



# Agenda

Meeting: **Cabinet**  
Date: **16 September 2020**  
Time: **5.00 pm**  
Place: **Zoom - remote meeting**

To: **All members of the Cabinet**

The committee will consider the matters, listed below, at the date and time shown above. The meeting will be open to the press and public and streamed live at [bit.ly/YouTubeMeetings](https://bit.ly/YouTubeMeetings)

1. **Apologies for Absence**
2. **Declarations of Interest (Pages 3 - 4)**

Members of the Council 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. **Minutes (Pages 5 - 12)**

To consider and approve, as a correct record, the minutes of the meeting held on 22 July 2020.

4. **Regulation of Investigatory Powers Act 2000 - Policy (Pages 13 - 48)**

This report sets out the Council's policy on the use of directed surveillance and covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

## **Queries about the agenda? Need a different format?**

Contact Jemma West – Tel: 01303 853369  
Email: [committee@folkestone-hythe.gov.uk](mailto:committee@folkestone-hythe.gov.uk) or download from our  
website  
[www.folkestone-hythe.gov.uk](http://www.folkestone-hythe.gov.uk)

5. **Oportunitas Limited - Progress report and Business Plan 2020 - 2022 (Pages 49 - 78)**

The Chairman of Oportunitas will be in attendance to present this report which proposes a Business Plan from the Board of Oportunitas Ltd (“the company”) covering its activities through to 31 March 2022. The report also provides a summary of the company’s provisional financial outturn position for 2019/20 as well as a trading update for 2020/21. The report is in-line with the requirement contained in the Shareholder’s Agreement between the company and the Council.

6. **Vision for the Housing Management Service (Pages 79 - 92)**

This paper outlines the vision for the new Housing Management Service; describing the delivery principles that will provide operational clarity and accountability. The Vision is the long term destination for the Service; the initial work being to ensure the service is built on sound systems, processes and staff on which the culture and values will be shaped and embedded within the council. The paper considers consultation feedback from the Tenant and Leaseholder Liaison Board and the Overview and Scrutiny Committee.

7. **Consultation on changes to Planning Policy and Regulations' by the Ministry of Housing, Communities and Local Government (Pages 93 - 112)**

The Ministry of Housing, Communities & Local Government (MHCLG) is consulting on '*Changes to the current planning system: Consultation on changes to planning policy and regulations*'. The consultation sets out proposed changes to planning guidance and regulations covering: the method for assessing housing numbers; delivering affordable homes through a new First Homes scheme; supporting small- and medium-sized developers; and extension of the Permission in Principle consent regime. The report sets out draft comments, which, if approved by Cabinet, would be sent to MHCLG as the council’s response to the consultation.

## **Declarations of Interest**

### **Disclosable Pecuniary Interest (DPI)**

Where a Member has a new or registered DPI in a matter under consideration they must disclose that they have an interest and, unless the Monitoring Officer has agreed in advance that the DPI is a 'Sensitive Interest', explain the nature of that interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a DPI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation permitting them to do so. If during the consideration of any item a Member becomes aware that they have a DPI in the matter they should declare the interest immediately and, subject to any dispensations, withdraw from the meeting.

### **Other Significant Interest (OSI)**

Where a Member is declaring an OSI they must also disclose the interest and explain the nature of the interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a OSI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation to do so or the meeting is one at which members of the public are permitted to speak for the purpose of making representations, answering questions or giving evidence relating to the matter. In the latter case, the Member may only participate on the same basis as a member of the public and cannot participate in any discussion of, or vote taken on, the matter and must withdraw from the meeting in accordance with the Council's procedure rules.

### **Voluntary Announcement of Other Interests (VAOI)**

Where a Member does not have either a DPI or OSI but is of the opinion that for transparency reasons alone s/he should make an announcement in respect of a matter under consideration, they can make a VAOI. A Member declaring a VAOI may still remain at the meeting and vote on the matter under consideration.

#### **Note to the Code:**

Situations in which a Member may wish to make a VAOI include membership of outside bodies that have made representations on agenda items; 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. It should be emphasised that an effect on the financial position of a Member, relative, close associate, employer, etc OR an application made by a Member, relative, close associate, employer, etc would both probably constitute either an OSI or in some cases a DPI.

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# Minutes

## Cabinet

Held at:	Remote meeting
Date	Wednesday, 22 July 2020
Present	Councillors John Collier, Ray Field, David Godfrey, Mrs Jennifer Hollingsbee (Vice-Chair), David Monk (Chairman), Stuart Peall, Tim Prater, Lesley Whybrow and David Wimble
Officers Present:	Andy Blaszkowicz (Director of Housing and Operations), Gavin Edwards (Performance and Improvement Specialist), Ewan Green (Director of Place), Adrian Hammond (Housing Strategy Manager), John Holman (Assistant Director of Housing), Amandeep Khroud (Assistant Director), Jyotsna Leney (Community Services Manager), Sue Lewis (Committee Services Officer), Tim Madden (Director of Transformation and Transition), Susan Priest (Chief Executive), Andrew Rush (Regulatory Services & Corporate Contracts Lead Specialist), Charlotte Spendley (Director of Corporate Services), Adrian Tofts (Strategy, Policy & Performance Lead Specialist), Jemma West (Committee Service Specialist) and David Whittington (Strategy & Policy Senior Specialist)

NOTE: All decisions are subject to call-in arrangements. The deadline for call-in is Friday 31 July 2020 at 5pm. Decisions not called in may be implemented on Monday 3 August 2020.

18. **Declarations of Interest**

There were no declarations of interest at the meeting.

19. **Minutes**

The minutes of the meeting held on 24 June 2020 were submitted, approved and signed by the Chairman.

20. **General Fund Capital Programme Budget Monitoring 2020/21**

The monitoring report provided an initial projection of the current financial position for the General Fund capital programme, based on expenditure to 31 May 2020, and identified variances compared to the latest approved budget.

Proposed by Councillor Monk,  
Seconded by Councillor Mrs Hollingsbee; and

**RESOLVED:**

- 1. That report C/20/24 be received and noted.**

(Voting figures: 7 for, 0 against, 0 abstentions).

**REASONS FOR DECISION:**

Cabinet was asked to agree the recommendations because it needed to be kept informed of the General Fund capital programme position and take appropriate action to deal with any variance from the approved budget.

**21. General Fund Revenue Budget Monitoring - 1st Quarter 2020/21**

The monitoring report provided a projection of the end of year financial position of the General Fund revenue budget, based on expenditure to the 31 May 2020.

Proposed by Councillor Monk,  
Seconded by Councillor Hollingsbee; and

**RESOLVED:**

- 1. That Report C/20/28 be received and noted.**

(Voting: 7 for, 0 against, 0 abstentions).

**REASONS FOR DECISION:**

Cabinet was asked to agree the recommendations because it needs to be informed of the council's General Fund revenue budget position and take appropriate action to deal with any variance from the approved budget.

**22. HRA Budget Monitoring Quarter 1**

During the consideration of this item, the Chairman experienced some technical problems, and Councillor Mrs Hollingsbee took the chair.

The monitoring report provided a projection of the end of year financial position for the Housing Revenue Account (HRA) revenue expenditure and HRA capital programme based on net expenditure to 31 May 2020.

Proposed by Councillor Godfrey,  
Seconded by Councillor Mrs Hollingsbee.

**RESOLVED:**

- 1. That Report C/20/23 be received and noted.**

(Voting figures: 8 for, 0 against, 0 abstentions).

During consideration of this item, Councillor Wimble entered the meeting.

**REASONS FOR DECISION:**

Cabinet was asked to agree the recommendations because Cabinet needs to be kept informed of the Housing Revenue Account position and take appropriate action to deal with any variance from the approved budget and be informed of the final 2020/21 position.

**Adjournment**

Proposed by Councillor Mrs Hollingsbee;  
Seconded by Councillor Peall;

**RESOLVED:**

That due to technical issues, the meeting be adjourned for a period of 30 minutes (resuming at 17.50).

(Voting figures: 7 for, 1 against, 0 abstentions).

*The meeting was adjourned at 17.20 and subsequently reconvened at 17.50.*

23. **Annual Performance Report - Making a difference: a snapshot of our year 2019/20**

The report set out how the Council has continued to deliver for local people in the district in 2019/20 in response to the Corporate Plan (2017-20) vision of *investing for the next generation ~ delivering more of what matters.*

Proposed by Councillor Monk,  
Seconded by Councillor Mrs Hollingsbee; and

**RESOLVED:**

1. **That report C/20/25 be received and noted.**
2. **That the Annual Performance Report, Making a difference: a snapshot of our year 2019/20 be approved.**

(Voting figures: 8 for, 0 against, 0 abstentions).

**REASONS FOR DECISION:**

The Annual Report highlights the activities and achievements of Folkestone & Hythe District Council in 2019/20 against priorities set out in 2017-20 Corporate Plan.

24. **Adoption of the Places and Policies Local Plan**

The report summarised the findings of the planning Inspector's report into the Places and Policies Local (PPLP). The report recommended that the council proceeds to adopt the PPLP with Main Modifications identified by the Inspector,

and the council's Additional Modifications, so that the plan can be used decide planning applications.

Proposed by Councillor Wimble,  
Seconded by Councillor Collier; and

**RESOLVED:**

1. That report C/20/20 be received and noted.
2. That the final report of the planning Inspector who carried out the examination of the Places and Policies Local Plan be noted;
3. That the Submission Places and Policies Local Plan be amended to incorporate:
  - a) The Inspector's Main Modifications as set out in his report (Appendices 1 and 2);
  - b) The Council's Additional Modifications;
  - c) Amendments to the Policies Map; and
  - d) Any other minor formatting changes or minor corrections that are necessary for clarity or comprehension; and
4. To recommend to Full Council that it adopts the Folkestone & Hythe District Places and Policies Local Plan, with the amendments set out in recommendation 3, to form part of the development plan for the district.

(Voting figures: 7 for, 2 against, 0 abstentions).

During the consideration of this item, Councillor Field entered the meeting.

**REASONS FOR DECISION:**

To ensure that the council has an up-to-date development plan to guide development in the district.

25. **COVID-19 Recovery - Future of Community Hubs**

The report outlined the role of the community hubs which were set up as part of the Council's response to the Covid-19 pandemic. The report highlights the successful outcomes of this response, identifies good practice and considers the Council's future role in the hubs.

Cabinet was asked to consider continued support and additional funding for the hubs, recognising the significance of the role they have played to date, including the extent and strength of the volunteering effort, depth of community engagement and value of the partnerships that have been established.

Cabinet Members noted that in the event of a second peak or other emergency COVID-19 requirement (eg localised lockdowns) the hub operations and needs would be reviewed.

Proposed by Councillor Mrs Hollingsbee,  
Seconded by Councillor Wimble; and

**RESOLVED:**



1. That report C/20/21 be received and noted.
2. That the Community Hub model be noted.
3. That the Council provide up to £35,000 in 2020/21 to support the Community Hub model; and
4. That the allocation of funding be delegated to the Director of Place, in consultation with Cabinet Member for Communities, Lifeline, Area Officers & Street Homeless.

(Voting figures: 9 for, 0 against, 0 abstentions).

**REASONS FOR DECISION:**

Cabinet was asked to agree the recommendations because:

- a) Support for the continuation of a community and voluntary sector led response to Covid-19 will be a key feature of the District's recovery period.
- b) There is a significant opportunity to create a positive and continued legacy for the hub model to support the health and well-being of communities, based on a contribution from all stakeholders, volunteers and the community.
- c) Council support for the hub response, moving into the recovery period, requires a final funding contribution in 2020/21 to enable a self-sustaining model to be developed.

26. **Customer Access Strategy**

A central part of the Council's transformation programme is the relationship with the customer. The Customer Access Strategy seeks to set out the Council's future approach to that relationship enhancing new technology and the benefits of the digital age whilst also ensuring those most in need are not excluded. This strategy sets out this approach and the move to channel shift and will form the basis of how the relationship on the future.

Proposed by Councillor Monk,  
Seconded by Councillor Godfrey; and

**RESOLVED:**

1. That the report be received and noted.
2. That the Customer Access Strategy as set out in Appendix A be agreed.

(Voting figures: 9 for, 0 against, 0 abstentions).

**REASONS FOR DECISION:**

Cabinet is asked to agree the recommendations because:-

- (a) This is an important element of the Council's transformation programme and will help shape the relationship between the Council and its

customers in the future. Included is the action plan which sets out how this will be developed over the medium term.

**27. East Kent Housing - Single System**

The strategy for the transfer of the single system from East Kent Housing to Folkestone and Hythe District Council was presented to the May Cabinet meeting. At that meeting, more information was requested in relation to the costs of splitting the database prior to agreeing the additional funding. This report set out the results of an independent review of the proposal and seeks the funding to continue the transfer of the system.

Proposed by Councillor Godfrey,  
Seconded by Councillor Mrs Hollingsbee; and

**RESOLVED:**

- 1. That report C/20/26 be received and noted.**
- 2. That the report from SOCITM attached at Appendix A be received and noted.**
- 3. That additional budget from the HRA of a capital sum of up to £130,000 and ongoing revenue of £105,000 per annum to support the transfer of the system be agreed. The exact amounts to be agreed by the Director of Transformation and Transition in consultation with the portfolio holder for Housing, Transport and Special Projects.**

(Voting figures: 9 for, 0 against, 0 abstentions).

**REASONS FOR DECISION:**

Cabinet was asked to agree the recommendations because:-

- (a) This is a significant element of transitioning the housing service to Council operation and as such requires additional funds to be made available to ensure this happens.
- (b) The timescales involved are such that this provides the most secure means of transferring the system and provide a basis for providing a stable service upon transition.
- (c) This approach has been agreed by the other 3 councils and it is needed to ensure the speedy and robust splitting of the system across all 4 councils.

**28. Exclusion of the Public**

Proposed by Councillor Monk,  
Seconded by Councillor Mrs Hollingsbee; and

**RESOLVED:**

**That the public be excluded for the following item of business on the grounds that it is likely to disclose exempt information, as defined in paragraph 3 of 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.’**

(Voting figures: 9 for, 0 against, 0 abstentions).

**29. Waste Project 2021 - Contract Award**

The Waste, Recycling and Street Cleansing Contract ends in January 2021. The council, in partnership with Dover District Council, has been engaged in a tender process for the new contract. The report outlined the outcomes of this tender process and makes recommendations for award.

Proposed by Councillor Peall,  
Seconded by Councillor Godfrey; and

**RESOLVED:**

- 1. That report C/20/19 be received and noted.**
- 2. That the new contract be awarded to Veolia ES (UK) Limited to start on 16/01/21.**
- 3. To proceed with the service transition to the new contract.**

(Voting figures: 9 for, 0 against, 0 abstentions).

**REASONS FOR DECISION:**

- a) The council has engaged in a tender exercise for a new Waste, Recycling and Street Cleansing Contract. The tender exercise is completed.
- b) The bids have been evaluated on a combined price and quality basis. A winning bid has been identified.
- c) The new contract will need to be awarded to ensure a successful service transition ready for January 2021.

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This Report will be made public on 8 September 2020

Report Number **C/20/34**

**To:** Cabinet  
**Date:** 16 September 2020  
**Status:** Non key decision  
**Responsible Officer:** Amandeep Khroud – Assistant Director – Governance, Law and Regulatory Services  
**Cabinet Member:** Councillor Ray Field – Cabinet Member for Digital Transformation

**SUBJECT: REGULATION OF INVESTIGATORY POWERS ACT 2000 – POLICY**

**SUMMARY:** This report sets out the Council's policy on the use of directed surveillance and covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

**REASON FOR RECOMMENDATIONS:**

The Cabinet is asked to agree the recommendations set out below to endorse the policy.

**RECOMMENDATIONS:**

1. To receive and note report C/20/34.
2. To endorse the RIPA policy and procedure in appendix 1 to this report.

## **1. INTRODUCTION**

- 1.1 Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) puts covert surveillance on a statutory basis enabling public authorities identified in the legislation to carry out surveillance operations without breaching the Human Rights Act 1998.
- 1.2 A number of statutory instruments and codes of practice published by the Home Office govern the operation of RIPA; the most recent came into effect in October 2012.
- 1.3 Organisations using RIPA are subject to regular inspection by the Investigatory Powers Commissioner's Office. Previously this was undertaken by the Office of Surveillance Commissioners (OSC) however on 1 September 2017 the OSC were merged with the Interception of Communications, and Intelligence Services Commissioners to form the new regulator.
- 1.4 A recent desk top inspection was carried out on 29 April 2020 which demonstrated that Folkestone and Hythe District Council was compliant with the requirements of RIPA legislation.

## **2. REPORTING REQUIREMENTS**

- 2.1 The guidance states:

“elected members of a local authority should review the authority's use of the 2000 Act and set the policy at least once a year. They should also consider internal reports on the use of the 2000 Act on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose. They should not, however, be involved in making decisions on specific authorisations.”

- 2.2 This report sets out the policy and seeks cabinet's endorsement of it.

## **3. BRIEF OVERVIEW OF RIPA**

- 3.1 The Act enables senior officers within public authorities to authorise Directed Surveillance and the use of Covert Human Intelligence Sources (CHIS). These authorisations can however only take effect once approved by a Magistrate.
- 3.2 The following sections give a brief overview of the types of surveillance:-

- a) Directed Surveillance

RIPA defines Directed Surveillance as surveillance that is covert but not intrusive. Directed Surveillance must relate to a specific investigation or operation and is surveillance that is likely to result in obtaining private information about someone, including the target of the investigation or operation. Private information includes any aspect of a person's private or

personal relationships with others, including family and professional/business relationships.

Directed Surveillance is usually planned surveillance. There is provision, in urgent cases, for an authorisation to be applied for and granted in exceptional circumstances (i.e. where the time taken to apply in writing would, in the judgment of the Authorising Officer, be likely to jeopardise the operation). In such circumstances unless renewed, the authorisation will cease to have effect after seventy-two hours.

b) Covert Human Intelligence Sources (CHIS).

RIPA defines a Covert Human Intelligence Source (CHIS) as a person (source) who establishes and/or maintains a personal or other relationship with a person for the purpose of: covertly using the relationship to obtain information or to provide another person with access to information or, covertly disclosing information obtained through the relationship. A CHIS is deployed in a manner intended to ensure that the target is unaware of the investigation or the purpose of the relationship between the source and the target.

The Council has never sought to make use of the CHIS provision. The Policy requires that if the use of CHIS is being contemplated, the officers concerned should seek the appropriate advice from other organisations that more commonly use CHIS surveillance, such as the Police.

- 3.3 The council can only grant an authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. These latter offences would, in any event, be matters for Kent County Council trading standards.
- 3.4 The Council may only authorise directed surveillance where it is both necessary and proportionate to the investigation or operation being undertaken and to what is being sought to achieve in terms of evidence gathering. The Authorising Officers have a key role in carefully scrutinising all applications for the use of RIPA powers under a specific authorisation. Authorising Officers must ensure that authorisations are granted only in appropriate cases and that the extent of all authorisations are clearly set out.
- 3.5 The last authorisation for directed surveillance was granted on 1 June 2012.

#### **4. THE POLICY**

- 4.1 The policy as amended is attached at appendix 1 for endorsement by Cabinet. This is essentially the same as the policy endorsed by cabinet last year other than clarification in the updated RIPA policy about Social Media.

## **5. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS**

### **5.1 Legal Officer's Comments**

The RIPA codes of practice advises that the elected members of a local authority should set the RIPA policy at least once a year. This is reflected in the council's RIPA policy.

### **5.2 Finance Officer's Comments (CS)**

There are no direct financial implications arising from this report

### **5.3 Diversities and Equalities Implications**

No implications arising directly from this report.

## **6. CONTACT OFFICER AND BACKGROUND DOCUMENTS**

Councillors with any questions arising from this report should contact the following officer prior to the meeting:

Amandeep Khroud – Assistant Director – Governance, Law and Regulatory Services

Telephone: 01303 853253

E-mail: [Amandeep.khroudl@folkestone-hythe.gov.uk](mailto:Amandeep.khroudl@folkestone-hythe.gov.uk)

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

None

### **Appendices:**

Appendix 1: RIPA Policy and Procedure



Regulation of Investigatory Powers Act 2000 (RIPA)

# RIPA Policy and Procedures

Issue 14

Assistant Director (Governance, Law and Regulatory Services)  
The Civic Centre  
Castle Hill Ave  
Folkestone  
Kent CT20 2QY

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## 1. Introduction

This Policy is the framework on which the Council applies the provisions of the Regulation of Investigatory Powers Act 2000 (RIPA) as it relates to covert surveillance. Certain covert powers under RIPA and the Investigatory Powers Act 2016 (IPA) are available to local authorities and can be used in appropriate circumstances in accordance with the requirements of the legislation to support the delivery of their functions. The Investigatory Powers Commissioner's Office (IPCO) oversees the use of covert powers under RIPA by local authorities.

This Policy must be read in conjunction with the Home Office Codes of Practice on Covert Surveillance and Property Interference and Covert Human Intelligence Sources. Covert surveillance should be used only rarely and in exceptional circumstances. Copies of the Home Office Codes of Practice are available on their [website](#). The Home Office website should be consulted regularly from time to time to ensure that the correct versions of the Codes of Practice are being used.

RIPA and this Policy are important for the effective and efficient operation of the Council's actions with regard to covert surveillance and Covert Human Intelligence Sources. The RIPA Monitoring Officer will therefore keep this Policy under annual review.

The RIPA Monitoring Officer is responsible for keeping the RIPA forms up to date and for checking the Home Office website and Codes of Practice. The RIPA Monitoring Officer will also be responsible for submitting a report on a three monthly basis to the Cabinet on the Council's use of RIPA if the Council has used RIPA during the previous three months. The RIPA Monitoring Officer is also responsible for submitting an annual report to Cabinet on this Policy and, if relevant, the Council's use of RIPA.

**Authorising Officers must bring any suggestions for continuous improvement of this Policy to the attention of the RIPA Monitoring Officer at the earliest possible opportunity.** If any of the Home Office Codes of Practice change, this Policy will be amended accordingly.

## 2. Policy Statement

The Council takes seriously its statutory responsibilities and will, at all times, act in accordance with the law and take necessary and proportionate action in these types of matters. In that regard, the Corporate Leadership Team is duly authorised by the Council to keep this Policy up to date and to amend, delete, add or substitute relevant provisions as necessary. The Cabinet will, if the Council has used RIPA, receive the RIPA Monitoring Officer's report every three months. The report will set out the surveillance carried out (though without revealing details of specific operations) and, if appropriate, reporting alterations to this Policy. An annual report will be submitted to Cabinet on this Policy setting out any alterations since the last report.

It is the policy of the Council that where RIPA applies (see below) surveillance should only be carried out in accordance with this Policy. This Policy covers the use of directed surveillance, intrusive surveillance and the deployment of Covert Human Intelligence Sources by the Council. These types of surveillance are set out in greater detail in paragraph 7 (Types of Surveillance) below.

Where RIPA does not apply, surveillance may properly be carried out provided that the

appropriate rules and procedures are followed. For example, surveillance connected with an employment issue will have to be carried out in accordance with the Data Protection Act 2018 and the various HR policies. The Council has also adopted a Non-RIPA Authorisation Policy<sup>1</sup> which Officers must follow for surveillance which falls outside of RIPA. Advice on non-RIPA surveillance should be sought from legal services or HR as appropriate.

### **Roles and Responsibilities of Directors, Assistant Directors, Chief Service Officers, Senior Authorising Officers, Authorising Officers, Senior Responsible Officer and the RIPA Monitoring Officer**

This section sets out the various roles and responsibilities in relation to the use of RIPA.

It is essential that Directors, Assistant Directors, Chief Service Officers and Authorising Officers take personal responsibility for the effective and efficient operation of this Policy and the implementation of RIPA in their departments.

#### ***Roles***

##### Authorising Officer

An Authorising Officer is a person who considers whether or not to grant an application to use directed surveillance. He/she must believe the activities to be authorised are necessary for the purposes of preventing or detecting crime and that they are proportionate to what is sought to be achieved by carrying them out. The authorisation is then subject to judicial approval.

**An Authorising Officer may not, except in case of urgency, consider an application to use directed surveillance if the Applying Officer is an Officer in his/her service area or the Authorising Officer has direct involvement with the operation.**

##### Senior Authorising Officer

A Senior Authorising Officer is a person responsible for considering whether or not to grant an authorisation where confidential information is likely to be obtained or for use of a CHIS.

##### Senior Responsible Officer

The Senior Responsible Officer has overall responsibility for the use and operation of RIPA within the Council, and oversees the competence of Authorising Officers and the processes in use in the Council. The Senior Responsible Officer is not an Authorising Officer as it would be inappropriate to oversee his / her own authorisations. The Senior Responsible Officer should be a member of the Corporate Leadership Team.

Specifically the Senior Responsible Officer will be responsible for:

- The integrity of the processes in place within the Council for the management of CHIS and directed surveillance;

- Compliance with the statutory provisions and Codes of Practice;
- Training or arranging training for Authorising Officers, together with the RIPA Monitoring Officer;
- Ensuring Officers generally understand provisions relating to covert surveillance and Covert Human Intelligence Sources;
- Engagement with the IPCO inspectors when they conduct their inspections;
- Overseeing the implementation of any post-inspection action plans approved by the relevant oversight Commissioner;
- Ensuring that all Authorising Officers are of an appropriate standard in light of any recommendations in IPCO inspection reports; and
- Addressing any concerns raised within an IPCO inspection report.

### RIPA Monitoring Officer

The RIPA Monitoring Officer has:

- The duty to maintain the list of Authorising Officers;
- The power to suspend from the list of Authorising Officers any Authorising Officer who does not follow the procedure or who does not attend training sessions; and
- The power to cancel any authorisation that is manifestly wrong.

### **Responsibilities**

Assistant Directors and Chief Service Officers are responsible for ensuring their relevant members of staff are suitably trained as 'Applying Officers' so as to avoid common mistakes appearing on forms for RIPA authorisations.

Assistant Directors and Chief Service Officers will also ensure that staff who report to them follow this Policy and do not undertake or carry out any form of surveillance governed by RIPA without first obtaining the relevant authorisations in compliance with this Policy. Wilful failure to follow this Policy will constitute gross misconduct under the Council's HR policies.

Directors, Assistant Directors, Chief Service Officers, Senior Authorising Officers and Authorising Officers must also pay particular attention to health and safety issues that may be raised by any proposed surveillance activity. Under no circumstances should Assistant Directors or Chief Service Officers permit an application to be made unless, and until, s/he is satisfied that the health and safety of Council employees/agents is suitably addressed and/or risks minimised, so far as is possible, and proportionate to/with the surveillance being proposed. It is the responsibility of the Applying Officer (i.e. the person who applies to the Authorising Officer to use the Council's RIPA powers) to carry out any risk assessment and complete a written risk assessment if necessary. **If a Head of Service is in any doubt s/he should obtain prior guidance on the same from a Director, the Council's Health & Safety Officer or the RIPA Monitoring Officer.**

Authorising Officers must acquaint themselves with the relevant Codes of Practice issued by the Home Office regarding RIPA. Any failure to comply exposes the Council to unnecessary legal risks and criticism from the IPCO. All stages of the process (application, review, renewal and cancellation) must be promptly dealt with.

Coming across **confidential information** during surveillance must be given prior thought before any applications are made or authorised, as failure to do so may invalidate the admissibility of any evidence obtained. Furthermore, thought must be given before any forms are signed to the retention and disposal of any material obtained under a RIPA

authorisation. Where confidential information is likely to be obtained through covert surveillance, the application must be authorised by a Senior Authorising Officer.

The Authorising Officer must ensure proper regard has been given to **necessity and proportionality** before any applications are authorised. 'Stock phrases' or cut and paste narrative must be avoided at all times as the use of the same may suggest that insufficient detail had been given to the particular circumstances of any person likely to be the subject of the surveillance. Any **equipment** to be used in any approved surveillance must also be properly controlled, recorded and maintained for audit purposes.

Authorising Officers must ensure that reviews are conducted in a timely manner and that cancellations and renewals are effected before the authorisation ceases to have effect. Best practice for Directed Surveillance is that a review should be carried out no more than 4 weeks after the grant of authorisation.

The RIPA Monitoring Officer shall have responsibility for maintaining, updating and enforcing this Policy. S/he, in conjunction with the Senior Responsible Officer, shall also be responsible for the provision of adequate training to Authorising Officers and Applying Officers and for ensuring that no authorisations shall be granted unless the Authorising Officer has received such training.

The RIPA Monitoring Officer shall also ensure that adequate records are maintained in accordance with the relevant and current Codes of Practice and also to check that reviews are conducted in a timely manner and that cancellations and renewals are effected before the authorisation ceases to have effect.

The RIPA Monitoring Officer's contact details are set out in Appendix 1 of this Policy.

#### **4. RIPA – General Information**

The Human Rights Act 1998 (which brought much of the European Convention on Human Rights and Fundamental Freedoms 1950 into UK domestic law) requires the Council, and organisations working on its behalf, pursuant to Article 8 of the European Convention, to respect the private and family life of citizens, his/her home and his/her correspondence.

The European Convention did not, however, make this an absolute right, but a qualified right. Accordingly, in certain circumstances, the Council **may** interfere in the citizen's right mentioned above, **if** such interference is:

- (a) **In accordance with the law;**
- (b) **Necessary** (see below); **and**
- (c) **Proportionate** (see below).

RIPA provides a statutory mechanism (i.e. in accordance with the law) for authorising **covert surveillance** and the use of a '**Covert Human Intelligence Source**' (**CHIS**) e.g. undercover agents. It now also permits public authorities to compel telecommunications and postal companies to obtain and release communications data to themselves in certain circumstances. It works to ensure that **any** interference with an individual's right under Article 8 of the European Convention is **necessary** and **proportionate**. In doing so, RIPA seeks to ensure both the public interest and the human rights of individuals are suitably balanced.

Directly employed Council staff and external agencies working for the Council are covered

by RIPA while they are working for the Council. All external agencies must therefore comply with RIPA and the work carried out by agencies on the Council's behalf must be properly authorised by one of the **Council's Authorising Officers**. It is the responsibility of the contracts manager to ensure that external agencies comply with this Policy. Authorising Officers are listed in **Appendix 1** to this Policy.

If the correct procedures are **not** followed, the courts may disallow evidence; a complaint of maladministration could be made to the Ombudsman; the Council could be the subject of an adverse report made by the IPCO; and the Human Rights Act 1998 provides a cause of action for damages and/or an injunction against the Council should it be proven that the Council's actions amount to an unwarranted interference with human rights. Such action would not, of course, promote the good reputation of the Council and will, undoubtedly, be the subject of adverse press and media interest. In addition wilful failure to follow this Policy could constitute gross misconduct under the Council's HR policies. **It is essential, therefore, that all involved with RIPA comply with this Policy and any further guidance that may be issued.**

Flowcharts of the procedures to be followed appear at **Appendix 2** for Directed Surveillance and for CHIS.

## **5. When is RIPA authorisation available?**

RIPA authorisation is only appropriate for surveillance which relates to the "core functions" of the Council and is for the purpose of preventing or detecting crime.

The core functions of the Council are defined as its "specific public functions" as opposed to its "ordinary functions". The ordinary functions are those functions which any public authority carries out e.g. employment of staff or entering into contractual agreements.

Surveillance, whether overt or covert, related to ordinary functions is not governed by RIPA and RIPA does not prohibit such activity. The Council has adopted a policy covering the authorisation of surveillance which is not covered by RIPA. The policy can be found [here](#). Advice on such surveillance should be sought from Legal Services and HR as appropriate.

Authorisations for both directed surveillance and CHIS are also subject to judicial approval, meaning that the Council must obtain the approval of the Magistrates' Court for any grant or renewal of a RIPA authorisation. The Magistrates' Court will only approve an authorisation where satisfied that the statutory tests have been met, and that the use of the technique is necessary and proportionate. Surveillance cannot commence until this approval has been obtained (see paragraph 10 below for further detail).

Through the application of authorisation procedures and Magistrates' Court approval, RIPA ensures that a balance is maintained between the public interest and the human rights of individuals.

## **6. What RIPA does and does not do:**

### **RIPA does:**

- require prior authorisation of directed surveillance;
- prohibit the Council from carrying out intrusive surveillance;

- compel disclosure of communications data from telecom and postal service providers;
- require authorisation of the conduct and use of a CHIS;
- require safeguards for the conduct and use of a CHIS; and
- permit the Council to obtain communications records from communications service providers.

### **RIPA does not**

- make anything unlawful which is otherwise lawful; or
- prejudice or dis-apply any existing powers available to the Council to obtain information by any means not involving conduct that may be authorised under the Act. For example, it does not affect the Council's current powers to obtain information via the DVLA or to get information from the Land Registry as to the ownership of a property.

**If the Authorising Officer or any Applying Officer is in any doubt, s/he should ask the RIPA Monitoring Officer BEFORE any directed surveillance and/or CHIS is authorised, renewed, cancelled or rejected.**

## **7. Types of Surveillance**

**'Surveillance'** includes:

- Monitoring, observing, listening to persons, watching or following their movements, listening to their conversations and other such activities or communications.
- Recording anything mentioned above in the course of authorised surveillance.
- Surveillance, by or with, the assistance of appropriate surveillance device(s).

**Surveillance can be overt or covert.**

### ***Overt Surveillance***

Most of the surveillance carried out by the Council will be done overtly; there will be nothing secretive, clandestine or hidden about it. In many cases, officers will be behaving in the same way as a normal member of the public (e.g. in the case of most test purchases), and/or will be going about Council business openly (e.g. a market inspector walking through markets).

Similarly, surveillance will be overt if the subject has been **told** it will happen, for example where a noisemaker is warned, (preferably in writing) that noise will be recorded if the noise continues or where an entertainment licence is issued subject to conditions and the licensee is told that officers may visit without notice or identifying themselves to the owner/proprietor to check that the conditions are being met.

### ***Covert Surveillance***

Covert surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place (section 26(9) (a) of RIPA). Generally covert surveillance cannot be used if there is reasonably available an overt means of finding out the information desired. However if those overt means might seriously undermine the conduct of any investigation or put innocent persons at risk then covert



surveillance can be used.

RIPA regulates **two types of covert surveillance, (directed surveillance and intrusive surveillance)** and the use of **Covert Human Intelligence Sources (CHIS)**).

### ***Directed Surveillance***

Directed surveillance is surveillance which:

- is covert, but not intrusive surveillance;
- is conducted for the purposes of a specific investigation or operation;
- is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation);
- is conducted otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable to seek authorisation under the Act

### ***Intrusive Surveillance***

Intrusive surveillance is surveillance which:

- Is covert;
- Relates to residential premises and/or private vehicles; and
- Involves the presence of a person **in the premises or in the vehicle** or is carried out by a surveillance device **in the premises/vehicle**. Surveillance equipment mounted outside the premises will not be intrusive, unless the device consistently provides information of the same quality and detail as might be expected if they were in the premises/vehicle.

“Residential premises” means any premises occupied or used, however temporarily, for residential purposes or otherwise as living accommodation. This includes a hotel room or prison accommodation that is occupied or used for residential purposes, but does not include common areas that a person has access to in common with others and in connection with their use of accommodation.

The 2010 Legal Consultations Order also provides that any directed surveillance that is carried out on premises ordinarily used for legal consultations, at a time when they are being so used, is to be treated as intrusive surveillance.

**Intrusive Surveillance cannot be authorised under RIPA for the Council. Only the police and other law enforcement agencies can use RIPA to authorise intrusive surveillance. Likewise, the Council has no statutory powers to interfere with private property.**

### ***Covert Human Intelligence Source***

A Covert Human Intelligence Source (“CHIS”) is someone who establishes or maintains a personal or other relationship for the covert purpose of using the relationship to obtain or disclose information (see below).

**Private Information** in relation to a person includes any information relating to his/her private or family life. Private information is generally taken to include any aspect of a

person's private or personal relationship with others including family and professional or business relationships. The fact that covert surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. Prolonged surveillance targeted on a single person will undoubtedly result in the obtaining of private information about him/her **and others** that s/he comes into contact or associates with.

To take an example: although overt town centre CCTV cameras do not normally require authorisation, if the camera(s) are to be directed for a specific purpose to observe particular individual(s), authorisation will be required. The way a person runs his/her business may also reveal information about his or her private life and the private lives of others. This example does not apply in Folkestone & Hythe as the Council no longer owns nor manages a town / city CCTV system.

## **Social media**

Social media can provide useful information as part of an investigation. However, Council Officers must consider if a RIPA authorisation is required if they are accessing social media for this purpose before undertaking any monitoring of a site.

Whilst initial research of social media to establish a fact or collate an intelligence picture is unlikely to require an authorisation for directed surveillance, repeat viewing of 'open source' sites may constitute directed surveillance on a case by case basis. This should be borne in mind e.g. if someone is being monitored through, for example, their Facebook profile for a period of time and a record of the information is kept for later analysis, this is likely to require a RIPA authorisation for directed surveillance. The key consideration is whether there is a repeated and systematic collection of personal information.

Where it is intended to access a social media or other online account to which the Council has been given access with the consent of the owner, the Council will still need to consider whether the account(s) may contain information about others who have not given their consent. If there is a likelihood of obtaining private information about others, the need for a directed surveillance authorisation should be considered, particularly (though not exclusively) where it is intended to monitor the account going forward.

In addition, Council Officers must be aware that the fact that digital investigation is routine or easy to conduct does not reduce the need for authorisation. Care must be taken to understand how the social networking site being used works. Authorising Officers must not assume that one service provider is the same as another or that the services provided by a single provider are the same. Whilst it is the responsibility of an individual to set privacy settings to protect against unsolicited access to private information, and even though data may be deemed published and no longer under the control of the author, it is unwise to regard it as 'open source' or publicly available.

The author has a reasonable expectation of privacy if access controls are applied. In some cases, data may be deemed private communication still in transmission (instant messages for example). Where privacy settings are available but not applied the data may be considered 'open source' and an authorisation is not usually required.

If it is necessary and proportionate for the Council to covertly breach access controls, an authorisation for directed surveillance is required. An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by a Council Officer or

by a person acting on the Council's behalf (i.e. the activity is more than mere reading of the site's content). It is not unlawful for a Council Officer to set up a false persona, but this must not be done for a covert purpose without authorisation. Using photographs of other persons without their permission to support the false identity infringes other laws and such photographs must not be used.

In order to determine whether an authorisation should be sought for accessing information on a website as part of a covert investigation or operation, it is necessary to look at the intended purpose and scope of the online activity it is proposed to undertake. Factors that should be considered in establishing whether a directed surveillance authorisation is required include:

- Whether the investigation or research is directed towards an individual or organisation;
- Whether it is likely to result in obtaining private information about a person or group of people;
- Whether it is likely to involve visiting internet sites to build up an intelligence picture or profile;
- Whether the information obtained will be recorded and retained;
- Whether the information is likely to provide an observer with a pattern of lifestyle;
- Whether the information is being combined with other sources of information or intelligence, which amounts to information relating to a person's private life;
- Whether the investigation or research is part of an ongoing piece of work involving repeated viewing of the subject(s);
- Whether it is likely to involve identifying and recording information about third parties, such as friends and family members of the subject of interest, or information posted by third parties, that may include private information and therefore constitute collateral intrusion into the privacy of these third parties.

To avoid the potential for inadvertent or inappropriate use of social network sites in investigative and enforcement roles, Council Officers should be mindful of the following:

- do not create a false identity in order to 'befriend' individuals on social networks without authorisation under RIPA;
- when viewing an individual's public profile on a social network, do so only to the minimum degree that is necessary and proportionate in order to obtain evidence to support or refute an investigation;
- repeated viewing of open profiles on social networks to gather evidence or to monitor an individual's status must only take place under a RIPA authorisation;
- be aware that it may not be possible to verify the accuracy of information on social networks and if such information is to be used as evidence, take reasonable steps to ensure its validity.

**For the avoidance of doubt, only those Officers designated and certified to be Authorising Officers for the purpose of RIPA can authorise directed surveillance IF, AND ONLY IF, the RIPA authorisation procedures detailed in this Policy are**

**followed. Authorisation for directed surveillance can only be granted if it is for the purpose of preventing or detecting crime and the criminal offence is punishable by at least six months' imprisonment or it is an offence under sections 146, 147, 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933 (sale of alcohol and tobacco to underage children).**

The [Home Office Codes of Practice](#) on covert surveillance and CHIS contain essential guidance in relation to online covert activity and must be consulted.

If you are in doubt as to whether or not you can use directed surveillance for the crime you are investigating, you should contact Legal Services for advice to ensure that no unauthorised online covert activity takes place within the Council.

## **Proportionality**

The authorised conduct will not be proportionate if it is excessive in the overall circumstances of the case. Each authorised action should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. No activity should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means.

The following elements of proportionality should therefore be considered:

- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
- evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

**In other words**, this means balancing the intrusiveness of the activity on the target subject and others who might be affected by it against the need for the activity in operational terms. The activity will not be proportionate if it is excessive in the circumstances - each case will be unique and will be judged on its merits - or if the information that is sought could reasonably be obtained by other less intrusive means. **All such activity must be carefully managed to meet the objective in question and must not be arbitrary or unfair.** Extra care should also be taken over any publication of the product of the surveillance.

**Put very simply, it means not using a sledgehammer to crack a nut.**

As well as being proportionate, the covert surveillance must be necessary in all the circumstances.

## ***Examples of different types of Surveillance***

Type of Surveillance	Examples
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Overt	<ul style="list-style-type: none"> <li>- Police Officer or Environmental Enforcement Officer on patrol</li> <li>- Signposted town centre CCTV cameras (in normal use)</li> <li>- Recording noise coming from outside the premises after the occupier has been warned that this will occur if the noise persists.</li> <li>- Most test purchases (where the officer behaves no differently from a normal member of the public).</li> </ul>
Covert but not requiring prior authorisation	<ul style="list-style-type: none"> <li>- CCTV cameras providing general traffic, crime or public safety information.</li> </ul>
Directed surveillance (must be RIPA authorised)	<ul style="list-style-type: none"> <li>- Officers follow an individual or individuals over a period, to establish whether s/he is working when claiming benefit or off long term sick from employment.</li> <li>- Test purchases where the officer has a hidden camera or other recording device to record information which might include information about the private life of a shop-owner, e.g. where s/he is suspected of running his business in an unlawful manner.</li> </ul>
Intrusive surveillance or interfering with private property – <b>Note: The Council cannot use RIPA to authorise this</b>	<ul style="list-style-type: none"> <li>- Planting a listening or other electronic device (bug) or camera in a person's home or in/on their private vehicle/person.</li> </ul>

### Further Information

Further guidance on surveillance which can be found in the Home Office Codes of Practice is set out in Appendix 5.

### Confidential Information

Special safeguards apply with regard to confidential information relating to:

- confidential personal information;
- confidential constituent information; and
- confidential journalistic material.

The Authorising Officer for directed surveillance where confidential information is likely to be obtained or for the use of a CHIS must be a Senior Authorising Officer. Further guidance is available in the Home Office Codes of Practice.

## **Legal Privilege**

Surveillance that is intended to result in knowledge of matters subject to legal privilege CANNOT be authorised. Where surveillance is not intended to result in knowledge of matters subject to legal privilege, but acquisition of such matters is likely, then the Authorising Officer must consider carefully whether such surveillance is appropriate. In particular, such surveillance can only be authorised to prevent or detect serious crime. The Authorising Officer in these circumstances must be a Senior Authorising Officer. Further guidance is available in the Home Office Codes of Practice.

## **Collateral Intrusion**

Before authorising surveillance the Authorising Officer should also take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation or operation (collateral intrusion). Measures should be taken, wherever practicable, to avoid or minimise unnecessary intrusion into the lives of those not directly connected with the investigation or operation.

Those carrying out the surveillance should inform the Authorising Officer if the investigation or operation unexpectedly interferes with the privacy of individuals who are not covered by the authorisation. When the original authorisation may not be sufficient, consideration should be given to whether the authorisation needs to be amended and re-authorised or a new authorisation is required.

Further guidance is available in the Home Office Codes of Practice.

## **Retention and Destruction of Products of Surveillance**

Where the product of surveillance could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with established disclosure requirements for a suitable period and subject to review. Authorising Officers must make sure that they have regard to the [Code of Practice](#) (2015 edition) made under S23 Criminal Procedure and Investigations Act 1996.

There is nothing in RIPA that prevents material obtained from properly authorised surveillance from being used in other investigations. Authorising Officers must ensure, therefore, that arrangements are in place for the handling, storage and destruction of material obtained through the use of covert surveillance. Authorising Officers must also ensure compliance with the appropriate data protection requirements and any relevant codes of practice produced by individual authorities relating to the handling and storage of material.

## **8. Conduct and Use of a Covert Human Intelligence Source (CHIS)**

### ***Who is a CHIS?***

A CHIS is someone who establishes or maintains a personal or other relationship for the covert purpose of using the relationship to obtain information.

Members of the public who volunteer information to the Council and those engaged by the Council to carry out test purchases in the ordinary course of business (i.e. they do not develop a relationship with the shop attendant and do not use covert recording devices) are not CHIS and do not require RIPA authorisation.

However, there may be instances where an individual covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship. In such circumstances where a member of the public, though not asked to do so, gives information (or repeated information) about a suspect, then serious consideration should be given to designating the individual as a CHIS, particularly if the Council intends to act upon the information received.

It is possible therefore that a person could become engaged in the conduct of a CHIS without the Council inducing, asking or assisting the person to engage in that conduct (i.e. "Tasking" – see Appendix 3 for further detail on the use and management of CHIS). As stated in paragraph 2.25 the Home Office CHIS Code of Practice the tasking of a person should not be used as the sole benchmark in seeking a CHIS authorisation, and it is possible that a person will become engaged in the conduct of a CHIS without a local authority inducing, asking or assisting the person to engage in this conduct. It is recommended that legal advice is sought in any such circumstances.

### ***What must be authorised?***

The conduct or use of a CHIS requires **prior authorisation**:

- **Conduct** of a CHIS = Establishing or maintaining a personal or other relationship with a person for the covert purpose of (or is incidental to) obtaining and passing on information
- **Use** of a CHIS = Actions inducing, asking or assisting a person to act as a CHIS and the decision to use a CHIS in the first place.

Most CHIS authorisations will be for both use and conduct. This is because public authorities usually take action in connection with the CHIS, such as tasking the CHIS to undertake covert action, and because the CHIS will be expected to take action in relation to the public authority, such as responding to particular tasking.

Authorisations are also subject to judicial approval and cannot commence until this has been obtained.

Detailed records must be kept relating to each source.

**The Council can only authorise CHIS under RIPA IF, AND ONLY IF, the procedures, as detailed in this Policy, are followed. Authorisation for CHIS can only be granted if it is for the purposes of preventing or detecting crime.**

### ***Juveniles and Vulnerable Individuals***

Special safeguards apply to the use or conduct of juvenile sources (i.e. those under 18 years old). On no occasion can a child under 16 years of age be authorised to give information against his or her parents.

A vulnerable individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself or herself, or unable to protect himself or herself against significant harm or exploitation.

Vulnerable individuals and juveniles will only be authorised to act as a CHIS in very exceptional circumstances and a Senior Authorising Officer **MUST** give the authorisation for their use.

## ***Test Purchases***

Carrying out test purchases will not usually (as highlighted above) require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information and, therefore, the purchaser will not normally be a CHIS. However, using mobile hidden recording devices or CCTV cameras to record what is going on in the shop will require **authorisation** as **directed surveillance**. A combined authorisation can be given for a **CHIS** and also **directed surveillance**.

## ***Anti-Social Behaviour Activities (e.g. noise, violence, race abuse, etc.)***

Persons who complain about anti-social behaviour, and are asked to keep a diary will **not** normally be a **CHIS**, as they are not required to establish or maintain a relationship for a covert purpose. Recording the level of noise (e.g. the decibel level) will not normally capture private information and, therefore, does **not** require authorisation.

Recording sound (with a DAT recorder) on private premises could constitute **intrusive surveillance**, unless it is done overtly. For example, it will be possible to record if the noisemaker is warned that this will occur if the level of noise continues.

Covert recording of noise where the recording is of decibels only or constitutes non-verbal noise (such as music, machinery or an alarm), or the recording of verbal content which is made at a level that does not exceed that which can be heard from the street outside or adjoining property with the naked ear, are unlikely to constitute either direct or intrusive surveillance. In the latter circumstance, the perpetrator would normally be regarded as having forfeited any claim to privacy. Placing a covert stationary or mobile video camera outside a building to record anti-social behaviour on residential estates **will** require prior authorisation.

## ***Use and Management of a CHIS***

Particular requirements apply to the management and use of a CHIS. This is particularly important when considering that the CHIS may be putting themselves in some jeopardy by performing as a CHIS. Details of those arrangements are contained within **Appendix 3**.

The Senior Authorising Officer must be satisfied that these arrangements are in place before authorising a request. The overriding duty is to the safety of and duty of care towards the CHIS.

## ***Further Information***

Further guidance on CHIS can be found in the Home Office's Codes of Practice on surveillance listed in **Appendix 5**.

## **9. Acquisition of Communications Data**

### ***What is Communications Data?***

Communication data means any traffic or any information that is or has been sent by over a telecommunications system or postal system, together with information about the use of the system made by any person.

### ***Procedure***



There are powers granted by S22 RIPA in respect of the acquisition of Communications Data from telecommunications and postal companies. These issues are beyond the scope of this Policy. Where an Authorised Officer considers that such data is required, the advice of the RIPA Monitoring Officer should be sought.

## 10. Authorisation Procedures

**Directed surveillance** and the use of a **CHIS** can only gain the protection under RIPA if properly authorised, and conducted in strict accordance with the terms of the authorisation. **Appendix 2** provides flow charts of processes from application / consideration to recording of information and the storage / retention of data obtained.

### *Authorising Officers*

Forms can only be signed by Authorising Officers who have the necessary authority from the Council. Authorised officers are listed in **Appendix 1**. It is the person that is authorised rather than his/her post. This Appendix will be kept up to date by the RIPA Monitoring Officer and added to as needs require. If it is felt that a post should be removed or added, the RIPA Monitoring Officer will request a resolution from the Cabinet. The RIPA Monitoring Officer is however able to suspend an Authorising Officer from the list as detailed above.

All RIPA authorisations must be for specific investigations only and must be reviewed, renewed or cancelled once the specific surveillance is complete or about to expire. **The authorisations for directed surveillance last for three months and for CHIS 12 months (four months for a juvenile CHIS); however they must also be cancelled as soon as the need for them no longer exists.**

### *Training Records*

All Council staff who may be involved in the application, authorisation and management of covert activity will receive refresher training as appropriate in the issues to take into account, including in relation to online covert activity. The RIPA Monitoring Officer will keep a record of those receiving training and will work with Human Resources to ensure that training is carried out as appropriate to account for staff turnover, legislative changes etc. Periodic written tests will be conducted to ensure that the Authorising Officers and Applying Officers retain the knowledge.

The training and testing regime will be documented in sufficient detail to enable assessment of its quality and competence.

### *Application Forms*

Only the RIPA forms set out in this Policy are permitted to be used. **The Authorising Officer and/or the RIPA Monitoring Officer will reject any other forms used.** All forms are available on the Intranet.

### **'A Forms' (Directed Surveillance) -see Appendix 6**

- Form A1 **Application** for Authority for Directed Surveillance
- Form A2 **Review** of Directed Surveillance Authority
- Form A3 **Renewal** of Directed Surveillance Authority
- Form A4 **Cancellation** of Directed Surveillance
- Form A5 **Judicial approval** for Directed Surveillance

## **'B Forms' (CHIS) -see Appendix 7**

- Form B1 **Application** for Authority for Conduct and Use of a CHIS
- Form B2 **Review** of Conduct and Use of a CHIS
- Form B3 **Renewal** of Conduct and Use of a CHIS
- Form B4 **Cancellation** of Conduct and Use of a CHIS
- Form B5 **Judicial approval** for the use of a CHIS

### ***Grounds for Authorisation***

Directed Surveillance (**A Forms**) and the Conduct and Use of the CHIS (**B Forms**) can be authorised by the Council **only on the grounds of preventing or detecting crime. NO other grounds are available to local authorities.**

### ***Assessing the Application Form***

Before an Authorising Officer signs a Form, **s/he must:**

- (a) Be mindful of this Policy, the training provided and any other guidance issued, from time to time, by the RIPA Monitoring Officer on such matters;
- (b) **Be clear on what is being authorised and make sure that there are no ambiguities in either the application or the authorisation;**
- (c) **Ensure that his/her statement as the Authorising Officer is completed spelling out the "5Ws" – who, what, where, when, why and how. In addition the Authorising Officer must ensure that the proposed operation is both necessary and proportionate;**
- (d) Satisfy his/herself that the RIPA authorisation is:
  - (i) **In accordance with the law;**
  - (ii) **Necessary** in the circumstances of the particular case on the grounds mentioned above; **and**
  - (iii) **Proportionate** to what it seeks to achieve;
- (e) In assessing whether or not the proposed surveillance is necessary, consideration should be given to whether it is necessary to use covert surveillance in all the circumstances. Consideration must be given as to whether the information could be obtained by other means;
- (f) In assessing whether or not the proposed surveillance is proportionate, consider whether there are any other non-intrusive methods available and, if there are none, whether the proposed surveillance is no more than necessary to achieve the objective, as the **least intrusive method will be considered proportionate by the courts. Guidance on proportionality is given above;**
- (g) Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (**Collateral Intrusion**) and the Applying Officer's plan to minimise that intrusion. Measures must be taken wherever practicable to avoid or minimise (so far as is possible) collateral intrusion. When considering proportionality the right to privacy of both third parties and the intended subject of the investigation must be considered against the seriousness of the offence and harm likely to be caused;

- (h) Allocate a Unique Reference Number (URN) for **each form**;
- (i) Set a date for **review** of the authorisation and review the authorisation on that date using the relevant form. The Authorising Officer should take account of how long authorisations for directed surveillance may last for (three months). The review date must be appropriate for the type of surveillance sought. At a review the Authorising Officer should be satisfied that the criteria for granting the authorisation still exists. They may also amend the authorisation;
- (j) **Make sure that the authorisation expiry date and time are inserted**;
- (k) Ensure that any RIPA Departmental Register is duly completed, and that a copy of the RIPA Forms (and any review / renewal / cancellation of the same) is forwarded to the RIPA Monitoring Officer's Central Register, **within 2 working days of the relevant authorisation, review, renewal, cancellation or rejection**. The original should be kept on the departmental register; and
- (l) If unsure on any matter, obtain advice from the RIPA Monitoring Officer **before** signing any forms.

**The authorisation section of the form should be completed in the Authorising Officer's own handwriting and in his/her own words. The Authorising Officer must be prepared to justify his/her authorisation in a court of law and must be able to answer for his/her decision.**

### ***Additional Safeguards when Authorising a CHIS***

When authorising the conduct or use of a CHIS, the Authorising Officer **must also**:

- (a) Be satisfied that the **conduct** and/or **use** of the CHIS is **proportionate** to what is sought to be achieved;
- (b) Be satisfied that **appropriate arrangements** are in place for the management and oversight of the CHIS and this must address health and safety issues through a written risk assessment (**see Appendix 3**);
- (c) Consider the likely degree of intrusion of all those potentially affected;
- (d) Consider any adverse impact on community confidence that may result from the use or conduct or the information obtained;
- (e) Ensure **records** contain particulars and are not available except on a need to know basis; and
- (f) If unsure on any matter, obtain the advice from the RIPA Monitoring Officer **before** signing any forms.

### **Judicial Approval**

After an Authorising Officer has authorised directed surveillance or the Senior Authorising Officer has approved the use of a CHIS, the Council **must** make an application to the Magistrates' Court for approval of the authorisation. This applies to all authorisations and renewals. The activity permitted by the authorisation **cannot** be carried out until the court has approved the authorisation.

After the Authorising Officer has approved the application, the Applying Officer (or the Authorising Officer in appropriate cases) must complete the first part of the approval form found at Appendix 6 and Appendix 7. Two copies of the approval form, the original authorisation and a copy must be taken to court for the Magistrate to consider.

The court will consider:

- (a) if the Authorising Officer was at the correct grade; and
- (b) whether the activity proposed is necessary and proportionate.

The authorisation and the approval form must be detailed enough for the court to consider the application. Whilst the court may ask the Officer attending court to clarify the application, oral evidence is not a substitute for a full and reasoned written application.

The court can either approve or quash the authorisation or renewal. Any application for renewal must take place before the expiry of the authorisation. The Applying Officer must ensure that any application to renew is made in good time so that the Authorising Officer and the court have enough time to consider the application.

The original authorisation must be retained by the Council. A copy of the approval or rejection by the Magistrates must be placed on the department's register and a further copy given to the RIPA Monitoring Officer for his/her Central Register.

Any Officer attending court to obtain judicial approval must be authorised by the Council under section 223 of the Local Government Act 1972 to conduct legal proceedings on the Council's behalf.

Further information about the procedure for obtaining judicial approval can be found at Appendix 8.

### ***Duration***

The form **must be reviewed in the time stated, renewed and/or cancelled** once it is no longer needed. The authorisation to carry out/conduct the surveillance lasts for three months (from authorisation) for Directed Surveillance, and 12 months (from authorisation) for a CHIS and four months for a juvenile CHIS. However, whether the surveillance is carried out/conducted or not, in the relevant period, does not mean the authorisation is 'spent'. In other words, **the forms do not expire**. The forms have to be **reviewed, renewed and/or cancelled** (once they are no longer required).

Authorisations can be renewed in writing before the maximum period in the Authorisation has expired. The Authorising Officer must **consider the matter afresh** including taking into account the benefits of the surveillance to date and any collateral intrusion that has occurred. An Authorisation cannot be renewed after it has expired. In such event, a fresh Authorisation will be necessary.

The renewal will begin on the day when the Authorisation would have expired.

## **11. Working With/Through Other Agencies**

When some other agency has been instructed on behalf of the Council to undertake any action under RIPA, this Policy and the forms in it must be used (as per normal procedure) and the agency advised or kept informed, as necessary, of the various requirements. They must be made aware explicitly what they are authorised to do.

When some other agency (e.g. Police, HM Revenue & Customs, Department for Work and Pensions etc.):

- (a) Wishes to use the Council's resources, that agency must use its own RIPA procedures **and**, before any Officer agrees to allow the Council's resources to be used for the other agency's purposes, s/he **must obtain** a copy of that agency's RIPA form for the record (a copy of which must be passed to the RIPA Monitoring Officer for the Central Register) or relevant extracts from the same which are sufficient for the purposes of protecting the Council and the use of its resources; or
- (b) Wishes to use the Council's premises for their own RIPA action and is expressly seeking assistance from the Council, the Officer should normally co-operate with the same unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. Suitable insurance or other appropriate indemnities may be sought, if necessary, from the other agency for the Council's co-operation in the agency's RIPA operation. In such cases, however, the Council's own RIPA forms should **not** be used, as the Council is only 'assisting' not being 'involved' in the RIPA activity of the external agency.

If the Police or other agency wish to use Council resources for general surveillance, as opposed to specific RIPA operations, an appropriate letter requesting the proposed use, extent of remit, duration, who will be undertaking the general surveillance and the purpose of it must be obtained from the Police or other agency **before** any Council resources are made available for the proposed use. The appropriate head of service will be responsible for agreeing to the proposed use.

### **Joint operations**

Where the Council is conducting an investigation jointly with another agency and that investigation involves directed surveillance or use of a CHIS only one authorisation under RIPA is needed. Duplicate authorisations therefore should be avoided. At the start of the joint operation the relevant Assistant Directors or Chief Service Officers should agree with his/her opposite number in the other agency who the lead body should be. The lead body will be responsible for RIPA authorisations.

**If in doubt, please consult with the RIPA Monitoring Officer at the earliest opportunity.**

## **12. Record Management**

The Council must keep a detailed record of all Authorisations, Reviews, Renewals, Cancellations and rejections in Departments and a **Central Register of all Authorisation Forms will be maintained and monitored by the RIPA Monitoring Officer.**

### ***Records Maintained in the Department***

The Council will retain records for a period of at least three years from the ending of the Authorisation. The Investigatory Power Commissioner's Office (IPCO) can audit/review the Council's policies and procedures and individual Authorisations, Reviews, Renewals, Cancellations and rejections.

### ***Central Register Maintained by the RIPA Monitoring Officer***

Authorising Officers must send a copy of any authorisation, cancellation, renewal or

review to the RIPA Monitoring Officer within 2 working days of the issue. Whilst the RIPA Monitoring Officer is responsible for oversight and review of the records, the Authorising Officers are responsible for their own records.

### **13. Reporting Arrangements**

Where there has been an application for the use of powers under RIPA, a report on the use of the powers shall, within three months of the application, be provided to Cabinet.

### **14. Concluding Remarks**

Where there is an interference with the right to respect for private life and family guaranteed under Article 8 of the European Convention on Human Rights, and where there is no other source of lawful authority for the interference, or if it is held not to be necessary or proportionate to the circumstances, the consequences of not obtaining or following the correct authorisation procedure set out in RIPA and this Policy, may be that the action (and the evidence obtained) will be held to be unlawful by the courts pursuant to Section 6 of the Human Rights Act 1998.

Obtaining an authorisation under RIPA and following this Policy will ensure therefore, that the action is carried out in accordance with this law and subject to stringent safeguards against abuse of anyone's human rights.

**Authorising Officers MUST exercise their minds every time they are asked to consider a form. They must NEVER sign or rubber stamp form(s) without thinking about their own personal and the Council's responsibilities. They should also report refusals to the RIPA Monitoring Officer. The RIPA Monitoring Officer will be able to assess whether the refusals were reasonable and this will also be reported to Cabinet.**

**Any boxes not needed on the form(s) must be clearly marked as being 'NOT APPLICABLE', 'N/A' or a line put through the same.** Great care must also be taken to ensure accurate information is used and is inserted in the correct boxes. Reasons for any refusal of an application must also be kept on the form and the form retained for future audits.

For further advice and assistance on any aspect of RIPA, please contact the Council's RIPA Monitoring Officer; contact details are set out in Appendix 1.

**Appendix 1 – List of Senior Authorising Officers Authorising Officers, Senior Responsible Officer and RIPA Monitoring Officer**

<b>Post Title</b>	<b>Current Post Holder</b>	<b>RIPA post</b>	<b>Contact Details</b>
Chief Executive	Susan Priest	Senior Authorising Officer / Senior Responsible Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853315 <a href="mailto:susan.priest@folkestone-hythe.gov.uk">susan.priest@folkestone-hythe.gov.uk</a>
Director of Transformation and Transition	Tim Madden	Authorising Officer – Senior Authorising Officer in the absence of the Chief Executive Service	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853371 <a href="mailto:tim.madden@folkestone-hythe.gov.uk">tim.madden@folkestone-hythe.gov.uk</a>
Director of Corporate Services	Charlotte Spendley	Authorising Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853263 <a href="mailto:Charlotte.spendley@folkestone-hythe.gov.uk">Charlotte.spendley@folkestone-hythe.gov.uk</a>
Assistant Director (Governance, Law and Regulatory Services)	Amandeep Khroud	RIPA Monitoring Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853253 <a href="mailto:amandeep.khroud@folkestone-hythe.gov.uk">amandeep.khroud@folkestone-hythe.gov.uk</a>
Director of Housing & Operations	Andy Blaszkowicz	Authorising Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853315 <a href="mailto:andrew.blaszkowicz@folkestone-hythe.gov.uk">andrew.blaszkowicz@folkestone-hythe.gov.uk</a>

# RIPA MANAGEMENT STRUCTURE

## Directed Surveillance

Court



**Authorising Officers**

**Susan Priest**  
Chief Executive

**Tim Madden**  
Director of Transformation and Transition

**Charlotte Spendley**  
Director of Corporate Services

**Andrew Blaszkowicz**  
Director of Housing & Operations



Applying Officer

**Amandeep Khroud**  
Assistant Director  
(Governance, Law and Regulatory Services)

## CHIS

Court



**Susan Priest**  
Chief Executive

Or

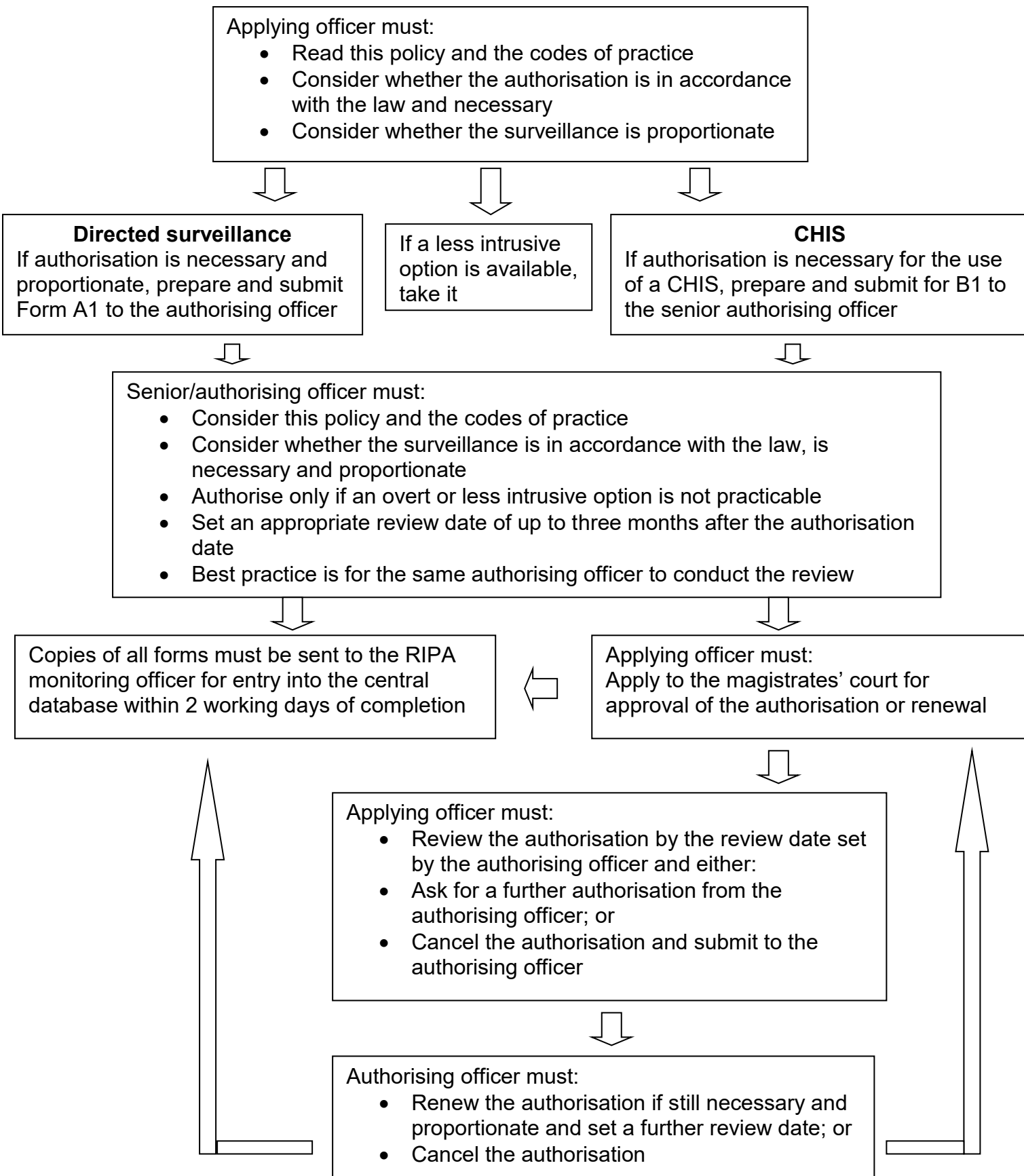
**Tim Madden**  
Director of Transformation and Transition



Applying Officer



## Appendix 2 – Flow Chart for Directed Surveillance and CHIS



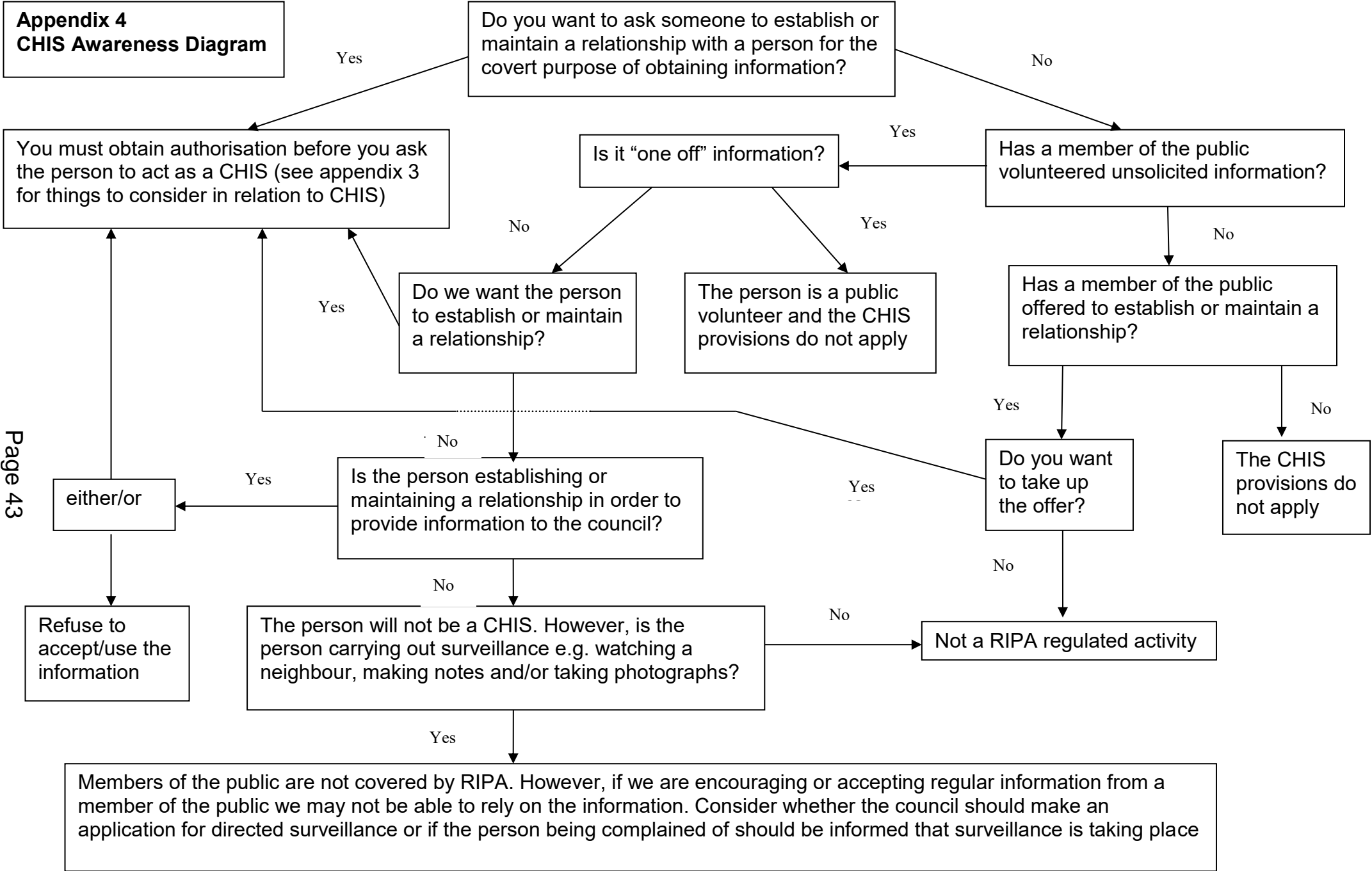
Applying officer – the person who makes a request to use RIPA powers;  
 Authorising officer – the person who considers whether or not to grant an authorisation;  
 Senior authorising officer – the senior person who considers whether or not to grant an authorisation for the use of a CHIS

## Appendix 3 – Additional Notes for the Use and Management of a CHIS

### Tasking

- 1 “Tasking” is the assignment given to the CHIS by the persons defined in sections 29(5) (a) and (b) of RIPA, asking him/her to obtain information, provide access to information or to otherwise act incidentally, for the benefit of the relevant public authority.
- 2 Authorisation for the use or conduct of a CHIS must be obtained prior to any tasking where such tasking requires the CHIS to establish or maintain a personal or other relationship for a covert purpose.
- 3 The person referred to in section 29(5) (a) of RIPA will have day to day responsibility for:
  - Dealing with the CHIS on behalf of the Council
  - Directing the day to day activities of the CHIS
  - Recording the information supplied by the CHIS, and
  - Monitoring the CHIS’s security and welfare
- 4 The person referred to in section 29(5) (b) of the 2000 Act will be responsible for the general oversight of the use of the CHIS.
- 5 The authorisation should not be drawn so narrowly that a separate authorisation is required each time the CHIS is tasked. The authorisation could cover the broad terms of the CHIS’s task.
- 6 The persons mentioned in paragraphs 3 and 4 above must take great care to ensure that actions are recorded in writing and must also keep the authorisation under review to ensure that it covers what the CHIS is actually doing. During the course of a task, unforeseen events may occur which mean that the authorisation may need to be cancelled and applied for again.
- 7 The Chief Executive as Head of Paid Service of the Council has the power to appoint officers to act under s29(5)(a) and (b) of RIPA.
- 8 In relation to health and safety, before tasking a CHIS, the relevant Officers will ensure that a risk assessment is carried out which determines the risk to the CHIS and to others in carrying out the task. The ongoing security and welfare of the CHIS after the task has been completed should also be considered.
- 9 Further advice on good practice is contained within the CHIS [Code of Practice](#).

**Appendix 4  
CHIS Awareness Diagram**



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**This flowchart cannot answer every scenario an officer may encounter. If you are unsure whether or not you authorisation speak to Legal Services or the RIPA monitoring officer**

## Appendix 5 – Codes of Good Practice

RIPA Codes of Practice can be accessed at:

[Codes of Practice](#)

## Appendix 6 – Directed Surveillance Forms

[Directed surveillance application form](#)

[Directed surveillance renewal form](#)

[Directed surveillance review form](#)

[Directed surveillance cancellation form](#)

[Judicial approval form](#)

## Appendix 7 – CHIS Forms

[Application to authorise a CHIS](#)

[CHIS cancellation form](#)

[CHIS renewal form](#)

[CHIS review form](#)

[Judicial approval form](#)

## **Appendix 8 – Judicial approval protocol**

In order to obtain judicial approval for your RIPA authorisation you will need to book an appointment to attend court. You must not turn up to court without an appointment. This step must not be taken unless an Authorised Officer has first authorised the application.

To book an appointment, contact the court administration centre on 01304 218600 option 6. There may be a delay between you making the appointment and attending court so make sure you factor this in when thinking about your timetable and the start date.

Your application may be heard at Folkestone or Canterbury Magistrates' Court. You will generally be asked to attend court at 9.30am before the court starts sitting although you may be given an alternative time to attend.

You will need to take two copies of the approval form with the first part completed and the original authorisation to court as well as a copy. Ensure that you retain the original authorisation and a signed approval form.

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This Report will be made public on 8 September 2020

Report Number **C/20/32**

**To:** Cabinet  
**Date:** 16 September 2020  
**Status:** Non-Key Decision  
**Head of Service:** Andy Blaszkowicz – Director of Housing and Operations  
**Oportunitas Chairman:** Councillor Patricia Rolfe  
**Cabinet Member:** Councillor David Monk, Leader and Portfolio Holder for Finance

**SUBJECT:** OPORTUNITAS LIMITED – PROGRESS REPORT & BUSINESS PLAN 2020 - 2022

**SUMMARY:** This report proposes a Business Plan from the Board of Oportunitas Ltd (“the company”) covering its activities through to 31 March 2022. The report also provides a summary of the company’s provisional financial outturn position for 2019/20 as well as a trading update for 2020/21. The report is in-line with the requirement contained in the Shareholder’s Agreement between the company and the Council.

**REASONS FOR RECOMMENDATIONS:**

Cabinet is asked to agree the recommendations set out below because the Shareholder’s Agreement between the company and the Council requires a Business Plan to be approved for the next trading period.

**RECOMMENDATIONS:**

1. To receive and note report C/20/32.
2. To agree the Business Plan for Oportunitas Limited for the period through to 31 March 2022.

## **1. INTRODUCTION AND BACKGROUND**

- 1.1 In line with the Shareholder's Agreement between Oportunitas Limited ("the company") and the Council, this report;-
- i) provides a summary of the company's activities and its provisional financial outturn position for the 2019/20 financial year,
  - ii) provides an update on the company's trading activities in 2020/21 based on the period to 31 July 2020, and
  - iii) presents the company's proposed Business Plan for the period 01 April 2020 to 31 March 2022 for Cabinet's approval.
- 1.2 The Council created the company in 2014 and provided it with a total initial capital investment of £4.78m in the form of 90% debt and 10% equity to acquire land and property primarily to provide residential properties to let to families at rent levels at or just below market rates. It was recognised at the time that, despite being a significant amount, further investment would be required for the company to trade sustainable in the long term while continuing to provide the council with a return on its investment.
- 1.3 On 28 February 2018, Cabinet approved a strategic financial review of the funding required to make the company financially sustainable in the long term while still providing a return to the Council as the sole shareholder. An additional capital investment of £6.9m was approved to enable the company to acquire further residential property for rent. Since then company has been exploring suitable property investment options. During the early part of this year the company agreed a deal to purchase 37 units of residential property 'off plan' from a development taking place at the site of the former Royal Victoria Hospital (RVH) building in central Folkestone at a total cost of £6.45m.
- 1.4 On 6 March 2020 the company's Board considered and approved a business plan for the period to 31 March 2022 including the impact of the purchase of the RVH residential units. However, the business plan was prepared before the impact of the Covid-19 pandemic began to take effect. Subsequently the Board recognised the pandemic and other issues were likely to have an impact on the financial projections contained in the business plan and that it would be necessary to review the position before submitting a revised position to Cabinet. The Board considered and approved a revised business plan on 24 August 2020.
- 1.5 At the same meeting the Board also received a summary of the company's provisional financial outturn position for 2019/20 and a trading update for 2020/21 for the period to 31 July 2020.

## **2 PROVISIONAL FINANCIAL OUTTURN 2019/20**

- 2.1 The company's financial outturn for the financial year ending 31 March 2020 is shown in appendix 1 to this report and is subject to Audit.
- 2.2 **Profit and Loss Account Summary**

- i) The majority of the company's turnover was from property rental income (£250k)
- ii) Its largest expense was the loan interest payable to the Council (£173k)
- iii) The company made a profit after tax of £119k including an unrealised property valuation gain of £210k
- iv) Adjusting for the property gain, the company made an operating loss of £52k, broadly in line with expectations

### 2.3 Balance Sheet Summary

- i) Investment Assets - The company paid a deposit of £1.275m for the acquisition of 37 'off-plan' residential units at the RVH site, Folkestone
- ii) Investment Assets – The company invested £79k to create an extra residential unit for its property at 1 Claremont Road, Folkestone
- iii) The accrued loan interest payable to the Council of £458k at 31 March 2019 was paid during 2019/20 in accordance with the loan agreement
- iv) Loans – The company utilised the remaining £778k of the Housing Acquisition loan from the Council. This had previously been deferred because the company had sufficient cash available to it through the original equity issue and surplus balances
- v) Share Capital and Premium – The Council increased its investment by £1.31m as the first part of its £6.9m agreed package to support the long term sustainability of the company
- vi) The Profit and Loss Reserve at 31 March 2020 is £170k. However, excluding the accumulated unrealised valuation gain of £549k, the accumulated operating loss is £310k

2.4 As outlined in section 1 of this report above, the decision to invest a further £6.9m to support the company's expansion is to allow it to trade efficiently and sustainably over the long term while maintaining value to the Council as the Shareholder.

## 3 FINANCIAL UPDATE 2020/21 – TO 31 JULY 2020

3.1 The company's financial update for the current financial year to 31 July 2020 is shown in appendix 2 to this report.

- 3.2 In summary, the company has seen a reduction of approximately £15k in its anticipated income from both its housing rental (£13k) and grounds maintenance activities (£2k) over the period to 31 July 2020 due, in part, to the impact of the Covid-19 crisis. The company is not expected to be able recover this reduction in income over the remainder of the financial year and it has been factored into the projected outturn position for 2020/21 covered in the updated Business Plan later in this report.
- 3.3 Work has commenced on the RVH development and the company has made two stage payments totalling £330,750 for Phase A of the scheme to the developer (in addition to the original deposit of £1,275,000.00). Phase A of the scheme is on target to be completed and ready for occupation from July 2021. The capital expenditure to date has been met from the Council's new equity investment in the company.

#### **4. BUSINESS PLAN - 1 APRIL 2020 TO 31 MARCH 2022**

- 4.1 In line with Shareholder's Agreement, the company is required to have a current business plan approved by Cabinet. As outlined earlier in this report, on 24 August 2020 the company's Board approved an updated business plan for the period from 1 April 2020 to 31 March 2022, to include the projected impact of Covid-19, and is appended to this report as appendix 3.
- 4.2 The business plan covers the majority of the period during which the Council's additional investment of £6.9m in the company will take place to allow it to acquire the 37 units of residential accommodation at the RVH development.
- 4.3 The company is forecast to continue making an operating loss over the period before returning a profit once the full additional revenue stream from the RVH scheme is received. The cumulative projected operating loss at 31 March 2022 is £478k. Financial modelling undertaken predicts it will take up to 7 years to clear the accumulated operating loss from the end of the business plan period.
- 4.4 The business plan demonstrates the company's cash flow over the period will meet its obligations based on the approved funding arrangements in place with the Council.
- 4.5 The annual financial benefit to the Council from the company is projected to rise from £282k in 2020/21 to £355k in 2021/22.
- 4.6 Cabinet is asked to endorse the Business Plan for the period to 31 March 2022.

#### **5 RISK MANAGEMENT ISSUES**

- 5.1 A summary of the perceived risks follows:

<b>Perceived risk</b>	<b>Seriousness</b>	<b>Likelihood</b>	<b>Preventative action</b>
The company fail to meet their interest and loan repayment obligations to the Council on time	High	Low	Regular financial updates from the Board to Cabinet to provide an early warning of any cash flow issues for the company. Loans are secured on the investment assets of the company.
Company continues to make operating losses threatening its long term sustainability	High	Medium	Approved additional Council investment of £6.9m in the company and the application of this as outlined in the business plan expected to ensure long term position
Cost of RVH scheme increases	High	Medium	The company has secured a fixed price contract with the developer to acquire the completed units
The financial impact of Covid-19 to the company lasts for longer than current expectations	Medium	Medium	The Council's loan agreement provides the company with the cash flow capacity to meet the impact of further financial uncertainty over the period of the business plan

## 6. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

### 6.1 Legal Officer's Comments (NM)

There are no legal issues arising directly from this report.

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

The provisional financial outturn for 2019/20 shown in appendix 1 and the Financial Update for 2020/21 shown in appendix 2 have been prepared by

the Finance Specialist Team. The proposed business plan shown in appendix 3, including the financial forecast and Shareholder benefit, has also been prepared in conjunction with the Finance Specialist Team.

### **6.3 Diversities and Equalities Implications**

The report does not cover a new service or policy or a revision of either and therefore does not require an Equality Impact Assessment.

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

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

Andy Blaszkowicz, Director – Housing & Operations

Tel: 01303 853684 email: [andy.blaszkowicz@folkestone-hythe.gov.uk](mailto:andy.blaszkowicz@folkestone-hythe.gov.uk)

Lee Walker, Capital & Treasury Senior Specialist

Tel: 01303 853593. e-mail: [lee.walker@folkestone-hythe.gov.uk](mailto:lee.walker@folkestone-hythe.gov.uk)

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

None

Appendices:

Appendix 1 – Financial Outturn for 2019/20 (Subject to Audit)

Appendix 2 – Financial Update for 2020/21

Appendix 3 – Oportunitas Limited Business Plan 2020-2022

Appendix 3a – Oportunitas Property Portfolio 31 March 2020

## Appendix 1

### Oportunitas Board Meeting 24 August 2020

### Oportunitas Limited Financial Outturn for 2019/20 (Subject to Audit)

Prepared by Lee Walker

#### 1. Introduction

- 1.1 This paper provides a summary of the provisional financial outturn position for the company for the year ending 31 March 2020. The Profit and Loss Account and the Balance Sheet are subject to an independent Audit.
- 1.2 The Board will be separately asked to consider and approve the audited accounts for the year ending 31 March 2020 later this year.

#### 2. Profit and Loss Account 2019/20

- 2.1 The Profit and Loss Account for the year ending 31 March 2020 is shown below together with comparative information for the previous financial year.

<u>Profit and Loss Account</u>	2019/20	2018/19
	£	£
<b>Housing Rental</b>		
Rental Income	250,075	238,997
Rental Expenses	<u>(87,105)</u>	<u>(63,415)</u>
Net	162,970	175,582
<b>Grounds Maintenance</b>		
Income	24,451	66,033
Expenses	<u>(17,480)</u>	<u>(58,109)</u>
Net	6,971	7,924
<b>Overheads</b>		
Directors Remuneration	(8,923)	(12,508)
FHDC Officer Support	(24,000)	(15,741)
Operating Expenses	<u>(16,170)</u>	<u>(20,383)</u>
Total Overheads	(49,093)	(48,632)
<b>Loan Interest</b>	(172,561)	(167,166)
<b>Unrealised Property Valuation Changes</b>	209,993	132,952
<b>Profit before Tax</b>	<u>158,280</u>	<u>100,660</u>
<b>Deferred Tax on Profit</b>	<u>(39,570)</u>	<u>(25,261)</u>
<b>Profit after Tax</b>	<u>118,710</u>	<u>75,399</u>

- 2.2 The profit before taxation of £158k includes the unrealised valuation gain of £210k for the Company's property portfolio. The company's property portfolio is required to be valued at 31 March each year and the latest valuation, undertaken by the independent valuer Sibley Pares, shows there has been an average increase of about 4.5% over the year.
- 2.3 Excluding the valuation gain, the company has made an operating loss of £52k for the financial year, £20k more than that for the previous year. The main reason for this increase is a provision for bad debts on rental income of £10k being made.
- 2.4 The Grounds Maintenance position reflects the decision to focus on tree works rather than general gardening services. This has had little impact on the company's net operating profit for the year. The Board are reminded that the company receives a net income of 20% over the cost of the work undertaken by the contractor, the Council's Grounds Maintenance
- 2.5 As previously outlined to the Board, the company's trading activities of residential property lettings and grounds maintenance cover their direct costs, including loan interest, but do not generate sufficient surpluses to meet its overheads. The point of the strategic financial review in early 2018 was to agree a way forward through additional investment which would allow the company to become financially sustainable over the medium term and to continue to provide a return to the Council.
- 2.6 The deferred Corporation Tax is based on the profit before tax and will only start to become payable when the Company makes an operating profit or should any assets be sold.

### **3. Balance Sheet at 31 March 2020**

- 3.1 The Balance Sheet for the year ending 31 March 2020 with comparative information for the previous financial year and supporting notes is shown in appendix 1 to this paper.

### **4. Recommendations**

- 4.1 The Board note the provisional outturn financial position for the year ending 31 March 2020.



<b>Appendix 1</b>				
<b>Oportunitas Ltd - Draft Balance Sheet at 31 March 2020</b>				
		<b>31/03/2020</b>		<b>31/03/2019</b>
<b>Fixed Assets</b>	£	£	£	£
Investment Assets	6,127,550		4,563,500	
		<b>6,127,550</b>		4,563,500
<b>Current Assets</b>				
Debtors	21,414		26,836	
Bank Account	206,376		47,113	
VAT Liability	(428)		11,284	
	227,362		85,233	
<b>Current Liabilities</b>				
Creditors : Short Term	(18,540)		(19,992)	
Loans (principal due within 12 monhs)	(27,444)		-	
Loan Interest	-		(458,399)	
	(45,984)		(478,391)	
<b>Current Assets less Current Liabilities:</b>		<b>181,378</b>		(393,158)
<b>Total Assets less Current Liabilities:</b>		<b>6,308,928</b>		4,170,342
<b>Long Term Liabilities</b>				
Creditors : Long Term				
Loans	(4,281,306)		(3,611,000)	
Deferred Corporation Tax	(69,400)		(29,830)	
		<b>(4,350,706)</b>		(3,640,830)
<b>Total Assets less Total Liabilities:</b>		<b>1,958,222</b>		529,512
<b>Capital &amp; Reserves</b>				
Share Capital		<b>955</b>		300
Share Premium		<b>1,787,796</b>		478,451
Profit & Loss Account		<b>169,471</b>		50,761
		<b>1,958,222</b>		529,512

## Notes to the Balance Sheet

### 1. Investment Assets

The company own 12 properties providing 38 units of residential accommodation and one commercial unit for rent. During the year the company entered into a contract and paid a deposit to acquire further residential units at the site of the former Royal Victoria Hospital (RVH) in Folkestone from a local developer. The change in value of the portfolio over the year is summarised below:

	£
Portfolio value at 31 March 2019	4,563,500
Conversion works	79,057
Deposit – RVH Site	1,275,000
Valuation Gains	209,993
Portfolio value at 31 March 2020	<u>6,127,550</u>

## 2. Debtors

	31 March 2020	31 March 2019
	£	£
Rent Arrears	19,527	11,227
Less Bad Debt Provision	(10,000)	-
Net Rent Arrears	9,527	11,227
Prepayments	9,681	8,598
Trade Debtors	2,206	7,011
<b>Total Debtors</b>	<b>21,414</b>	<b>26,836</b>

## 3. Creditors (Short Term)

	31 March 2020	31 March 2019
	£	£
Trade Creditors	14,528	15,973
Receipts in Advance	2,137	2,144
Rent Deposit	1,875	1,875
<b>Total Creditors</b>	<b>18,540</b>	<b>19,992</b>

## 4. Loans

The Council has a loan agreement the Company to support the acquisition of property (£4.309m) and provide a working capital facility (£0.3m) for short term cash flow requirements. The existing loan facility for property acquisitions has been fully utilised during 2019/20 and this becomes repayable from 30 September 2020 over a 45 year period. The movement in loans over the year is summarised below

	Housing Acquisition Loan	Working Capital Loan	Total Loans
	£'000	£'000	£'000
Balance 31 March 2019	(3,531)	(80)	(3,611)
Advances	(778)	-	(778)
Repayments	-	80	80
<b>Balance 31 March 2020</b>	<b>(4,309)</b>	<b>-</b>	<b>(4,309)</b>
Due less 12 months	28		
Due long term	4,281		
<b>Total</b>	<b>4,309</b>		

## 5. Share Capital and Share Premium

The Council has increased its investment in the Company during 2019/20. This is part of an agreed investment package of £6.9m to support the Company's expansion to enable it to trade sustainable in the long term while providing a return to the Council as the sole shareholder.

## 6. Profit and Loss Account Reserve

The Profit and Loss Account Reserve is analysed in the table below

	Operating Loss	Deferred Tax Liability	Valuation Changes	Total
	£'000	£'000	£'000	£'000
Balance B/F	(258)	(30)	339	51
Movement 19/20	(52)	(39)	210	119
<b>Balance C/F</b>	<b>(310)</b>	<b>(69)</b>	<b>549</b>	<b>170</b>

## Appendix 2

### Oportunitas Board Meeting 24 August 2020

### Oportunitas Limited – Financial Update for 2020/21

Prepared by Lee Walker

#### 1. Introduction

- 1.1 This paper provides an update to the Board of the company's financial position for the current financial year. It covers the latest trading position to 31 July 2020 reported through the Profit and Loss Account and summarises the capital expenditure incurred.

#### 2. Profit and Loss Account

- 2.1 The summarised Profit and Loss Account to 31 July 2020 together with the original projection for the current financial year is shown below.

<b><u>Profit and Loss Account</u></b>	Actual 01/04/2020 to 31/07/2020 £	Profiled Projection to 31/07/2020 £	Variance £
<b>Housing Rental</b>			
Rental Income	76,918	89,839	(12,921)
Rental Expenses	(28,143)	(28,611)	468
Net	48,775	61,228	(12,453)
<b>Grounds Maintenance</b>			
Income	79	10,200	(10,121)
Expenses	(63)	(8,160)	8,097
Net	16	2,040	(2,024)
<b>Overheads</b>			
Directors Remuneration	(3,223)	(3,787)	564
FHDC Officer Support	(7,752)	(6,800)	(952)
Operating Expenses	(1,598)	(15,666)	14,068
Total Overheads	(12,573)	(26,253)	13,680
<b>Loan Interest</b>	(70,089)	(69,512)	(577)
<b>P &amp; L Operating Surplus / (Deficit) for period</b>	(33,871)	(32,497)	(1,374)

- 2.2 **Housing Rental Income** - The rental income for the period is approximately £13k lower than anticipated due to increases in both the void period for properties being re-let (£7k) and rent arrears (£6k). In both cases Covid-19 is a factor for the reduced income. The loss of income due to voids is expected to reduce over the remainder of this year following the easing of the lockdown restrictions. However one unit will remain empty until at least October 2020 because of repairs required following a serious water leak. As the Board are already aware, action is being taken at the moment to tackle the level of rent arrears with the position being closely monitored.
- 2.3 **Grounds Maintenance** - The Covid-19 crisis has virtually curtailed the tree-work and other grounds maintenance work forecast to take place to the end of July and resulted in a net loss of income of £2k. As some of the work is regular in nature or takes place during the summer months, it is anticipated this will be now be lost for the year.
- 2.4 **Overheads** - Although there is currently an underspending of about £14k on the overhead expenses, on a profiled basis, there are significant items which will be incurred later in the financial year which will negate this. This includes annual audit and valuation fees and a loan arrangement fee from the Council for a new agreement currently being put in place.

### 3. **Capital Expenditure – Royal Victoria Hospital (RVH) Development**

- 3.1 The table summarises the latest position for capital expenditure incurred on the RVH development.

Date	Description	Amount £
17/02/2020	Deposit – Phases A & B	1,275,000
11/06/2020	Phase A – stage payment no. 1	110,250
07/08/2020	Phase A – stage payment no. 2	220,500
	<b>Total Paid</b>	<b><u>1,605,750</u></b>

- 3.2 The funding of the capital expenditure incurred has been met from the proceeds of the Council's new equity investment in the company.

### 4. **Recommendations**

- 4.1 The Board note the latest financial position for 2020/21 outlined in this paper.



OPORTUNITAS LIMITED

BUSINESS PLAN

2020-2022

UPDATED VERSION

24 AUGUST 2020

## **1. INTRODUCTION**

1.1 This document presents an updated version of the business plan for Oportunitas Limited, the Council's wholly owned housing and regeneration company, for the period 1 April 2020 through to 31 March 2022. The original version of the business plan was approved by the Board on 12 March 2020. This version updates the business plan to reflect the anticipated impact of Covid-19 pandemic crisis and other changes on the company's activities. In accordance with the Shareholder's Agreement, the business plan is required to be considered and approved by Cabinet, planned for 16 September 2020.

1.2 Following success in the trading period from its inception in September 2014 to March 2020, Oportunitas will:-

- continue to invest in a Housing Acquisitions & Rental Programme – a land and property acquisition and conversion/refurbishment programme to provide residential properties to let to families at rental levels at or just below market rates; and
- explore commercial investment opportunities in line with its objectives, where the financial returns required in the business plan can be demonstrated.

## **2.2 The Company's Objectives**

2.2.1 The objectives are set out in Schedule 4 of the Shareholder's Agreement. These objectives formalise the scope of the intended activities, and are stated as follows:

- To lead the co-ordination and brokerage of regeneration, economic and development activity;
- To acquire housing and property to make available housing for rent and sale on a range of tenures including (but not limited to) shared ownership, shared equity, market sale and rent, affordable rent;
- To lead site development activity including securing private investment interest where appropriate;
- Facilitating partnership development arrangements to bring forward housing and employment site opportunities across the district of Folkestone & Hythe, including where appropriate joint ventures with other organisations;

- To develop residential housing either for market rent or private sale or in partnership with a registered provider of social housing;
- To develop or hold commercial employment or industrial uses of land and buildings;
- To develop or carry out such infrastructure works as are required to deliver any development or project;
- To commission conversion, improvement works and any other professional services relating to the Business;
- To carry out such trading activities as are identified in the business plan, initially relating to grounds and parks maintenance; and
- To carry out such trading activities as the Council and the Company may agree from time to time.

### **3. STRUCTURE OF THE BUSINESS PLAN**

- 3.1 The rest of this document will review the company's activities undertaken to date and outline what is planned for the next two years.
- 3.2 Progress will be kept under review by the Board at regular intervals during the period of this business plan. If changes are necessary or amendments are made during this period the appropriate processes will be followed as laid out in the corporate control documents.
- 3.3 The final version of the business plan approved by the Board is required to be submitted to the Shareholder (Cabinet) for approval, expected to be the Cabinet meeting due on 16 September 2020.

### **4. BACKGROUND - ACTIVITY TO DATE**

#### **4.1 Housing Acquisitions, Conversions and Rental programme**

- 4.1.1 To date 11 properties have been acquired providing 38 units of residential accommodation and one commercial unit for rent. The commercial unit is contained within the ground floor level of one of the residential properties. Smith Woolley (SW) has been providing property search and assessment services and currently manage most of the properties. Reeds Rains also manage a couple of the first units acquired and, as these become available to re-let, the Board will consider their future management arrangements to ensure that the most advantageous arrangements are secured.

4.1.2 All rents have been set at a market level and acquisitions to date have been financed at a 90:10 loan to equity ratio. The original loan funding provided by the Council for acquiring properties to rent at market levels was at an interest rate of 4.88% (4% if the properties acquired were to be let at affordable rents).

4.1.3 Prior to the strategic financial review in 2018, covered in section 5 below, an initial £4.78m was approved by the shareholder to support the company and, to date, approximately £4.3m has been invested in the 11 properties acquired, including fees. In summary the property portfolio;

- is generating an average gross yield of 5.8%,
- has seen its value increase by 18.8% since acquisition to 31 March 2020,
- has seen its net value, after Stamp Duty Land Tax, increase by £547k since acquisition to 31 March 2020.

A detailed list of the property portfolio with valuations and yields is shown in appendix 1 to the business plan.

4.1.4 The property portfolio was revalued at 31 March 2020 by an independent RICS qualified valuer and this resulted in an average increase of 4.5% in its value over the year.

## 4.2 **Grounds Maintenance Activity**

4.2.1 The Company, since its inception in 2014 had offered a range of gardening and grounds maintenance services to both local residents and businesses that utilized the resources of the Council's Grounds Maintenance Unit as part of its diversified commercial offering. The following grounds maintenance services were agreed to be provided on behalf of the Company:

- Grass and hedge cutting
- Hanging baskets, annual flower, displays, shrub and rose beds
- Soft landscaping, including planting and turfing
- Sport pitch maintenance, including line marking
- Tree advice, management and associated works
- Weed killing including hard surface treatments and Japanese Knotweed treatment

4.2.2 However, changes to the demands on the Grounds Maintenance unit have meant a reduction in the capacity to provide this service and the overall long term commercial viability of providing these services against local competitors within the market has seen a realignment of grounds maintenance offering to broadly focus on tree-related work for external



customers. The Company will instead continue with its strategic focus on seeking out development and investment opportunities within the property market to generate greater commercial returns for the shareholder.

- 4.2.3 This change has resulted in a small reduction in the net income to the company of about £6,000 per year from these works. Additionally, the impact of Covid-19 has curtailed most of this work in the first half of 2020/21 and will see a further reduction in the net income of about £3,000. These changes are reflected in the financial position in section 4 below.

## 5 COMPANY FINANCIAL POSITION

### 5.1 Profit and Loss Account 2019/20 (Subject to Audit)

- 5.1.1 The table below summarises the company's Profit and Loss Account for the year to 31 March 2020 with comparative figures for the previous financial year and shows the accumulated trading loss, before adjustments for unrealised property valuation gains are reflected.

Table 1 Company's Profit and Loss Account

<u>Profit and Loss Account</u>	2018/19	2019/20
	£	£
<b>Housing Rental</b>		
Rental Income	238,997	250,075
Rental Expenses	<u>(63,415)</u>	<u>(87,105)</u>
Net	175,582	162,970
<b>Grounds Maintenance</b>		
Income	66,033	24,451
Expenses	<u>(58,109)</u>	<u>(17,480)</u>
Net	7,924	6,971
<b>Overheads</b>		
Directors Remuneration	(12,508)	(8,923)
FHDC Officer Support	(15,741)	(24,000)
Operating Expenses	<u>(20,383)</u>	<u>(16,170)</u>
Total Overheads	<u>(48,632)</u>	<u>(49,093)</u>
Loan Interest	(167,166)	(172,561)
<b>P &amp; L Operating Surplus / (Deficit) for period</b>	<u>(32,292)</u>	<u>(51,713)</u>
<b>P &amp; L Operating Loss b/f</b>	<u>(226,158)</u>	<u>(258,450)</u>
<b>P &amp; L Operating Loss c/f</b>	<u>(258,450)</u>	<u>(310,163)</u>

- 5.1.2 The company's full profit and loss account includes the unrealised valuation adjustments and any deferred tax liability arising from these. However, these items do not impact on the company's cash position and are excluded from the figures in Table 1, above.
- 5.1.3 Table 1 shows the company made an operating loss of about £51k in the year to 31 March 2020, subject to Audit. This means the accumulated operating loss is £310k. Although this may appear to be a cause for concern it is not unexpected. The point of the strategic financial review in early 2018 was to agree a way forward through additional investment which would allow the company to become financially sustainable over the medium term and to continue to provide a return to the Council.
- 5.1.4 In broad terms, the company's trading activities of residential property lettings and grounds maintenance cover their direct costs, including loan interest, but do not generate sufficient surpluses to meet its overheads.
- 5.1.5 The company's accounts are independently audited at the end of each financial year and have, so far, received an unqualified audit opinion to say they are a fair and accurate record of its financial activities.

## 5.2 Profit and Loss Forecast for 2020/21 & 2021/22

- 5.2.1 The company is expected to continue making losses over the next two financial years, again before any adjustment for unrealised property valuation changes. For 2020/21 the annual operating loss is forecast to be about £117k, reducing to £50k in 2021/22. This will leave the company with an accumulated operating loss £478k at 31 March 2022. Further detail of this shown in table 2 below:

Table 2 Forecast Profit and Loss Account 2020/21 and 2021/22

<b><u>Profit and Loss Account</u></b>	2020/21	2021/22
	£	£
<b>Housing Rental</b>		
Rental Income	264,114	405,383
Rental Expenses	<u>(93,936)</u>	<u>(135,755)</u>
Net	170,178	269,628
<b>Grounds Maintenance</b>		
Income	15,300	30,000
Expenses	<u>(12,240)</u>	<u>(24,000)</u>
Net	3,060	6,000
<b>Overheads</b>		
Directors Remuneration	(11,361)	(11,588)
FHDC Officer Support	(23,256)	(23,721)

Operating Expenses	<u>(47,534)</u>	<u>(23,138)</u>
Total Overheads	<u>(82,150)</u>	<u>(58,447)</u>
Loan Interest	(208,535)	(267,457)
<b>P &amp; L Operating Surplus / (Deficit) for period</b>	<u>(117,448)</u>	<u>(50,276)</u>
<b>P &amp; L Operating Loss b/f</b>	<u>(310,163)</u>	<u>(427,611)</u>
<b>P &amp; L Operating Loss c/f</b>	<u>(427,611)</u>	<u>(477,887)</u>
<b>Loan Repayments</b>		
Loan 1	(27,261)	(28,608)
Loan 2	0	0
Total Loan Repayments	<u>(27,261)</u>	<u>(28,608)</u>

5.2.2 During the period of this two year forecast the company will be making stage payments for the conversion and construction of further residential accommodation at the Royal Victoria Hospital (RVH) site in Folkestone, explained in more detail in section 5 below. During 2020/21 the company will incur additional interest and other finance costs of £62k which is the main reason for the increase in the projected loss.

5.2.3 In 2021/22 the company expects to start receiving the net benefit of the additional rental stream from phase one of the RVH scheme and this is the main reason for the reduction in the operating loss for the year to £50k.

5.2.4 Forecasts also predict the company will return an operating profit of about £15k in 2022/23 increasing to just about £80k in 2023/24, the first financial year it receives the full benefit from both phases of the investment in the RVH scheme. At this point the accumulated operating loss is projected to have reduced to about £384k and it is likely to take a further 4 to 5 years before this has been cleared.

### 5.3 Company Cash Flow Forecast

5.3.1 The Company's cash flow forecast for the period of the business plan to 31 March 2022 is shown in the table below:

**Table 3 Cash Flow Forecast**

	31/03/2020	31/03/2021	31/03/2022
	£'000	£'000	£'000
Cash b/f	47	207	228
Cap Ex - Claremont Rd Extension	(79)	-	-
Cap Ex - RVH	(1,275)	(3,725)	(1,700)
P & L net position	(51)	(117)	(50)
Net Movement Debtor/Creditors	15	-	-
Payment Accrued Interest	(458)	-	-
Main Loan Repayments	-	(27)	(29)
Drawdown Loan 1	778	-	-
Drawdown Loan 2	0	770	1,700
Working Capital Repayment	(80)	-	-
Equity	1,310	3,120	-
Cash c/f	207	228	149

5.3.2 The cash flow forecast demonstrates the company has sufficient cash resources available to it to meet its existing commitments and planned expenditure for the next two years including the investment in the RVH scheme totaling £6.7m. This position is based on the approved equity and loan funding package agreed by the Council in February 2018 as part of the strategic financial review of the company and outlined in more detail in section 5 below.

#### 5.4 Shareholder Benefit

5.4.1 The gross shareholder benefit to the Council from Oportunitas for the period from 2018/19 to 2021/22 is shown in the table below:

**Table 4 Shareholder Benefit**

	2018/19	2019/20	2020/21	2021/22
	Actual	Actual	Forecast	Forecast
	£	£	£	£
Interest received	-168,405	-172,561	-208,535	-267,457
Cost reimbursement				
Staff Cost	-15,741	-24,000	-23,256	-23,721
Members Allowances	-12,508	-8,923	-11,361	-11,588
Grounds Maintenance	-58,109	-17,480	-12,240	-24,000
Loan repayments	0	0	-27,261	-28,608
Total Return	-254,763	-222,964	-282,653	-355,374

## **6. FUTURE ACTIVITIES**

### **6.1 Strategic Financial Review Funding**

6.1.1 On 28 February 2018, Cabinet considered and approved a report regarding the future strategy for Oportunitas. This report included the outcomes of detailed strategic financial review of the level of investment required to make the company financially sustainable in the long term while still providing a return to the Council as the sole shareholder. In summary, the outcomes of this review in terms of the company were:

- £6.9m minimum additional capital investment required to acquire further residential properties to provide an enhanced revenue stream to trade sustainably;
- The overall debt to equity ratio required to be 58%:42%;
- Commercial interest on the loan element to remain at 4.88%;
- A minimum gross rental yield of 5% is required for new acquisitions;
- It will take at least 2 years for the company to acquire the additional residential property;
- It will take about a further 4 years from the completing the acquisitions to generate sufficient operational profits to absorb the forecast accumulated loss of around £300k; and
- The existing £300k liquidity loan facility to be reviewed.

6.1.2 Subsequently, full Council approved the £6.9m additional capital investment as part of the update to the Medium Term Capital Programme.

## **6.2 Royal Victoria Hospital - Background**

6.2.1 The Royal Victoria Hospital (RVH) was originally established as a small general hospital containing administrative offices, general and private wards, designed by Joseph Gardner and opened in 1890.

6.2.2 The hospital has a local history of serving generations of Folkestone residents as voluntary and military hospital before becoming part of the National Health Service from 1948. In 1979, the introduction of the new William Harvey Hospital in Ashford saw gradual scaling down of NHS services provided at the RVH until the final wards in the main building closed in 2006. The 2.3 acre site on Radnor Park Avenue since closure has remained derelict and was purchased by Kent County Council from East Kent Hospitals University Trust before being sold on to a local developer in November 2018 that realises its wider regeneration and development potential.

## **6.3. RVH - The Proposal**

6.3.1 As part of the company's commitment to explore commercial opportunities in line with its wider business objectives, Oportunitas has been involved in negotiations to purchase 'off plan' from the developer at a cost of £6.45 million, the first two phases of the proposed RVH development that will incorporate:

- Phase 1: The regeneration and conversion of the existing hospital building into 18 units comprising of 15x 2 bedroom and 3x 1 bedroom apartments proposed for completion in summer of 2021. This will provide an additional gross rental of about £202k per year.
- Phase 2: A newly developed block adjacent to the existing hospital building of 19 units comprising of 17 x 2 bedroom and 2 x 1 bedroom apartments proposed for completion in the summer of 2022. This will provide an additional gross rental of about £207k per year.

6.3.2 The acquisition of both phases 1 and 2 of the completed scheme will generate an additional gross income of £407k per year which is a yield of about 6.4% on the investment. This yield is comparable with the existing property portfolio and in line with the company's target return.

6.3.3 Should there be a delay to the scheme or it takes longer than anticipated to let all the units on completion then this is likely to adverse effect on the profit and loss position for the company over and it will take longer to clear the accumulated losses outlined in section 4 above.

6.3.4 In addition to the projected financial benefits to the Company, the investment in the scheme secures a regeneration benefit to this locally significant Victorian building within central Folkestone and will

complement existing local regeneration projects, including the Radnor Park Lodge and Folkestone Harbour Arm as well as the Council's wider regeneration strategy for the future of Folkestone Town Centre.

## 7. RISK MATTERS

### 7.1 Company Risks Identified

7.1.1 Table 6 below presents a matrix style assessment providing a judgement on the combination of probability/likelihood of occurrence and severity of impact on the Company. All risks will be kept under review during the year.

<b>Table 6 Company risks - detailed assessment</b>				
<b>Company Risk</b>		<b>Prob-ability</b>	<b>Impact</b>	<b>Risk Management Action</b>
<b>LEGAL</b>				
A	Contractual Disputes	Low	Medium	Governance structures in place to ensure that contracts which require Council approval are considered appropriately. Oportunitas will take appropriate legal advice before entering into contracts.
B	The balance between Council control and the Company's ability to deliver against its Business Plan results in the Company's inability to operate effectively	Low	High	Detailed definitions contained within the key corporate governance documents mitigate against this risk. Board is given adequate decision-making powers and independence.
<b>LEGAL / FINANCE</b>				
C	Breach of EU state aid rules	Low	Medium	Independent legal advice sought when the company was established which confirmed Council's funding of the Company was compliant with state aid rules.
<b>FINANCE</b>				

D	The Company fails to adhere to loan repayment obligations	Low	Medium	A repayment schedule is prepared and financial matters are discussed regularly with the board. Quarterly reports are given to Cabinet.
E	Failure of housing to be competitive and/or attractive to tenants	Low	Low	The acquisition programme is professionally managed to ensure a competitive product is offered.
F	Rental income returns fall short of projections included in the Business Plan	Low	Medium	Rental values are kept under review and financial implications reported to the Board. Changes will be made to activities if necessary and appropriate returns are not made.
G	Failure to arrange adequate insurance cover for the Company's liabilities and assets	Low	Medium	The Council's Finance Team is has appropriate insurance in place. The Shareholders Agreement enables the Company to purchase and maintain adequate insurance against all risks comparable to that insured by companies carrying out similar business
H	Failure to arrange adequate insurance cover for the Company's Directors	Low	Medium	The Company has insurance in place for its Directors against any liability which may be incurred in relation to their role as Company Director
I	Challenge from auditors (Council or external)	Low	Low	The Company has appointed its own external auditors and accountant.
J	Failure to comply with taxation laws (Corporation Tax and VAT)	Low	Low	The company will take independent tax advice.
K	Properties decrease in value resulting in an impairment	Low / Medium	High	The Company Board will keep under review and if necessary will look at options such as changing the mix of portfolio, refinancing or sale of properties.
L	Movement in interest rates	Medium	Medium	The Business plan will take into account the likelihood of medium to long term increases in interest rates and the impact this will have on viability of future activities, adjusting activities accordingly.



<b>FINANCE / OPERATIONAL</b>				
M	Assumption of values for acquisition and refurbishment and rental yields proves to be inadequate	Medium	High	Need to regularly review the market conditions to ensure that the activity is managed within the overall budget envelope.
<b>OPERATIONAL</b>				
N	Mechanism for drawing down funding proves to be too slow and costly to facilitate delivery of acquisitions programme	Low	High	Facility is agreed for Council draw down process.
O	Higher level of voids than projected or rent arrears	Low	High	A void rate of 3% has been included in the Business Plan and will be regularly reviewed. Rent arrears kept under review with immediate action taken for non-payment.
P	Allowances for maintenance and repairs in the Business Plan prove to be inadequate	Low	Medium	This has been allowed for in the Business Plan and will be regularly reviewed.
Q	Conflict of interest over workload priorities of Council and Company	Low	Medium	Council will retain control over the staffing of the Company. Council resources will be invoiced to the Company.
R	Lack of capacity to manage the Company's workload	Low	Medium	Staff resources carefully managed and balance of staffing needs regularly reviewed, with flexibility retained to provide additional capacity as required.
S	The Company is inadequately resourced in terms of management, accounting, legal and admin	Low	Medium	As above.

<b>PROCUREMENT</b>				
T	Failure to adhere to EU procurement rules	Low	Low	Procurement rules transferred to the Company from the Council including the use of approved procurement frameworks.
<b>OTHER</b>				
U	Conflict of interest for members acting as Directors of the Company	Low	Medium	In accordance with the Council's constitution dispensations have been granted to Councillors allowing them to speak and vote at meetings where Company affairs are being discussed.
V	Company strays beyond its objectives	Low	High	Objectives clearly defined within governance documents and protected by annual Council approval of the Company's rolling Business Plan.
W	Inaccuracy in stock condition information on the properties prior to acquisition leading to unexpected maintenance costs	Low	Medium	Detailed stock condition information acquired prior to acquisition. Surveys undertaken as needed to ascertain expected maintenance costs.
X	Inclusion of trading activities weakens the Company's strategic focus	Low	Medium	The Company will provide mechanism for invoicing private work and will not detract from the strategic objectives of the Company's programme of activities.

## Appendix A: Scheme of Delegation & Financial Thresholds –

Board decisions need to be taken in a timely manner to pursue property purchases. The financial delegation thresholds are included as per the Shareholder's Agreement with financial delegations for works, supplies and services aligned with existing FHDC thresholds:

### Works, Services & Supplies:

Total Value	Type of Contract	Procedure
£1,000 to £9,999	Works, supplies and services	At least one quote to be obtained in advance
£10,000 to £99,999	Works, supplies and services	At least three quotes to be obtained in advance
100,000to £164,175	Works, supplies and services	At least three written tenders in advance following advertisement by public notice.
£164,176	Supplies and services	EU rules apply.
£164,176 to £4,104,393	Works	Full competitive process with tenders following advertisement by public notice
£4,104,394 plus	Works	EU rules apply

### Property Acquisitions:

Total Value	Type of Contract	Procedure
£0 to £150,000	Purchase of property	Officer decision in consultation with a senior director, subsequent notification of the purchase to the Board
£150,001 to £250,000	Purchase of property	Officer recommendation with sign-off by two senior directors, subsequent notification of the purchase to the Board

£250,000 and over	Purchase of property	Board decision.
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Note: 'Officer' of the Council is seconded to work for the company via the SLA, they then effectively have the powers and delegations given to them through the company's governing documents, including the Shareholder's Agreement. This should then be sufficient to enable an officer acting on behalf of the Company to agree to purchase a property in accordance with the above table.

### **Delegations / Authorised Signatories**

Delegation levels will be established for key Company staff (and FHDC Officers delegated to support the Company) and Board members and included in the Shareholder's Agreement.

Proposals are that signing authorities will be:

- Cheques and other bank payments up to £10,000 - FHDC Officer with delegated authority;
- Cheques and other bank payments £10,000 and over - Senior Director, or FHDC Officer with delegated authority;
- All external contracts – Chairman or Senior Director;
- Approval of Purchase Orders - FHDC Officer with delegated authority;
- Approval of Purchase invoices up to £10,000 - FHDC Officer with delegated authority;
- Approval of Purchase invoices £10,000 and above – Senior Director, or FHDC Officer with delegated authority;
- Loan Agreements – Chairman or Senior Director; and
- Funding Agreements – Chairman or Senior Director.

Appendix 3a (Business Plan Appendix 1)  
Opportunitas Limited Property Schedule at March 2020

ITEM NUMBER	ASSET REFERENCE	PROPERTY ADDRESS	DESCRIPTION	PURCHASE COST (EXCLUDING SDLT)	VALUATION AT 31/03/20	CURRENT RENT PCM	RENTAL YIELD %
1	AR0001	Flat 1, 2 Walter Tull Way, Folkestone	1 bed flat	£200,000	£151,000	£550	4.37%
2	AR0002	Flat 2, 2 Walter Tull Way, Folkestone	1 bed flat		£144,500	£540	4.48%
3	AR0003	4 Walter Tull Way, Folkestone	2 bed house	£155,000	£216,500	£775	4.30%
4	AR0004	6 Watler Tull Way, Folkestone	2 bed house	£155,000	£216,500	£700	3.88%
5	AR0005	16 Walter Tull Way, Folkestone	3 bed house	£170,000	£236,700	£850	4.31%
6	AR0006	2 Grove Terrace, Folkestone	4 bed house	£160,000	£202,000	£865	5.14%
7	AR0007a	Flat 1, 15 Grace Hill, Folkestone	1 bed flat	£500,000	£102,700	£560	6.54%
8	AR0007b	Flat 2, 15 Grace Hill, Folkestone	1 bed flat		£102,700	£585	6.84%
9	AR0007c	Flat 3, 15 Grace Hill, Folkestone	1 bed flat		£99,100	£585	7.08%
10	AR0007d	Flat 4, 15 Grace Hill, Folkestone	1 bed flat		£93,500	£510	6.55%
11	AR0007e	Flat 5, 15 Grace Hill, Folkestone	1 bed flat		£93,500	£515	6.61%
12	AR0007f	Commercial Unit, 15 Grace Hill	Office space		£81,000	£625	9.26%
13	AR0008a	Flat 1, 82 Leyburne Road, Dover	2 bed flat	£810,000	£103,250	£590	6.86%
14	AR0008b	Flat 2, 82 Leyburne Road, Dover	2 bed flat		£120,000	£590	5.90%
15	AR0008c	Flat 3, 82 Leyburne Road, Dover	2 bed flat		£120,000	£560	5.60%
16	AR0008d	Flat 4, 82 Leyburne Road, Dover	2 bed flat		£114,500	£600	6.29%
17	AR0009a	Flat 1, 84 Leyburne Road, Dover	2 bed flat		£103,250	£625	7.26%
18	AR0009b	Flat 2, 84 Leyburne Road, Dover	2 bed flat		£120,000	£550	5.50%
19	AR0009c	Flat 3 84 Leyburne Road, Dover	2 bed flat		£120,000	£545	5.45%
20	AR0009d	Flat 4, 84 Leyburne Road, Dover	2 bed flat		£114,500	£550	5.76%
21	AR0010a	Flat 1, 19 Castle Hill Avenue, Folkestone	1 bed flat	£1,200,000	£133,500	£635	5.71%
22	AR0010b	Flat 2, 19 Castle Hill Avenue, Folkestone	1 bed flat		£143,750	£640	5.34%
23	AR0010c	Flat 3, 19 Castle Hill Avenue, Folkestone	2 bed flat		£176,000	£675	4.60%
24	AR0010d	Flat 4, 19 Castle Hill Avenue, Folkestone	1 bed flat		£138,500	£625	5.42%
25	AR0010e	Flat 5, 19 Castle Hill Avenue, Folkestone	1 bed flat		£133,500	£610	5.48%
26	AR0010f	Flat 6, 19 Castle Hill Avenue, Folkestone	1 bed flat		£133,500	£595	5.35%
27	AR0010g	Flat 7, 19 Castle Hill Avenue, Folkestone	1 bed flat		£122,750	£610	5.96%
28	AR0010h	Flat 8, 19 Castle Hill Avenue, Folkestone	1 bed flat		£122,750	£605	5.91%
29	AR0010i	Flat 9, 19 Castle Hill Avenue, Folkestone	1 bed flat		£117,250	£610	6.24%
30	AR0010j	Flat 10, 19 Castle Hill Avenue, Folkestone	1 bed flat		£117,250	£605	6.19%
31	AR0011a	Flat 1, 84 Sidney Street, Folkestone	1 bed flat	£385,000	£115,000	£530	5.53%
32	AR0011b	Flat 2, 84 Sidney Street, Folkestone	1 bed flat		£97,500	£535	6.58%
33	AR0011c	Flat 3, 84 Sidney Street, Folkestone	1 bed flat		£97,500	£525	6.46%
34	AR0011d	Flat 4, 84 Sidney Street, Folkestone	2 bed flat		£85,250	£625	8.80%
35	AR0012a	Flat 1, 1 Claremont Road, Folkestone	1 bed flat	£350,000	£87,250	£550	7.56%
36	AR0012b	Flat 2, 1 Claremont Road, Folkestone	1 bed flat		£97,500	£550	6.77%
37	AR0012c	Flat 3, 1 Claremont Road, Folkestone	1 bed flat		£97,500	£535	6.58%
38	AR0012d	Flat 4, 1 Claremont Road, Folkestone	1 bed flat		£80,100	£460	6.89%
39	AR0012e	Flat 1a, 1 Claremont Road, Folkestone	1 bed flat	£80,000	£101,000	£595	7.07%
<b>Total</b>				<b>£4,085,000</b>	<b>£4,852,550</b>	<b>£23,385</b>	<b>5.78%</b>

Gain on purchase price

**£767,550**

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This Report will be made public on 8 September 2020



Report Number **C/20/31**

**To:** Cabinet  
**Date:** 16 September 2020  
**Status:** Non key decision  
**Responsible Officer:** John Holman – AD Housing  
Andy Blaszkowicz – Director, Housing & Operations  
**Cabinet Member:** Councillor David Godfrey - Cabinet Member for Housing, Transport and Special Projects

**SUBJECT:** **VISION – FOR THE HOUSING MANAGEMENT SERVICE**

**SUMMARY:** This paper outlines the vision for the new Housing Management Service; describing the delivery principles that will provide operational clarity and accountability. The Vision is the long term destination for the Service; the initial work being to ensure the service is built on sound systems, processes and staff on which the culture and values will be shaped and embedded within the council. The paper considers consultation feedback from the Tenant and Leaseholder Liaison Board and the Overview and Scrutiny Committee.

#### **REASONS FOR RECOMMENDATIONS:**

Cabinet are asked to consider the feedback from the Tenant and Leaseholder Liaison Board and the Overview and Scrutiny Committee, the minor amendments to the draft Vision for the Housing Management Service and approve the draft document which sets out clear principles of how the Council will operate and manage the Housing Management Service.

#### **RECOMMENDATIONS:**

- 1. To receive and note the report.**
- 2. To note the consultation responses from the Tenant and Leaseholder Liaison Board and feedback from Overview and Scrutiny Committee.**
- 3. To note the amendment to the Vision.**
- 4. To approve the draft Vision for the Housing Management Service.**

## 1. BACKGROUND

- 1.1 The housing management service transfers from East Kent Housing to the Council on 1<sup>st</sup> October 2020. The Council is fully committed to building a world class housing service where officers work together with tenants and members to deliver the best possible housing outcomes. It is key that the Council has a clearly defined set of strategic principles that will guide the design and implementation of the new service.

## 2. THE VISION

- 2.1 The Vision sets out an efficient, customer centric way of working. Correctly delivered, it will reflect best practice (according to industry standards / House Mark etc.), drive continual improvement, prioritise the necessary estate improvements, and create the conditions in which a truly excellent service will be delivered to FHDC tenants and leaseholders.

- 2.2 The Vision includes the following key principles;

- Tenants will be at the heart of the service.
- Digital by default with processes in place for the more vulnerable.
- Services provided by neighbourhood with specialists operating across the estate.
- Housing management service fully integrated into the Council, with specialist estate management resources and embracing case management.
- Real time reporting and clear accountability.
- New asset management strategy to establish framework for estates management, regeneration and new build, embracing modern methods of construction and the Council's zero carbon agenda.

- 2.3 The full **Vision for the Housing Management Service** is attached at appendix 1.

## 3. CONSULTATION

- 3.1 The Vision document was sent out to the Tenant and Leaseholder Liaison Board for their consideration. Tenant feedback was provided to officers at the Tenant and Leaseholder board meeting on 6<sup>th</sup> July. This feedback was then presented to the Overview and Scrutiny Committee by the Chair of the Tenant and Leaseholder board at the 14<sup>th</sup> July meeting. The Tenant and Leaseholder board feedback is included at appendix 2 whilst the key points from the Overview and Scrutiny Committee meeting are listed in paragraph 3.3 below.

- 3.2 The Tenant and Leaseholder board were happy with the document and requested no changes. They summarised their feedback in the statement that they were 'cautiously optimistic' with the housing management service transitioning back to the Council.



3.3 The following points were raised at the OSC meeting:

- Carbon neutrality aspirations for new builds with the possibility of existing, stock moving towards this as well.
- Environmental aspects of existing stock, retro-fitting for added efficiency.
- Energy grant availability in attaining green standards for all stock.
- The importance of neighbourhood officers building sustainable relationships with tenants rather than contact being made by multiple officers.
- Service and compliance efficiency.
- Digital efficiency with the option of traditional services maintained for tenants/leaseholders.
- Whistleblowing and transparency – a live reporting system and dashboard information are planned.
- Safety – The Vision document is aspirational and a fresh start is needed, however it was noted that safety aspects could be added to the document.

3.4 Many of the points raised at the OSC meeting are encapsulated within the Vision document with an additional point now included about safety.

3.5 The following principle has been added to the Vision as Principle 2:

***‘The Health and Safety of our tenants and leaseholders is paramount. We will learn from the past and embed a culture of health and safety throughout the organisation.’***

3.6 In operational terms, the council’s estate management team will be led internally by specialists to give the necessary focus on health, safety and compliance issues.

#### **4. RISK MANAGEMENT ISSUES**

4.1 The only perceived risk is set out below.

<b>Perceived risk</b>	<b>Seriousness</b>	<b>Likelihood</b>	<b>Preventative action</b>
Cabinet not willing to approve document	medium	Low	Informal and formal consultation process undertaken with the Tenant and Leaseholder Liaison Board and OSC to gain approval for Vision providing confidence in document to Cabinet.

#### **5. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS**

**5.1 Legal Officer's Comments (NM)**

There are no legal implications arising directly from this report.

**5.2 Finance Officer's Comments (CI)**

There are no financial implications arising directly from this report.

**5.3 Diversities and Equalities Implications (AB)**

There are no diversities or equalities implications arising directly from this report.

**6. CONTACT OFFICERS AND BACKGROUND DOCUMENTS**

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

John Holman, Assistant Director, Housing  
[John.holman@folkestone-hythe.gov.uk](mailto:John.holman@folkestone-hythe.gov.uk)

Andy Blaszkowicz, Director, Housing & Operations  
[andy.blaszkowicz@folkestone-hythe.gov.uk](mailto:andy.blaszkowicz@folkestone-hythe.gov.uk)

**Appendices:**

Appendix 1: Vision for the Housing Management Service.

Appendix 2: Tenant and Leaseholders presentation.

Folkestone & Hythe District Council

# **Vision**

for the Housing Management Service

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Introduction	3
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How the vision will be achieved	4

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# Vision for the Housing Management Service

## Introduction

Folkestone & Hythe District Council are in a unique position to create a new Housing Service for its tenants. To some extent the Council has a blank sheet of paper, not restricted by systems, procedures, previous methods of working and ways of communicating as well as staff wanting to play a part in shaping the new service. The new service has the opportunity to become the vanguard of the Council's transformation programme as it is not encumbered with history and being HRA funded it should be able to move swiftly and smoothly to adapt to new ways of working.

This paper outlines the vision for the new Housing Management Service; describing the delivery model that will provide operational clarity and accountability. The Vision is the long term destination for the Service; the initial work being to ensure the service is built on sound systems, processes and staff on which the culture and values will be shaped and embedded within the council.

## The Vision

The vision for the service is based around the following key principles:

1. Tenants will be at the heart of the new service and are our best advocates.
2. The Health and Safety of our tenants and leaseholders is paramount. We will learn from the past and embed a culture of health and safety throughout the organisation.
3. Success will be measured by the annual tenant STAR survey (if existing surveys are not up to date then a new survey will be completed in Autumn/Winter 2020).
4. FHDC staff will consider it a stimulating and rewarding place to work and stakeholders find us easy, flexible and professional to work with. (This will be measured by internally managed surveys).
5. Digital efficiency across the service will provide tenants with access to their rent accounts, tenancy sign up, repairs reporting, and details of their home e.g. location of asbestos, SAP levels, future planned maintenance work. Work and visits will be organised around the customer; we will be sufficiently confident to share our performances on line and in real time, e.g. Trip Advisor style. Invoices will be electronic, paper confined to history whilst systems will be put in place for customers who cannot interact digitally. Staff will operate remotely with full access to the housing systems requiring a minimal office footprint.
6. The Service will integrate with the wider Council from day 1 fully embracing the case management approach to service delivery whilst allowing specialists to deliver their expert areas of housing, i.e. estate & building management distinct and led by a dedicated professional team, while being complementary to tenant management.

7. Neighbourhood management will be the backbone of the Service with Housing Officers and Area Surveyors being responsible for discrete geographical areas of the housing stock. Neighbourhoods will be determined by workload (rather than number of homes), and are likely to change with time and activity e.g. an area may have significant repair demand that will reduce after a planned maintenance programme has been completed. Flexibility across the resources in neighbourhood management will be key to providing resilience in the service.
8. The specialist functions will operate across the housing stock and work closely with the neighbourhood team.
9. A new Asset Management Strategy will be designed alongside an HRA Acquisition and Development Strategy. These two documents will provide the framework to enable us to manage and improve our existing stock and develop our new build programme. New homes will be site specific and aspire to be constructed to carbon neutral standards, they will embrace new methods of construction and digitisation, supporting future technology and the self-service vision for the Service for tenants and equipment.
10. The Service will be reliant on contractors providing services (and the service will therefore include staff skilled in procurement and contract management). As contracts expire all methods of service delivery will be explored, e.g. directly employing, the use of contractors, or a mix of both to improve service delivery through critical areas. Where contracts are let scoring will be weighted in favour of local SME's and supply chains and companies that provide local apprenticeships, trainees and other employment opportunities.

### **How the Vision will be achieved**

11. With a go live date for the Housing Management Service of 1 October 2020 focus will be on creating the initial operating structure, appointing staff (or interims) with the right attitude that will help deliver the service whilst ensuring clarity of roles and embedding the performance management framework from the start.
12. The heavy lifting of embedding the new structure, processes and systems will be completed over the next 2 years whilst the culture will emanate from the existing Council during service integration and beyond. The service will evolve as strategies are implemented and service areas become more efficient driving continual improvement.
13. New ways of working will not be limited to transactional services and will extend to all areas, such as the selection of products and materials used in the housing stock that will enable self-diagnosis and reporting of faults providing just in time solutions to be delivered over break down and fix arrangements.
14. Delivering a people centred business, such as Housing, with the ongoing threat of Corona Virus has necessitated new ways of working. Where appropriate these ways of working will be embedded and at the same time further approaches to work will be needed to ensure safe practices for tenants, contractors and staff.

15. This vision will not be delivered until the housing service is fully integrated throughout the Council. Methods of working, training, governance, performance management etc. are the foundation on which the housing service will be constructed.

16. The vision sets out an efficient, customer centric way of working. Correctly delivered, it will reflect best practice (according to industry standards / House Mark etc.), drive continual improvement and create the conditions in which a truly excellent service will be delivered to FHDC tenants and leaseholders.

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# Tenant & Leaseholder Board Feedback

## Housing Service Vision

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- ❖ Due to historic issues the confidence in the Council was limited.
- ❖ A meeting with Senior Council Officers on the 6<sup>th</sup> July, discussed the Vision for the Housing Service with the Tenant & Leaseholder Board
- ❖ The outcome is that the Tenant & Leaseholder Board have a good understanding of the Vision
- ❖ The Tenant & Leaseholder Board has not requested any changes to the Vision
- ❖ The Tenant & Leaseholder Board have summed up their comments about the Vision as “cautiously optimistic”
- ❖ The Board provided feedback on what they think “tenants being at the heart of the service” means.....

# Tenant & Leaseholder Board Feedback

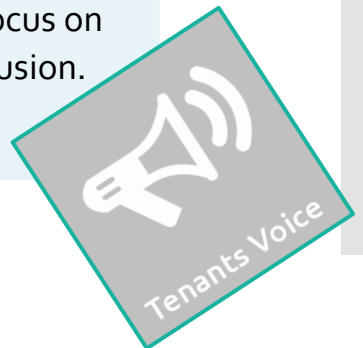
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## Housing Service Vision

- ❖ There is an expectation that all tenants & leaseholders will be given opportunities to be involved in, consulted on, or facilitate the following:



Tendering process	Voids	Disabled adaptations	Garden Competition
Contract interviews	Stock survey	Annual conference for all tenants	Engagement with tenants at all levels
Environmental Improvement Programme	Have their own communication group (with logo)	Contractor contract meetings/KPIs etc.	Leaseholders involved with costings etc.
Estate inspections	Workshops & training	ASB – regular meetings with CSU (patches)	Validation of Satisfaction
Scrutiny panel for tenants	New builds – architects & plans upwards	Independent Living Schemes – estate inspections	renewed focus on tenant inclusion.



# Tenant & Leaseholder Board Feedback Housing Service Vision

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- ❖ Tenant & Leaseholder Board has been consulted on, or been involved in:
  - the Vision for the Housing Service
  - Interviews for senior specialist posts within the housing service
- ❖ We will also be involved in agreeing the patch areas for Neighbourhood Officers.
- ❖ We will need to recruit more participants from the wider tenant base to joint board members on the Scrutiny Panel and Communications Group.



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This Report will be made public on 8 September 2020



Report Number **C/20/33**

**To:** Cabinet  
**Date:** 16 September 2020  
**Status:** Non key  
**Responsible Officer:** Charlotte Spendley, Director – Corporate Services  
**Cabinet Member:** Councillor David Wimble, Cabinet Member for the District Economy

**SUBJECT:** ***‘CONSULTATION ON CHANGES TO PLANNING POLICY AND REGULATIONS’ BY THE MINISTRY OF HOUSING, COMMUNITIES & LOCAL GOVERNMENT***

**SUMMARY:** The Ministry of Housing, Communities & Local Government (MHCLG) is consulting on *‘Changes to the current planning system: Consultation on changes to planning policy and regulations’*. The consultation sets out proposed changes to planning guidance and regulations covering: the method for assessing housing numbers; delivering affordable homes through a new First Homes scheme; supporting small- and medium-sized developers; and extension of the Permission in Principle consent regime. The report sets out draft comments, which, if approved by Cabinet, would be sent to MHCLG as the council’s response to the consultation.

**REASONS FOR RECOMMENDATIONS:**

That Folkestone & Hythe District Council’s views on the consultation are provided to MHCLG so that they can be considered by Government before any changes are introduced.

**RECOMMENDATIONS:**

1. To receive and note report C/20/33.
2. To approve the draft consultation comments set out in Appendix 1 for submission to MHCLG, with any final amendments or additions agreed by the portfolio holder, in consultation with the Leader.

## 1. BACKGROUND

1.1 The Ministry of Housing, Communities & Local Government (MHCLG) is consulting on two linked documents:

- *‘Changes to the current planning system: Consultation on changes to planning policy and regulations’* - this consultation runs for eight weeks and closes on 1 October 2020; and
- The White Paper, *‘Planning for the Future’* - this consultation runs for 12 weeks and closes on 29 October 2020.

1.2 This report deals with the first consultation; consultation on the planning White Paper will be reported to Cabinet on 21 October 2020.

1.3 Draft comments to *‘Consultation on changes to planning policy and regulations’* are set out in Appendix 1. If approved by Cabinet, subject to any amendments made under Recommendation 2, these comments will be submitted to MHCLG as the council’s response to the consultation.

## 2. **‘CHANGES TO THE CURRENT PLANNING SYSTEM: CONSULTATION ON CHANGES TO PLANNING POLICY AND REGULATIONS’**

2.1 *‘Consultation on changes to planning policy and regulations’* accompanies the consultation on the planning White Paper, but runs to a shorter timescale, closing on 1 October 2020.<sup>1</sup> The White Paper *‘Planning for the Future’*<sup>2</sup> proposes more fundamental and long-lasting changes to the planning system and this will be reported separately to Cabinet.

2.2 *‘Consultation on changes to planning policy and regulations’* sets out four main proposals:

- Changes to the standard method for assessing how many new homes local authorities should plan for;
- Securing First Homes, sold at a discount to the market price, through developer contributions;
- Lifting the threshold below which developers do not have to provide affordable housing, to help small- and medium-sized building firms recover from the impacts of Covid-19; and
- Extending the current Permission in Principle to major developments to create a fast route to secure the principle of development for housing on larger sites.

These proposals are outlined in the four sections that follow.

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<sup>1</sup> The consultation paper is available to view on MHCLG’s website:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/907215/200805\\_Changes\\_to\\_the\\_current\\_planning\\_system\\_FINAL\\_version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907215/200805_Changes_to_the_current_planning_system_FINAL_version.pdf)

<sup>2</sup> The White Paper is available to view on MHCLG’s website:  
<https://www.gov.uk/government/consultations/planning-for-the-future>

### 3. STANDARD METHOD FOR ASSESSING HOUSING NUMBERS

- 3.1 In 2018 the Government replaced local assessments of housing need with a new national method to set out the minimum number of new homes that local authorities should plan for. Amendments were introduced with a new version of the National Planning Policy Framework (NPPF) in 2019. The current consultation sets out further changes to the standard national method.
- 3.2 It is unclear how this proposal relates to proposals in the planning White Paper: the White Paper states that the new housing requirement would be binding on local authorities, but would factor in land constraints<sup>3</sup>; however, the consultation on the technical changes does not include any allowance for land constraints.
- 3.3 The technical consultation states at paragraph 5:
- 'It is the Government's intention that the method set out in this document would form part of the process for setting any binding housing requirement. However, this consultation does not set out how this binding requirement would be calculated, which will be determined following the Planning for the Future consultation. Instead, it proposes a revised standard method for calculating local housing need which will be used as the basis for plans created prior to any changes outlined in Planning for the Future being introduced.'*
- 3.4 The statement that the method will form 'part of the process for setting any binding housing requirement' suggests that the proposed method would be used to establish a base figure for the minimum number of new homes in an area which would then be moderated through an assessment of the area's constraints, using a new, and as yet unpublished, adjustment.
- 3.5 The 2018 and 2019 changes brought in a new methodology to calculate the minimum number of new homes that local authorities should plan for. The methodology is based on figures from two data sets published and updated regularly by the Office for National Statistics (ONS). These are:
- The projected increase in the number of households in an area, as an annual average using a ten year period starting from the current year; and
  - A measure of current housing affordability, based on the ratio between the median wage and the median house price in an area using the most recent available figure.
- 3.6 These figures are entered into a formula set out in the Government's national planning practice guidance to arrive at the minimum annual number of new homes<sup>4</sup>. At the time the council was finalising the Core Strategy Review for submission to the Secretary of State this formula gave rise to a minimum need for the district of an additional 738 homes a year.

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<sup>3</sup> See: 'Planning for the Future', page 23

<sup>4</sup> See: <https://www.gov.uk/guidance/housing-and-economic-development-needs-assessments>

- 3.7 The technical consultation takes this approach as its starting point, but adds additional factors to the formula, including an assessment of the existing housing stock in an area and changes to affordability over the last ten years, in addition to the most recent housing affordability measure.
- 3.8 If the most recent ONS figures for the district are put into the new formula set out in the consultation document, this would result in a minimum number of 1,043 new homes a year for Folkestone & Hythe district. (However, as outlined above, this is described as being part of the process, rather than the final figure and it is not clear how this figure may be moderated.)
- 3.9 The consultation asks a number of questions relating to these proposals (Questions 1 to 7).

#### **4. DELIVERING FIRST HOMES**

- 4.1 First Homes is a new Government scheme intended to provide homes for local first-time buyers at a discounted rate of 30 per cent below market value. Sellers of First Homes will be required to sell at the same level of discount that applied at the initial purchase, and to another eligible First Homes purchaser.
- 4.2 The consultation sets out options for providing First Homes through developer contributions.
- 4.3 The consultation recognises that local planning authorities will already have targets in local plan policies for the different affordable tenures that should be provided through new developments (social rented, shared ownership, etc). The consultation proposes that, of the total affordable housing contribution provided by a development, the First Homes proportion should take precedence over any local requirement and a minimum 25 per cent of the affordable homes should be First Homes. Either:
- First Homes would take the place of tenures which secure the smallest discount from market price; or
  - Local authorities would be free to negotiate whatever mix of affordable tenures they wish on the remaining 75 per cent of affordable homes not designated as First Homes.
- 4.4 Where off-site financial contributions are made, rather than on-site provision, the consultation proposes that a minimum 25 per cent of the contributions should be used to provide First Homes. (Initially these changes would be delivered through Section 106 agreements, but if the proposals in the White Paper are brought into force, Section 106 agreements will eventually be replaced by a new Infrastructure Levy.)
- 4.5 The consultation proposes that the minimum discount for First Homes should be 30 per cent from the market price, which would be set by an independent registered valuer. Local authorities would have discretion to increase the discount to 40 or 50 per cent, but this would need to be evidenced through the local plan process.



4.6 The consultation states that the Government intends to amend the existing exception sites policy set out in the NPPF (which allows for sites to come forward on the edge of settlements as an exception to normal policies of restraint) to specify that these sites should deliver First Homes for local, first-time buyers. There will be flexibility in the policy to allow a small proportion of other affordable tenure homes to be delivered on these sites, as well as a small proportion of market homes where this is needed to make the scheme viable.

4.7 Questions 8 to 16 ask for views on these proposals.

## **5. SUPPORTING SMALL- AND MEDIUM-SIZED DEVELOPERS**

5.1 The consultation emphasises that the Government is committed to helping small- and medium-sized developers (SMEs), as they provide variety in the housing market, speed up the build-out rate of new homes and increase the overall supply.

5.2 The consultation proposes reforms to help SMEs for a limited period during the economic recovery from Covid-19; these changes would release a wider range of sites from the need to provide affordable housing through Section 106 agreements.

5.3 Currently local planning authorities can require affordable homes to be provided on sites of ten dwellings and above, or in designated areas, such as Areas of Outstanding Natural Beauty (AONBs), on sites of six dwellings and above.

5.4 The consultation proposes to raise the threshold for a limited period of 18 months and asks whether the threshold at and above which affordable homes could still be required should be 40 or 50 new homes. This would mean that sites that are given planning permission below this threshold would not have to provide any affordable homes for an 18 month period from the point when the change to national policy is made.

5.5 The consultation proposes that the threshold for designated areas should remain unaltered.

5.6 Questions 17 to 23 ask what the threshold should be, how long the arrangement should be in place for and what the arrangements should be for designated areas, such as AONBs.

## **6. EXTENSION OF THE PERMISSION IN PRINCIPLE CONSENT REGIME**

6.1 A new system for 'Permission in Principle' was introduced in 2017 as a way to obtain faster consents for housing schemes. Permission in Principle consent has two stages:

- Permission in Principle – this stage establishes whether a site is suitable in principle for housing development. The grant of Permission in Principle is for five years and no planning conditions can be attached to it; and

- Technical details consent – this stage is when the detailed development proposals are assessed and conditions can be attached. National guidance states that: *‘Local planning authorities should take a proportionate approach to any information they request in support of applications for technical details consent, which should be relevant, necessary and material to the application in question. Local planning authorities are encouraged to consider whether this could be achieved by requesting that such information is provided in a single concise statement.’*<sup>5</sup>

Granting of Permission in Principle and technical details consents equates to full planning permission.

- 6.2 Currently applicants can only apply for minor developments through the Permission in Principle route (sites of one to nine dwellings). The consultation proposes that this restriction is lifted; the Government considers that this would be particularly helpful to small- and medium-sized developers. In practice, the consultation argues, there will be a natural cut-off point for the scale of sites where Environmental Impact Assessment Regulations Schedule 2 would be triggered (sites delivering more than 150 dwellings or sites of more than five hectares). Similarly this route would not be appropriate for sites in areas where there is a probability or risk that the project would have a significant effect on a European-designated site.
- 6.3 The consultation asks a number of questions about this proposal (Questions 24 to 34). Questions ask whether there should be any additional information that applicants would be required to provide, such as heights of buildings, and what publicity requirements should be put in place.
- 6.4 Other questions ask about the fees that would be payable. If the current Permission in Principle fee structure was scaled up for larger sizes of site, it would lead to a level of fees that would be only slightly below the fees for outline planning applications. The consultation states that the Government wants to establish Permission in Principle as a cheaper alternative to outline planning permission and so the consultation sets out proposals for a banded fee structure to keep the fees low.
- 6.5 The take-up of Permission in Principle consent since its introduction in 2017 has generally been very low; the consultation asks what guidance would be useful to increase awareness and use of this option.
- 6.6 The final question in the consultation (Question 35) asks about the equalities impacts of the Government’s proposals.

## 7. CONSULTATION

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<sup>5</sup> See: <https://www.gov.uk/guidance/permission-in-principle>

7.1 Consultation is being undertaken by Government on its changes to planning policy and regulations. This report sets out a proposed response to the Government's consultation.

## **8. OPTIONS**

8.1 The options are:

(1) Not to respond to the consultation

This would mean that the district council would not have the chance to influence the Government's proposed changes to the planning system.

(2) To respond to the consultation

This would mean that the district council's comments, as set out in Appendix 1, with any additions or amendments agreed under Recommendation 2, would be submitted to MHCLG for consideration in developing the Government's proposals.

## **9. RISK MANAGEMENT ISSUES**

9.1 The Cabinet report recommends submitting the comments set out in Appendix 1 to MHCLG, with or without amendments. It is not considered that this action comes with any appreciable risks.

<b>Perceived risk</b>	<b>Seriousness</b>	<b>Likelihood</b>	<b>Preventative action</b>
None	Not applicable	Not applicable	Not applicable

## **10. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS**

### **10.1 Legal Officer's Comments**

There are no legal implications arising directly from this report.

### **10.2 Finance Officer's Comments**

There are no financial implications at this stage of the consultation.

### **10.3 Diversities and Equalities Implications**

There are no diversities and equalities implications at this stage of the consultation. Implications will depend on the final proposals implemented by Government.

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

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

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**Appendices:**

Appendix 1: Consultation Questions and Proposed District Council Responses

## APPENDIX 1: CONSULTATION QUESTIONS AND PROPOSED DISTRICT COUNCIL RESPONSES

### STANDARD METHOD FOR ASSESSING HOUSING NUMBERS

**Question 1: Do you agree that planning practice guidance should be amended to specify that the appropriate baseline for the standard method is *whichever is the higher* of the level of 0.5% of housing stock in each local authority area OR the latest household projections averaged over a 10-year period?**

#### Proposed Folkestone & Hythe District Council Response

*See response to Question 2.*

**Question 2: In the stock element of the baseline, do you agree that 0.5% of existing stock for the standard method is appropriate? If not, please explain why.**

#### Proposed Folkestone & Hythe District Council Response

*It is not clear why a measure of the existing housing stock has been introduced into the formula to calculate future housing need. The consultation states that these new elements are intended to 'ensure that diverse housing needs in all parts of the country are taken into account.' However, the housing stock is a crude measure: in areas where there is high overcrowding, a factor for the existing housing stock is likely to underestimate housing need; in areas where there is a concentration of second homes or vacant properties, the addition of this factor is likely to overestimate housing need.*

*The consultation states that the current formula underestimates demand for housing in growing cities in the Northern Powerhouse, by being based on historic trends. However, current national policy and guidance already allow authorities to plan for higher levels of growth than set out in their minimum requirement figures.*

*Planning Practice Guidance currently stresses that the national methodology provides a minimum starting point and allows local authorities to plan for levels of growth above these figures, for example, to account for changing economic circumstances, growth strategies, infrastructure improvements or taking on unmet need from neighbouring authorities. Given that these changes were introduced relatively recently into national planning policy, they are unlikely to have been tested at many local plan examinations. It is not clear why existing planning guidance on this issue is considered inadequate.*

**Question 3: Do you agree that using the workplace-based median house price to median earnings ratio from the most recent year for which data is available to adjust the standard method's baseline is appropriate? If not, please explain why.**

#### Proposed Folkestone & Hythe District Council Response

*Given that this has been part of the methodology since its introduction in July 2018, it would be best to continue with this measure, as local authorities across*

*England will be planning to meet these requirements. The district council is bringing forward ambitious plans for a new garden settlement to meet its housing requirement, and has had to amend its Core Strategy Review three times over the course of preparing the plan for submission to take account of changing national policy and guidance.*

**Question 4: Do you agree that incorporating an adjustment for the change of affordability over 10 years is a positive way to look at whether affordability has improved? If not, please explain why.**

*Proposed Folkestone & Hythe District Council Response*

*If further changes to the methodology are introduced, the use of past affordability trends over a ten year period would reflect longer term trends and ensure that housing provision for a local authority's plan period would not be unduly influenced by an anomalous result from the most recent available year (e.g. reflecting a temporary housing price boom or slump).*

*However, if a ten year affordability average is used, it is not clear why the formula should also have the most recent housing affordability figure as a separate input into the calculation. This complicates the formula and creates an element of double-counting. It would be clearer and simpler to have an average affordability figure over a ten year period as the only input for this factor, in a similar way to how the housing projections are factored into the formula using a ten year average.*

**Question 5: Do you agree that affordability is given an appropriate weighting within the standard method? If not, please explain why.**

*Proposed Folkestone & Hythe District Council Response*

*The methodology currently measures affordability based on a single average wage and a mortgage of four times' annual income. To more accurately reflect affordability, the assessment needs to reflect the fact that many people buy homes with a joint mortgage. While some of these joint purchases may be a reflection of affordability problems (for example where a parent is a joint mortgagor with a child who is a first-time buyer), most will reflect a situation where the buyers are a couple and both mortgagors are in employment.*

**Do you agree that authorities should be planning having regard to their revised standard method need figure, from the publication date of the revised guidance, with the exception of:**

**Question 6: Authorities which are already at the second stage of the strategic plan consultation process (Regulation 19), which should be given 6 months to submit their plan to the Planning Inspectorate for examination?**

*Proposed Folkestone & Hythe District Council Response*

*See response to Question 7.*

**Question 7: Authorities close to publishing their second stage consultation (Regulation 19), which should be given 3 months from the publication date**

**of the revised guidance to publish their Regulation 19 plan, and a further 6 months to submit their plan to the Planning Inspectorate?**

*Proposed Folkestone & Hythe District Council Response*

*The council has already submitted its Core Strategy Review for examination, so understands that the emerging plan will not be affected by the current proposals, although they will be a factor when the district council's plan is next reviewed.*

*In general, it is important that local planning authorities are given sufficient time to advance their local plans before new national policies and guidance are brought into effect. The council has had to amend its Core Strategy Review three times while preparing the plan for submission to take account of changing national policy and guidance relating to housing provision; frequent changes in national policy only add to the time taken to adopt a local plan.*

*It is not clear how the proposals for the new housing methodology in this consultation relate to the proposals set out in the White Paper 'Planning for the Future'. The White Paper states that the new methodology will be binding on authorities and will factor in land constraints. The consultation on 'Changes to planning policy and regulations' does not refer to land constraints. The planning policy and regulations consultation also states that the proposed methodology will be temporary, prior to the changes in the White Paper being introduced; however, it also states that the new methodology will form 'part of the process' for setting the binding requirement, which suggests it will continue into the new system.*

*It is not clear from this how land constraints will be factored into this process: whether this will be a matter for testing at the examination of a local plan or whether the Government intends to introduce further changes to the national methodology at some future date. This is a very important consideration for Folkestone & Hythe, where large areas of the district are covered by Area of Outstanding Natural Beauty designation, are subject to high risk of flooding or are subject to international protection for their rare habitats.*

**If not, please explain why. Are there particular circumstances which need to be catered for?**

*Proposed Folkestone & Hythe District Council Response*

*See responses to Questions 5 and 6.*

## **DELIVERING FIRST HOMES**

**Question 8: The Government is proposing policy compliant planning applications will deliver a minimum of 25% of onsite affordable housing as First Homes, and a minimum of 25% of offsite contributions towards First Homes where appropriate. Which do you think is the most appropriate option for the remaining 75% of affordable housing secured through developer contributions? Please provide reasons and / or evidence for your views (if possible):**

**i) Prioritising the replacement of affordable home ownership tenures, and delivering rental tenures in the ratio set out in the local plan policy.**

**ii) Negotiation between a local authority and developer.**

**iii) Other (please specify)**

*Proposed Folkestone & Hythe District Council Response*

*The council generally supports the intention behind the First Homes proposals, to help local people buy their first home. The current proposals have several advantages over the previous Starter Homes initiative in that: homes would be reserved for local buyers; the discount would be set at a default value of 30 per cent of market value (rather than 20 per cent); and the intention is that the homes could only be sold on to other local first time buyers, rather than being sold on the open market after five years.*

*However, the levels of discount do not suggest that this will be an affordable option in this district; it appears that First Homes would be less affordable than existing shared ownership schemes where buyers usually purchase around 25 to 50 per cent of the property and have the ability to buy further shares later if their financial circumstances allow.*

*ONS figures from September 2019 show that the average house price in Folkestone & Hythe district is £260,000. This suggests that the average First Home would command a value of around £182,000, applying the default 30 per cent discount. Using the measure of affordability set out in the Government's national methodology for housing provision, which assumes a single wage and a mortgage of four times' annual income, this suggests that the average First Home in the district would only be affordable to a person earning above £45,000 a year. ONS figures show that the median workplace-based wage in the district is £27,310. This suggests that, using the government's own measure of affordability, First Homes will not be an affordable option in this district, particularly for single wage earning households.*

*For context, the council's Healthier Housing Strategy (2018-2023) found that 64 per cent of newly-forming households were unable to access shared ownership homes, with 36 per cent being able to consider shared ownership. The Strategy found that an entry-level two bedroom flat in the district of around £124,000 would require an income of approximately £35,000 and deposit savings of approximately £21,000. In the case of a three-bedroom family home valued at £219,000 and available for purchase on a 50 per cent shared ownership basis, the Housing Strategy found that buyers would require access to a deposit of approximately £18,615 and a gross household income of at least £31,000. This suggests that it will be considerably easier for newly forming households to buy an entry-level property on the open market, or a shared ownership family home at a 50 per cent share, than to buy the average First Home in Folkestone & Hythe district.*

*The council considers that First Homes may be one option but they should not take priority over other types of affordable housing; it should be left to local authorities to determine the mix of affordable tenures according to local circumstances and local evidence of need.*



**With regards to current exemptions from delivery of affordable home ownership products:**

**Question 9: Should the existing exemptions from the requirement for affordable home ownership products (e.g. for build to rent) also apply to apply to this First Homes requirement?**

*Proposed Folkestone & Hythe District Council Response*

*As outlined in the council's response to Question 8, the First Home option is likely to be at the very upper limits of affordability in Folkestone & Hythe district. While it may be an attractive option for some relatively high earning first time buyers, the council does not agree that it should be the default affordable housing product.*

*It is not clear why build-to-rent schemes should be exempt from this requirement if it is brought in. As a relatively expensive product, First Homes should not have as detrimental an impact on viability as affordable rented or shared ownership tenures.*

*The use of viability tests to reduce the numbers of affordable homes that schemes provide is a relatively new feature of the planning system and leads to great concern from local people about the quality of information and transparency of the planning system.*

**Question 10: Are any existing exemptions not required? If not, please set out which exemptions and why.**

*Proposed Folkestone & Hythe District Council Response*

*See the council's response to Question 9.*

**Question 11: Are any other exemptions needed? If so, please provide reasons and /or evidence for your views.**

*Proposed Folkestone & Hythe District Council Response*

*See the council's response to Question 9.*

**Question 12: Do you agree with the proposed approach to transitional arrangements set out above?**

*Proposed Folkestone & Hythe District Council Response*

*As outlined in the response to Question 7, it is important that local planning authorities are given sufficient time to advance their local plans before new national policies and guidance are brought into effect; frequent changes in national policy only add to the time taken to adopt a local plan.*

**Question 13: Do you agree with the proposed approach to different levels of discount?**

*Proposed Folkestone & Hythe District Council Response*

*As outlined in the council's response to Question 8, the First Home option is likely to be at the very upper limits of affordability in Folkestone & Hythe district, assuming a discount of 30 per cent of market price.*

*If this scheme is brought in, then local planning authorities should be able to set higher levels of discount in their local plans, based on local circumstances and evidence of local need.*

**Question 14: Do you agree with the approach of allowing a small proportion of market housing on First Homes exception sites, in order to ensure site viability?**

*Proposed Folkestone & Hythe District Council Response*

*As outlined in the council's response to Question 8, the First Home option is likely to be at the very upper limits of affordability in Folkestone & Hythe district. While it may be an attractive option to some relatively high earning first time buyers, the council does not agree that it should be the default affordable housing product.*

*The consultation states that the current exceptions sites policy in the National Planning Policy Framework will be amended to specify that affordable homes delivered on exceptions sites should be First Homes, but that the policy would 'allow a small proportion of other affordable homes to be delivered on these sites where there is a significant identified local need ...'*

*The council considers that First Homes may be one option for exceptions sites, but they should not take priority over other types of affordable housing; it should be left to local authorities to determine the mix of affordable tenures on exceptions sites according to local circumstances and local evidence of need.*

*It is not clear why market housing would be needed on exceptions sites to allow development for First Homes; as a relatively expensive product First Homes should not have as detrimental an impact on viability as affordable rented or shared ownership tenures. The use of viability tests to reduce the numbers of affordable homes that schemes provide is a relatively new feature of the planning system and leads to great concern from local people about the quality of information and transparency of the planning system.*

**Question 15: Do you agree with the removal of the site size threshold set out in the National Planning Policy Framework?**

*Proposed Folkestone & Hythe District Council Response*

*The National Planning Policy Framework specifies that entry-level exceptions sites should not be larger than one hectare in size or exceed 5 per cent of the size of the existing settlement. This does seem an arbitrary threshold; the council would support a change to state that exceptions sites should be proportionate in size to the existing settlement. This would then be determined through the development management process based on local circumstances.*

**Question 16: Do you agree that the First Homes exception sites policy should not apply in designated rural areas?**

### Proposed Folkestone & Hythe District Council Response

*As outlined in the council's response to Question 8, the First Home option is likely to be at the very upper limits of affordability in Folkestone & Hythe district. It should be left to local authorities to determine the mix of affordable tenures on rural exceptions sites according to local circumstances and local evidence of need.*

## **SUPPORTING SMALL- AND MEDIUM-SIZED DEVELOPERS**

### **Question 17: Do you agree with the proposed approach to raise the small sites threshold for a time-limited period?**

#### Proposed Folkestone & Hythe District Council Response

*While it is appreciated that, at face value, this proposal could temporarily assist the viability of some schemes, it could disproportionately harm the district's supply of affordable housing given our reliance on smaller sites, especially as we are not dependant on Section 106 for the majority of contributions.*

*While the council is bringing forward ambitious plans for a new sustainable garden settlement of up to 10,000 new homes, the council's Places and Policies Local Plan identifies a number of smaller sites throughout the district that would fall below the revised threshold (40 or 50 homes) and so not contribute to affordable housing in the district if these proposals are introduced.*

*At present we are not aware of any evidence that the district's limited Section 106 contributions (mainly for affordable housing) are a barrier for bringing forward smaller sites, which tend to have far less upfront infrastructure costs than larger sites.*

*The Government's own research suggests that 50 units would reduce the delivery of affordable units via developer contributions by between ten and 20 per cent.*

*Developers bringing forward sites slightly above the threshold may also be disincentivised from bringing forward schemes because it would be more profitable, as well as cheaper and quicker, to deliver slightly smaller schemes.*

*Another issue is that the policy may become a windfall for the landowner rather than an incentive for the developer.*

*There is also no certainty that the time-limited restriction would deliver housing faster or aid a swift recovery unless this is coupled with a shorter implementation period of 12 months and a bond or clawback mechanism, should the implementation not be substantially completed in a short time period.*

*The consultation does not put forward any evidence that the requirement to provide affordable housing is a significant problem for SMEs or that this is the main issue affecting housing delivery in the period of Covid-19 recovery. There may be much more significant issues with grant availability for affordable housing, or more general problems with the availability of construction materials, skilled or un-skilled labour, development finance, connections to infrastructure networks or other factors.*

**Question 18: What is the appropriate level of small sites threshold?**

- i) Up to 40 homes**
- ii) Up to 50 homes**
- iii) Other (please specify)**

*Proposed Folkestone & Hythe District Council Response*

*See the council's response to Question 17; the council does not consider that this threshold needs to be raised.*

**Question 19: Do you agree with the proposed approach to the site size threshold?**

*Proposed Folkestone & Hythe District Council Response*

*See the council's response to Question 17; the council does not consider that this threshold needs to be raised.*

**Question 20: Do you agree with linking the time-limited period to economic recovery and raising the threshold for an initial period of 18 months?**

*Proposed Folkestone & Hythe District Council Response*

*See the council's response to Question 17; the council does not consider that this threshold needs to be raised. However, if these changes are introduced, the removal of the requirement to provide affordable housing should be time-limited to economic recovery (see the response to Question 17).*

*The council would only support the raising of threshold where the implementation is within 12 months of the permission being granted and a bond or clawback mechanism is introduced, if the implementation is not substantially completed in a short time period.*

**Question 21: Do you agree with the proposed approach to minimising threshold effects?**

*Proposed Folkestone & Hythe District Council Response*

*If this change is introduced, then the council would agree with the intent behind this part of the proposal, but the consultation includes scant detail on how the approach would work.*

**Question 22: Do you agree with the Government's proposed approach to setting thresholds in rural areas?**

*Proposed Folkestone & Hythe District Council Response*

*See the council's response to Question 17; the council does not consider that this threshold needs to be raised. The council would not wish to see thresholds raised in designated areas, such as AONBs, where sites are likely to be smaller and most would fall under the revised threshold so avoiding the need to provide any affordable housing in these areas.*

**Question 23: Are there any other ways in which the Government can support SME builders to deliver new homes during the economic recovery period?**

*Proposed Folkestone & Hythe District Council Response*

*As outlined above, there may be much more significant issues with grant availability for affordable housing, or more general problems with the availability of construction materials, skilled or un-skilled labour, development finance, connections to infrastructure networks or other factors.*

**EXTENSION OF PERMISSION IN PRINCIPLE CONSENT REGIME**

**Question 24: Do you agree that the new Permission in Principle should remove the restriction on major development?**

*Proposed Folkestone & Hythe District Council Response*

*The council does not agree with this proposal, and it would seem to undermine the aspirations of the planning White Paper to secure higher standards of design in new developments.*

*National Planning Practice Guidance states that, in requesting further details for determining technical details consent, 'Local planning authorities are encouraged to consider whether this could be achieved by requesting that such information is provided in a single concise statement.'*

*The current proposal to widen Permission in Principle could encompass some very large schemes, effectively removing them from the need to provide detailed design information; it is not clear how this fits with the White Paper's proposal to use design codes as the key part of the development management process, if limited detail is provided at technical details consent stage for Permission in Principle schemes.*

**Question 25: Should the new Permission in Principle for major development set any limit on the amount of commercial development (providing housing still occupies the majority of the floorspace of the overall scheme)? Please provide any comments in support of your views.**

*Proposed Folkestone & Hythe District Council Response*

*If these proposals are brought into force, then there should be a limit on the amount of commercial development.*

*This must be part of a sustainable, strategic and plan-led system which still seeks to focus commercial development on local centres which are well-served by existing infrastructure. Having no limit would undermine this premise.*

**Question 26: Do you agree with our proposal that information requirements for Permission in Principle by application for major development should broadly remain unchanged? If you disagree, what changes would you suggest and why?**

Proposed Folkestone & Hythe District Council Response

See the council's response to Question 24 regarding securing high standards of design in new developments. In addition, the council would suggest that:

1. A minimum number of houses lacks flexibility should unknown site constraints come to light. A minimum also has potential to result in cramped developments which lack the beauty that the Government aspires to, should developers be forced to achieve a minimum.
2. That a minimum open space parameter is included. The Covid-19 pandemic has demonstrated the need and benefits of open space and this should be ingrained in all development going forward.

**Question 27: Should there be an additional height parameter for Permission in Principle? Please provide comments in support of your views.**

Proposed Folkestone & Hythe District Council Response

See the council's response to Question 24 regarding securing high standards of design in new developments. In addition, maximum height lacks flexibility and is not assessable without significant levels of detail. Maximum storeys is a better measure as it focuses on the user, not an arbitrary measurement.

**Question 28: Do you agree that publicity arrangements for Permission in Principle by application should be extended for large developments? If so, should local planning authorities be:**

- i) required to publish a notice in a local newspaper?
- ii) subject to a general requirement to publicise the application or
- iii) both?
- iv) disagree

**If you disagree, please state your reasons.**

Proposed Folkestone & Hythe District Council Response

If these changes are introduced, publicity should be on a local planning authority's website with direct consultation with neighbouring landowners.

**Question 29: Do you agree with our proposal for a banded fee structure based on a flat fee per hectare, with a maximum fee cap?**

Proposed Folkestone & Hythe District Council Response

The fee structure must be set at a level that recoups local authorities' full costs in determining Permission in Principle and technical details consent applications.

The consultation states that: 'We are keen to promote Permission in Principle by application as a more streamlined and cheaper alternative to outline permission and have considered a number of options to facilitate this.'

*This appears to go against the planning White Paper's statement that: 'Planning fees should continue to be set on a national basis and cover at least the full cost of processing the application type based on clear national benchmarking.'*

*The current proposal seems to be designed to undercut the existing planning application fee structure to divert large proposals into the Permission in Principle route; at the very least, the fee structure for Permission in Principle should be based on a national assessment of evidence from local authorities into the full costs of processing these types of application, as the planning White Paper states will be undertaken.*

**Question 30: What level of flat fee do you consider appropriate, and why?**

*Proposed Folkestone & Hythe District Council Response*

*See the council's response to Question 29.*

**Question 31: Do you agree that any brownfield site that is granted Permission in Principle through the application process should be included in Part 2 of the Brownfield Land Register? If you disagree, please state why.**

*Proposed Folkestone & Hythe District Council Response*

*Part 2 of the brownfield land register comprises only those sites that would be suitable for a grant of permission in principle for residential development. It would therefore make sense if brownfield sites that were granted Permission in Principle through the new system were also included on Part 2 of the register.*

**Question 32: What guidance would help support applicants and local planning authorities to make decisions about Permission in Principle? Where possible, please set out any areas of guidance you consider are currently lacking and would assist stakeholders.**

*Proposed Folkestone & Hythe District Council Response*

*Clear and concise guidance is needed about what the Permission in Principle route will approve and what it cannot.*

**Question 33: What costs and benefits do you envisage the proposed scheme would cause? Where you have identified drawbacks, how might these be overcome?**

*Proposed Folkestone & Hythe District Council Response*

*See the council's response to Question 29.*

*In addition, expanding Permission in Principle to large schemes opens up scope for additional challenges through judicial review, with the associated costs these entail for local planning authorities.*

**Question 34: To what extent do you consider landowners and developers are likely to use the proposed measure? Please provide evidence where possible.**

Proposed Folkestone & Hythe District Council Response

*The council has experienced very little interest from developers for the existing Permission in Principle regime.*

**Question 35: In light of the proposals set out in this consultation, are there any direct or indirect impacts in terms of eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations on people who share characteristics protected under the Public Sector Equality Duty?**

Proposed Folkestone & Hythe District Council Response

*No comment.*