Option 2, the staff transferring to the contractor should be afforded pension protection under the Direction. The terms of the Direction only 'bite' and oblige a 'Best Value Authority' to ensure that protection is enshrined within the contract terms. This protection extends to require BHCC to oblige the contractor to secure pension provision that is the same as or 'broadly comparable' to the pension provision provided by the incumbent contractors in circumstances where the contractor undertakes the services and staff transfer from the incumbent contractors. We have assumed, for the purpose of this report that the incumbent contractors are admitted to the LGPS.

##### 2.3 Contractor risk-sharing policy

2.3.1 Where BHCC and the contractor comply with the requirements of the Direction and the contractor seeks admission to the LGPS, BHCC will need to prepare a commercial stance on where pensions risk should sit between the parties.

2.3.2 It is likely that the contractor will want to enter into a form of risk sharing arrangement to manage employer contribution rate volatility under the LGPS.

- 2.3.3 BHCC will need to be aware of the relevant considerations attributable to a risk sharing approach. Broadly, this is where the contractor will request that BHCC allocates and retains responsibility for certain risk factors considered to be within BHCC's control. This can have a direct impact upon pricing and affordability for contract provision.
- 2.3.4 There are a number of relevant considerations that would need to be addressed. These would include:
- (a) Apportioning responsibility for any historic LGPS underfunding in relation to transferring staff;
  - (b) Risk sharing of LGPS employer contribution rate variance throughout the term of a contract. This can for example take the form of a 'capped' rate for the contractor or a 'pass through' of increases to the employer contribution rate so that the 'net effect' is for the contractor to pay a consistent employer contribution percentage;
  - (c) How matters such as ill-health dismissal and redundancy risk should be treated;
  - (d) Considering the requirement for a pension bond or guarantee from the contractor.
  - (e) Determining how any funding 'shortfall' under the LGPS should be dealt with and by which party when the contractor's admission agreement comes to an end;
- 2.3.5 In all of the above matters, it is generally our experience that contractors will initially adopt a risk-averse approach to assuming these responsibilities and liabilities. It is usually the case that detailed negotiation will be required to assert that matters falling within the 'control' of the contractor should be retained by it as part of any risk sharing approach.
- 2.3.6 The terms of the Direction place the obligation upon BHCC to ensure that pension protection is included within the terms of the contract for services. In circumstances where BHCC takes a decision not to apply the terms of the Direction, there would be a considerable risk that transferring staff (or where represented, their trade union) would seek to review the basis of that decision. Whilst dis-applying the operation of the Direction would allow BHCC to relax the pension provision provided to staff by the contractor (with the associated cost reduction which could flow from that decision), in our experience local authorities have acknowledged the perceived and real risk of adopting that approach and have complied with the terms of the Direction.

### **3 Option 3: Wholly-Owned Subsidiary/Managed Service models**

- 3.1 Any Wholly-Owned Subsidiary entering into a contract for the provision of services (which could include a management contract arrangement) with BHCC would, applying the Direction, need to provide an arrangement broadly comparable to that provided by the incumbent contractors. As noted in the preceding paragraph, it is open to BHCC to not

incorporate the terms of the Direction into any contract arrangement, but there are potential and material risks in not doing so.

3.2 It is likely that an organisation structured as a Wholly-Owned Subsidiary of BHCC could participate in the LGPS as a Designated Body. The qualifying criteria are set out in Part 2 of Schedule 2 of the Local Government Pension Scheme Regulations 2013 (the 2013 Regulations). Broadly, a company that is 'connected with' a body such as a local authority will be a Designated Body. We have set out the 'connected with' test in greater detail below.

3.3 We have explained below in greater detail how the "connected with" test under Part 2 of Schedule 2 of the 2013 Regulations can be met:

3.3.1 An entity is "connected with" a local authority if:

- (a) it is an entity other than the local authority; and
- (b) according to the proper practices in force at that time, financial information about the entity is included in the local authority's statement of accounts.

3.4 On the assumption that the statement of accounts for BHCC confirms that the "connected with" test is satisfied, the Wholly-Owned Subsidiary will be capable of securing Designated Body status.

### 3.5 **Wholly-Owned Subsidiary and LGPS participation**

3.5.1 The advantages of the Wholly-Owned Subsidiary being admitted to the LGPS as a Designated Body is that the process is straightforward – it does not require an admission agreement to be entered into and there is no requirement to assess the risk for a pension bond. It also provides security for employees to remain members of the LGPS.

3.5.2 However, when the Wholly-Owned Subsidiary ceases to be a Designated Body for the purposes of the 2013 Regulations, either because it no longer meets the criteria set out above or because it ceases to employ active members of the LGPS, a calculation of the Wholly-Owned Subsidiary's "exit liability" under the LGPS would still need to be carried out in accordance with the LGPS legislation. Where the assets in the fund attributable to the Wholly-Owned Subsidiary are insufficient to meet its liabilities, then it would be obliged to make a payment to the LGPS fund equal to any pension deficit calculated.

3.5.3 An advantage of Designated Body Status arising from the exit liability is that the LGPS funding strategy statement on the calculation of that liability may not be as onerous compared to other admission bodies. This can mean that any liability amount is valued by the actuary to produce a smaller exit amount. By the same token, if any exit liability is ultimately subsumed as part of any funding obligations between BHCC and the Wholly-Owned Subsidiary, then the less conservative actuarial valuation basis would be a beneficial cost consideration for BHCC.

3.5.4 Unlike an admission body, the 2013 Regulations do not require a Designated Body to enter into a pension bond or guarantee. To that degree, the extrinsic documentation and actuarial costings required to facilitate LGPS membership are less onerous.

#### **4 Option 4: Joint Venture Option**

4.1 Similar considerations to those set out in the preceding paragraphs for the contractor arise for BHCC where it opts for a Joint Venture partner. Any Joint Venture entity entering into a contract for services with BHCC would, applying the Direction, need to provide an arrangement broadly comparable to that provided by the incumbent contractors.

4.2 In addition, it is likely that the private sector partner to the Joint Venture will wish to introduce 'risk sharing' mechanisms into any contract for services it enters into with BHCC. The relative 'pros and cons' of the risk sharing approach is the same for a Joint Venture Option as it would be for a service provider, with one possible exception.

4.3 Where a pension bond is being considered, BHCC may look more favourably on dispensing with the need for a pension bond. The current 2013 Regulations also provide that an alternative form of security (such as a guarantee or indemnity) can be entered into in place of a pension bond in certain circumstances. The alternative guarantee can be from a person who funds the admission body in whole or in part or who owns or controls the exercise of the functions of the admission body. Depending on how the Joint Venture Option is established and structured, BHCC may be able to act as guarantor so as to alleviate the need for a pension bond. This in turn would help drive a value for money approach as the cost of securing pension bond premiums could be removed from any service provision cost.

4.4 That said, BHCC would need to act very carefully to avoid 'state-aid' issues, particularly where the JV company was bidding against other contracting service providers.

4.5 BHCC would also need to keep in mind the variant LGPS 'exit liability' positions negotiated with its incumbent contracting providers for current services such as street lighting. BHCC would need to consider its commercial strategy in light of any exit liability it has assumed under previous contracts and consider how it wishes to address any historic underfunding.

#### **5 Incumbent Contractor's position**

5.1 One issue which is a relevant consideration to all Options is the pensions risk that materialises when staff transfer from the incumbent contractor. On the basis that those staff are members of the LGPS, we would recommend that the current contract for services is reviewed to determine whether a risk-sharing model operates to allocate risk when an admission agreement comes to an end.

5.2 When a contract for services comes to an end or there are no remaining active LGPS members in the contractor's employment, an admission agreement comes to an end. At that point the administering authority instructs the Fund actuary to calculate what is known as a 'termination valuation'. Broadly, if the LGPS fund is underfunded, a capital payment will normally be requested from the provider to the Fund. The 2013 Regulations now afford some flexibility as to how these exit payments are recovered. Staged payments for example are now possible. It may be that BHCC has already entered into a contractual

mechanism with the provider to deal with such termination liabilities so that it remains liable to reimburse the contractor for any exit payment falling due.

## Annex 3

### Comparison of standard forms of Term Contract

#### 1 Introduction

The form of contract to be selected by BHCC will clearly depend on the Option selected for the procurement of repairs and maintenance programme following consideration of the issues raised in this Report and BHCC's own decision-making process.

#### 2 Published forms of contract

We set out below the key features of the following published forms of contract commonly used by local authorities for repairs and maintenance programmes. In our experience, bidders are likely to welcome the use of a standard form contract with which they will be familiar, though it is possible to adopt an entirely bespoke form of contract to suit the specific needs of the procurement. Even where standard forms of contract are used, it is likely that BHCC will need to prepare a set of amendments to address any matters not adequately covered by the published provisions or to establish a more advantageous commercial position. Any amendments should be undertaken with care to ensure that there are no inconsistencies between the contract terms and the specification and technical documents, which may undermine the objective of the procurement or create inconsistencies that bidders may exploit.

The standard form Term Contracts that we have compared are:

##### 2.1 JCT Measured Term Contract 2016 ("JCT")

The JCT is part of the JCT 2016 suite of contracts published by the Joint Contracts Tribunal. The JCT suite comprises a complementary set of main contracts and sub-contracts, and includes a separate Pre-Construction Services Agreement to provide for pre-commencement activity. There is a form of Consultancy Agreement for public sector employers. The JCT Measured Term Contract is the form that is most suitable to instruct responsive repairs and maintenance programmes.

##### 2.2 The New Engineering Contract 4<sup>th</sup> Edition ("NEC")

The NEC 4th Edition contracts, which include the NEC4 Term Service Contract, are well-established and used by a significant number of local authorities for the procurement of responsive repairs and maintenance programmes. The NEC4 suite comprises a complementary set of main contracts, sub-contracts and professional services appointments.

##### 2.3 The ACA Standard Form of Term Alliance Contract ("TAC")

The TAC-1 was published in 2017, part of a suite of contracts published by the Association of Consultant Architects and based on a partnered approach to construction. TAC-1 replaces and updates the TPC2005 Term Partnering Contract, which was first published in 2005 and is currently used by BHCC for its contract with Mears for the delivery of responsive and planned works. TAC-1 comprises a multi-party form of contract which allows consultants and key sub-contractors to be integrated into the team as parties to the same contract where appropriate. It also provides for the parties to operate a strategic



alliance to identify and develop collaborative activities to share best practice and improve the efficiency of programme delivery.

## 2.4 **The National Housing Federation Schedule of Rates Contract Revision 4 (2016) ("NHF")**

The NHF Schedule of Rates are widely used in the construction industry to provide a comprehensive schedule of works activities that tenderers can price as part of a construction contract, with variations for responsive repairs and maintenance and planned works programmes. The NHF Contract was first produced by the National Housing Maintenance Forum in 2011 to support the use of the NHF Schedule of Rates and was most recently updated in 2016. The NHF Contract includes a template Invitation to Tender document. The contract documents themselves comprise Articles of Agreement, Contract Conditions, Preliminaries, a Specification, Price Framework and a KPI Framework, in addition to the Schedule of Rates.

## 3 **Criteria for selecting a form of Term Contract**

### 3.1 **General comments**

It is important to note that the appropriateness of a standard form of contract will depend on the procurement Option selected and BHCC's strategic procurement objectives. It is clearly important that BHCC should select and adopt a form of contract that is most appropriate to its needs and can be effectively integrated to establish continuity and stability in procurement/contracting practices, so as to obtain the maximum benefits in terms of efficiency, economy and streamlined programme implementation.

### 3.2 **Efficiency criteria**

Any procurement arrangement designed to lead to increased efficiency should incorporate as core features:

- i Timely engagement of all key players in the works and services programme, particularly in the pre-commencement phase,
- ii Mutual clarity between all parties regarding allocation of roles, responsibilities, risks and rewards,
- iii A collaborative approach to developing and managing the programme,
- iv Open and effective communication between the parties, and
- v Strategies for continuous improvement.

The form of contract used should support these objectives and also provide for BHCC's preferences relating to practical issues of procurement and contract administration, including:

- i The contractor's input into (but not necessarily control of) all key processes;
- ii Flexible pricing arrangements that allow BHCC maximum certainty and clarity as to prices paid;

- iii Volume supply arrangements with the supply-chain;
- iv Financial sanction;
- v Depot facilities and leasing arrangements;
- vi Dispute resolution;
- vii Storage facilities;
- viii Developing efficient processes for resident liaison;
- ix Employment issues including TUPE;
- x Pensions issues including LGPS;
- xi Development of proposals to deal with Health & Safety;
- xii Analysing and managing risk including procuring appropriate insurance;
- xiii Programming and phasing of the works or services to be undertaken;
- xiv Change management;
- xv Ability to terminate the contract for sustained poor performance; and
- xvi Ability to instruct third parties to undertake uncompleted works.

### 3.3 **Comparison of standard forms of contract**

In this section, we have indicated why we consider each issue is an important criterion in selecting an appropriate form of contract, and how each of the evaluated standard forms deals with the issue. Specific points that may assist in forming a view on the most suitable contract form for their purposes are listed in the Table below, where each of the 4 standard forms of contract are assessed against each criterion.

The assessment in the table is indicative only, and reference should also be made to the explanatory notes that follow.

**Table – Summary of criteria for assessing standard forms of contract**

|    |   | JCT | NEC | TAC | NHF |
|----|---|-----|-----|-----|-----|
| 1  | Contractual pre-commencement/mobilisation process                 | [✓] | [✓] | ✓   | [✓] |
| 2  | Clear definition of roles of delivery team                        | [✓] | [✓] | ✓   | [✓] |
| 3  | Involvement of residents and other key stakeholders               | X   | X   | ✓   | [✓] |
| 4  | Options for allocating design responsibility                      | X   | ✓   | ✓   | X   |
| 5  | Integration of supply-chain                                       | [✓] | ✓   | ✓   | [✓] |
| 6  | Collaborative management of risk                                  | X   | ✓   | ✓   | X   |
| 7  | Performance measured against KPIs                                 | [✓] | ✓   | ✓   | ✓   |
| 8  | Management group of key players                                   | X   | ✓   | ✓   | ✓   |
| 9  | Incentive Options   | [✓] | ✓   | ✓   | [✓] |
| 10 | Option for 'open book' pricing                                    | [✓] | [✓] | [✓] | X   |
| 11 | Option for fixed price  | ✓   | ✓   | ✓   | [✓] |
| 12 | Contractual programme for the works/services orders               | X   | ✓   | ✓   | X   |
| 13 | Prior evaluation of change  | X   | ✓   | ✓   | ✓   |
| 14 | Early warning of problems   | ✓   | ✓   | ✓   | ✓   |
| 15 | Exclusion of profit from contractor's claims for delay/disruption | X   | X   | ✓   | X   |
| 16 | Remedies in respect of breach of contract                         | ✓   | ✓   | ✓   | ✓   |
| 17 | Ability to terminate the contract with notice                     | ✓   | ✓   | [✓] | [✓] |
| 18 | Ability to instruct third parties to undertake uncompleted works  | ✓   | [✓] | ✓   | ✓   |
| 19 | Alternative Dispute Resolution                                    | ✓   | ✓   | ✓   | ✓   |
| 20 | Forms of sub-contract, collateral warranties and guarantees       | ✓   | ✓   | [✓] | X   |

**Key**

|     |  |
|-----|--|
| ✓   | Specifically provides for this point in the main form of Term Contract           |
| [✓] | Provides for this point in part measure or through use of other compatible forms |
| X   | Does not provide for this point  |

3.3.1

4 **Detailed commentary**

4.1 **Pre-commencement/Mobilisation process**

Contractual provisions covering the mobilisation process are a convenient and effective means of handling any transitional provisions. The client has the advantage of having the contractor committed to the contract and can ensure that any preparatory activities or processes required before the start of the programme can be completed before commencement. In turn, the contractor has the benefit of being "in contract" and not working "at risk" while they undertake the pre-commencement activities. For maintenance or services programmes a pre-commencement phase is particularly important to ensure adequate coverage of TUPE obligations and the appointment of sub-contractors both of which should be completed before commencement.

Provision of a pre-commencement phase allows the client to activate the performance and payment obligations when the pre-commencement activities are complete. In this way, the contract can be used as a management or process tool, to ensure that all parties fulfil their obligations and to avoid delays or problems when the programme commences.

|     |  |
|-----|--|
| JCT | The JCT Pre-Construction Agreement can be signed as a separate document to cover the pre-commencement/mobilisation period. The Pre-Construction Agreement does not deal with transitional arrangements from mobilisation to commencement phases and would need extensive amendment and integration with the main form of contract used.  |
| NEC | The NEC4 Engineering and Construction Contract (ECC) now includes as a secondary Option the clauses for early contractor involvement (ECI) previously published by NEC in 2015. ECI is a method of appointing a Contractor at an early stage, to participate in the development of designs and proposals. It enables the Contractor's input to the design at a stage when significant improvements and innovation can be introduced. |
| TAC | Provides for preconditions to implementation of Term Programme, also provides Options as regards treatment of TUPE and pensions and as regards treatment of client assets to assist in transitional provisions.  |
| NHF | Provides for the parties to form a contract by exchanging a Letter of Acceptance, ahead of executing the formal contract documents.  |

#### 4.2 Clear definition of roles of delivery team

For a maintenance or services delivery team to be set up on a fully integrated basis and to function effectively, it is essential that the roles and responsibilities of each team member are clearly and compatibly defined and mutually recognised. To the extent that all appointments are not made from a fully integrated set of terms and conditions, mutual clarity is achieved only by each party having knowledge of all other parties' contracts and agreeing an integrated set of programmes and responsibilities.

|     |   |
|-----|---|
| JCT | Two party contract which specifies the roles of the client and the main contractor. Separate agreements required for the appointment of suppliers or sub-contractors.   |
| NEC | Two party contract which specifies the roles of the client and the main contractor. Separate appointment required for Service Manager and sub-contractors. However, NEC4 now provides for separate collateral warranties to be secured in favour of 3 <sup>rd</sup> parties and from the supply-chain in favour of the Client (NEC3 would need Z-Clause). |
| TAC | Multi-party contract which specifies the role and responsibilities of client, service provider and key sub-contractors with mutual duties of care between team members.   |
| NHF | Two party contract which specifies the roles of the client and the main contractor. Separate appointment required for Client's Representative and Service Provider's Contract Manager and sub-contractors.  |

#### 4.3 Involvement of residents and other key stakeholders

Effective capture and use of contributions from residents and other stakeholders who are not party to the contract will be an important element of a successful programme. Acknowledging this within a Term Contract lends form and discipline to the process.

|     |  |
|-----|--|
| JCT | Does not refer to other stakeholders.  |
| NEC | Does not refer to other stakeholders.  |
| TAC | Requires members of the delivery team to establish involvement of Interested Parties (a defined term). |
| NHF | Refers to postholders listed in the Contract Details who can be members of the Core Group.             |

#### 4.4 Options for allocating design responsibility

In modern construction practice, responsibility for design and the related risk is frequently assumed by the main contractor and increasingly by suppliers and specialist sub-contractors. It is important that BHCC have the opportunity to allocate any design responsibility, particularly in relation to the selection of surfacing materials and processes for any given task.

|     |   |
|-----|---|
| JCT | Does not provide for contractor's design.                                 |
| NEC | Provides for main contractor design and design of its items of equipment. |
| TAC | Provides flexibility in the allocation of design responsibility           |
| NHF | Does not provide for contractor's design.                                 |

#### 4.5 Integration of the supply-chain

It is widely recognised that to achieve best value in delivery of a programme, it is essential that all influential members of the supply-chain, in particular key suppliers and specialist contractors, are effectively integrated into the procurement process. This requires recognition of their potential roles, particularly in relation to any design work and the key processes, and usually implies their early appointment.

In addition, for effective integration, all key members of the supply-chain should be recognised as equal partners in the programme, be included in decision-making processes, and be involved in finalising price.

|     |   |
|-----|---|
| JCT | No specific provisions for supply-chain partnering. Client able to consent to any sub-contractors.  |
| NEC | Includes compatible forms of subcontract; suppliers and subcontractors can be named as partners in Option X12 and become members of the Core Group. Provides for notification of the Core Group prior to sub-contracting. However, decisions of the Core Group are not required to be implemented under the contract. |
| TAC | Includes specific provisions for supply-chain partnering and for client approval of subcontractors and suppliers.   |
| NHF | No specific provisions for supply-chain partnering. Client able to suggest and consent to appointments of any sub-contractors.  |

#### 4.6 Collaborative risk management

The systematic identification, assessment, allocation and mitigation of risk is essential for successful programme delivery, and is most effective if all parties are involved in and committed to the process.

|     |  |
|-----|--|
| JCT | Does not provide for main or sub-contractor or supplier involvement in risk management.  |
| NEC | X12 Partnering Option may assist in collaborative risk management. Provides for development and maintenance of a risk register with risk reduction meetings for cooperative response to risks. |
| TAC | Provides for joint risk management activities as described in a Risk Register.   |
| NHF | Does not provide for main or sub-contractor or supplier involvement in risk management.  |

#### 4.7 Performance measured against KPIs

Measuring performance is fundamental to improving performance; this applies within a programme but is particularly important for long term maintenance programmes where clients are focusing on continuous improvement. Formalising this requirement within the Term Contract commits members of the delivery team to the process.

|      |   |
|------|---|
| JCT  | General reference to measuring performance against agreed KPIs. |
| NEC4 | Provides for measuring performance against agreed KPIs.         |
| TAC5 | Provides for measuring performance against agreed KPIs.         |
| NHF  | Provides for measuring performance against agreed KPIs.         |

#### 4.8 Management group of key players

A management group comprising the key individuals in the delivery team can play a valuable role in a number of areas, as follows:

- (a) An information hub at the centre of a communications strategy,
- (b) Monitoring and taking forward progress in the pre-commencement/mobilisation phase,
- (c) Evaluating proposed changes notified in advance,
- (d) Receiving warnings of potential problems and overseeing the response.

Such a group can function most effectively in relation to the due processes of the contract if it is specifically provided for in the Term Contract. The group's roles and responsibilities must be clearly defined, in particular its scope and authority to take decisions for implementation by the parties.

|      |  |
|------|--|
| JCT  | Does not provide for a management group.   |
| NEC4 | The NEC4 contracts introduce a requirement for the Contractor to prepare and issue a quality management system and plan. |
| TAC  | Provides for a Core Group able to take decisions within the scope of its   |

|     |   |
|-----|---|
|     | agreed functions as set out in the contract.                                    |
| NHF | Provides for a Core Group to manage the contract and the delivery of the works. |

#### 4.9 Incentive Options

Financial incentives are widely recognised as effective in securing commitment to improving performance and achieving best value in programme delivery. For clarity and effective operation they should be built into the contract.

|     |  |
|-----|--|
| JCT | Provides for contractor to receive some of the financial benefit of any cost saving or value improvement it proposes which is implemented. |
| NEC | Includes provisions for bonuses on early completion and payments relating to KPIs.   |
| TAC | Provides for incentives to be agreed.  |
| NHF | No express contractual provision for incentives to be agreed. Separate KPI Framework in NHF suite has provision to agree incentives.       |

#### 4.10 Option for 'open book' pricing

Genuinely collaborative working implies openness and trust and this should extend through to the financial management of the Term Contract. Accordingly 'open book' pricing, where the contractor declares its profits and overheads and allows the Client access to its financial records to monitor how prices for the services are developed is widely advocated. For successful application, its meaning, scope and operation should be clearly defined in the Term Contract.

|      |  |
|------|--|
| JCT  | Does not provide for open book pricing.  |
| NEC4 | Does not expressly refer to open book pricing but separate identification of profit and overheads is implied in the target cost and cost-reimbursable Options. |
| TAC  | Provides for Open-book pricing with separate identification of profit and overheads but can be used with a variety of pricing Options.                         |
| NEC  | Does not provide for open book pricing.  |

#### 4.11 Option for fixed prices

BHCC may prefer the discipline and risk allocation delivered by fixed prices from the contractor prior to starting work on site. In many circumstances, seeking fixed prices from the contractor at tender stage will be difficult to reconcile with the principles of collaborative working, including early appointment of the contractor. However, this may be an Option BHCC wish to have available.

Each of the four contract suites compared in this note provides this Option through:

|     |   |
|-----|---|
| JCT | Reference to a Schedule of Rates.   |
| NEC | Provides for priced contract with Activity Schedule (Option A) and priced contract with bill of quantities (Option B) |

|     |  |
|-----|--|
| TAC | Task Prices calculated in accordance with Price Framework. |
| NHF | Reference to a Schedule of Rates.                          |

#### 4.12 Contractual programme for the works/services orders

A contractually binding programme for issuing and completing of orders or tasks under a Term Contract clarifies and confirms each party's commitment to timely delivery. If used effectively, a contractually binding programme can function as a programme management tool, and provides clear definitions of each party's obligations. The offer of a clear long-term programme by BHCC should secure greater efficiency from the programme.

|     |   |
|-----|---|
| JCT | Does not provide for a contractually binding programme.   |
| NEC | Provides for an 'Accepted Programme' and new provisions which provide 'treated acceptance' of the Contractor's programme where the Project Manager does not respond to a programme issued by the Contractor for acceptance, or to a reminder. This is to unlock the impasse which otherwise prevails. |
| TAC | Provides for the Partnering Timetable as a contractually binding programme, including provisions for the timetable to be updated as required.   |
| NHF | Does not provide for a contractually binding programme.   |

#### 4.13 Prior evaluation of change

Effective change management requires that whenever possible proposed changes are notified in advance to allow evaluation of the full time, cost and quality implications and consideration of appropriate responses.

|     |   |
|-----|---|
| JCT | No provision for advance evaluation of change.  |
| NEC | Provides for advance notice of change in the context of Compensation Events (a defined term). |
| TAC | Provides for advance evaluation of change.  |
| NHF | Provides for advance evaluation of change.  |

#### 4.14 Early warning of problems

Early recognition of an emerging problem considerably improves the opportunities for the parties to manage the issue before delays are caused to the programme. Inclusion in the contract of a clear duty on the parties to warn of a potential problem will reinforce their commitment to do so.

|      |  |
|------|--|
| JCT  | Includes a basic early warning system. |
| NEC4 | Includes an early warning system.      |
| TAC  | Includes an early warning system.      |
| NHF  | Includes an early warning system.      |



#### 4.15 **Exclusion of profit from contractor's claims for delay/disruption**

BHCC might take the view that in the context of a long-term collaborative relationship it is equitable for the contractor to recover costs in a claim for delay and disruption but not additional profit and overheads. If so, this should be explicit in the contract.

|     |   |
|-----|---|
| JCT | Does not exclude profit and overheads from delay/disruption claims. |
| NEC | Does not exclude profit and overheads from delay/disruption claims. |
| TAC | Excludes profit and overheads from delay/disruption claims.         |
| NHF | Does not exclude profit and overheads from delay/disruption claims. |

#### 4.16 **Remedies in respect of breach of contract**

The Term Contract must include effective remedies for default or insolvency of a member of the delivery team. As far as possible these should protect any continuing interests of the client.

|     |  |
|-----|--|
| JCT | Provides for termination by the client or main contractor in a specified list of circumstances.                  |
| NEC | Provides for termination by the client or main contractor in a specified list of circumstances.                  |
| TAC | Provides for termination by the client or main contractor or other parties in a specified list of circumstances. |
| NHF | Provides for termination by the client or main contractor in a specified list of circumstances.                  |

#### 4.17 **Ability to terminate the contract with notice**

Many local authorities require the ability to terminate the contractor's appointment under the Term Contract following a specified period of notice. This has become increasingly important in the current economic climate, to allow clients flexibility to appoint alternative contractors and ensure that there is delay in the provision of key services.

|     |  |
|-----|--|
| JCT | Provides for either party to terminate the contract with 13 weeks' notice.   |
| NEC | Option X11 provides for the Client to terminate the Service by providing notice to the Service Manager and the Contractor. |
| TAC | Option for the parties to agree to terminate the contract within a specified notice period.                                |
| NHF | Option for the parties to agree to terminate the contract within a specified notice period.                                |

#### 4.18 **Ability to instruct third parties to undertake uncompleted works**

In the event of sustained poor performance in a responsive maintenance programme and/or the termination of a contractor's appointment, clients should have the ability to instruct third parties to undertake any outstanding or uncompleted works. In the event of the contract being terminated due to the contractor's poor performance or breach, the

Term Contract should ideally have the ability recover the costs of appointing third parties from the original contractor.

|     |  |
|-----|--|
| JCT | Client has the ability to instruct third parties to undertake uncompleted or outstanding works following the Contractor's failure to undertake the works and/or the termination of the Contractor's appointment. |
| NEC | Option X11 provides that on termination the Client may complete the service itself and use any plant or materials that were provided by the Contractor.  |
| TAC | Client has the ability to instruct third parties to undertake uncompleted or outstanding works following any Alliance Members' failure to undertake the works.   |
| NHF | Client has the ability to instruct third parties to undertake uncompleted or outstanding work following the Service Provider's failure to undertake the works.   |

#### 4.19 **Alternative Dispute Resolution**

Any party to any Term Contract has a statutory right to adjudication and thereafter to initiate litigation. However, it is likely to be in all parties' interests to agree contractual alternatives that remain within their control in terms of timing, cost and outcome, and that are less likely to undermine long-term working relationships.

|     |  |
|-----|--|
| JCT | Provides for alternative dispute resolution through nominated individuals and through mediation.   |
| NEC | NEC4 has introduced a four week period for escalation and negotiation of a dispute, which takes place prior to any formal proceedings are commenced. This requires nominated senior representatives of each party to meet and try to reach a negotiated solution. It is a mandatory requirement where dispute resolution Option W1 applies, but is consensual where dispute resolution W2 applies. |
| TAC | Provides for alternative dispute resolution through a problem solving hierarchy, reference to the Core Group, conciliation, mediation and reference to a Partnering Adviser.   |
| NHF | Provides for alternative dispute resolution through a Dispute Escalation Table, reference to Adjudication, Mediation, Expert Decision and Arbitration.   |

#### 4.20 **Forms of sub-contract, collateral warranties and guarantees**

Any Term Contract should have corresponding forms of sub-contract so that any supply-chain members are appointed on compatible terms and conditions to the main contract, and so that relevant contractual obligations are passed down to the supply-chain as required. The Term Contracts should ideally have compatible forms of collateral warranty and parent company guarantee.

|     |   |
|-----|---|
| JCT | Provides compatible forms of sub-contracts. No provisions for collateral warranties or parent company guarantees. |
| NEC | Provides compatible forms of sub-contracts. No provisions for collateral warranties or parent company guarantees. |

|     |   |
|-----|---|
| TAC | There is no form of sub-contract written expressly for TAC-1, but the STC2005 Specialist Term Contract 2005 (written for the TPC2005) can be used with some amendments. No provisions for collateral warranties or parent company guarantees. |
| NHF | No compatible forms of sub-contracts, collateral warranties or parent company guarantees.   |

#### 4.21 **Issues not dealt with in Term Contracts**

It is uncommon for liquidated damages and retention to be included within a Term Contract and these are not found in the standard forms analysed above. BHCC should consider whether the security these provisions offer are relevant to the programme and amend the chosen standard form as appropriate although this might attract "risk pricing" by the contractor.

A copyright licence is not included in the standard forms and this should be considered for a programme with extensive design responsibility.

#### 4.22 **Conclusion**

The selection of the form of Term Contract will set the tone for the procurement and approach the contractor will take to the ensuing relationship. Clearly, all the standard form Term Contracts discussed above can be amended to alter their existing features and overlay additional features required by BHCC.

As noted above at Section 9.8 of the Main Report, the key determining of successful implementation will be the management of the contract (and related amendments) that BHCC adopts. The selected Term Contract can provide all relevant protections and levers of contract BHCC requires, but these will not protect BHCC or provide it with any control if the contract terms are not understood or enforced by BHCC's contract managers. Given this, training in and knowledge of the selected form of Term Contract will be essential for BHCC contract managers and affected staff as part of any procurement exercise.

## Annex 4

### Example Partnering Timetable

| Item | Description of Activity / Requirement  | Period / Deadline for Activity | Additional Comments   |
|------|--|--------------------------------|---|
| 1    | Attend pre-contract meeting  | Week 1                         | Review draft Partnering Timetable, draft KPIs, draft Risk Register, Core Group membership and Contract Start date   |
| 2    | Issue revised Partnering Timetable   | Week 2-4                       |   |
| 3    | Issue revised Risk Register  | Week 2-4                       |   |
| 4    | Issue revised KPIs   | Week 2-4                       |   |
| 5    | Prepare and engross Framework Agreement and Partnering Contract for issue to all Parties | Week 4-6                       |   |
| 6    | Production of agreed contract documents and sign   | Week 7                         |   |
| 7    | Confirm site addresses and scoping survey information and issue to Service Provider(s)   | Week 4-7                       | Final Scoping Surveys and Property List for the Year 1 internal works programme issued.   |
| 8    | Prepare draft cash flow based on first year's internals                                  | Week 4-7                       | Based on agreed programme and phasing   |
| 9    | Attend Resident Focus Group  | Week 4-7                       | Introduction to the Client Resident Focus Group. Explain approach to works, what to expect and component choices. Reps will form a sub-group to sign off communication protocols and choice sheets. |
| 10   | Attend Employment & Skills project initiation meeting                                    | Week 4-7                       |   |
| 11   | Agree key components   | Week 4-7                       | To agree material suppliers and confirm key components, etc   |
| 12   | Hold Commercial Management workshop  | Week 4-7                       | Agree valuations, handover and payment processes, etc   |

| Item | Description of Activity / Requirement  | Period / Deadline for Activity  | Additional Comments  |
|------|--|---|--|
| 13   | Project Delivery session   | Week 4-7  | Agree the management processes necessary to deliver the project. To include procedures for asbestos removal, data management, etc. |
| 14   | Surveys, investigations and resident profiling   | Week 5-9  | Service Provider carries out site surveys to confirm design & manufacturing details and consult residents.                         |
| 15   | Issue Task Order, Task Brief and confirmed address list to Service Provider                    | Week 10   | Issued following receipt of the engrossed Partnering Contracts   |
| 16   | Service Provider issues Construction Phase Plan, Task Proposals, Task Timetable and Task Price | Week 10-12  | Deadlines for return of documents agreed as 2 weeks from receipt of the Task Order and will be confirmed in the Order              |
| 17   | Construction Phase Plan agreed by Principal Designer   | Week 13-14  |  |
| 18   | Consideration and agreement of Task Proposals and Task Timetable                               | Week 13-14  |  |
| 19   | Review and agree Task Price for Year 1   | Week 13-14  |  |
| 20   | Place orders and organisation of labour, plant & specialists                                   | Week 15-18  |  |
| 21   | Start on site  | Week 19   | Start dates subject to satisfactory completion of those pre-conditions   |
| 22   | Risk Management Actions  | Ongoing   |  |
| 23   | Volume Supply Agreements and Value Engineering   | Value Engineering will continue throughout the life of the project. Particular innovations for efficiencies to be discussed at the Core Group so benefits can be shared |  |
| 24   | Business Case Submissions  | As required   | As required for Specialists or any increases sought to the Task Price  |

| Item | Description of Activity / Requirement | Period / Deadline for Activity | Additional Comments   |
|------|---------------------------------------|--------------------------------|---|
| 25   | Specialist Tenders                    | As required                    | As may be required for any specialist supply and fit works, eg. Major aids & adaptations, damp proofing, floor timber replacements, etc |
| 26   | Core Group Meetings                   | First meeting:<br>Week 23      | Thereafter meetings monthly as agreed by the Core Group   |
| 27   | Partnering Meetings                   | First Meeting:<br>Week 22      | Thereafter meetings monthly (Site meetings to be scheduled in advance of the Core Group)  |

## Annex 5

### Procurement obligations and OJEU procedures

#### 1 Procurement obligations

1.1 As a local authority, BHCC is regarded as a "contracting authority" for the purposes of the Public Contracts Regulations 2015 (the **Regulations**). Day-to-day asset management, planned works and voids contracts are generally accepted to be public works contracts. The current EU threshold for works contracts, above which value contracts must be publicly advertised is £4,551,413 excluding VAT and contracts of equal or greater value are required to be procured in line with the full procedure(s) set out in the Regulations (the relevant threshold for supplies and services is £181,302 excluding VAT). A procurement procedure which complies with the Regulations requires that the contract is advertised in the Official Journal of the European Union and that tenders are assessed and contracts awarded in line with the timescales and criteria set out in the Regulations. Also, case-law suggests that contracts below the threshold value must still be advertised although not necessarily in the Official Journal and therefore a directly negotiated contract with a single supplier is not allowed.

1.2 Contracts of employment fall outside of the EU procurement regime and are not classed as "public services contracts" for the purposes of the Regulations. However, a "management contract" entered into with a contractor for the management of employees would be classed as a public services contract for the purposes of the Regulations and would therefore have to be advertised in the Official Journal of the European Union in the (likely) event it exceeded the threshold. Any such services should be part of the tendered contracts.

#### 2 Pre-market engagement

We would recommend that, before launching the procurement procedure, BHCC undertakes a sufficient amount of soft-market testing and contractor engagement, in order to gauge the state of the market in relation to the Options presented above and to consider how best the market will be able to meet its needs. The results of this pre-procurement engagement can then feed directly into the procurement requirements – as long as BHCC does not use such information in a way that could discriminate against or in favour of any particular bidder or class of bidder.

#### 3 The Restricted Procedure

##### 3.1 Background to Restricted Procedure

3.1.1 The Restricted Procedure is the most commonly used procurement procedure in the UK. Unlike the Open Procedure which requires contracting authorities to assess all bids received, the Restricted Procedure provides a two-stage process whereby bidders are initially assessed on their past experience, good standing, financial robustness and technical qualifications, from which a shortlist of bidders is selected to submit a tender. If run efficiently and with adequate preparation time, the Restricted Procedure can be completed within 3-4

months. BHCC is also able to shorten tender return timescales with the agreement of the bidders.

- 3.1.2 The Restricted Procedure is widely understood by the market. The initial pre-qualification stage has been somewhat standardised by the use of a standard Selection Questionnaire document issued by the Crown Commercial Service for use in all procurement exercises in England and Wales, which many bidders in the marketplace will be familiar with.

## 3.2 Use of the Restricted Procedure

- 3.2.1 As with the Open Procedure, the Restricted Procedure assumes that the scope and terms of the contract have been well defined in advance, requiring little or no discussion or negotiation with bidders. The Restricted Procedure is largely a paper-based assessment exercise, in which bidders respond to the client's requirements as set out in the procurement documents, and where tenders are assessed with no former negotiation or discussion between the client and the bidders. Following contract award, the expectation is that the client will enter into contract with the selected tenderer using the form of contract as set out in the procurement documents.
- 3.2.2 Therefore, this procedure requires BHCC to have defined their requirements fully before starting the tender exercise (in terms of preparing the specification and contract documents) and not deviate from those requirements once the tender is underway. However, some clients like to include an interview with shortlisted bidders as part of the tender evaluation process, to enable the client to interrogate the bidders' written submissions.

## 3.3 Structure of Restricted Dialogue

A timetable setting out our recommended stages involved in the Restricted Procedure is noted at the end of this section.

### 3.3.1 OJEU Notice and Descriptive Document

The beginning of the Restricted Procedure will require BHCC to publish a Contract Notice in the Official Journal of the European Union (the **OJEU Notice**) signalling its intention to advertise and award the contract. The OJEU Notice must clearly set out BHCC's requirements, and will include at a minimum: a description of the scope of works or services required, with reference to Common Procurement Vocabulary codes; the estimated value and length of the contract, including any Options to extend the contract term; the award criteria for awarding the contract (which will usually be a combination of Quality and Price); any minimum requirements that must be satisfied to be able to bid for the contract; and key dates in the procurement process and information about where bidders can access the procurement documents. BHCC is also required to place a notice on the Contracts Finder website, to advertise the opportunity.

### 3.3.2 Procurement Documents



The Restricted Procedure requires that all "procurement documents" relevant to the tender exercise are made available in electronic form free of charge to interested bidders from the date that the OJEU Notice is published. "Procurement documents" is defined very widely and includes all specifications of works/services, pricing documents, and the proposed conditions of contract. Therefore to be in full compliance with the Regulations, BHCC would need to have these documents prepared before the OJEU Notice is published, and make these freely available to interested bidders. From April 2018, contracting authorities will be required to run their procurement exercises and make procurement documents via an electronic portal.

### 3.3.3 **Selection Questionnaire**

Following the issue of the OJEU Notice, BHCC will evaluate the prospective participants against criteria included in a Selection Questionnaire. The Crown Commercial Service, which monitors the use of the Regulations in the UK, has published a standard Selection Questionnaire which should be used by contracting authorities in England and Wales. This document asks a series of basic questions about bidders' past experience and qualifications (which can be supplemented or amended by clients to suit the particular requirements of their project) and questions to determine whether bidders should be disqualified under mandatory exclusion criteria set out in the Regulations (eg where bidders have been guilty of bribery or other offences). Bidders are required to respond to the Selection Questionnaire within a prescribed deadline, and are assessed by the client in accordance with the evaluation criteria set out in the Questionnaire. The Regulations anticipate a minimum of 5 bidders will be shortlisted and invited to submit a tender, unless insufficient bids are received. BHCC is required to write to all bidders, whether successful or unsuccessful, and give them feedback about their scores.

### 3.3.4 **Tender Stage**

BHCC will then invite the shortlisted tenderers to respond to the Invitation to Tender document (the **ITT**), based on the document made available to bidders when the OJEU Notice was published (supplemented or amended as necessary). The ITT will normally ask bidders to describe their methodology for delivering the contract in accordance with the specification, and provide their prices for delivering the contract including their anticipated profit and overheads. The ITT should set out the Price and Quality award criteria by which the tenders will be evaluated and associated scores and weightings.

### 3.3.5 **Evaluation and Award**

Evaluation of tenders will be carried out in accordance with the award criteria set out in the ITT to determine which is the most economically advantageous. BHCC is required to write to each tenderer who has submitted a tender notifying them of the award decision and giving unsuccessful bidders feedback on their tender submissions. Following the issue of these letters, BHCC must observe a 10 calendar day standstill period (provided that the letters are issued electronically) before contracts can be finalised.

### 3.3.6 **Post-Tender Discussions**

Under the Regulations post-tender discussions and negotiations are prohibited. As a result, prospective contractors must ensure that their tenders are the equivalent of a "Best and Final Offer", such that no significant amendments are required and there is no negotiation of the contract terms (other than to correct errors and discrepancies).

### 3.3.7 Finalisation of contracts/Contract Award Notice

Following the completion of the standstill period and assuming that no legal challenges have been received during that period, BHCC can proceed to finalise the terms of contract with the selected tenderer. BHCC is required to publish a Contract Award Notice in the Official Journal, advertising the details of the award, and place a similar notice on the Contracts Finder website.

## 3.4 Restricted Procedure Timetable

|    | <b>Milestone</b>  | <b>Duration</b>  |
|----|---|--|
| 1  | [Section 20 – Notice of Intention]  | [Minimum of 30 calendar days to allow leaseholders to submit observations]                                     |
| 2  | OJEU Notice despatched to Official Journal/Contract notice placed on Contracts Finder website                                 |  |
| 3  | Deadline for receipt of Selection Questionnaire   | Minimum of 30 calendar days from date of OJEU Notice   |
| 4  | Evaluation of SQ responses  | Suggest 2 working weeks  |
| 5  | Issue of Regulation 55 letters to successful and unsuccessful Applicants/Tenderers invited to respond to Invitation to Tender |  |
| 6  | Submission of ITT responses   | Minimum of 30 days (though this can be shortened to as little as 14 calendar days by agreement with tenderers) |
| 7  | Evaluation of ITT responses   | Suggest 2-3 working weeks  |
| 8  | Seeking Board/Cabinet decision for conditional award to preferred tenderer  |  |
| 9  | [Section 20 Notice of Landlord's Proposals]   | [Minimum of 30 calendar days to allow leaseholders to submit observations]                                     |
| 10 | Issue of Regulation 86 letters to successful and unsuccessful   |  |

|    | <b>Milestone</b>  | <b>Duration</b>  |
|----|---|--|
|    | tenderers with feedback   |  |
| 11 | Mandatory standstill period   | Minimum of [10] days from date of letters (provided that the letters were issued electronically); must end on a working day. |
| 12 | Finalisation of contracts   |  |
| 13 | Contract Award Notice despatched to Official Journal/Award Notice placed on Contracts Finder website. | Within 30 days of award decision   |

## 4 **Competitive Dialogue Procedure**

### 4.1 **Background to Competitive Dialogue Procedure**

4.1.1 The Competitive Dialogue can be an advantageous route to take if BHCC is not able to completely specify its requirements or if it is unable to fix either the pricing model or the contract terms at the outset of the procurement. However, the competitive dialogue has a reputation for taking a long time and for being extremely costly. This does not need to be the case and we note below the timetable of a streamlined Competitive Dialogue procedure that BHCC could adopt in order to minimise time spent in procurement.

4.1.2 Generally, bidders in the asset management and maintenance industry like having the opportunity to put forward innovative and alternative ideas to contracting authorities, which it is not possible to do under an Open or Restricted Procedure exercise.

### 4.2 **Use of the Competitive Dialogue Procedure**

4.2.1 BHCC may elect to use the Competitive Dialogue procedure when its needs cannot be met without adaptation of a readily available solution or where it cannot objectively define either the technical means of achieving its aims or the legal and/or financial make-up of the project (which may well be the case in respect of Options 3 and 4). In such cases, it is anticipated that the Open Procedure and the Restricted Procedure will not be adequate, since the contract will not be sufficiently well defined to enable the prospective contractors to tender appropriately or for BHCC to properly evaluate such tenders.

4.2.2 The Competitive Dialogue is designed to enable BHCC to explore and develop, with the prospective contractors, solutions which will fulfil its needs and requirements before requiring the submission of final tenders. The prospective contractors then tender against a detailed and worked up solution with minimal prospect for clarification during the post-tender period. Please note that BHCC can limit what it conducts the dialogue in relation to, so that if it has certain minimum requirements or "no go" areas, they can be noted as "non-negotiable" elements of the contract/delivery structure from the outset – this may be

particularly useful in respect of Options 3 (Wholly Owned Subsidiary/Managed Service) or 4 (Joint Venture), where a complete dialogue on all of the features of the delivery structures would take a significant amount of time.

- 4.2.3 In terms of the documentation and the basic steps in the procedure, the Competitive Dialogue gives a contracting authority flexibility during the procurement process to identify the best means of meeting its requirements, but consequently requires more input (both in terms of time and money) from the prospective contractors prior to the submission of their final tenders.

### 4.3 **Structure of Competitive Dialogue**

A timetable setting out our recommended stages involved in the Competitive Dialogue is noted at the end of this section.

#### 4.3.1 **OJEU Notice and Descriptive Document**

The beginning of the Competitive Dialogue Procedure is the same as the Restricted Procedure. The OJEU Notice and/or the Descriptive Document must clearly set out what BHCC requires from the awarded contract to enable the invited participants in the Dialogue to propose their solutions.

#### 4.3.2 **Procurement Documents**

As with the Restricted Procedure, the Regulations requires all "procurement documents" relevant to the tender exercise to be made available in electronic form free of charge to interested bidders from the date that the OJEU Notice is published. However, the Crown Commercial Service has published a guidance note stating that procurement documents for complex procurement procedures do not need to be made available at the start of the exercise and may be made available to tenderers as the documents become available. This suggests a degree of flexibility particularly to issue the tender documents and forms of contract later in the tender exercise after a shortlist has been selected.

#### 4.3.3 **Selection Questionnaire**

The pre-qualification stage is the same as for the Restricted Procedure, requiring the use of the Crown Commercial Service's Standard Selection Questionnaire (which can be amended as required) and stating the evaluation criteria. Following the evaluation of the Selection Questionnaires against the evaluation criteria, BHCC are required to shortlist a minimum of three bidders to be invited to submit an Outline Solution. However, if BHCC wishes to skip the Outline Solutions stage, it can shortlist a minimum of 3 bidders to participate in Dialogue (and ignore a mere formal Outline Solution stage – see below).

#### 4.3.4 **Outline Solutions stage**

- (a) It is recommended (but not compulsory) to invite bidders to present their Outline Solutions, in response to the procurement documents. This will give BHCC an opportunity to review the tenderers' proposed methodology for delivering the contract and their approach to the contract documents, which will form the basis of Dialogue discussions.

- (b) Following expressions of interest, BHCC will evaluate the prospective participants against criteria included in the Outline Solutions responses and invite the short-listed organisations to participate in Dialogue (each a **Participant**). The short-list must consist of at least three Participants.
- (c) Alternatively, BHCC could bypass the Outline Solutions stage and go straight to Dialogue. The downside of this approach is that BHCC will have very little information about the Participants' offerings on which to run structured Dialogue sessions or to engage in the details of the contract. The risk is that a Participant may be invited to Dialogue who may be unable to deliver the contract, which might have been more easily established in an Outline Solutions exercise.
- (d) If the Outline Solutions stage is to be skipped, we recommend that BHCC establish key gateways during the Dialogue process, where Participants will be required to review and respond to key documents (especially around pricing and the form of contract) to ensure that, at Best and Final Offer Stage, robust and realistic bids are submitted.

#### 4.3.5 Dialogue Stage

- (a) The Dialogue phase is designed to enable BHCC to identify the most appropriate means of satisfying its contractual needs and requirements. The Participants will propose their solution(s) (based on the information included in the OJEU Notice and/or Descriptive Document) which will be further developed during the Dialogue. Under the Regulations, contracting authorities can discuss all aspects of the contract with the Participants, provided that the principle of equal treatment is followed. Contracting authorities cannot discriminate between the Participants by providing information which may give some Participants an advantage over others. However, contracting authorities also cannot reveal the solutions proposed by individual Participants to other participants without that particular Participant's agreement. This is likely to lead to some tension between a contracting authority's duty to be fair and open with all Participants and the Participants' understandable desire to keep confidential solutions which it they have spent time and money developing.
- (b) There is no set time period for which the Dialogue phase should last, nor do the Regulations provide much detail as to how the Dialogue should be conducted. Previous guidance issued by the Office of Government Commerce (now the Crown Commercial Service) suggests that it is likely that most discussions during this phase will be with each Participant about its own solution(s). The Regulations also identify that it is possible for contracting authorities to reduce the number of solutions and Participants during the dialogue phase, provided that the criteria for doing so are set out in the OJEU Notice and/or the Descriptive Document.
- (c) Once BHCC is satisfied that it has identified a solution(s) that will meet all of its requirements, it must declare the Dialogue complete and invite

the remaining Participants to submit their Best and Final Offers for the identified solution(s).

#### 4.3.6 **Best and Final Offers and Evaluation**

- (a) Evaluation of Best and Final Offers will be carried out in accordance with the award criteria set out in the Descriptive Document and/or the Invitation to Submit Best and Final Offers document. The Regulations prohibit a contract being let under the Competitive Dialogue from being evaluated on a lowest-price basis, so the Final Tender must be assessed on a combination of quality and price.
- (b) BHCC is required to write to each Participant who has submitted a Best and Final Offer notifying them of the award decision and giving feedback on their tender submissions, and the name and scores of the winning tender. Following the issue of these letters, BHCC must observe a 10 calendar day standstill period (provided that the letters are issued electronically) before contracts can be finalised.

#### 4.3.7 **Post-Tender Discussions**

- (a) Under the Regulations the potential for post-tender discussions and negotiations under the Competitive Dialogue procedure is limited. BHCC is only permitted to ask participants to "clarify, specify or optimise" their tenders. However, this cannot involve any changes to the basic features of the tender (e.g. price or risk-allocation). As a result, prospective contractors must ensure that their tenders are the equivalent of a "Best and Final Offer", such that no significant amendments are required.
- (b) Having selected its preferred bidder, BHCC can only ask the preferred bidder to clarify aspects of the tender or confirm commitments contained in it. Again, this cannot result in substantial aspects of the tender being altered.

#### 4.3.8 **Finalisation of contracts/Contract Award Notice**

Following the completion of the standstill period and assuming that no legal challenges have been received during that period, BHCC can proceed to finalise the terms of contract with the selected tenderer. BHCC is required to publish a Contract Award Notice in the Official Journal, advertising the details of the award, and place a similar notice in the Contracts Finder site.

### 4.4 **Competitive Dialogue Timetable**

|   | <b>Milestone</b>                                    | <b>Duration</b>  |
|---|---|--|
| 1 | [Section 20 – Notice of Intention]                  | [Minimum of 30 calendar days to allow leaseholders to submit observations] |
| 2 | OJEU Notice despatched to Official Journal/Contract |  |

|    | <b>Milestone</b>   | <b>Duration</b>   |
|----|--|---|
|    | notice placed on Contracts Finder website  |   |
| 3  | Deadline for receipt of Selection Questionnaire  | Minimum of 30 calendar days from date of OJEU Notice  |
| 4  | Evaluation of SQ responses   | Suggest 2 working weeks   |
| 5  | Issue of Regulation 55 letters to successful and unsuccessful Applicants/Tenderers invited to respond to Initial Tender or Participate in Dialogue         |   |
| 6  | Briefing Session (Optional)  |   |
| 7  | Submission of Outline Solutions  | Suggest 3-4 working weeks   |
| 8  | Evaluation of Outline Solutions and shortlisting of Participants to be invited to Dialogue   | Suggest 2 working weeks   |
| 9  | Issue of Regulation 55 letters to successful and unsuccessful tenders/Despatch agenda and final timetable for Dialogue sessions to successful Participants |   |
| 10 | Dialogue sessions with each Participant to discuss and identify preferred proposals  | Suggest 3-6 weeks (assuming a minimum of 3 Dialogue sessions with each Participant)   |
| 11 | Conclusion of Dialogue/Issue of Invitation to Best and Final Offers  |   |
| 12 | Deadline for submission of Best and Final Offers   | Suggest 3-4 working weeks   |
| 13 | Evaluation of Detailed Solutions   | Suggest 2 working weeks   |
| 14 | Seeking Board/Cabinet decision for conditional award to preferred tenderer   |   |
| 15 | [Section 20 Notice of Landlord's Proposals]  | [Minimum of 30 calendar days to allow leaseholders to submit observations]  |
| 16 | Issue of Regulation 86 letters to successful and unsuccessful tenderers with feedback  |   |
| 17 | Mandatory standstill period  | Minimum of [10] days from date of letters (provided that the letters were issued electronically; must end on a working day. |
| 18 | Finalisation of contracts  |   |
| 19 | Contract Award Notice despatched to Official Journal/Award Notice placed on Contracts Finder website.  | Within 30 days of award decision  |





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