

<b>Subject:</b>	<b>Provision of the Commercial Portfolio's Downland Estate Management Consultancy Contract</b>		
<b>Date of Meeting:</b>	<b>1 September 2011</b>		
<b>Report of:</b>	<b>Strategic Director, Resources</b>		
<b>Lead Member:</b>	<b>Cabinet Member for Finance &amp; Central Services</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Tom Hook</b>	<b>Tel: 29-1110</b>
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<b>Key Decision:</b>	<b>No</b>		
<b>Ward(s) affected:</b>	<b>All</b>		

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

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

## 2. RECOMMENDATIONS:

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

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

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

### 2.2.1 Resolution of the Overview and Scrutiny Commission

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

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

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

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

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

#### **4. EXTRA INFORMATION PROVIDED SINCE THE 22 JULY OSC MEETING**

##### **Background to Additional Information**

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

##### **Consultation**

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

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

Individual specific concerns were raised with regard:-

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

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

#### **Financial Implications**

4.3.4 Financial implications are detailed in paragraphs 6.1-6.3.

#### **Additional Information Related to Specific OSC Proposals**

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

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

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

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

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

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

The key objectives achieved so far include:

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

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

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

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

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

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

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

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

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

(e) Consultation feedback

Additional information provided in the section above.

(f) The proposed timetable specifically for the Downland Estate

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

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

## 5. COMMUNITY ENGAGEMENT AND CONSULTATION

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

## 6. FINANCIAL & OTHER IMPLICATIONS:

### Financial Implications:

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

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

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

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

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

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

Other Implications:

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

**7. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

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

**8. REASONS FOR REPORT RECOMMENDATIONS**

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

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. **Appendix 1** contains the report from the Strategic Director, Resources which was agreed at the 14 July Cabinet meeting;
2. **Appendix 2** contains the official record of Cabinet's Decision in relation to this report;
3. **Appendix 3** contains an extract from the draft minutes of the Cabinet meeting;
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### **Documents in Members' Rooms**

None

### **Background Documents**

1. The Council's Constitution