



# Agenda

Meeting: **Overview and Scrutiny Committee**  
Date: **12 February 2019**  
Time: **7.00 pm**  
Place: **Council Chamber - Civic Centre, Folkestone**

To: **All members of the Overview and Scrutiny Committee**

The committee will consider the matters, listed below, at the date, time and place shown above. The meeting will be open to the press and public.

Members of the committee, who wish to have information on any matter arising on the agenda, which is not fully covered in these papers, are requested to give notice, prior to the meeting, to the Chairman or appropriate officer.

This meeting will be webcast live to the council's website at <https://folkestone-hythe.public-i.tv/core/portal/home>. Although unlikely, no guarantee can be made that Members of the public in attendance will not appear in the webcast footage. It is therefore recommended that anyone with an objection to being filmed does not enter the council chamber.

1. **Apologies for Absence**

2. **Declarations of Interest**

Members of the committee should declare any interests which fall under the following categories\*:

- a) disclosable pecuniary interests (DPI);
- b) other significant interests (OSI);
- c) voluntary announcements of other interests.

3. **Princes Parade Business Plan (Pages 3 - 18)**

Report C/18/89 presents the business case for the Princes Parade project and sets out a proposal for the procurement of the contractor for the

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leisure centre and associated infrastructure, core consultant team and leisure centre operator. The report also seeks approval of Cabinet to allow the Director for Place and Commercial to take the steps necessary to deliver the project in consultation with the Leader and the Princes Parade Working Group.

4. **Exclusion of the Public (Pages 19 - 36)**

**To exclude the public for the following item of business on the grounds that it is likely to disclose exempt information, as defined in paragraph 3 or Part 1 of Schedule 12A to the Local Government Act 1972 –**

**‘Information relating to the financial or business affairs of any particular person (including the authority holding that information). “Financial or business affairs” includes contemplated as well as current activities.’**

**Part 2 – Exempt Information Item**

5. **Princes Parade Business Plan - appendices 1 and 3 (exempt). (Pages 37 - 178)**

This report presents the business case for the Princes Parade project and sets out a proposal for the procurement of the contractor for the leisure centre and associated infrastructure, core consultant team and leisure centre operator. The report also seeks the approval of Cabinet to allow the Director for Place and Commercial to take the steps necessary to deliver the project in consultation with the Leader and the Princes Parade Working Group.

\*Explanations as to different levels of interest

(a) A member with a disclosable pecuniary interest (DPI) must declare the nature as well as the existence of any such interest and the agenda item(s) to which it relates must be stated. A member who declares a DPI in relation to any item must leave the meeting for that item (unless a relevant dispensation has been granted).

(b) A member with an other significant interest (OSI) under the local code of conduct relating to items on this agenda must declare the nature as well as the existence of any such interest and the agenda item(s) to which it relates must be stated. A member who declares an OSI in relation to any item will need to remove him/herself to the public gallery before the debate and not vote on that item (unless a relevant dispensation has been granted). However, prior to leaving, the member may address the meeting in the same way that a member of the public may do so.

(c) Members may make voluntary announcements of other interests which are not required to be disclosed under (a) and (b). These are announcements made for transparency reasons alone, such as:

- membership of outside bodies that have made representations on agenda items, or
- where a member knows a person involved, but does not have a close association with that person, or
- where an item would affect the well-being of a member, relative, close associate, employer, etc. but not his/her financial position.

Voluntary announcements do not prevent the member from participating or voting on the relevant item

This report will be made  
public on 5 February  
2019

Report Number **C/18/69**

**To:** Cabinet  
**Date:** 13 February 2019  
**Status:** Key Decision  
**Head of Service:** Andy Jarrett – Chief Strategic Development Officer  
**Cabinet Member:** Councillor David Monk – Leader of the Council

**SUBJECT:** Princes Parade Project Business Plan

**SUMMARY:**

This report presents the business case for the Princes Parade project and sets out a proposal for the procurement of the contractor for the leisure centre and associated infrastructure, core consultant team and leisure centre operator. The report also seeks the approval of Cabinet to allow the Director for Place and Commercial to take the steps necessary to deliver the project in consultation with the Leader and the Princes Parade Working Group.

**REASONS FOR RECOMMENDATION:**

To allow the development of the Princes Parade Project to proceed in accordance with the resolution of Cabinet on 7<sup>th</sup> February 2017.

**RECOMMENDATIONS:**

1. To receive and note report C/18/69.
2. To approve the business case and financial appraisal as set out in the report as the basis for delivering the Princes Parade project.
3. The Corporate Director - Place and Commercial be authorised, in consultation with the Leader of the Council and the Cabinet Member for Special Projects, to implement the steps necessary to deliver the Princes Parade project as outlined in the report.
4. The Corporate Director – Place and Commercial be authorised, in consultation with the Leader and Cabinet Member for Special Projects, to dispose of the residential/commercial land at Princes Parade and the existing Hythe Swimming Pool site in order to enable the delivery of the project.
5. To accept the grant offered by the Government under its Accelerated Construction Programme for work to the site.
6. To seek the approval of Full Council to release the capital funding necessary to deliver Phases 1 and 2 of the project.

## 1 Background

- 1.1 The Princes Parade project was originally conceived in 2012 with aim of securing a replacement for the existing Hythe Swimming Pool. The Princes Parade site was chosen following the consideration by Folkestone and Hythe District Council's Cabinet of a number of alternatives sites and a number of development mixes including the potential relocation of Seabrook Primary School. In February 2017, Cabinet agreed the mix outlined below and authorised the submission of an application for planning permission that was subsequently submitted in September 2017 (ref Y17/1042/SH). Details of the specification and design of the proposed leisure centre are set out in Section 2 of the Leisure Centre Business Case (Appendix 1). The masterplan for the overall scheme is attached as Appendix 2.
- A new leisure centre, located to the eastern end of the site including a main 25m by 6 lane swimming pool, teaching pool, 100 station gym, studio space and a café.
  - The relocation of the existing Princes Parade in order to provide an 11m wide promenade.
  - A comprehensive area of open space to the western end of the site linked to a central area of open space by a linear park.
  - Up to 150 residential units provided in two land parcels either side of the central open space, including 45 (30%) affordable housing.
  - The potential for commercial activities, including a boutique hotel, café, restaurant, adjacent to the promenade and central open space.
  - Car parking to accommodate both residents, visitors and users of the leisure centre.
- 1.2 The planning application generated a high level of response from the public with a total of 762 responses being received with 588 of those being objections and 172 setting out support for the scheme. Following the submission of further information related to heritage, ecology, viability, transportation, road safety and lighting, a further round of consultation was carried out in March 2018. Additional information related to the Environment Statement and ecological mitigation was submitted in July 2018.
- 1.3 The application was considered by the Council's Planning and Licencing Committee on 16<sup>th</sup> August 2018 with the Committee resolving to grant planning permission subject to the Environment Agency withdrawing an objection relating to surface water drainage and the satisfactory completion of a S106 agreement covering affordable housing, open space management and a health and wellbeing contribution. These issues have been resolved (a draft s106 and Memorandum of Understanding) has been prepared and the Development Management Manager now has the authority to issue the planning permission. The National Planning Casework Unit (NPCU) have been notified of the current position in order that the Secretary of State for Communities and Local Government (SoS) can consider whether to 'call in the application' for their own determination. Such a process would involve the appointment of an independent inspector and the holding of a public inquiry. The planning

permission will be issued by FHDC should notification be received that the SoS does not wish to 'call in' the application. Following the issuing of the planning permission there is 6 week judicial review period in which a legal challenge may be made against the issuing of the planning permission.

- 1.4 In July 2017 Cabinet considered a report (ref. C/17/25) setting out the key element of the future work programme for the project. The following was agreed:

*That the work programme identified in the report be approved in order that a full business case and financial appraisal may be prepared for their consideration, prior to the commencement of construction, should planning permission be granted.*

- 1.5 The report identified a suggested structure for the business case and financial appraisal to include the following elements:-

- Chapter 1 – ARC Business case.
- Chapter 2 – Design Proposals.
- Chapter 3 – Capital Cost Plan.
- Chapter 4 – Capital Funding Strategy.
- Chapter 5 – Project Execution Plan.
- Chapter 6 – Project Delivery Team.
- Appendix 1 - Updated Risk Register.

- 1.6 Following the decision of Cabinet a range of work was commissioned in order to provide the information identified above. This is summarised below and set out as appendices to the report:-

- Leisure Centre Business Case (Appendix 1 to the report) – This document was prepared by The Sports Consultancy and includes an informed estimate of the management fee that Folkestone and Hythe District Council can be expected to receive over the short to medium term and the associated revenue turn-around position. The business case also sets out the management options and associated procurement options for operation of the centre.
- Design Proposal – The design proposal for the leisure centre and Princes Parade scheme as a whole were prepared by GT3 Architects and Tibbalds Planning and Urban Design and included with planning application (ref. Y17/1042/SH). The site masterplan is attached as Appendix 2. The specification and floor plans for the scheme are set out in Section 2 of Appendix 1. Further detail can be found at the Princes Parade website – [www.princesparade.co.uk](http://www.princesparade.co.uk).
- Capital cost plan (Appendix 3) – A stage 2 cost plan for phase 1 and 2 of the Princes Parade scheme, has been prepared by quantity surveyors Betteridge and Milsom. Phases 1 and 2 (site remediation and construction of the leisure centre and supporting infrastructure) are the elements of the scheme that Folkestone and Hythe District Council will have direct responsibility for delivering, with phases 3 and 4 (residential and commercial) being delivered

by a third party developer. The cost plan incorporates valuation advice (updated in October 2018) for both the residential and commercial land included as part of the Princes Parade scheme and the existing Hythe Swimming Pool site, as provided by Savills Estate Agents and Valuers.

- Capital funding strategy – A capital funding strategy has been prepared by Folkestone and Hythe District Council Financial services based on information contained within the leisure centre business case and capital cost plan. The capital funding plan has been the subject of an independent review undertaken by Arlingclose Limited, the results of which are summarised in the Finance Officers comments.
- Project execution plan – An outline delivery programme is included in Section 4 of the Procurement and Programme Review as prepared by Hadron Consulting Ltd (see Appendix C to Appendix 1). A full project execution plan will be prepared once the Core Consultant Team has been appointed.
- Risk Register – A summary of the key risks associated with the projects is set out in Section 3 of the report. A more detailed risk register is being maintained and updated by the project team as the project progresses.

## **2 The Princes Parade Business Case – Overview and Summary**

- 2.1 This section provides a summary and assessment of the key issues arising from the work set out in the previous section of the report and highlights the issues that Cabinet will need to take into consideration when coming to a decision on whether to proceed with the delivery of this project.
- 2.2 The Princes Parade project was developed in response to the need to find a long terms replacement for the current Hythe Swimming pool that, having been constructed in the early 1970's is coming to the end of its useful life. The options appraisal undertaken by the District Council in 2015, and recently updated, has shown the Princes Parade site to be the most suitable in terms of location, availability and deliverability.
- 2.3 In addition to the delivery of the new leisure centre the project will also deliver a number of other public benefits including a substantial area of high quality, accessible open space, a new promenade and both affordable and market housing. The Princes Parade Leisure Centre Business Case has also demonstrated that the project will result in a significant turn-around in the revenue position will the existing facility currently costing the Council approximately £320,000 per annum (see Business Case Section 3, Current Financial Performance - Appendix 1 page 7). The demographic and market analysis set out in the business case demonstrates that the facility is likely to generate a healthy surplus that will be payable to the District Council in the form of a management fee. The management fee will become payable once the centre has reached a mature position (around 3 years into operation). This is due to there being a number of upfront investment costs, such as furniture, fixtures and equipment, and the fact that it will take a certain period of time to build up the membership/usage and achieve income targets.

- 2.4 The project will also address the current contamination present on the site, as a result of its previous use as a landfill site. Should the development not go ahead then the District Council, as landowner, will need to consider addressing the current levels of contamination which will not only incur additional costs but may result in access restrictions being put in place.
- 2.5 The delivery of the Princes Parade project can essentially be divided into two key components, that is, the construction of the capital elements of the scheme (leisure centre, housing/commercial and open space provision) and the procurement and appointment of an operator for the leisure centre.

### **Homes England Accelerated Construction Programme Grant**

- 2.6 In 2017 an application for grant funding was to be made to Homes England under the Government's Accelerated Construction Programme to support remediation and other development costs for the site.
- 2.7 The application for the grant was successful and the council has been awarded £1,977,879. The Accelerated Construction programme is designed so that local authorities can bring forward and develop surplus and / or acquired sites which:-
- Can begin to deliver housing starts within this Parliament, as part of a local authority's wider housing ambitions;
  - Can demonstrate clear additionality, for example by bringing forward sites that might otherwise not be sold for housing development, and in particular sites that are not currently in a local authority's Local Plan or 5 year land supply;
  - Respond to meeting housing needs locally by freeing up surplus land for housing where it is needed most;
  - Have capacity for 50 homes or more, or form part of a portfolio of smaller sites;
  - Are not, or, subject to successful application, will not be held in a Local Authority's Housing Revenue Account. However proposals for the delivery of mixed tenure sites were welcomed where they meet the Government's wider objectives as were proposals for the provision of serviced custom build plots.
- 2.8 The government were obviously satisfied that the site met the criteria. They were also satisfied that the scheme was viable. The offer of the grant is time limited. The council must decide whether to accept it or not. The recommendation is that it should be accepted.

## **The Princes Parade Capital Project**

2.9 The capital element of the Princes Parade project can be broken down into four distinct element or phases as listed below, and set out in the Planning and Design Statement (PDAS) submitted with the planning application:-

### **Phase 1**

- Site remediation works.

### **Phase 2**

- Construction of leisure centre.
- Realignment of Princes Parade and construction of western car park.
- Relocation of existing rising main along realigned Princes Parade.
- Provision of new promenade.
- Construction of new linear park (including installation of planting along the embankment to the northern boundary, adjacent to the Royal Military Canal).

### **Phase 3**

- Construction of the character area east (residential) and central open space.

### **Phase 4**

- Construction of character area west (residential and commercial) and western open space.

2.10 It is considered, based on the professional advice received, that the most appropriate way to deliver the project is for Folkestone and Hythe District Council to procure a contractor to deliver phases 1 and 2. In parallel to that process the Council should seek to dispose of the residential and commercial land with the capital receipt from that sale being used to fund the implementation phases 1 and 2. The Council may also wish to consider entering into some form of joint venture or other similar arrangement, with a private developer, to deliver phases 3 and 4. In addition an alternative phasing schedule, that combines Phases 1 and 2, is set out in Section 4 of the Procurement and Programme Review (Appendix 1). Consideration should be given to both approaches as part of the further development of the project.

2.11 The cost plan prepared by quantity surveyors and cost consultants Betteridge and Milsom. In addition a funding package has been identified to meet the capital cost of delivering Phases 1 and 2 of the scheme. The estimate of costs and income is set out in detail in Section 8: Affordability of the Princes Parade Leisure Centre Business Case (Appendix 1).

2.14 The development of the cost plan and income assumptions for the scheme have relied upon advice from quantity surveyors and valuers with the overall



cost plan being subject to an assessment by independent treasury advisory company Arlingclose.

- 2.15 In addition a project programme for the scheme is set out in the Business Case (Appendix 1). This indicates that the Leisure Centre will open in the latter part of 2021.

### **Procurement Options for the Princes Parade Capital Project**

- 2.16 In order to deliver the project it will be necessary for the Council to procure a main contractor to deliver phases 1 and 2. The options open to the Council include the use of a procurement framework or the more traditional competitively tendered OJEU route. The issue of contractor procurement is covered in detail in the Procurement and Programme Review (see Appendix 1) which sets out the following recommendations:-

- A single contractor is appointed for the remedial works, leisure centre and infrastructure (Phases 1 and 2).
- A two stage develop and construct procurement route be adopted.
- Design developed to RIBA Stage 4a in conjunction with the contractor and for the completion of the second stage tender.
- A fixed lump sum price is obtained for the works at the second stage tender.
- Key designers (e.g. architects, mechanical/electrical engineer and civil/structural engineer) would be appointed by the Council to complete the design to RIBA Stage 4a and then novated to the contractor to complete the design.
- The contractor is procured through the Southern Construction Framework, although this needs to be soft market tested to ensure there is sufficient interest from contractors on this framework.

- 2.17 An earlier soft market testing exercise indicated that there are a number of contractors on the Southern Construction Framework that would be interested in tendering for the delivery of phases 1 and 2 of the project.

### **Core Consultant Team**

- 2.18 In order to deliver the project it will necessary for the Council to appoint a Core Consultant Team consisting of the following:-

- Lead consultant.
- Quantity Surveyor.
- Principal designer (to cover the CDM requirements. Can be appointed by the contractor at the post contract stage).
- Project manager.
- Lead architect.
- Landscape architect.
- Civil and structural engineer.
- Mechanical and electrical engineers.

- 2.19 The Procurement and Programme Review recommends the use of a single source framework, such as Pagabo or Scape, be considered for the appointment of the Core consultant team. The various stages of the project, from the current phase of the project to completion, are listed below. These are based on the standard Royal Institute of British Architects (RIBA) phases used for most construction projects.
- RIBA Stage 2 - Concept Design.
  - RIBA Stage 3 – Developed Design.
  - RIBA Stage 4 – Technical Design.
  - RIBA Stage 5 – Construction.
  - RIBA Stage 6 – Handover and Close Out.
- 2.20 It will be necessary for the Council to appoint the consultants listed above at RIBA Stage 2 in order to ensure alignment of the various aspects of the design.
- 2.21 The appointment for the lead consultant, project manager, quantity surveyor and by the District Council, will need to continue through to RIBA Stage 6.
- 2.22 The appointment of the architect, landscape architect, civil and structural engineer and mechanical/electrical engineer, by the Council, will need to continue through to stage 4. These members of the design team will then be novated to the main contractor to cover RIBA Stage 5 and 6.
- 2.23 The value of the pre-contract fees is estimated at £1.5 million. These costs are covered within the project/design team fees within the stage 2 cost plan. Such an approach will ensure that that the appointment of the team can be undertaken quickly whilst complying with the requirements of OJEU procurement regulations. It will also enable the appointment of a team with significant experience of delivering leisure projects and the retention of the architects that have developed the scheme to date to ensure continuity of design. The framework approach ensures that the fees payable have been benchmarked against other comparable schemes to ensure best value.
- 2.24 Smaller ‘non – core consultant team’ appointments, necessary to deliver the project can be dealt with either by a variation to the framework appointment or as a direct appointment by the Council.

### **Princes Parade Leisure Centre Business Case**

- 2.25 A full business case for the proposed Leisure is out in the Princes Parade Leisure Centre Business Centre Business Case, as prepared by The Sports Consultancy and attached as Appendix 1. The key issues identified in the report are summarised below:-
- There is unmet latent demand for health and fitness facilities within the catchment of the new centre equating to circa 2300 membership.
  - Detailed business planning undertaken using by The Sports Consultancy used a recognised methodology to assess the likely demand for the centre

and the likely level of the management fee to be paid to Folkestone and Hythe District Council.

- Over first ten years of operation the centre will generate an average annual management fee payment to the Council with year by year variation, reflecting upfront mobilisation costs and reaching maturity in the early years and fluctuations in the lifecycle maintenance requirements from year to year. Living wage and in-house management options have also been assessed that would incur an additional average annual cost.
- A detailed assessment of income and expenditure is set out in Section 5 : Business Planning of the Princes Parade Leisure Centre Business Case (Appendix 1). A summary of the management fee estimate is set out in page 14 of that document.
- Soft market testing has indicated a good level of interest from potential operators most of the main leisure operators.

2.26 It is recommended that Folkestone and Hythe District Council seek to secure an operator for the new leisure centre through an open procurement process. It also recommended that the Council procure specialist advice to manage this process and achieve the best possible financial and service proposals for the Council. The estimated cost of such advice is £60,000.

### **3. Summary of the Next Stage or the Project Development**

- 3.1 Following the granting of planning permission, the next stage in the delivery of project will involve commencement of the procurement process for the core consultant team, the contractor for Phases 1 and 2 and the operator of the leisure centre, as described earlier in the report. A number of preliminary works relating to, for example, ecological mitigation will also need to be undertaken. It is also recommended that further ground investigation work is undertaken at this stage that can be used to inform the contractor of the procurement process.
- 3.2 The Council should also, at this stage, commence the process of disposing of the residential/commercial land at Princes Parade and the existing Hythe Pool site. As part of this process the possibility of FHDC entering in to a joint venture with a private developer should be explored.
- 3.3 Once planning permission is obtained it will also be necessary to obtain other consents including highway stopping up approval, main rivers consent, badger licences and reserved matter approval. In relation to the stopping up process an application was submitted to the Secretary of State for Transport in May 2018. Over 200 representations (mainly objections) were received. Given that it is not a realistic possibility that all the objections will be withdrawn, following a process of negotiation, it will be necessary for the SoS to appoint an inspector to consider any remaining objections in accordance with the legal tests set out in the Town and Country Planning Act. This may be done either through a process of written representations or public inquiry. This process has been factored into the project programme, based on an estimate of the overall timescale, and will continue to be monitored.

- 3.4 The early appointment of the Core Consultant Team will be an important step in the development of the project as it will provide the Council with the additional skills need to undertake further detailed design work and take the project through to implementation.
- 3.5 A two stage procurement process has been recommended in relation to the construction of the leisure centre. This is considered appropriate as it will allow further detailed discussions to take place between the appointed contractor, FHDC and the core consultant team in order to allow the specification to be finalised in accordance with the requirements of the client and the agreed budget. Similarly discussions regarding the operational specification of the leisure centre will take place once the operator has been appointed.
- 3.6 A number of decisions will therefore need to be taken to allow the project to proceed. It is recommended that authority to take those decisions is delegated to the Corporate Director for Place and Commercial in consultation with the Leader and the Princes Parade Working Group.

#### **4. Finance Comments**

- 4.1 Arlingclose Limited, the council's treasury adviser, was commissioned by the Corporate Director for Customer, Support and Specialist Services to undertake a review of the key financial information in the business case for delivering phase 1 and 2 of the Princes Parade project. This included assessing the robustness of the estimates the council had obtained for:-
- The capital cost of the project.
  - The valuations for the land disposal options to help fund the capital cost, and
  - The operating cost model.
- 4.2 The review also included an assessment of the overall capital financing proposed for the scheme, its cashflow implications and the main financial risks.

#### **Arlingclose Review – Summary of Main Findings**

- The council has taken the correct approach in obtaining professional advice from experienced consultancy firms for the key cost and funding estimates for the scheme, including the operating cost model, providing assurance the project is achievable.
- These estimates have recently been reviewed to ensure they remain relevant and accurate.
- The capital scheme is deliverable without the need for long term borrowing.
- Short term borrowing will be required to meet cashflow timing issues and the interest cost should be capitalised and added to the overall scheme cost.
- The forecast capital funding streams will produce surplus capital receipts of about £1.2m over the estimated capital cost.

- With no long term capital financing costs, the operating cost model for the new leisure centre is expected to generate an ongoing revenue saving to the council compared to the cost of providing its existing facility.
  - The most significant financial risk to the project are delays to the capital receipts and S106 contributions required towards the project with the need for further interim borrowing to meet this should it occur.
  - Should for any reason the capital cost exceed the total capital funding, then for every £1m incurred this will mean an additional ongoing capital financing cost of £45k pa.
  - The council is most likely to have to take on the affordable housing and commercial development elements of the overall project.
- 4.3 The Arlingclose review provides assurance over the robustness of the key financial estimates for the project and that the operation of the leisure centre is financially viable over its lifetime.
- 4.4 It is important to highlight that the financial estimates remain indicative at this stage. The actual cost to deliver the scheme and operate the new leisure and commercial facilities will not be known until the outcome of the procurement process and further work on the disposal options for both the Princes Parade and South Road sites are known. Once these are known, a final detailed business case will be prepared for the scheme that will include its full financial implications. The proposed £60k budget to support the procurement process for the appointment of the leisure centre operator can be contained within existing revenue resources earmarked towards the council's corporate development plans.

## 5. Summary of Risks

- 5.1 The Princes Parade project is a complex and its development to date has been based on a number of assumptions informed by appropriate professional advice. The project therefore carries a number of risks of which Cabinet should be aware when taking a decision on whether to proceed with the project. The key risks are set out below:

### Funding and Delivery Risks

- Capital receipts from the Princes Parade and existing Hythe Swimming Pool site lower than estimated leading to a significant funding shortfall.
- Construction costs identified through contractor procurement process greater than anticipated leading to a significant funding shortfall.
- Further abnormal development costs identified during construction stage leading to cost pressures lower than anticipated demand for new leisure centre leading to revenue shortfall.
- Significant delay to Nickolls Quarry scheme (Y06/1079/SH) leaves FHDC unable to draw down S106 contribution.
- Delays in obtaining the necessary consents required to deliver the scheme included highway stopping up approval, main rivers consent and reserved

matter approval (for planning permission Y17/10142/SH) resulting in delays to the programme and additional costs.

### Planning Risks

- Call in by Secretary of State resulting planning uncertainty and a substantial delay to the programme.
- A successful judicial review challenge leading to reconsideration of the application by the local planning authority.

## 6. Conclusion

- 6.1 The business case and professional advice presented in this report demonstrates that the Princes Parade capital project can be delivered provided that the proposed funding package is available and the risk is appropriately managed.
- 6.2 The report also recommends a procurement route for the appointment of the main contractor, the operator of the leisure centre and the core consultant team that it is considered to achieve an appropriate balance between delivering best value and speed of delivery.
- 6.3 The Leisure Centre Business Case demonstrates that a significant and positive turn-around in the revenue position will be achieved greatly improving the Council's financial position, in addition to a much improved facility being available for use by the general public.
- 6.4 In addition the project will provide a range of other public benefits including high quality, accessible open space and both market and affordable housing.

## 6. RISK MANAGEMENT ISSUES

- 6.1 A summary of the perceived risks is as follows :-

Perceived risk	Seriousness	Likelihood	Preventative action
Funding and delivery risks (see section 3 of report)	High	Medium	Review position following detailed design (e.g. RIBA Stage 4a)
Planning risks (see section 3 of report)	High	Medium	Review programme and deliverability of project as appropriate.

### Legal Officer's Comments (DK)

Subject to the Council complying with its planning obligations and acting competitively, fairly and transparently when selecting relevant contractors in accordance with the Public Contracts Regulations 2015, there are no legal implications arising directly out of this report other than as stated therein.

### **Finance Officer's Comments (LW)**

The Finance Officer's comments are included in the main body of the report.

### **Diversities and Equalities Implications (DS)**

There are no diversities and equalities implications directly related to this report.

## **7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS**

Councilors with any questions arising out of this report should contact the following officers prior to the meeting.

Andy Jarrett – Chief Strategic Development Officer  
Telephone: 07713081278  
Email: [andy.jarrett@folkestone-hythe.gov.uk](mailto:andy.jarrett@folkestone-hythe.gov.uk)

Dave Shore – Strategic Development Projects Manager  
Telephone: 01303 853459  
Email: [dave.shore@folkestone-hythe.gov.uk](mailto:dave.shore@folkestone-hythe.gov.uk)

The following background documents have been relied upon in the preparation of this report.

Nil

### **APPENDICES**

Appendix 1 – Princes Parade Leisure Centre Business Case (incorporating latent demand assessment, soft market testing documentation and procurement and programme review).

Appendix 2 – Princes Parade Illustrative Masterplan

Appendix 3 – Stage 2 Cost Plan Report

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# Princes Parade

## Illustrative Masterplan

drawing no. IM 007  
 scale 1: 2,000 @ A2  
 date 08-08-2017



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## Cabinet meeting – 13 February 2019

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 – regulation 5

Council response to representations received by the decision-making body about why the Cabinet meeting on the 13 February 2019 should be open to the public

On the 13 February 2019 the cabinet will consider a report presenting the business case for the Princes Parade project setting out a proposal for the procurement of the contractor for the leisure centre and associated infrastructure, core consultant team and leisure centre operator.

The council has indicated its intention to hold that part of the meeting considering the item in private. Part 1 of Schedule 12A Local Government Act 1972 (as amended) as applied by the above regulations provides for exemptions to the requirements to allow public access to meetings and reports to be considered, subject to a public interest test. The Council is seeking to rely on paragraph 3 Part 1 of Schedule 12A which states that - Information *relating to the financial or business affairs of any particular person (including the authority holding that information)* may be exempt from publication.

Representations concerning this proposal have been received and can be viewed on line at <http://www.folkestone-hythe.gov.uk/moderngov/ieListDocuments.aspx?CId=142&MId=4577&Ver=4> or at the council's offices at the address below during normal office hours.

The council's response is as follows:-

Part of the representation relates to one of the qualification to the exemptions in Part 1 which are contained in part 2 of Schedule 12A namely the exception at paragraph 9 which states that "*Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission or permission in principle pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.*" The council's view is that the exception at paragraph 9 relates to information concerning the regulatory planning process prior to a planning decision being made, rather than to the business case behind each respective development. Consequently the qualification does not apply.

On the question whether the matter should be discussed in public the information clearly falls within paragraph 3 above. Councillors will consider whether it is in the public interest to maintain the exemption.

A handwritten signature in black ink, appearing to read 'Susan Priest', written in a cursive style.

Susan Priest  
Head of Paid Service  
Civic Centre  
Castle Hill Avenue  
Folkestone  
Kent CT20 2QY

Date: 5 February 2019

## Representation 1

From [REDACTED]

Sent: 08 January 2019 15:21

To: Priest, Susan <Susan.Priest@folkestone-hythe.gov.uk>; Khroud, Amandeep <Amandeep.Khroud@folkestone-hythe.gov.uk>; Bunnett, John <John.Bunnett@folkestone-hythe.gov.uk>

Subject: Princes Parade Business Plan

Dear Dr Priest, Mrs Khroud, Mr Bunnett

The Princes Parade Business Plan which is due before Cabinet on the 30th Jan 2019 is NOT exempt information, and as such the public cannot be excluded from the public gallery, nor can this part of the meeting be heard behind closed doors.

Part 2, s9 of Schedule 12A of the Local Government Act 1972 states:

- Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992

It is clear the Princes Parade Business Plan relates to the Council's proposed development of Princes Parade; which it may grant itself planning permission, and as such the contents of the Business Plan cannot be held to be exempt information.

I therefore request this part of the agenda at the Cabinet Meeting on 30th January 2019 be heard in public, as there are NO legal grounds to make the Business Plan an exempt item.

I look forward to your response within the near future.

Kind Regards

[REDACTED]

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## Representation 2

**From:** [REDACTED]  
**Sent:** 18 December 2018 22:55  
**To:** Priest, Susan <Susan.Priest@folkestone-hythe.gov.uk>  
**Cc:** Committee <Committee@folkestone-hythe.gov.uk>  
**Subject:** Princes Parade Business Plan is NOT EXEMPT

Dear Susan

I have just seen the Authority's notice of an intention to exclude the public from part of the 30<sup>th</sup> January 2019 Cabinet meeting that will be discussing the Princes Parade Business Plan.

The reason given by the council is that the Business Plan is Exempt because it includes *"Information relating to the financial or business affairs of any particular person (including the authority holding that information). 'Financial or business affairs' includes contemplated as well as current activities"* (Ref A).

Please be aware that [Ref A] is not a valid reason for claiming that the Princes Parade Business Plan contains Exempt information.

As stated correctly in your notice: *"Information is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town & Country Planning General Regulations 1992(a)"* (Ref B).

It is therefore entirely clear from the legislation that the Business Plan is NOT exempt since it **relates to** a proposed development for which the Authority has yet to grant itself planning permission and is following a process that may lead to the grant of such permission. Further, the Exempt designation applies to the **Information itself**; that designation does not depend on an intention to hold a meeting at which it is to be discussed. The Princes Parade Business Plan and related documents are therefore rendered disclosable according to the legislation because they exist in relation to the possible granting of planning consent irrespective of what, if any, meetings take place.

For the avoidance of doubt:

- (i) When the latter condition (Ref B) applies, it totally over-rides Ref A, which consequently becomes irrelevant.
- (ii) Any claim that might be put forward by the council that the Business Plan is "Confidential" would similarly not be valid since it does not conform to the definition of "Confidential" laid out within the council's own Constitution.
- (iii) Even though it has been claimed that *"in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information"*, I would, were it found to be necessary, challenge the validity of that claim since it fails to take into account the well-known circumstance in which the public have sound reasons to consider the proposed development non-viable.

In conclusion:

The actions of your council in repeatedly withholding information relating to the proposed Princes Parade development, whether it be in respect of meetings or FOI(EIR) requests, is unnecessary, unreasonable and unlawful.

**Representation 2**

**I ask that you now please release all financial information relating to the Princes Parade Business Plan, and in turn open up the Cabinet for attendance by the public.**

**All best wishes**

**[REDACTED]**

**[REDACTED]**



## Representation 3

From: [REDACTED]

Sent: 18 December 2018 16:15

To: Priest, Susan <Susan.Priest@folkestone-hythe.gov.uk>; Committee <Committee@folkestone-hythe.gov.uk>

Subject: Exclusion of the public - cabinet meeting 30 January 2019

Dear Dr Priest

I am writing on behalf of the 481 members of Save Princes Parade to object to the proposal to hold part of the 30 January 2019 Cabinet meeting (namely the consideration of the Princes Parade Business plan/Case) wholly or partly in private.

### **Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972**

In order to exclude the public from the meeting the council is relying on paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.

However, before making the decision that the information that would be disclosed is exempt, the council must first carry out a public interest test.

In this case, given the controversy surrounding the proposed development of Princes Parade and given the potentially large risk to public funds it is clear that the public interest in publishing the information outweighs the need for the council to keep the information private for reasons of commercial confidentiality.

We note that Judge Taylor reporting on the Biggins Wood Information Tribunal stated in para 43 that: *"To conclude, on balance, when considering all the factors set out above and in all the circumstances of the case, the public interest in disclosing the information that is the subject of this appeal outweighs the public interest in maintaining the exception that is set out in reg.12(5)(e) (Confidentiality of commercial or industrial information). We find disclosure of the disputed information would both be unlikely to have caused and to cause such a degree of commercial prejudice so as to justify withholding it in the public interest. Conversely, on the facts of this case, there is an overriding public interest in the disclosure of the disputed information to ensure public participation in environmental decision-making. This is heightened by considerations of Value for Money where legitimate questions are raised in respect of significant costs spent by a public authority that clearly has limited means. The interest is additionally weighty given the nature and history of the land in question, which has been contaminated and neglected."*

This argument is equally applicable to Princes Parade.

### **Local Government Act 1972 and Regulation 3 of the Town & Country Planning General Regulations 1992**

The Local Government Act 1972 as amended by The Local Government (Access to Information) (Variation) Order, 1992, states that information falling within any paragraph of Part 1 of Schedule 12A of the Local Government Act 1972 is not exempt if it relates to proposed development for which the local planning authority can grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992 (S.I. 1992 No. 1492).

Whilst there may be a decision in principle to grant consent subject to the Environment Agency withdrawing its objection (which it has not) no planning permission has been

### **Representation 3**

**Issued, and therefore legally a planning permission does not exist, and the application remains undetermined.**

**Given that no permission yet exists, the whole of the Business Case/Plan is very relevant to the determination of the application and so should be published in full and the public allowed to attend the meeting at which it will be discussed.**

**The requirements of the Local Government Act 1972 and Regulation 3, applies to the information, regardless of whether the meeting at which it is to be discussed will be the meeting at which the application will be determined.**

**I hope therefore that you will reconsider the decision to exclude the public from the meeting and that you will publish all the relevant reports the required number of days ahead of the meeting. The public have a right to see how decisions are made on our behalf and in order to retain the confidence of the public the council have a duty to be as transparent as possible in their decision making.**

**Please acknowledge receipt of this email.**

**Kind regards**

**[REDACTED]**

## Representation 4

**From:** [REDACTED]  
**Sent:** 14 January 2019 13:34  
**To:** West, Jemma <Jemma.West@folkestone-hythe.gov.uk>  
**Subject:** Re: Prince's Parade

Dear Ms West,

Thank you for your email & explanation of the Council's stance on this matter. I confess to finding it somewhat obtuse but I appreciate these things are a matter of interpretation. Clearly the business case is key to the viability of the proposal therefore critical to the final shape of any submission of a Planning Application for permission.

My concern is in the issue of the viability of the project as a whole & whether a shaky business case will be used to justify changes to the current proposal e.g. diminution of the housing element, especially the affordable/social element etc. or a change in the scale of the proposal to shore up a potentially shaky business case. If no one external to the Council is to be privy to the discussion of the business case, how can the community be assured that it is all soundly based and feel confident that problems will not occur 'down the line'? How is it to be monitored? In my experience "commercial sensitivity" can be used to shelter a multitude of sins!

I look forward to your reassurance that my concerns are groundless.

Yours sincerely

[REDACTED]

On 14 Jan 2019, at 11:01, <Jemma.West@folkestone-hythe.gov.uk>  
<Jemma.West@folkestone-hythe.gov.uk> wrote:

Good morning,

Thank you for your email dated 21 December 2018.

I have now had the opportunity of considering the contents of your email and I have also discussed this matter with the Monitoring Officer.

The Council does not agree with your interpretation of para 9 of Schedule 12A of the Local Government Act 1972. The Council is of the opinion that the exemption can still apply. This is because the restriction on exemptions at paragraph 9 of Schedule 12A relates to information concerning the planning process, rather than the Business Case.

As you are aware, the Cabinet meeting on 30 January will be considering the Business Case and will not be considering planning issues. Officers consider the details of the Business Case to be commercially sensitive. It should also be noted

## Representation 4

that the information being considered during the Cabinet meeting will not be part of the consideration as to whether planning permission should be granted.

It is, of course, for the members of the Cabinet to decide whether or not to exclude the public from the meeting. Objections to the exclusion will be placed before Councillors so they can take them into account. The public interest will also be considered prior to any decision on whether or not to consider the matter in private.

Kind regards

Jemma West  
Senior Committee Services Officer  
Folkestone & Hythe District Council,  
Civic Centre, Castle Hill Avenue,  
Folkestone, Kent. CT20 2QY.  
Office: 01303 853369  
Mobile: 07590 624 048  
Email: [jemma.west@folkestone-hythe.gov.uk](mailto:jemma.west@folkestone-hythe.gov.uk)  
Website: [www.folkestone-hythe.gov.uk](http://www.folkestone-hythe.gov.uk)  
[www.folkestone-hythe.gov.uk](http://www.folkestone-hythe.gov.uk)

-----Original Message-----

From: [REDACTED]  
Sent: 21 December 2018 16:31  
To: Jarrett, Andy <[Andy.Jarrett@folkestone-hythe.gov.uk](mailto:Andy.Jarrett@folkestone-hythe.gov.uk)>  
Subject: Prince's Parade

Dear Andy Jarrett,

I am writing to express my view that the discussions on the business case for the above project should be open to the public.

This project is initiated & driven by Folkestone & Hythe DC, representatives of the community of Folkestone, Hythe etc and the costs presumably funded by residents Council Tax contributions, therefore it is of interest to those residents to know how & why their money is being spent.

It seem to me that to exclude them is very high handed and completely unacceptable. The Councillors making the decisions have frequently demonstrated that they are out of step with the majority of their electorate, this would be a opportunity to redress that.

I look forward to receiving your comments on my suggestion.

In the mean time, have a Happy Christmas.

Yours sincerely

A large, solid black rectangular redaction box covering the signature area.

# RICHARD BUXTON SOLICITORS

ENVIRONMENTAL PLANNING & PUBLIC LAW

19B Victoria Street  
Cambridge CB1 1JP

Tel: (01223) 328933

www.richardbuxton.co.uk  
law@richardbuxton.co.uk

Folkestone and Hythe District Council  
Civic Centre  
Castle Hill Avenue,  
Folkestone  
Kent  
CT20 2QY

Susan.Priest@folkestone-hythe.gov.uk  
amandeep.khroud@folkestone-hythe.gov.uk  
Committee Services at committee@folkestone-hythe.gov.uk

By email and post

Your ref:  
Our ref: LW01-001/PDT/LF  
Email: [REDACTED]@richardbuxton.co.uk

24 January 2019

Dear Dr Priest,

**Re Notice of Intention to hold a Cabinet meeting and Overview and Scrutiny Committee meeting (or parts thereof) in private – meetings 12 and 13 February 2019**

We act for the Save Princes Parade community group and have been asked to write to you in relation to the notice issued by you on 17 December 2018 in relation to the part of the forthcoming Cabinet Committee meeting (originally planned for 30<sup>th</sup> January 2019 but now on 13 February 2019) which concerns the business case for the Princes Parade Planning Application.

We also understand that a report relating to the business case for the Princes Parade Planning Application will be considered by the Overview and Scrutiny committee on Tuesday 12 February 2019.

### The Cabinet Meeting

In respect of the cabinet meeting, the notice dated 17 December 2018 says:

**NOTICE IS GIVEN THAT:**

*The Cabinet of Folkestone and Hythe District Council intends to hold a meeting (or parts thereof), on the date shown above, in private.*

*The following exempt issues will be considered:-*

*Princes Parade Business Plan - Part exempt*

Partners: Richard Buxton\* MA (Cantab) MES (Yale), Lisa Foster Juris D MSc (UEA) MA (York)  
Solicitors: Simon Kelly BA MSt (Oxon), Paul Taylor BA (Oxon), Hannah Brown MA (Cantab), Matthew McFeeley BSc MPP Juris D  
Consultants: Paul Stookes\* PhD MSc LLB, Adrienne Copithorne\* BA (Cantab) MA (UC Berkeley), Kristina Kenworthy BA (Hons) LLM Env (UCL)  
Solicitor and Practice Manager: Caroline Chilvers BA (Hons) Office Manager: Kath Kusya

Authorised and regulated by the Solicitors Regulation Authority No. 74899

**Consideration of the business case for the Princes Parade development comprising the construction of a new leisure centre, up to 150 new homes and public open space**

**It is proposed to exclude the public from this item of business on the grounds that it is likely to disclose exempt information, as defined in the following paragraph of Part 1 of Schedule 12A to the Local Government Act 1972:**

**3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information). 'Financial or business affairs' includes contemplated as well as current activities.**

The Notice has been published pursuant to the Local Authorities (Executive Arrangements) Meetings and Access to Information) (England) Regulations 2012.

Section 4 of these regulations states:

**(1) A meeting of a decision-making body must be open to the public except to the extent that the public are excluded under paragraph (2).**

**(2) The public must be excluded from a meeting during an item of business whenever—**

**(a) it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item, confidential information would be disclosed to them in breach of the obligation of confidence;**

**(b) the decision-making body concerned passes a resolution to exclude the public during that item where it is likely, in view of the nature of the item of business, that if members of the public were present during that item, exempt information would be disclosed to them; or**

**(c) a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or prevent misbehaviour at a meeting.**

**(3) A resolution under paragraph (2)(b) must—**

**(a) identify the proceedings, or the part of the proceedings to which it applies, and**

**(b) state, by reference to the descriptions in Schedule 12A to the 1972 Act (access to information: exempt information), the description of exempt information giving rise to the exclusion of the public.**

**(4) The public may only be excluded under sub-paragraph (a) or (b) of paragraph (2) for the part or parts of the meeting during which it is likely that confidential information or exempt information would be disclosed.**

Section 2 explains that:

**"exempt information" has the meaning given by section 100I of the Local Government Act 1972 (exempt information and power to vary Schedule 12A);**

Section 100I of the Local Government Act 1972 as amended states:

*In relation to principal councils in England, the descriptions of information which are, for the purposes of this Part, exempt information are those for the time being specified in Part I of Schedule 12A to this Act, but subject to any qualifications contained in Part II of that Schedule; and Part III has effect for the interpretation of Parts 1 to 3 of that Schedule.*

Schedule 12A part 1 includes:

*(3) Information relating to the financial or business affairs of any particular person (including the authority holding that information)*

This type of information is therefore potentially exempt and this is the section that the notice relies upon.

However Part 2 says:

*(9) Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.*

The Council is the determining Authority and therefore the information contained in the Business Case is not exempt.

We note that these statutory requirements are mirrored in s.6.4 (9) of the council's constitution.

The notice of 17 December refers to the business case for the Princes Parade development comprising the construction of a new leisure centre, up to 150 new homes and public open space. The Princes Parade Development is the subject of an application for planning permission by Folkestone and Hythe District Council (reference Y17/1042/SH).

The information therefore:

*"relates to proposed development for which the local planning authority may grant itself planning permission".*

It therefore falls within Schedule 12A Part 2 paragraph (9) and, as a result, it is not exempt and there is no basis for the meeting to be held in private.

We note that you have made the following points in an email to Mrs Whybrow dated 11 January 2019:

*"The Council does not agree with your interpretation of para 9 of Schedule 12A of the Local Government Act 1972. The Council is of the opinion that the exemption can still apply. This is because the restriction on exemptions at paragraph 9 of Schedule 12A relates to*

*information concerning the planning process, rather than the Business Case.*

*As you are aware, the Cabinet meeting on 30 January will be considering the Business Case and will not be considering planning issues. Officers consider the details of the Business Case to be commercially sensitive. It should also be noted that the information being considered during the Cabinet meeting will not be part of the consideration as to whether planning permission should be granted.*

*It is, of course, for the members of the Cabinet to decide whether or not to exclude the public from the meeting. Objections to the exclusion will be placed before Councillors so they can take them into account. The public interest will also be considered prior to any decision on whether or not to consider the matter in private."*

We have already set out the exemption at paragraph 9 above. Paragraph 9 does not say that the information is not exempt information if it (your wording):

*"relates to information concerning the planning process"*

Instead paragraph 9 says that the information is not exempt information if it:

*"relates to proposed development for which the local planning authority may grant itself planning permission."*

The "Princes Parade Business Plan" clearly falls within this definition

Similarly, paragraph 9 is not confined to planning meetings as you suggest. It applies to categories of information rather than types of meeting. The "business case for the Princes Parade development comprising the construction of a new leisure centre, up to 150 new homes and public open space" clearly:

*"relates to proposed development for which the local planning authority may grant itself planning permission."*

Whether or not the meeting will be considering planning issues is irrelevant. The meeting must be in public unless one of the exceptions applies. In this case the purported exemption does not apply and so the meeting must be in public. Any attempt to restrict the public would be unlawful. These points apply whether the meeting takes place on 13th February or at any later date.

We would be grateful if you would confirm that the notice will be withdrawn and that the meeting will be open to the public. We would also be grateful if you would provide us with copies of the papers relating to the Princes Parade Development at least 5 clear working days prior to the meeting.

In the event that the notice is not withdrawn, in accordance with the Council's constitution Part 6.4 Rule 14.1b), we request that you post a notice of our representations at the Council offices and on the website at least 5 working days prior to the meeting.



## **The Overview and Scrutiny Committee meeting**

The situation in respect of the Overview and Scrutiny Committee meeting is the same. The committee is covered by the Local Government Act 2000. Section 21 (11) states that:

*An overview and scrutiny committee of a local authority, or a sub-committee of such a committee, is to be treated—*

*(a) as a committee or sub-committee of a principal council for the purposes of Part VA of the Local Government Act 1972 (access to meetings and documents of certain authorities, committees and sub-committees)*

Part VA of the Local Government Act 1972 starts with s.100A: Admission to meetings of principal councils.

- (1) A meeting of a principal council shall be open to the public except to the extent that they are excluded (whether during the whole or part of the proceedings) under subsection (2) below or by resolution under subsection (4) below.*
- (2) The public shall be excluded from a meeting of a principal council during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that, if members of the public were present during that item, confidential information would be disclosed to them in breach of the obligation of confidence; and nothing in this Part shall be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.*
- (3) ...*
- (4) A principal council may by resolution exclude the public from a meeting during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item there would be disclosure to them of exempt information, as defined in section 100I below.*

According to s.100E, Application to committees and sub-committees.

- (1) Sections 100A to 100D above shall apply in relation to a committee or sub-committee of a principal council as they apply in relation to a principal council.*

In short, the same rules under s.100E apply to the Overview and Scrutiny Committee. The public can only be excluded if there is exempt information. For the reasons set out above, the exemption does not apply in this case because the information:

*"relates to proposed development for which the local planning authority may grant itself planning permission."*

We note that these statutory requirements are mirrored in s.7.4 (9) of the council's constitution.

We would be grateful if you would confirm that the Overview and Scrutiny Committee meeting will be open to the public. We would also be grateful if you would provide us with copies of the report and any other papers relating to the Princes Parade Development at least 5 clear working days prior to the meeting.

In the event that this is not agreed, we request that you provide the members of the committee with a copy of this letter so that they are aware of our client's objections.

Yours faithfully



Richard Buxton Solicitors  
Environmental, Planning and Public Law

**From:** Simpson, Trudi **On Behalf Of** Priest, Susan

**Sent:** 31 January 2019 10:51

**To:** Berry, Ann Cllr <[CllrAnn.Berry@folkestone-hythe.gov.uk](mailto:CllrAnn.Berry@folkestone-hythe.gov.uk)>; Collier, John Cllr <[JohnCllr.Collier@folkestone-hythe.gov.uk](mailto:JohnCllr.Collier@folkestone-hythe.gov.uk)>; Dearden, Malcolm Cllr <[Malcolm.Dearden@folkestone-hythe.gov.uk](mailto:Malcolm.Dearden@folkestone-hythe.gov.uk)>; Ewart-James, Alan Cllr <[Alan.Ewart-James@folkestone-hythe.gov.uk](mailto:Alan.Ewart-James@folkestone-hythe.gov.uk)>; Godfrey, David Cllr <[DavidCllr.Godfrey@folkestone-hythe.gov.uk](mailto:DavidCllr.Godfrey@folkestone-hythe.gov.uk)>; Hollingsbee, Jenny Cllr <[Jenny.Hollingsbee@folkestone-hythe.gov.uk](mailto:Jenny.Hollingsbee@folkestone-hythe.gov.uk)>; Love, Rory Cllr <[Rory.Love@folkestone-hythe.gov.uk](mailto:Rory.Love@folkestone-hythe.gov.uk)>; Monk, David Cllr <[David.Monk@folkestone-hythe.gov.uk](mailto:David.Monk@folkestone-hythe.gov.uk)>; Pascoe, Dick Cllr <[dick.pascoe@folkestone-hythe.gov.uk](mailto:dick.pascoe@folkestone-hythe.gov.uk)>; Peall, Stuart Cllr <[Stuart.Peall@folkestone-hythe.gov.uk](mailto:Stuart.Peall@folkestone-hythe.gov.uk)>  
**Cc:** Khroud, Amandeep <[Amandeep.Khroud@folkestone-hythe.gov.uk](mailto:Amandeep.Khroud@folkestone-hythe.gov.uk)>; Carey, Susan Cllr <[Susan.Carey@folkestone-hythe.gov.uk](mailto:Susan.Carey@folkestone-hythe.gov.uk)>; Gane, Peter Cllr <[Peter.Gane@folkestone-hythe.gov.uk](mailto:Peter.Gane@folkestone-hythe.gov.uk)>; Goddard, Clive Cllr <[Clive.Goddard@folkestone-hythe.gov.uk](mailto:Clive.Goddard@folkestone-hythe.gov.uk)>; Holben, Janet Cllr <[Janet.Holben@folkestone-hythe.gov.uk](mailto:Janet.Holben@folkestone-hythe.gov.uk)>; Jeffrey, Claire Cllr <[Claire.Jeffrey@folkestone-hythe.gov.uk](mailto:Claire.Jeffrey@folkestone-hythe.gov.uk)>; Lawes, Mary Cllr <[Mary.Lawes@folkestone-hythe.gov.uk](mailto:Mary.Lawes@folkestone-hythe.gov.uk)>; Lyons, Michael Cllr <[Michael.Lyons@folkestone-hythe.gov.uk](mailto:Michael.Lyons@folkestone-hythe.gov.uk)>; Meyers, Ian Cllr <[Ian.Meyers@folkestone-hythe.gov.uk](mailto:Ian.Meyers@folkestone-hythe.gov.uk)>; Tillson, Russell Cllr <[Russell.Tillson@folkestone-hythe.gov.uk](mailto:Russell.Tillson@folkestone-hythe.gov.uk)>; Wheeler, Rodica Cllr <[Rodica.Wheeler@folkestone-hythe.gov.uk](mailto:Rodica.Wheeler@folkestone-hythe.gov.uk)>

**Subject:** Princes Parade Cabinet Report - 12th & 13th February - Report No: C/18/69

**EMAIL SENT ON BEHALF OF THE HEAD OF PAID SERVICE AND MONITORING OFFICER**

Dear Cabinet Members

As you are aware, you have received correspondence from Richard Buxton Solicitors dated 24 January 2019 as well some correspondence from members of the public in relation to the above Cabinet report.

You will note that it is being argued by Richard Buxton Solicitors that the information contained in the Business Case is not exempt information and should therefore be in the public domain.

Part 1 of Schedule 12A provides for exemptions to the requirements to allow public access to meetings and reports to be considered, subject to a public interest test. The Council is seeking to rely on para 3 Part 1 of Schedule 12A which states that - *Information relating to the financial or business affairs of any particular person (including the authority holding that information may be exempt from publication.*

Part 2 of Schedule 12A contains qualifications to the exemptions in Part 1, which includes an exception at paragraph 9 which states that "*Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission or permission in principle pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.*

The Head of Paid Service and the Monitoring Officer have considered all the representations received. It should also be noted that the Monitoring Officer has obtained independent legal advice on this issue. Having considered that the legal advice the Monitoring Officer is of the opinion that the exception at paragraph 9 relates to information concerning the regulatory planning process prior to a

planning decision being made, rather than to the business case behind each respective development. As a result of this, the Monitoring Officer believes that the Council can rely on para 3 Part 1 of Schedule 12A which states that information relating to the financial or business affairs of the authority can be exempt information

**Susan Priest**  
**Head of Paid Service**

Folkestone & Hythe District Council,  
Civic Centre, Castle Hill Avenue,  
Folkestone, Kent. CT20 2QY.  
Office: 01303 853315  
Email: [susan.priest@folkestone-hythe.gov.uk](mailto:susan.priest@folkestone-hythe.gov.uk)  
Website: [www.folkestone-hythe.gov.uk](http://www.folkestone-hythe.gov.uk)

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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