



Agenda

Meeting: **Cabinet**
Date: **21 September 2022**
Time: **5.00 pm**
Place: **Council Chamber - Civic Centre Folkestone**

To: **All members of the Cabinet**

All Councillors for information

The cabinet will consider the matters listed below on the date and at the time and place shown above.

This meeting will be webcast live to the council's website at <https://folkestone-hythe.public-i.tv/core/portal/home>.

Please note there will be 37 seats available for members of the public, which will be reserved for those speaking or participating at the meeting. The remaining available seats will be given on a first come, first served basis.

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

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Email: committee@folkestone-hythe.gov.uk or download from our
website
www.folkestone-hythe.gov.uk

held on 20 July 2022.

4. **Update to the General Fund Medium Term Capital Programme (Pages 13 - 18)**

This report updates the General Fund Medium Term Capital Programme for changes which have occurred since the Council approved the budget on 10 February 2022. Changes to the Capital Programme, including updated Capital Prudential Indicators, are required to be submitted to full Council for consideration and approval.

5. **Treasury Management Annual Report 2021/22 (Pages 19 - 36)**

This report reviews the Council's treasury management activities for 2021/22, including the actual treasury management indicators. The report meets the requirements of both the CIPFA Code of Practice on Treasury Management and the CIPFA Prudential Code for Capital Finance in Local Authorities. The Council is required to comply with both Codes through Regulations issued under the Local Government Act 2003.

6. **Regulation of Investigatory Powers Act 2000 - Policy (Pages 37 - 72)**

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.

7. **Draft Statement of Community Involvement (SCI) Update (Pages 73 - 130)**

The purpose of this report is to inform Cabinet of the work being carried out to update the current Statement of Community Involvement (2015) and to ask for Cabinet approval to consult on the attached draft document.

8. **Lyminge Neighbourhood Area (Pages 131 - 140)**

Lyminge Parish Council has submitted a 'neighbourhood area' application, the first stage in producing a neighbourhood development plan. As the proposed area is the same as the parish boundary, the District Council must now designate it.

9. **Ship Street Development - Next steps (Pages 141 - 152)**

This report updates Members on the work that has been undertaken since the acquisition of the former gas works site at Ship Street, East Folkestone, and seeks authority to proceed with the next steps to deliver a mixed tenure housing led development.

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:	Council Chamber - Civic Centre Folkestone
Date	Wednesday, 20 July 2022
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), James Clapson (Case Officer (Committee)), Gavin Edwards (Performance and Improvement Specialist), James Hammond (Strategic Policy Officer), Andrew Hatcher (Revenues and Benefits Strategic Manager), Amandeep Khroud (Assistant Director), Rod Lean (Chief Officer - Place & Growth), Susan Priest (Chief Executive), Andrew Rush (Chief Officer Place & Regulatory Services), Charlotte Spendley (Director of Corporate Services), Adrian Tofts (Strategy, Policy & Performance Lead Specialist) and Jemma West (Committee Service Specialist).
Others Present:	Councillor Rolfe.

NOTE: All decisions (except for the decision at Minute No 16 - Household Support Fund, which is exempt under paragraph 7 (call-in and urgency) of Part 7 (Overview and Scrutiny Rules and Procedures) of the constitution) are subject to call-in arrangements. The deadline for call-in is Friday 29 July at 5pm. Decisions not called in may be implemented on Monday 1 August 2022.

10. **Declarations of Interest**

There were no declarations of interest at the meeting.

11. **Minutes**

The minutes of the meeting held on 16 June 2022 were submitted, approved, and signed by the Leader.

12. **Annual Performance Report 2021/22 and Draft KPIs 2022/23**

The report set out how the Council has delivered for local people in the district in 2021-22 in relation to the priorities documented within its Corporate Plan 'Creating Tomorrow Together' (2021-30) and presents amendments to Key Performance Indicators (KPIs) that will be used to monitor progress during the 2022-23 year. The report had been considered by the Finance and Performance Scrutiny Sub-Committee at their meeting held on 14 June 2022.

Cabinet Members requested the introduction of two further KPIs relating to the number of calls answered, by month, and the number of calls answered within one minute. It was agreed that officers be asked to investigate whether this was possible and report back to a future meeting.

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

RESOLVED:

1. That report C/22/23 be received and noted.
2. That the 2021/22 Annual Performance Report set out in appendix 1 of the report be noted.
3. That the end of year performance data for the 2021/22 year set out in appendix 2 of the report be noted.
4. That the proposed amendments to KPIs for monitoring during the 2022-23 year set out in appendix 3 of the report be approved.
5. That the introduction of an amber target status within performance reporting for 2022-23 year on results that fall within a threshold of 5% of their agreed target, be approved.

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

REASONS FOR DECISION:

- a) The Council is committed to monitoring performance across all its corporate service ambitions to ensure progress and improvement is maintained.
- b) The Council needs to ensure that performance is measured, monitored and the results are used to identify where things are working well and where there are failings and appropriate action needs to be taken.

13. Oportunitas Progress Report 2022 (to 31 March 2022)

The report provided an update from the Board of Oportunitas Ltd ("the company") on its provisional financial outturn and activities undertaken for the financial year ending 31 March 2022 and is in-line with the requirement contained in the Shareholder's Agreement between the company and the Council. The Chairman of Oportunitas was in attendance at the meeting to present the report and address any questions.

Proposed by Councillor Wimble,
Seconded by Councillor Godfrey; and

RESOLVED:

1. That report C/22/22 be received and noted.
2. That the provisional financial outturn for Oportunitas Ltd for the period from 1 April 2021 to 31 March 2022 be noted.

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

REASON FOR DECISION:

Cabinet is asked to agree the recommendations because Oportunitas Ltd (“the company”) is required to provide regular updates to Cabinet as set out in the Shareholder’s Agreement between the company and the Council.

14. Update to the Flexible Use of Capital Receipts Policy

The report sought Council approval regarding the Flexible Use of Capital Receipts Strategy for 2022/23 in accordance with the Department for Levelling Up, Housing and Communities latest guidance.

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

RESOLVED:

1. That report C/22/21 be received and noted.
2. To recommend to Full Council that the Flexible Use of Capital Receipts Strategy for 2022/23 be approved.

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

REASONS FOR DECISION:

The Council is required to approve a strategy for each year it intends to apply the Flexible Use of Capital Receipts guidance which outlines how it intends to use these receipts to meet relevant expenditure and the impact this will have on the Prudential Indicators for capital expenditure.

15. Welfare report and Overview 2021/22

The report gave an overview of the work of the Folkestone & Hythe District Council (FHDC) Welfare and Compliance & Development Teams for the year 2021/22, covering additional support offered to residents on top of standard Housing Benefit and Council Tax Reduction support.

A Member asked for clarity around data protection. Following the meeting, the Revenues and Benefits Lead Specialist provided the response below:

“In terms of the PIP tool, data is anonymised for the profiling work and only the Council can drill down and access personal details which are held for Council Tax and Benefits purposes. There is a data share agreement in place and this system is used all across Kent in collaboration with KCC. There is also a data processing notice on our forms, an example is given below:

By law, we may check information you have provided, or information provided about you by someone else, against other information we already have. We may also ask other agencies, organisations, local authorities or government departments to give us information they have about you. This is to:

- make sure the information is accurate*
- prevent or detect crime, and*
- protect public funds*

These third parties include other departments, organisations, government departments, local authorities and private sector companies such as banks and organisations that may lend you money.

To view the councils full privacy policy please [<https://www.folkestone-hythe.gov.uk/article/25/Privacy-Policy>click here]

For further information on how we may share information with Kent County Council please see the [<https://www.kent.gov.uk/about-the-council/information-and-data/access-to-information/gdpr-privacy-notice/finance-and-procurement/the-kent-intelligence-network-privacy-noticeKIN-privacy-notice>]

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

RESOLVED:

- 1. That report C/22/19 be received and noted.**

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

REASONS FOR DECISION:

The Cabinet were invited to note a review of work carried out by Folkestone & Hythe District Council in 2021/22.

16. Household Support Fund

The report presented the policy of allocating and managing the Household Support Fund funding received from Kent County Council (KCC).

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

RESOLVED:

- 1. That report C/22/18 be received and noted.**
- 2. That the Council's Household Support Fund Policy be approved and adopted.**

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

REASONS FOR DECISION:

Cabinet were asked to consider the proposed policy in order to support residents with Household Support Payments under Government and KCC recommendations.

17. **Community Infrastructure Levy Charging Schedule Review**

Folkestone & Hythe District Council ('the Council') adopted a Community Infrastructure Levy (CIL) in August 2016 and has collected receipts from liable development since this time. The Regulation 18 Core Strategy Review highlighted that the council would seek to amend its CIL Charging Schedule to consider the exemption of the proposed North Downs Garden Settlement from CIL to maximise the developer contributions secured through Section 106 and Section 278 legal agreements.

The Council adopted the Core Strategy Review (CSR) in March 2022, and so it is timely that the Council now seeks to amend the adopted CIL Charging Schedule to bring it 'in step' with the adopted Core Strategy Review.

Proposed by Councillor Monk,
Seconded by Councillor Wimble; and

RESOLVED:

1. **That report C/22/20 be received and noted.**
2. **That the Council accepts the proposed Community Infrastructure Levy (CIL) Draft Revised Charging Schedule report and, subject to agreed changes:**
 - (a) **That the Senior Planning Policy Specialist be authorised, in consultation with the Leader of the Council, to make minor changes and corrections to the Draft Charging Schedule and associated documents that may be necessary, prior to public consultation.**
 - (b) **That the Community Infrastructure Levy Draft Charging Schedule and supporting documents (Viability Study, Infrastructure Planning and Funding Gap Report, Infrastructure Delivery Plan Schedule, Statement of the Representations Procedure) be published for consultation for a period of four weeks, and thereafter,**
 - (c) **that the Senior Planning Policy Specialist, in consultation with the Leader of the Council be authorised to submit the Community Infrastructure Levy Draft Charging Schedule and supporting documents and evidence, together with the Consultation Statement and summary of consultation responses received, to the appointed external examiner for independent examination in accordance with the CIL Regulations 2010 (as amended).**

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

REASONS FOR DECISION:

Cabinet was asked to agree the recommendations so that a draft CIL Charging Schedule can be published for public consultation and that, following any necessary changes as a result of consultation responses, the draft CIL Charging Schedule can be formally submitted for independent examination.

18. UK Shared Prosperity Fund

The report presented an overview of the Governments UK Shared Prosperity Fund (UKSPF) and details the allocation the Council will receive. The report outlined a recommended approach for use of the funding through submission of an Investment Plan to Government and seeks agreement for the delivery of the programme.

Councillor Whybrow asked it to be noted that although she was happy to support the recommendations, she did not consider nuclear technology to be a green skill.

Proposed by Councillor Wimble,
Seconded by Councillor Peall; and

RESOLVED:

- 1. That report C/22/25 be received and noted.**
- 2. That the UKSPF prospectus and funding allocated to FHDC be noted.**
- 3. That the £1m UK Shared Prosperity Fund grant and related £20,000 development grant be accepted and agreed.**
- 4. That the basis for the Investment Plan be agreed, as outlined in section 4 of the report.**
- 5. That a Local Partnership Group be established as outlined section 6 of the report.**
- 6. That Cabinet be advised of the outcome of the submission of the Investment Plan to Government in due course.**
- 7. That delegate authority be given to the Director of Place, in consultation with the Leader of the Council, to take the necessary decisions and actions required to finalise the Investment Plan and to implement and administer the programme.**
- 8. That the delivery of the Investment Plan will be reported in the Quarterly Performance Report to Cabinet.**

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

REASON FOR DECISION:

Cabinet agreement was required to accept the UK Shared Prosperity Fund grant allocation and to agree the basis of the related Investment Plan which will guide use of the funding.

19. Exclusion of the Public

The Leader advised that a representation had been received from a member of the public requesting that the Cabinet consider the item relating to the Variation of the Leisure Operator Agreement in public.

During consideration of the matter, a discussion took place, and the Chief Executive stated that Cabinet Members had been issued with advice as to why the matter was commercially sensitive, and the importance of protecting commercially sensitive matters during contract negotiations.

Proposed by Councillor Monk,
Seconded by Councillor Peall; 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: 7 for, 2 against, 0 abstentions).

20. **Variation to the Leisure Operator Agreement**

The outcome of leisure operator tender was reported to Cabinet in January 2022 and following the decision the contract was subsequently awarded. Since the tender bids were submitted and the contract award was approved, there have been national contextual changes that have impacted on the drafting of the contract, notably the recent significant increases in utility costs. The report provided an update and set out the proposed revised terms.

Proposed by Councillor Monk,
Seconded by Councillor Godfrey; and

RESOLVED:

- 1. That report C/22/24 be received and noted.**
- 2. To agree the revised terms as outlined in report C/22/24.**

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

Councillor Prater asked for it to be recorded that he voted against the recommendations.

REASONS FOR DECISION:

The proposed revisions to the agreement are in response to national changes in circumstances unforeseen when the tender was first presented. Re-tendering will not alter the position with regards to the utility tariff risk.

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This Report will be made public on 13 September 2022

Report Number **C/22/35**

To: Cabinet
Date: 21 September 2022
Status: Key Decision
Head of Service: Charlotte Spendley – Director of Corporate Services
Cabinet Member: Councillor David Monk, Leader and Portfolio Holder for Finance

SUBJECT: UPDATE TO THE GENERAL FUND MEDIUM TERM CAPITAL PROGRAMME

SUMMARY: This report updates the General Fund Medium Term Capital Programme for changes which have occurred since the Council approved the budget on 10 February 2022. Changes to the Capital Programme, including updated Capital Prudential Indicators, are required to be submitted to full Council for consideration and approval.

REASONS FOR RECOMMENDATIONS:

Cabinet is asked to agree the recommendations set out below because:

- a) It needs to be kept informed of the General Fund Capital Programme position and take appropriate action to deal with any variance from the approved budget.
- b) Proposed changes to the General Fund Capital Programme need to be considered before being submitted to full Council for approval.

RECOMMENDATIONS:

1. To receive and note report C/22/35.
2. To seek full Council approval to update the General Fund Medium Term Capital Programme for the changes outlined in section 2 of the report.
3. To seek full Council approval to update the Capital Prudential Indicators outlined in section 3 of the report.

1. INTRODUCTION AND BACKGROUND

1.1 Full Council approved the current General Fund Medium Term Capital Programme (MTCP) for the rolling five year period to 31 March 2027 on 10 February 2022 (minute 57 refers). Since then, one new capital scheme has come forward for inclusion in the MTCP. Additionally, there are two schemes originally included as growth items as part of the Budget Strategy for 2022/23 approved by full Council on 10 February 2022 (minute 56 refers) that were not fully reflected in the MTCP. This report summarises the impact to the MTCP from these changes, including capital financing, and outlines amendments required to the Capital Prudential Indicators from this. Full Council approval is required for the changes proposed in the report.

2. CAPITAL PROGRAMME CHANGES

2.1 The proposed changes to the MTCP are summarised below:

i) Play Area Improvements (new scheme)

Proposed Budget	£176,000
Capital Funding = Grant	£164,000
Capital Funding = Section 106	<u>£12,000</u>
Total Capital Funding	<u>£176,000</u>

Scheme initially reported to Cabinet in the General Fund Capital Budget Monitoring 2021/22 report on 26 April 2022 (minute 101 refers). The Council has been awarded £164k from the Contain Outbreak Management Fund (COMF) to use towards community parks. The three sites identified as being strategically important play areas for improvement are:-

- Oak Drive Play Area, St Mary's Bay
- Morehall Recreation Ground, Folkestone (FPPG Charity)
- Cheriton Recreation Ground, Folkestone (£12k of Section 106 monies also to be applied towards this site)

The improvement works for these sites were commissioned earlier this year and have now been completed.

ii) Website Content Management System (CMS) Replacement (growth item)

Budget	£130,000
Capital Funding = Capital Receipts	£130,000

This scheme, to support the digital delivery of services, is to be funded under the Flexible Use of Capital Receipts guidance.

iii) ICT Improvement Costs (growth item)

Full Budget	£314,000
Budget already approved	<u>£192,000</u>
Additional budget to approve	£122,000

Capital Funding = Capital Receipts £122,000

This scheme, to support the digital delivery of services through the migration of Revenues and Benefits system to an externally hosted service, is to be funded under the Flexible Use of Capital Receipts guidance.

- 2.2 Members are reminded that full Council approved the Flexible Use of Capital Receipts Strategy 2022/23 on 27 July 2022 (minute 24 refers), and both the Website CMS and ICT Improvement schemes were identified within it to be funded by capital receipts under the guidance.

3. UPDATE TO CAPITAL PRUDENTIAL INDICATORS 2022/23

- 3.1 As a result of the changes to the MTCP outlined above, the Chartered Institute of Public Finance and Accountancy's (CIPFA) Prudential Code requires full Council to approve revised prudential indicators for capital expenditure and financing. In addition to the changes to the MTCP outlined above, the prudential indicators will need to reflect the reprofiling of capital expenditure from 2021/22 to 2022/23, reported to Cabinet on 16 June 2022 in the General Fund Capital Programme Provisional Outturn 2021/22 report (minute 4 refers).
- 3.2 The revised estimate of capital expenditure planned for 2022/23 is summarised in table 1, below:

Table 1: Prudential Indicator – Estimate of Capital expenditure

	2022/23 Approved Budget	Reprofiled Budget from 2021/22	Budget Changes	2022/23 Revised Budget
	£m	£m	£m	£m
General Fund services	21.671	1.993	0.428	24.092
Council housing (HRA)	14.697	-	-	14.697
Capital investments	14.342	6.123	-	20.465
TOTAL	50.710	8.116	0.428	59.254

- 3.3 The revised estimate of capital financing for 2022/23 is summarised in table 2, below:

Table 2: Prudential Indicator – Estimate of Capital Financing

	2022/23 Approved Budget	Reprofiled Budget from 2021/22	Budget Changes	2022/23 Revised Budget
	£m	£m	£m	£m
External sources	6.168	1.415	0.176	7.759
Own resources	22.268	0.388	0.252	22.908
Debt	22.274	6.313	-	28.587
TOTAL	50.710	8.116	0.428	59.254

3.4 None of the other existing approved capital prudential indicators are affected by the proposed changes to the MTCP and are excluded from this report.

4. CONCLUSIONS

4.1 Full Council approval is required for the changes to the General Fund MTCP outlined above.

5. RISK MANAGEMENT ISSUES

5.1 A summary of the perceived risks follows:

Perceived risk	Seriousness	Likelihood	Preventative action
Capital resources not available to meet the cost of the new projects.	High	Low	Schemes supported by grant funding will only commence once fully approved and committed by the relevant body. Revenue resources required to fund capital expenditure are covered by Earmarked Reserves and have been factored into the Council's medium term financial planning

Cost of new projects may exceed the estimate.	High	Medium	Capital monitoring procedures in place allowing prompt early action to be taken to manage the risk effectively.
Non-compliance with the requirements of the Prudential Code	High	Low	Approval of this report meets the requirements of the Prudential Code

6. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

6.1 Legal Officer's Comments (NM)

There are no legal implications arising directly out of this report. Part 1 of the Local Government Act 2003 gives the Council the power to borrow and to invest for any purpose relevant to its functions or for the purposes of the prudent management of its financial affairs. It also requires the Council to act prudently when carrying out these activities, including an obligation to determine and keep under review how much money it can borrow. In addition, the Council is required by the Local Government Finance Act 1992 to produce a balanced budget. Generally the Council must take into account its fiduciary duties to local tax payers and its continuing obligation to ensure it has the funding required to perform its statutory undertakings.

6.2 Finance Officer's Comments (LW)

This report has been prepared by Financial Services. There are no further comments to add.

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.

6.4 Climate Change Implications (AT)

There are no climate change implications arising directly from this report. It updates Cabinet on this position following decisions taken at Cabinet and Full Council. Climate change implications of the projects referenced in the report will be assessed as part of the development and implementation phases of those projects through the appropriate decision-making process

6.5 Communication Officer's Comments (KA)

There are no communication issues arising directly from this report.

7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

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

Lee Walker, Capital and Treasury Senior Specialist
Tel: 01303 853593. e-mail: lee.walker@folkestone-hythe.gov.uk

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

None



This report will be made public on 13 September 2022

Report Number **C/22/36**

To: Cabinet
Date: 21 September 2022
Status: Non-Key Decision
Head of Service: Charlotte Spendley – Director of Corporate Services
Cabinet Member: Councillor David Monk, Leader and Portfolio Holder for Finance

SUBJECT: TREASURY MANAGEMENT ANNUAL REPORT 2021/22

SUMMARY: This report reviews the Council's treasury management activities for 2021/22, including the actual treasury management indicators. The report meets the requirements of both the CIPFA Code of Practice on Treasury Management and the CIPFA Prudential Code for Capital Finance in Local Authorities. The Council is required to comply with both Codes through Regulations issued under the Local Government Act 2003.

REASONS FOR RECOMMENDATION:

Cabinet is asked to agree the recommendations set out below because:-

- a) Both CIPFA's Code of Practice on Treasury Management in the Public Services and their Prudential Code for Capital Finance in Local Authorities, together with the Council's Financial Procedure Rules, require that an annual report on treasury management is received by the Council after the close of the financial year.

RECOMMENDATION:

1. To receive and note Report C/22/36.

1. INTRODUCTION

- 1.1 The annual treasury report is a requirement of the Council's reporting procedures. It covers the treasury activity for 2021/22 compared to the approved strategy for the year. It also summarises the actual treasury management indicators for 2021/22 compared to those approved for the year.
- 1.2 The report meets the requirements of both the CIPFA Code of Practice on Treasury Management and the CIPFA Prudential Code for Capital Finance in Local Authorities. The Council is required to comply with both Codes through Regulations issued under the Local Government Act 2003.
- 1.3 Cabinet approved the Treasury Management Strategy Statement for 2021/22, including treasury management indicators, on 20 January 2021 (minute 66 refers). Full Council approved the Capital Strategy for 2021/22 covering capital expenditure and financing, treasury management and non-treasury investments on 24 February 2021 (minute 26 refers). Cabinet received an update on the Council's treasury management activity in 2021/22 on 26 January 2022 as part of the Treasury Management Strategy Statement 2022/23 and Treasury Management Monitoring Report 2021/22 (minute 68 refers). The report also updated Cabinet on changes to both CIPFA's Prudential Code and Treasury Management Code along with the Public Works Loan Board (PWLB) lending arrangements which happened during 2021/22. In the case of CIPFA's Treasury Management Code, 2022/23 is a transitional year and the Council must meet its full requirements from 2023/24.
- 1.4 The Council's formal treasury management reporting arrangements comply with the requirements of the CIPFA's Treasury Management Code and also provide the opportunity for proper scrutiny of its treasury management activities.

2. ECONOMIC COMMENTARY

(Based on commentary supplied by Arlingclose Ltd, the Council's Treasury Advisor)

2.1 Economic Background

- 2.1.1 The economic background during 2021 has largely been dominated by the gradual recovery from the worst of the impact of the Covid-19 pandemic. However, the conflict in Ukraine has caused inflation to rise significantly in the first quarter of 2022 due to the impact on energy and commodity prices. The key issues affecting the UK economy over the past year are:
 - i) **Growth** – Gross Domestic Product (GDP) grew by 7.4% over 2021 as the domestic economy continued to adjust from the worst of the impact of the pandemic from 2020. GDP also grew by a modest 0.8% in Q1 of 2022, and at 31 March 2022 was 1.2% above its pre-pandemic level for February 2020.

- ii) **Inflation** – At March 2021 the annual headline rate of UK Consumer Price Inflation (CPI) was at 0.70%. Inflation rose steadily throughout the year to reach 7.0% in March 2022 as the economy continued its recovery from the pandemic largely due to the impact of higher energy prices and wages as demand increased. Initially commentators expected inflation to peak in early 2022 before falling quite rapidly, however the conflict in Ukraine has only added to the existing inflationary pressures. Domestic inflation is now expected to persist at levels not seen since the 1980s for the next couple of years. The Bank of England's (BoE) target for inflation remains at 2%.
- iii) **Wages and Employment** – Labour market data showed that in the three months to March 2022 the unemployment rate was a near record low of 3.9%, in contrast to the 4.8% recorded for the same period 12 months ago. Wages rose 7% for total pay in nominal terms (4.2% for regular pay), up by 1.4% in real terms for total pay, a reduction of 1.2% for regular pay.
- iv) **Global Economy** – Like the UK, the US and Eurozone economies have both seen GDP rapidly improving as they recover from the pandemic and are now experiencing rising inflation at similar levels. The US Fed has started to raise interest rates in Q1 of 2022, however the European Central Bank had resisted this.
- v) **Bank Base Rate** – As a response to the rising domestic inflation, the BoE raised the Bank Rate from 0.10% in December 2021 to 0.75% by March 2022. In February the BoE also signaled its intention to start to reduce the stock of its Quantitative Easing asset purchase scheme. In March the BoE said domestic inflation was expected to peak at 8% later in 2022. Since then this has been revised upwards and is now expected to peak around 13% as energy costs in particular impact on the economy while the Bank Rate has risen to 1.75%.

2.2 Financial Markets

- 2.2.1 Gilt yields, which regulate borrowing rates through the Public Works Loan Board (PWLB), increased over the year albeit with periods of volatility during this time. The 5-year UK benchmark gilt yield began the financial year at 0.39% before rising to 1.41% by the end of the financial year. Over the same period the 10-year gilt yield rose from 0.84% to 1.61%. The 20-year gilt increased from 1.36% to 1.82%.
- 2.2.2 The overnight, 1-month, 3-month and 12-month SONIA money market bid rates, used as a benchmark for short term cash deposits, averaged 0.18%, 0.22%, 0.31% and 0.62% respectively over the year.
- 2.2.3 The conflict in Ukraine has created uncertainty and this has affected the major equity indices. The Dow Jones started to decline in January but remained above its pre-pandemic level at 31 March 2022. The FTSE indices had mixed performances over the 12 month period to March 2022. The FTSE 100 has seen its value increase by 12.8%. However, the more UK-focused

FTSE 250 has seen its value fall by 17.3%. However, both indices were broadly at their pre-pandemic level by the end of the period.

2.3 Credit Background

- 2.3.1 Credit Default Swap spreads (the premium banks pay to guarantee liquidity for borrowing) remained broadly flat at relatively low levels during 2021. However, uncertainty over the conflict in Ukraine pushed CDS prices slightly higher in the first quarter of 2022, illustrating the general resilience of the banking sector. Arlingclose, the council's treasury management advisor, completed a full review of its credit advice on unsecured deposits and in September 2021 extended its recommended maximum investment duration limit for UK banks from 35 days to 100 days. A similar extension was advised for the non-UK banks from December 2021. Arlingclose keep recommended counterparties and investment durations under constant review.
- 2.3.2 There were no major changes in the credit ratings for UK institutions during the past year.

3. TREASURY POSITION AT 31 MARCH 2022

- 3.1 On 31 March 2022, the Council had net investments of £31.1m arising from its revenue and capital income and expenditure, an increase on 2021 of £12.3m. The underlying need to borrow for capital purposes is measured by the Capital Financing Requirement (CFR), while usable reserves and working capital are the underlying resources available for investment. These factors and the year-on-year change are summarised in table 1 below.

Table 1: Balance Sheet Summary

	31.3.21 Actual £m	2021/22 Movement £m	31.3.22 Actual £m
General Fund CFR	79.5	6.3	85.8
HRA CFR	47.4	-	47.4
Total CFR	126.9	6.3	133.2
Less, External Borrowing	79.0	18.7	97.7
Internal Borrowing	47.9	(12.4)	35.5
Less: Usable reserves	(56.3)	2.4	(53.9)
Less: Working capital	(10.4)	(2.3)	(12.7)
Net Investments	(18.8)	(12.3)	(31.1)

- 3.2 The net increase in the Council's CFR of £6.3m was reported to Cabinet on 16 June 2022 in the General Fund Capital Programme Outturn 2021/22 report (minute 4 refers). Notably, capital expenditure in 2021/22 on the Otterpool Park Garden Town development (£3.7m), the acquisition of vehicles for the new waste contract (£1.5m), funding to support Oportunitas Limited for its property investment programme (£1.0m) and the Princes Parade Leisure and Housing scheme (£1.2m) was met from prudential

borrowing. Moving forward, it is expected some of the remaining internal borrowing will be replaced with new external borrowing as the cash reserves and balances are applied towards their intended use.

- 3.3 The Council's current strategy is to maintain borrowing and investments below their underlying levels, sometimes known as internal borrowing, in order to reduce risk and keep interest costs low. The treasury management position at 31 March 2022 and the year-on-year change in show in table 2 below.

Table 2: Treasury Management Summary

	31.3.21 Balance £m	2021/22 Movement £m	31.3.22 Balance £m
Long-term borrowing	72.2	(15.0)	57.2
Short-term borrowing	6.8	33.7	40.5
Total borrowing	79.0	18.7	97.7
Long-term investments	(15.2)	(0.8)	(16.0)
Cash and cash equivalents	(3.6)	(11.5)	(15.1)
Total investments	(18.8)	(12.3)	(31.1)
Net borrowing	60.2	6.4	66.6

Note: the figures in the table are from the balance sheet in the authority's statement of accounts, but adjusted to exclude operational cash, accrued interest and other accounting adjustments.

- 3.4 The increase in the Council's net borrowing of £6.4m reflects the increase in the CFR, outlined above in table 1.

4. BORROWING 2021/22

4.1 Borrowing Update

- 4.1.1 The updated CIPFA Prudential Code and PWLB lending arrangements now prohibit local authorities from borrowing to incur capital expenditure on investment assets primarily for yield. These are prospective rather than retrospective requirements.

- 4.1.2 The Council was not planning to purchase any investment assets primarily for yield during 2021/22 or over the period of the approved Medium Term Capital Programme so is unaffected by the changes to the Prudential Code and PWLB lending arrangements for its borrowing activity.

- 4.1.3 The Prudential Code states that local authorities who already held commercial investment assets primarily for yield prior to the changes made in 2021 are not required to sell these. However, local authorities who have an ongoing borrowing requirement are expected to review these commercial investment assets as part of their annual treasury management of investment strategies to evaluate the financial returns are commensurate

with the risks involved. The Council currently holds the Connect 38 office building in Ashford that meets this definition and will now be subject to the annual evaluation process.

4.2 Borrowing Activity 2021/22

4.2.1 At 31 March 2022, the Council held £97.7m of loans, an increase of 18.7m on the previous year, as part of its strategy for funding previous and current years' capital programmes. Following the introduction of the Housing Revenue Account (HRA) Self-Financing regime in 2012 the Council operates a two pool debt approach allocating its loans between the General Fund and HRA. The year-end borrowing position and the year-on-year change is shown in table 3 below. A full list of the loans held at 31 March 2022 is shown in appendix 1 to this report.

Table 3: Borrowing Position – Two Pool Debt Approach

	31.3.21 Balance £m	2021/22 Movement £m	31.3.22 Balance £m	Average Rate %
<u>General Fund</u>				
Public Works Loan Board	7.2	-	7.2	4.69%
Local Authorities	25.5	17.0	42.5	0.65%
Total General Fund borrowing	32.7	17.0	49.7	1.42%
<u>Housing Revenue Account</u>				
Public Works Loan Board	46.3	(1.3)	45.0	3.28%
Local Authorities	-	3.0	3.0	0.95%
Total HRA borrowing	46.3	1.7	48.0	3.27%
Total borrowing	79.0	18.7	97.7	2.44%

4.2.2 The weighted average maturity of the overall loans portfolio at 31 March 2022 is 6.3 years.

4.2.3 The Council's chief objective when borrowing has been to strike an appropriately low risk balance between securing low interest costs and achieving cost certainty over the period for which funds are required, with flexibility to renegotiate loans should the authority's long-term plans change being a secondary objective.

4.2.4 With short-term interest rates remaining much lower than long-term rates, it was considered to be more cost effective in the near term to use mainly short-term loans borrowed from other local authorities and also to continue using internal resources to meet the increase in the CFR. The movement in these loans is shown in table 3, above.

4.2.5 The Council's borrowing decisions are not predicated on any one outcome for interest rates and a balanced portfolio of short and long-term borrowing is in place to provide flexibility for future decisions.

5. INVESTMENT ACTIVITY 2021/22

5.1 The CIPFA Treasury Management Code defines treasury management investments as those that arise from the organisation's cash flows or treasury risk management activity that ultimately represents balances that need to be invested until the cash is required for use in the course of its business.

5.2 The Council holds significant invested funds, representing income received in advance of expenditure plus balances and reserves held. During 2021/22, the Council's investment balance ranged between £18.8 million and £43.6 million due to timing differences between income and expenditure. The Council had an average investment balance of £34m during 2021/22. This is about £9m more than originally anticipated and is due to the following three main factors:

- i) Higher than anticipated usable reserves at 31 March 2021
- ii) Delays to the council's General Fund capital expenditure programme for 2021/22 to be met from prudential borrowing
- iii) Short-term net positive cash flow from Council Tax receipts and government grants

5.3 The Council generated a return, net of fees, of 1.79% for the year from its treasury investments. The year-end investment position and the year-on-year change are shown in table 4 below. A list of the individual investments held at 31 March 2022 is shown in appendix 2 to this report.

Table 4: Investment Position

	31.3.21	Net	31.3.22	Average
	Balance	Movement	Balance	Return
	£m	£m	£m	
Banks & building societies (unsecured)	-	-	-	0.01%
Government (inc Local Authorities)	-	5.0	5.0	0.06%
Money Market Funds	3.6	6.5	10.1	0.08%
Property Pooled Fund	5.3	0.9	6.2	4.47%
Multi-Asset Income Funds	9.9	(0.1)	9.8	3.99%
Total investments	18.8	12.3	31.1	1.79%

5.4 The weighted average maturity of the investment portfolio at 31 March 2022 was 13 days.

- 5.5 Both the CIPFA Code and government guidance require the Council to invest its funds prudently, and to have regard to the security and liquidity of its investments before seeking the highest rate of return, or yield. The Council's objective when investing money is to strike an appropriate balance between risk and return, minimising the risk of incurring losses from defaults and the risk of receiving unsuitably low investment income.
- 5.6 Ultra low short-dated cash rates, which were a feature since March 2020 when Bank Rate was cut to 0.1%, prevailed for much of the 12-month reporting period which resulted in the return on sterling low volatility net asset value (LVNAV) Money Market Funds being close to zero even after some managers have temporarily waived or lowered their fees. However, higher returns on cash instruments followed the increases in Bank Rate in December, February and March. At 31st March, the 1-day return on the Authority's MMFs ranged between 0.48% - 0.53% p.a.
- 5.7 Similarly, deposit rates with the Debt Management Account Deposit Facility (DMADF) initially remained very low with rates ranging from 0% to 0.1%, but following the hikes to policy rates increased to between 0.55% and 0.85% depending on the deposit maturity.
- 5.8 The Council met its investment objectives and strategy for 2021/22. As previously outlined in sections 3 and 4 of this report, the Council has been able to use short term liquid cash to meet its underlying borrowing need through internal borrowing, reducing its exposure to credit risk. Secondly, the return from the strategic investments in pooled funds have continued to provide cash returns in excess of average inflation over the year. The performance of these pooled funds is considered in more detail below.
- 5.9 **Externally Managed Pooled Funds** - The Council has £15m invested in externally managed multi-asset and property funds, representing the authority's forecast minimum level of cash reserves and balances over the medium term. These pooled funds aim to provide returns in excess of inflation and, over time, provide the opportunity for some limited capital growth.
- 5.10 The funds generated a total return of £1.45m or 9.45% compared to their value at 31 March 2021, comprising an income return of £0.64m (4.16%) which is used to support services in year, and £0.81m (5.29%) of unrealised capital growth. A summary of the pooled funds value and performance for the financial year is shown in table 5 below.

Table 5 – Pooled Funds Summary

Fund	Value at 31/03/21	Value 31/03/22	Capital Return 2021/22	Cash Return 2021/22	Total Return 2021/22
	£m	£m	£m	£m	£m
CCLA Local Authority Property Fund	5.28	6.21	0.93	0.24	1.17
CCLA Diversified Income Fund	1.94	2.04	0.10	0.05	0.15
Aegon Diversified Monthly Income Fund	3.52	3.51	(0.01)	0.18	0.17
Ninety-One Diversified Income Fund	3.51	3.35	(0.16)	0.13	-0.03
UBS Multi-Asset Income Fund	0.95	0.90	(0.05)	0.04	-0.01
Total	15.20	16.01	0.81	0.64	1.45
Return %			5.29%	4.16%	9.45%

- 5.11 In the nine months to December 2021 improved market sentiment was reflected in equity, property and multi-asset fund valuations and, in turn, in the capital values of the Authority’s property and multi-asset income funds in the Council’s portfolio. The prospect of higher inflation and rising bond yields did however result in muted bond fund performance. In the January- March quarter the two dominant themes were tighter UK and US monetary policy and higher interest rates, and the military invasion of Ukraine by Russia in February, the latter triggering significant volatility and uncertainty in financial markets.
- 5.12 In light of Russia’s invasion, Arlingclose contacted the fund managers of both Money Market Funds and pooled funds the Council is invested with, who confirmed there is no direct exposure to Russian or Belarusian assets held by banks and financial institutions. Any indirect exposures were viewed as immaterial. It should be noted that that any assets held by banks and financial institutions (e.g. from loans to companies with links to those countries) within MMFs and other pooled funds cannot be identified easily or with any certainty as that level of granular detail is unlikely to be available to the fund managers or Arlingclose in the short-term, if at all.
- 5.13 Because the pooled funds have no defined maturity date, but are available for withdrawal after a notice period, their performance and continued suitability in meeting the Council’s investment objectives is regularly reviewed. Strategic fund investments are made in the knowledge that capital values will move both up and down on months, quarters and even years; but with the confidence that over a three to five-year period total returns will exceed cash interest rates.

- 5.14 The progression of risk and return metrics are shown in the extracts from Arlingclose's quarterly investment benchmarking in table 6 below.

Table 6: Investment Benchmarking – Treasury investments managed in-house only

	Credit Score	Credit Rating	Bail-in Exposure	WAM* (days)	Income Return
<u>FHDC</u>					
31.03.2021	4.01	AA-	100%	1	0.01%
31.03.2022	3.99	AA-	68%	7	0.52%
Similar LAs	4.37	AA-	61%	43	0.46%
All LAs	4.39	AA-	60%	14	0.46%

*WAM = weighted average maturity of investments held.

- 5.15 The investment benchmarking, which is a snapshot at the end of each quarter and only covers in-house managed investments, demonstrates the council's risk profile and returns are comparable to both its peer group and the wider local authority population as at 31 March 2022 (measured against other Arlingclose clients only).

6. FINANCIAL SUMMARY

- 6.1 The following table summarises the Council's net interest cost for its treasury management activities in 2021/22 and shows the outturn to the General Fund and the Housing Revenue Account is lower than the approved estimate, subject to audit:

Table 7: Net Interest Cost

	<i>2020/21 Actual</i>	<i>2021/22 Estimate</i>	2021/22 Actual	2021/22 Variance Estimate to Actual
	<i>£'000</i>	<i>£'000</i>	£'000	£'000
Interest Paid	2,188	2,124	2,058	(66)
Interest Received(net of fees)	(664)	(535)	(643)	(108)
Net Interest	1,524	1,589	1,415	(174)
<u>Net Impact</u>				
General Fund	(238)	66	(291)	(357)
H.R.A	1,535	1,523	1,513	(10)
Capitalised Interest	227	-	193	193
	1,524	1,589	1,415	(174)

- 6.2 The reduction in the net borrowing cost to the General Fund of £357k is mainly due to; -
- i) higher than anticipated investment income received (£107k) from its strategic pooled fund investments, and
 - ii) capitalised interest on borrowing mainly attributable to land acquired for the Otterpool Park Garden Town Development.
- 6.3 The Council changed its Accounting Policy from 2019/20 to allow it to capitalise interest incurred on qualifying capital projects that are expected to take a number of years to be delivered. This has enabled the capitalisation of interest on borrowing to purchase the property from Cozumel Estates and other property for the Otterpool Park development acquired since 1 April 2019. Capitalised interest will also be charged to the Princes Parade development on that element met by prudential borrowing during its construction phase. The budgets for Otterpool Park and Princes Parade within the approved Medium Term Capital Programme provide for the capitalised interest cost.

7. OTHER NON-TREASURY HOLDINGS AND ACTIVITY

- 7.1 The definition of investments in CIPFA's revised Treasury Management Code now covers all the financial assets of the Council as well as other non-financial assets which it holds primarily for financial return. This is replicated in the former MHCLG's Investment Guidance, in which the definition of investments is further broadened to also include all such assets held partially for financial return. The assets are summarised in the table below:

Table 8: Non-Treasury Holdings and Returns

Investment Type	Value 31/03/21	Value 31/03/22	Net Income 2021/22	Equated Rate of Return
	£m	£m	£'000	%
Investment Property				
Otterpool Property	64.0	69.5	266	(0.38)
Offices	17.4	16.8	(259)	1.54
Commercial Land	0.8	1.8	-	-
Commercial Units	1.8	1.9	(114)	3.10
Assets Under Construction	0.2	-	-	-
Total Investment Property	84.2	90.0	(106)	0.12
Subsidiary Companies				
Oportunitas loan	4.3	4.3	(208)	4.88
Oportunitas equity	3.5	2.3	14	(0.78)
Oportunitas - Total	7.8	6.6	(194)	3.21
Otterpool Park LLP equity	1.2	1.2	13	(1.00)
Otterpool Park LLP loan	-	1.3	(14)	5.10

Otterpool Park LLP - Total	1.2	2.5	(1)	0.09
Total Subsidiaries	9.0	9.1	(195)	2.01
Total	93.2	99.1	(301)	0.30

7.2 The net income and rate of return excludes the impact of any unrealised property valuation gains or losses. Ordinarily the rate of return on non-treasury investment assets would be expected to be higher than that earned on treasury investments reflecting the additional risks to the council of holding such investments. This is demonstrated with the return on the commercial units and Oportunitas. However the return on the investment property portfolio for 2021/22 is significantly distorted because of the land acquisitions taking place for the Otterpool Park project in particular. The Council is receiving rental streams from some of the property being acquired in the short to medium term.

8. COMPLIANCE WITH INVESTMENT LIMITS AND TREASURY INDICATORS

8.1 The Director of Corporate Services reports that the treasury management activities undertaken during 2021/22, with one exception, complied with the CIPFA Code of Practice and the council's approved Treasury Management Strategy. The Council has exceeded the approved upper limits for the future financial impact of a 1% increase in interest rates. This is an advisory indicator designed to reduce the authority's exposure to interest rate changes on variable debt and investments. The original approved limits did not fully reflect the maximum amount of new or replacement borrowing the Council could be liable to take up over the next 12 months. The actual limit reflects the prudential borrowing need for the latest approved capital programme. Although this suggests a potential increased interest charge to revenue for a rise in rates, Members are reminded that the Council capitalises its interest cost directly related to borrowing for qualifying capital schemes and much of the additional charge would be charged to these rather than revenue. Further information regarding this issue and compliance with the specific Investment and Treasury indicators is contained in appendix 3 to this report.

9. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

9.1 Legal Officer's Comments (NM)

There are no significant legal implications as a result of the recommendations in this report which are not covered in the body of the report. Compliance with the CIPFA Code of Practice for Treasury Management in the Public Services and the CIPFA Prudential Code for Capital Finance in Local Authorities issued under the Local Government Act 2003 provides assurance that the council's investments are, and will continue to be, within its legal powers.

9.2 Finance Officer's Comments (LW)

This report has been prepared by the Finance Specialist Team and relevant financial implications are included within it.

9.3 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.

9.4 Climate Change Implications (AT)

There are no climate change implications arising directly from this report. It updates Cabinet on the treasury management activities undertaken during the 2021-22 financial year and confirms all borrowing and investment decision were made in accordance with the approved strategy for the year.

9.5 Communications Officer's Comments (KA)

There are no communications implications arising directly from this report.

10. CONTACT OFFICER AND BACKGROUND DOCUMENTS

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

Lee Walker, Capital and Treasury Senior Specialist

Telephone: 01303 853593 Email: lee.walker@folkestone-hythe.gov.uk

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

Arlingclose Ltd – Model Treasury Management Annual Report Template

Appendices:

Appendix 1 – Borrowing, loans held at 31 March 2022

Appendix 2 – Investments held at 31 March 2022

Appendix 3 – Compliance with specific investment and borrowing limits and Treasury Indicators

APPENDIX 1 – BORROWING, LOANS HELD AT 31 MARCH 2022

Lender	Loan No	Loan Type	Start Date	Maturity Date	Principal Outstanding 31/03/2022	Interest Rate
					£	%
Public Works Loan Board	500536	Fixed	28/03/2012	28/03/2023	4,000,000.00	2.56
Public Works Loan Board	480111	Fixed	14/10/1997	31/03/2023	1,000,000.00	6.63
Public Works Loan Board	500546	Fixed	28/03/2012	28/03/2024	4,000,000.00	2.70
Public Works Loan Board	500540	Fixed	28/03/2012	28/03/2025	4,000,000.00	2.82
Public Works Loan Board	500548	Fixed	28/03/2012	28/03/2026	4,000,000.00	2.92
Public Works Loan Board	500543	Fixed	28/03/2012	28/03/2027	4,000,000.00	3.01
Public Works Loan Board	500538	Fixed	28/03/2012	28/03/2028	4,000,000.00	3.08
Public Works Loan Board	500541	Fixed	28/03/2012	28/03/2029	4,000,000.00	3.15
Public Works Loan Board	500542	Fixed	28/03/2012	28/03/2030	4,000,000.00	3.21
Public Works Loan Board	500537	Fixed	28/03/2012	28/03/2031	4,010,000.00	3.26
Public Works Loan Board	430141	Annuity	09/11/1973	01/11/2033	3,705.61	11.38
Public Works Loan Board	488942	Fixed	12/08/2004	07/08/2034	2,000,000.00	4.80
Public Works Loan Board	494027	Fixed	31/10/2007	15/03/2044	2,000,000.00	4.65
Public Works Loan Board	494028	Fixed	31/10/2007	15/03/2045	2,000,000.00	4.65
Public Works Loan Board	494029	Fixed	31/10/2007	15/03/2046	2,141,190.00	4.65
Public Works Loan Board	493914	Fixed	10/09/2007	07/02/2053	2,500,000.00	4.55
Public Works Loan Board	492233	Fixed	28/09/2006	15/03/2054	2,000,000.00	4.05
Public Works Loan Board	493698	Fixed	10/08/2007	07/08/2055	2,500,000.00	4.55
Total - Public Works Loan Board					52,154,895.61	
West Yorkshire Combined Authority		Fixed	22/04/2021	19/04/2022	5,000,000.00	0.10
Durham County Council		Fixed	01/02/2021	03/10/2022	5,000,000.00	0.55
London Borough of Wandsworth		Fixed	29/01/2021	31/01/2023	10,000,000.00	0.60
Leicester City Council		Fixed	01/03/2021	01/03/2023	5,000,000.00	0.65
Lichfield District Council		Fixed	09/03/2022	09/03/2023	2,000,000.00	0.95
North Somerset Council		Fixed	09/03/2022	09/03/2023	3,000,000.00	0.95
East Sussex County Council		Fixed	22/03/2022	21/03/2023	5,000,000.00	1.25
Leicester City Council		Fixed	31/01/2022	31/01/2024	5,000,000.00	0.40
Leicester City Council		Fixed	22/03/2022	22/03/2024	5,000,000.00	1.25
Folkestone Town Council	n/a	Variable - 2 day call notice	Various May 2018	n/a	500,000.00	0.50
Total - Other Loans					45,500,000.00	
Total - Borrowing at 31/03/2022					97,654,895.61	

APPENDIX 2 – INVESTMENTS HELD AT 31 MARCH 2022

Category and Counterparty	Amount or Value £	Terms	Indicative Interest Rate or Yield %
Government & Local Authorities			
UK - Debt Management Office	5,000,000	22/03/2022 to 19/04/2022	0.55
Money Market Funds			
Aberdeen Standard MMF	4,270,000	No notice instant access	0.51
Goldman Sachs MMF	615,000	No notice instant access	0.48
Legal & General MMF	4,865,000	No notice instant access	0.53
Federated MMF	385,000	No notice instant access	0.51
Other Pooled Funds			
Commercial Property Funds			
CCLA Property Fund	6,209,799	No specified maturity date	4.47
Multi-Asset Income Funds			
CCLA Diversified Income Fund	2,036,219	No specified maturity date	2.50
UBS Multi-Asset Income Fund	900,633	No specified maturity date	4.53
Aegon Asset Management Diversified Monthly Income Fund	3,513,924	No specified maturity date	5.08
Ninety-One Diversified Income Fund	3,349,092	No specified maturity date	3.57
Total Investments	31,144,667		2.16

* Net of Fees

APPENDIX 3 – COMPLIANCE WITH SPECIFIC INVESTMENT AND TREASURY INDICATORS

Compliance with specific investment limits is demonstrated in table 1 below.

Table 1: Specific Investment Limits

	Maximum to 31.3.22	31.3.22 Actual	2021/22 Limit	Complied
Any single organisation, except UK Government	£5m	nil	£5m each	✓
UK Central Government	£8m	£5m	Unlimited	✓
Any group of funds under the same management	nil	nil	£5m per group	✓
Negotiable instruments held in a broker's nominee account	nil	nil	£10m per broker	✓
Foreign countries	nil	nil	£5m per country	✓
Registered Providers	nil	nil	£10m in total	✓
Unsecured investments with Building Societies	nil	nil	£6m in total	✓
Loans to unrated corporates	nil	nil	£5m in total	✓
Money Market Funds	£20m	£10.14m	Unlimited	✓
Strategic Pooled Funds	£16.01m	£16.01m	£25m	✓
Any group of pooled funds under the same management	£8.25m	£8.25m	£10m per manager	✓
Real estate investment trusts	nil	nil	£10m in total	✓

Treasury Management Indicators

The council measures and manages its exposures to treasury management risks using the following indicators.

Security: The council has adopted a voluntary measure of its exposure to credit risk by monitoring the value-weighted average credit rating of its investment portfolio. This is calculated by applying a score to each investment (AAA=1, AA+=2, etc.) and taking the arithmetic average, weighted by the size of each investment. Unrated investments are assigned a score based on their perceived risk.

	31.3.22 Actual	2021/22 Target	Complied
Portfolio average credit rating	AA-	A	✓

Liquidity: The council has adopted a voluntary measure of its exposure to liquidity risk by monitoring the amount of cash available to meet unexpected payments within a rolling three-month period, without additional borrowing

	31.3.22 Actual	2021/22 Target	Complied
Total cash available within 3 months	£15.1m	£5m	✓

Interest Rate Exposures: This indicator is set to control the council's exposure to interest rate risk. The upper limits on fixed and variable rate interest rate exposures, expressed as the amount of net principal borrowed is shown in table 3 below:

Table 3: Interest Rate Exposures

	31.3.22 Actual	2021/22 Limit	Complied
Upper limit on one-year revenue impact of a 1% rise in interest rates	£309,396	£164,000	×
Upper limit on one-year revenue impact of a 1% fall in interest rates	(£342,672)	(£185,000)	×

The impact of a change in interest rates is calculated on the assumption that maturing loans and investment will be replaced at current rates. This is an advisory indicator designed to reduce the authority's exposure to interest rate changes on variable debt and investments. The actual upper limit on the one-year revenue impact of a 1% rise and fall in rates exceeds the limits set for the year. The original approved limits did not fully reflect the maximum amount of new or replacement borrowing the Council could be liable to take up over the next 12 months. The actual limit reflects the prudential borrowing need for the latest approved capital programme. Although this suggests a potential increased interest charge to revenue for a rise in rates, Members are reminded that the Council capitalises its interest cost directly related to borrowing for qualifying capital schemes and approximately £105k of the additional charge would be charged to these rather than revenue. This means for every 1% increase in interest rates, approximately £204k would be an additional charge to revenue.

Maturity Structure of Borrowing: This indicator is set to control the council's exposure to refinancing risk. Compliance with the upper and lower limits on the maturity structure of fixed rate borrowing is shown in table 4 below:

Table 4: Maturity Structure of Borrowing

	31.3.22 Actual	Upper Limit	Lower Limit	Complied
Under 12 months	11.6%	30%	0%	✓

12 months and within 24 months	3.4%	40%	0%	✓
24 months and within 5 years	4.8%	50%	0%	✓
5 years and within 10 years	10.7%	80%	0%	✓
10 years and above	12.3%	100%	0%	✓

Time periods start on the first day of each financial year. The maturity date of borrowing is the earliest date on which the lender can demand repayment.

Principal Sums Invested for Periods Longer than 364 days: The purpose of this indicator is to control the council's exposure to the risk of incurring losses by seeking early repayment of its investments. Compliance with the limits on the long-term principal sum invested to final maturities beyond the period end is shown in table 5 below:

Table 5: Principal Sums Invested for Periods Longer than 364 days

At 31.3.22	2021/22	2022/23	2023/24
Actual principal invested for longer than 364 days	-	-	-
Limit on principal invested beyond 364 days	£15m	£5m	£5m
Complied	✓	✓	✓

Although the council's investments in the pooled funds of £16.01m are accounted for as non-current (long term) assets, based on the intention to continue to hold them for longer than 12 months, they do not have a fixed maturity date and can be redeemed within a short notice period if required so do not feature in this indicator.

This Report will be made public on 13 September 2022



Report Number **C/22/37**

To: Cabinet
Date: 21 September 2022
Status: Non key decision
Responsible Officer: Amandeep Khroud – Assistant Director – Governance and Law
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/22/37.
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 The most recent desktop 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 (1) for endorsement by cabinet. This is essentially the same as the policy endorsed by cabinet last year.

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 and Law
Telephone: 01303 853253
E-mail: Amandeep.khroud@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

FOLKESTONE & HYTHE DISTRICT

COUNCIL

Regulation of Investigatory Powers Act

2000 (RIPA)

RIPA Policy and Procedures

Issue [15]

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

Approved CLT [date]

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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 Policy¹ 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 Corporate 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 Corporate 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.

Corporate 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 Corporate 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"> - Police Officer or Environmental Enforcement Officer on patrol - Signposted town centre CCTV cameras (in normal use) - Recording noise coming from outside the premises after the occupier has been warned that this will occur if the noise persists. - Most test purchases (where the officer behaves no differently from a normal member of the public).
Covert but not requiring prior authorisation	<ul style="list-style-type: none"> - CCTV cameras providing general traffic, crime or public safety information.
Directed surveillance (must be RIPA authorised)	<ul style="list-style-type: none"> - 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. - 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.
Intrusive surveillance or interfering with private property – Note: The Council cannot use RIPA to authorise this	<ul style="list-style-type: none"> - Planting a listening or other electronic device (bug) or camera in a person's home or in/on their private vehicle/person.

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

Post Title	Current Post Holder	RIPA post	Contact Details
Head of Paid Service	Susan Priest	Senior Authorising Officer / Senior Responsible Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853315 susan.priest@folkestone-hythe.gov.uk
Director of Corporate Services	Charlotte Spendley	Authorising Officer/ Senior Authorising Officer in the absence of the Head of Paid Service	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853263 Charlotte.spendley@folkestone-hythe.gov.uk
Assistant Director (Governance, Law and Regulatory Services)	Amandeep Khroud	RIPA Monitoring Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853253 amandeep.khroud@folkestone-hythe.gov.uk
Director of Housing & Operations	Andy Blaszkowicz	Authorising Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853315 andrew.blaszkowicz@folkestone-hythe.gov.uk
Director - Place	Ewan Green	Authorising Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY Ewan.green@folkestone-hythe.gov.uk

RIPA MANAGEMENT STRUCTURE

Directed Surveillance

Court



Authorising Officers
Susan Priest
Head of Paid Service
Charlotte Spendley
Director of Corporate Services
Andrew Blaszkowicz
Director of Housing & Operations
Ewan Green
Director - Place



Applying Officer

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

CHIS

Court



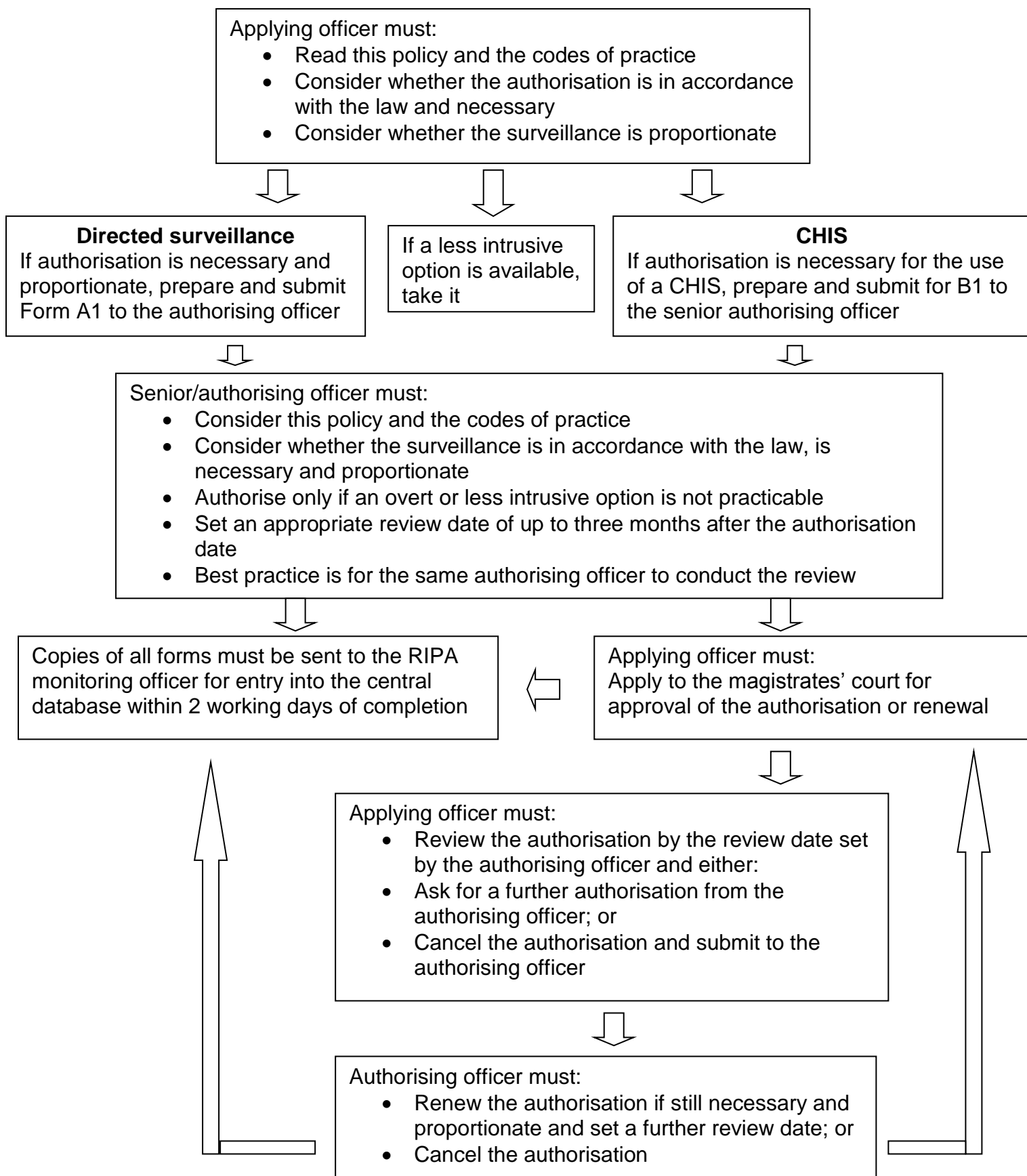
Susan Priest
Head of Paid Service

Or
Charlotte Spendley
Director of Corporate Services



Applying Officer

Appendix 2 – Flow Chart for Directed Surveillance and CHIS



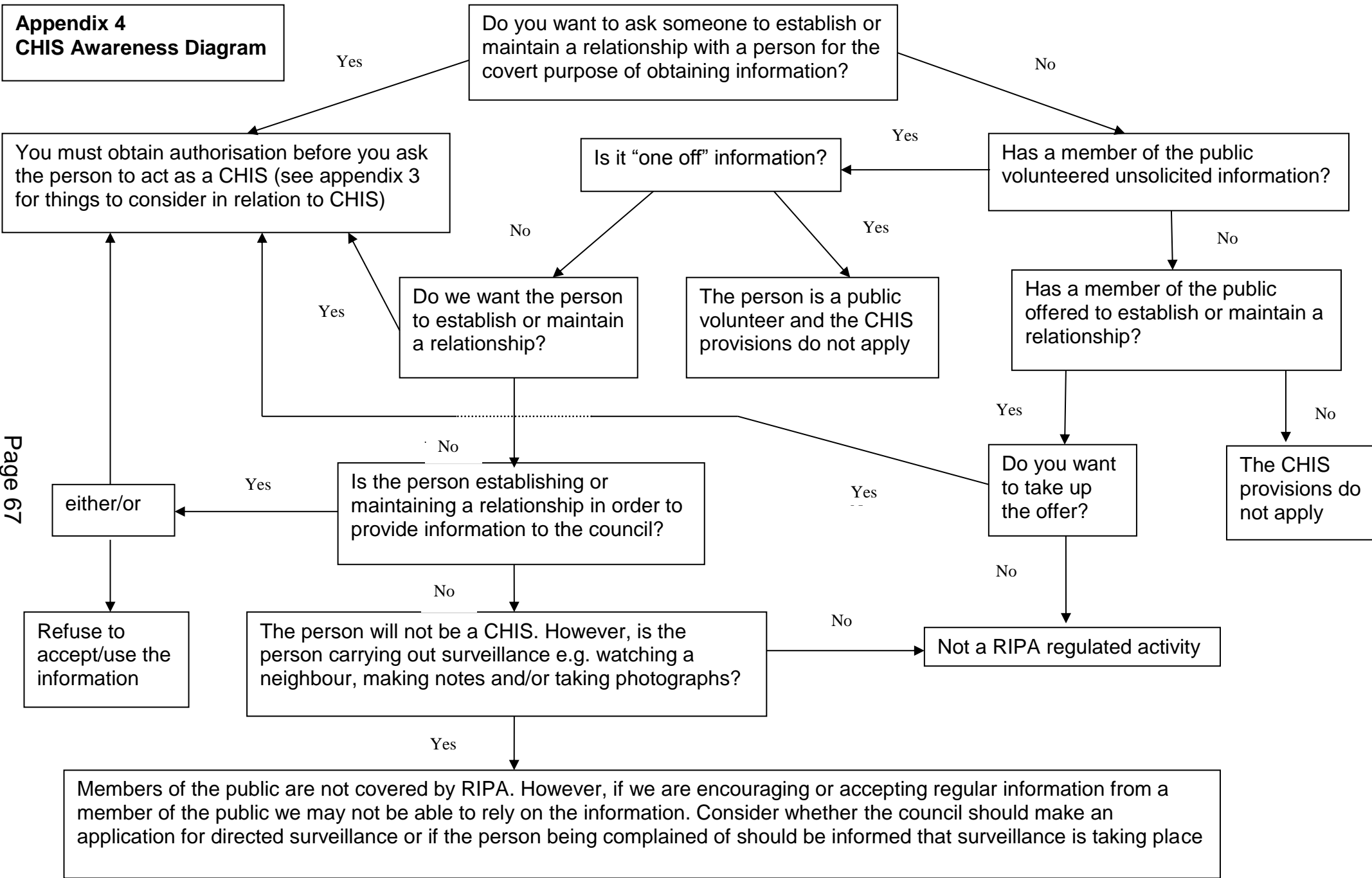
Applying officer – the person who makes a request to use RIPA powers;
 Authorising officer – the person who considers whether or not to grant an authorisation;
 Senior authorising officer – the senior person who considers whether or not to grant an authorisation for the use of a CHIS

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 Corporate Director – Strategy 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 13 September 2022

Report Number **C/22/33**

To: Cabinet
Date: 21 September 2022
Status: Non key
Responsible Officer: Rebecca Chittock, Planning Policy Specialist
Cabinet Member: Cllr Monk, Leader of the Council

SUBJECT: Statement of Community Involvement (SCI) Update

SUMMARY: The purpose of this report is to inform Cabinet of the work being carried out to update the current Statement of Community Involvement (2015) and to ask for Cabinet approval to consult on the attached draft document.

REASONS FOR RECOMMENDATIONS:

So that the council can consult on the draft SCI presented in Appendix 1, or as amended by Cabinet, to set out the council's commitment to engaging with the community on planning decisions affecting them.

RECOMMENDATIONS:

1. To receive and note report C/22/33.
2. That Cabinet supports work being carried out to update the SCI, including a public consultation.
3. That Cabinet approves the draft SCI (Appendix 1) for consultation, subject to any amendments that Cabinet considers necessary.
4. That Cabinet gives delegated authority to the Interim Assistant Director of Corporate Services, in consultation with the Leader of the Council, to make any amendments identified by Cabinet under Recommendation 3.

1. BACKGROUND

- 1.1 The Statement of Community Involvement (SCI) is a statutory document that all local planning authorities are required to have in place. The SCI explains how people can get involved in decisions about plan making and planning applications, these are the two main ways to get involved in the planning system locally.
- 1.2 As Cabinet may recall, when the Core Strategy Review was taken to full Council for adoption on 30 March 2022, a resolution was tabled highlighting that the existing SCI (adopted 2015) is out-of-date in certain aspects and calling for it to be renewed by the end of 2022. This was approved, with 27 votes for, none against and no abstentions.
- 1.3 It is important that SCI's are kept up-to-date to ensure effective community involvement at all stages of the planning process. Subsequently this update has been prepared to take into account changes to the planning legislation and regulations, new digital technologies, such as inclusion of social media as a public engagement tool, local changes and out-dated terminology.

2. DOCUMENT STRUCTURE

- 2.1 The SCI update follows a similar structure to the 2015 document. Introducing what is meant by engagement and then, looking at both the national and local context, touching on the government's vision to increase the use of digital engagement within the planning process.
- 2.2 Following this, is our Community Involvement Principles which have been updated to include our duties under the Equality Act 2010 and to ensure that information received through consultation processes complies with all GDPR. The principles are set out below:

Our Community Involvement Principles	
Seek views as early as possible	<ul style="list-style-type: none">• Involve the community as early as possible in the production of Local Plan documents• Pre-application involvement in planning applications, so that the applicants for certain types of development are encouraged to consult the community before submitting an application
Transparent planning processes	<ul style="list-style-type: none">• Make the purpose of planning consultations clear• Take account of views received and be clear about the scope of consultations from the start

- Publish consultation material that is clear, concise and avoids unnecessary jargon

Choosing appropriate ways to involve as many people as possible

- Choose consultation processes that are proportionate in type and scale to the potential impacts of the proposed plan
- Target consultation to include people whom we consider would be most affected by the proposals or plans and organisations who may have specialist knowledge of the issues
- Provide sufficient information for people to comment effectively
- Ensure involvement is open to all
- Consider our duties under the [Equality Act 2010](#)

Listen and feedback

- Fully acknowledge and consider the results of consultations
- Provide accessible feedback on the results of consultations and how they have been used
- Aim to make all representations publicly available
- Ensure that information received through consultation processes complies with all [Data Protection legislation](#)

2.3 The document is then split into two main sections, Plan-Making followed by Development Management. The Plan-Making section looks at:

- Who within the community the council will consult and engage with,
- What the council will consult and engage the community on;
- When the council will consult and engage the community; and
- How the council will consult and engage the community.

2.4 The Development Management section runs through our consultation procedure for the planning application process, from start to finish. It also sets out the minimum publicity requirements for different types of applications.

2.5 The Coronavirus pandemic has seen changes in the way that we work, communicate and engage. Picking up on these changes and the government's push to increase the use of digital engagement, the SCI states that the council will look to capitalise on the increased opportunities for wider engagement that online platforms have provided and that going forward we will aim to take a hybrid approach to community engagement, offering alternative routes to engage alongside the traditional.

3. NEXT STEPS

- 3.1 There is no requirement for local planning authorities to consult when reviewing and updating their Statement of Community Involvement, however the council resolution of 30 March 2022 included the line: “To engage with all residents and stakeholders of the district with regards to the renewal of the document.” Therefore, with Cabinet’s agreement, we would like to carry out a six week (October/ November 2022) public consultation.
- 3.2 The public consultation will consist of an online consultation, advertised through the council’s social media channels, the council website, a press release in local media and direct notification to statutory consultees and relevant groups. Hard copies of the consultation document will also be made available for inspection at the council office and local libraries.
- 3.3 The draft document is attached in Appendix 1. The draft has been prepared with the close involvement of the Development Management and Communications & Engagement teams. The Communications & Engagement Team are going to reformat the document before the public consultation, so that it is visually engaging and user friendly to help ensure that it is easily accessible to local communities.
- 3.4 The draft Statement of Community Involvement was presented to Overview and Scrutiny Committee on the 6th September 2022. Members of the committee raised comments relating to:
- the number of planning notices posted in relation to the size of the development;
 - whether a statement could be added to the notice requiring the applicant to remove them after the consultation period had closed;
 - Could other groups be added to the list of consultees in Appendix 1; and
 - Whether there was anything we could learn from recent consultations, such as the Place Plan.

4. RISK MANAGEMENT ISSUES

- 4.1 A summary of the perceived risks follows:

Perceived risk	Seriousness	Likelihood	Preventative action
That the council is held to account by a future local plan Inspector for having out-of-date materials to support its local plan.	Medium	Medium	That following the consultation the council proceeds to amend the SCI as necessary, adopt it in reasonable time and keep it under periodic review.
That emerging planning reforms (the Levelling Up and	Low	Medium	That the council continues to monitor emerging legislation and regulations and responds accordingly.

Regeneration Bill and supporting Regulations) remove the need to prepare an SCI or supersede it with an alternative mechanism.			
That the council cannot meet the engagement commitments set out in the SCI.	Low	Low	That the SCI is sufficiently flexible to adapt to changing circumstances (e.g. the occurrence of a pandemic-type emergency) while also meeting the community's needs and expectations to be engaged in planning decisions.
That the practices of the Development Management and/or Strategy, Policy and Performance teams fall short of the standards set out in the SCI.	Low	Low	That the Development Management and Strategy, Policy and Performance teams periodically compare their respective working practices to the standards set out in the SCI and amend practices as necessary. That the teams attend training on best practice in engagement techniques, when available, and familiarise new team members with the latest adopted SCI when there are personnel changes.

5. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

5.1 Legal Officer's Comments (NM)

"It is a legal requirement for the council to have both an SCI and to update it at least once every five years.

The review and subsequent update of the SCI means that the Council is acting in accordance with s18 of the Planning and Compulsory Purchase Act 2004. It also ensures compliance with regulation 10A(b) of The Town and Country Planning (Local Planning)(England) Regulations 2012 (as amended by The Town and Country Planning (Local Planning)(England)(Amendment) Regulations 2017) which requires the Council to review their SCI every 5 years from the date of adoption.

5.2 Finance Officer's Comments (RH)

There are no financial implications arising from this report.

5.3 Diversities and Equalities Implications (GE)

There are no equality and diversity implications directly arising from this report. The Statement of Community Involvement is designed to encourage and engage with the widest range people within local communities across the district on decisions relating to plan making and planning applications.

5.4 Climate Change Implications (AT)

There are no Climate Change implications relating to the Statement of Community Involvement update.

6. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

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

Rebecca Chittock Planning Policy Specialist
Telephone: 01303 853337
Email: rebecca.chittock@folkestone-hythe.gov.uk

Appendices:

Appendix 1: Draft Statement of Community Involvement 2022

Front Cover to be inserted

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DRAFT

Enquiries about planning

For information about plan-making and to register for email alerts for future consultations, contact the Strategy, Policy and Performance Team:

planning.policy@folkestone-hythe.gov.uk

01303 853000

Or make an appointment to visit the council offices.

For information about planning applications contact the Development Management Team:

planning@folkestone-hythe.gov.uk

01303 853538

Or make an appointment to visit the council offices.

DRAFT

PART ONE: INTRODUCTION AND GENERAL PRINCIPLES

1. Introduction

This document explains how to get involved in decisions about plan-making and planning applications. It is known as a Statement of Community Involvement (SCI) and all local planning authorities are required to have one¹. Our previous Statement of Community Involvement was adopted in 2015 and this update has been prepared to take into account new legislation and regulations, new technologies and to remove outdated terminology.

Planning affects everyone in some way – the homes we live in, where we study, the places we work, the open spaces we enjoy and the roads we travel on. Therefore, it is important that people understand the planning system and are given the opportunity to get involved to contribute ideas and influence decisions.

Folkestone & Hythe District Council is committed to involving local communities and other stakeholders in the planning process, so they can help shape our district.

2. How you can get involved in planning

Legislation sets out that planning decisions should be made in accordance with a council's Development Plan unless material considerations indicate otherwise. The district's Development Plan consists of adopted Local Plans, Neighbourhood Plans, prepared by Town and Parish Councils, and Minerals and Waste Plans prepared by Kent County Council.

There are two main ways to get involved in the planning system locally:

- 1) Responding to public consultation on Local Plans – these documents set the policy framework against which development proposals will be assessed.
- 2) Making comments on planning applications – most types of development require a planning application to be submitted and approved.

This document sets out how you can get involved. By 'involvement' we mean any interaction between our planning teams and the community, which can occur in a number of different ways, for example:

¹ The Statement of Community Involvement reflects the requirements of the Town and Country Planning (Local Planning) (England) Regulations 2012, Neighbourhood Planning (General) Regulations 2012 (as amended) the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Participation – active involvement in identifying needs and priorities, such as interactive workshops, both online and in person.

Consultation – consulting you on your views, such as through online consultation processes and surveys.

Information – providing data, such as advertisements in newspapers, publishing reports and holding exhibitions.

3. Community involvement in context

Policy and legislative context

The SCI update has been prepared under the following legislation:

- The Town and Country Planning (Local Planning) (England) Regulations 2012
- The Town and Country Planning (Development Management) (Procedure)(England) Order 2015
- Equality Act 2010
- Neighbourhood Planning (General) Regulations 2012 (as amended)
- The Localism Act 2011
- The General Permitted Development Order 2015 (as amended)
- The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019

To find out more information about the above legislation, please visit:

<https://www.planningportal.co.uk/planning/policy-and-legislation/legislation>

National context

The National Planning Policy Framework (NPPF) stresses the importance of engaging the community in plan making and decision taking. The NPPF states that Local Plans should:

Be shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees; [paragraph 16]

It also stresses the benefits for development and planning processes that arise from effective engagement:

Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community. [paragraph 39]

The Planning for the Future White Paper (2020) set out the government's vision to increase the use of digital engagement within the planning process, to make the planning system more accountable and democratic by offering alternative routes to engage alongside traditional forms of engagement.

Most recently the government has announced through the Levelling Up and Regeneration Bill (11 May 2022) that the government will be producing new guidance on community engagement in planning, which will describe the different ways communities can get involved and highlight best practice. This will include the opportunities which digital technology offers. When this guidance becomes available the SCI will be updated accordingly.

Local context

The council has an up-to-date Development Plan covering the period to 2037 and is set out in the following documents:

- The Core Strategy Review (2022) which sets out the spatial vision, objectives, development strategy and a series of over-arching strategic policies that will guide the scale, location and type of development in the district to 2037.
- The Places and Policies Local Plan (2020) which identifies small and medium sized sites for development across the district to meet the targets in the Core Strategy (2013); as well as setting out detailed development management policies to assess planning applications.
- St Mary in the Marsh Neighbourhood Plan (2019) which determines the extent of any future development in the parish and identifies where it is best located.
- Kent Minerals and Waste Local Plan (2016) which sets out the vision and strategy for waste management and mineral provision up until the year 2030.

The programme for preparing current and future planning documents is set out in the council's Local Development Scheme (LDS) which is updated on a regular basis and is available to view on the council [website](#).

4. Our Community Involvement Principles

In making planning decisions, the council often needs to balance differing views and make judgements in the best interests of all our communities. Gathering local opinions

will help us make decisions in the most informed way possible. To achieve this, we will apply the following principles to our planning consultations:

Figure 1 Our Community Involvement Principles

Our Community Involvement Principles
Seek views as early as possible
<ul style="list-style-type: none"> • Involve the community as early as possible in the production of Local Plan documents • Pre-application involvement in planning applications, so that the applicants for certain types of development are encouraged to consult the community before submitting an application
Transparent planning processes
<ul style="list-style-type: none"> • Make the purpose of planning consultations clear • Take account of views received and be clear about the scope of consultations from the start. • Publish consultation material that is clear, concise and avoids unnecessary jargon
Choosing appropriate ways to involve as many people as possible
<ul style="list-style-type: none"> • Choose consultation processes that are proportionate in type and scale to the potential impacts of the proposed plan • Target consultation to include people whom we consider would be most affected by the proposals or plans and organisations who may have specialist knowledge of the issues • Provide sufficient information for people to comment effectively • Ensure involvement is open to all • Consider our duties under the Equality Act 2010
Listen and feedback
<ul style="list-style-type: none"> • Fully acknowledge and consider the results of consultations • Provide accessible feedback on the results of consultations and how they have been used • Aim to make all representations publicly available • Ensure that information received through consultation processes complies with all Data Protection legislation

Other organisations that involve the community in planning processes could also use these principles. For example, town and parish councils consult when producing Neighbourhood Plans and developers provide a Statement of Community Involvement with major planning applications.

PART TWO: PLAN-MAKING

5. Community involvement in Plan-Making

We consider a wide range of locally prepared planning documents when planning decisions are made. Opportunities for community involvement in preparing these documents vary, depending on their status and purpose. Levels of community involvement in the main types of document are as follows:

Type of Document	Produced by	Purpose	Level of Involvement
The Development Plan	The Local Plan	Folkestone & Hythe District Council	Participation, Information and Consultation
	Kent Minerals and Waste Local Plan	Kent County Council	
	Neighbourhood Plans	town and parish councils	
Supplementary Planning Documents	Folkestone & Hythe District Council	Expands or adds detail to policies laid out in Local Plans.	Participation, Information and Consultation
Strategies and other supporting documents	Folkestone & Hythe District Council	Sets out proposals or actions to achieve broader planning objectives	Participation (usually), Information and Consultation (usually)
Statement of Community Involvement (SCI)	Folkestone & Hythe District Council	Sets out the council's approach to community	Information and Consultation

Type of Document	Produced by	Purpose	Level of Involvement
		involvement on planning matters	
Community Infrastructure Levy (CIL)	Folkestone & Hythe District Council	Sets a charge on new development to help fund infrastructure	Information and Consultation
Local Development Scheme (LDS)	Folkestone & Hythe District Council	Timetable for preparation and adoption of future Local Plan documents and other planning policies	Information
Authority Monitoring Report (AMR)	Folkestone & Hythe District Council	Reports progress on implementing the adopted Local Plan	Information

Table 1 Community involvement in Plan-Making

6. Who we will involve in Plan-Making

The council is required by legislation to consult certain bodies which it considers may have an interest in or be affected by a document, a list of these bodies is set out in Appendix A.

In addition, we maintain a database² of individuals, landowners, developers, and businesses that have taken part in past consultations or wish to be involved in future consultation events. New consultees can be added to the consultation database at any time. Anyone who wishes to be added can do so by contacting the Strategy, Policy and Performance Team.

The Duty to Co-operate set out in the Planning and Compulsory Purchase Act 2004 (as amended) and by the Localism Act 2011 establishes legal principles of co-operation with neighbouring councils, and other relevant organisations to work together across boundaries on strategic planning issues that affect them all. A list of duty to co-operate bodies is also included in Appendix A.

As part of the duty to co-operate we produce statements of common ground. All statements of common ground shall be published and kept up to date by the signatory

² This database complies with the GDPR principles

authorities as an accessible and public record of where agreements have or have not been reached on cross boundary strategic issues. All statements of common ground are available to view on the council [website](#).

7. How we will involve you in Plan-Making

Legislation sets out the minimum requirements for community involvement when preparing Local Plan documents. Where possible and appropriate, we will go beyond these requirements to promote greater community involvement and to meet the needs of our different communities. Therefore, a variety of methods are likely to be used at various stages of the plan-making process.

In addition, the Coronavirus pandemic has seen an expansion of the use of digital technologies in the way that we work, communicate and engage. The council will look to capitalise on the increased opportunities for wider engagement that online platforms have provided. Going forward we will aim to take a hybrid approach to community engagement, offering alternative routes to engage alongside the traditional.

Consultation methods we may use include, but are not limited to:

- **Direct notifications** – emails or letters (where no email address) will be sent to statutory consultees, relevant groups and to those who have requested to be contacted on our consultation database.
- **Website** – progress on our planning documents will be publicised on the council website. This will also be the place to download evidence base documents and feedback reports. People will be able to view consultation documents and make representations online. There is also a link to our plan-making consultations on the councils MyAccount online platform, which allows registered users to see council information relevant to them all in one place.
- **Hard copies** – during consultation periods, hard copies of documents will be made available for inspection at the council offices and local libraries (at the discretion of Kent County Council).
- **Social media** – consultation events will be advertised before, during and after the consultation via social media platforms, for example Facebook and Twitter.
- **Local media** – public notices, press releases will be sent to local media³ and published on the council website to promote consultations.
- **Your District Today** – where possible, updates will appear in our council magazine which is distributed to more than 50,000 homes and businesses across the district twice a year.
- **Presentations (in person and online)** – presentations to appropriate groups, organisations and stakeholders will be delivered to target particular people in the community who may be interested in specific issues. Presentations may also take place online, using technology such as video conferencing.
- **Leaflets and posters**- these may be distributed to promote consultations and summarise information on consultations. Information may also be circulated to town and parish councils and residents' associations for display on community

³ Local media includes Kent Messenger Group, Reach plc, community magazines, regional radio and television outlets.

notice boards or in community newsletters. QR codes will be used to link the community back to our website.

- **Interactive workshops and focus groups (in person and online)** – discussions of topics and documents in groups using plans, models, videos and other visual materials. This format may be more appealing to some people than traditional methods of consultation. Workshops are particularly useful at early stages of consultation and specific topic-based plans. The council may use consultants to support this engagement where it would be appropriate to have impartial intermediaries.
- **Exhibitions and road shows** – public displays for local residents to follow progress of plans and to give publicity to large scale development proposals and applications. Timing and location of exhibitions must be relevant to the community. These displays could be part of wider community events so that the council goes out to communities, rather than relying on communities to approach the council.
- **Councillor workshops** – to keep councillors informed and help them share information about the processes with local residents.
- **Surveys and questionnaires (in person and online)** – surveys and questionnaires may be used to canvass views on key issues, options, proposals and documents. Responses can help identify key interests and groups. There is benefit in focusing questions on key topics.
- **Digital tools**- including specialist consultation and engagement tools that incorporate interactive visual elements such as mapping and videos.

The details behind each consultation initiative will be formulated in partnership with the council Communications and Engagement Team and in line with our Community Involvement Principles.

8. Consultation in Plan-Making

The process for preparing a Local Plan will include at least one formal consultation stage before submission to the Secretary of State for independent examination.

Figure 2 Local Plan Process

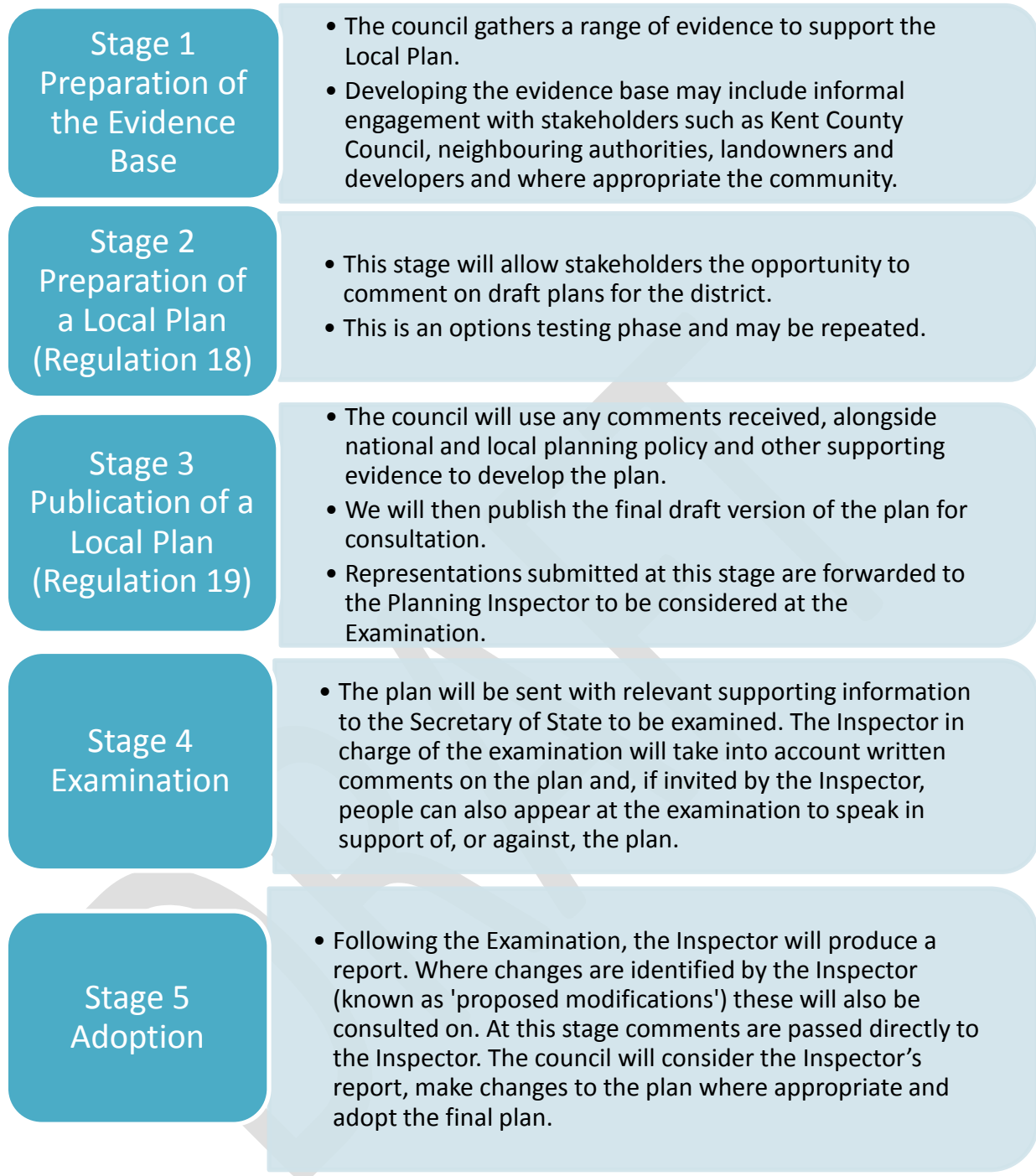


Table 3 in Appendix B outlines how the council will undertake the consultation and engagement at different stages of the preparation of a Local Plan. Examples of engagement methods are given, and as a minimum, the council will always comply with the relevant planning regulations.

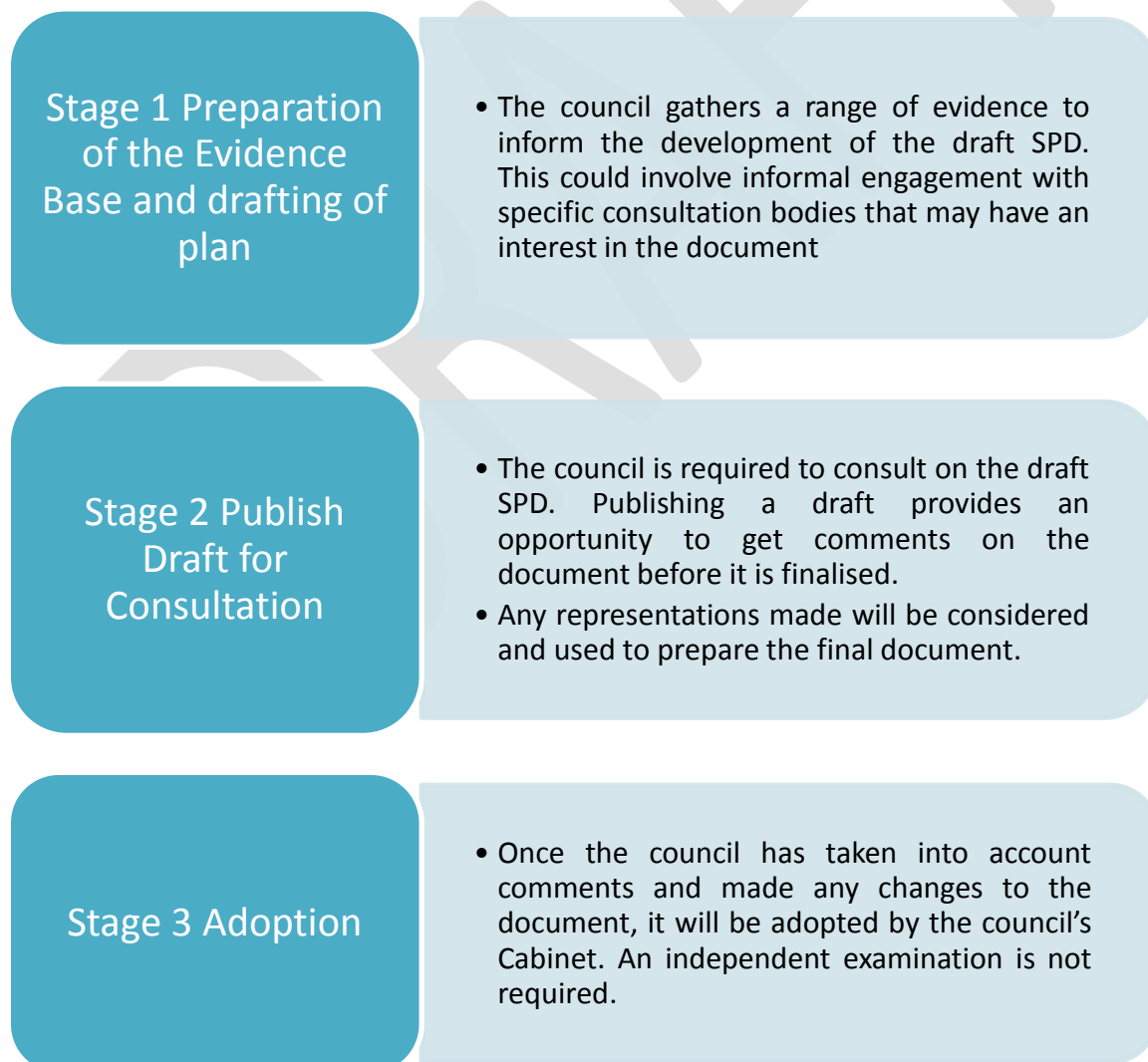
9. Sustainability Appraisal/Strategic Environmental Assessments

Legislation requires a Local Plan to go through a process of Sustainability Appraisal and Strategic Environmental Assessment (SA/SEA). This assesses the impact on the environment, economy and society and is intended to promote more sustainable development. When required, an SA/SEA will be consulted on throughout the plan-making process, at the same time as the document itself. Relevant stakeholders will also be consulted on the 'scope' of the SA/SEA at the start of the document preparation.

10. Consultation on a Supplementary Planning Document

Supplementary Planning Documents (SPD) add further detail to the policies in a Local Plan. The preparation of a SPD involves the stages set out below and the consultation requirements are outlined in Table 3 in Appendix B.

Figure 3 Supplementary Planning Document Process



11. Neighbourhood Plans and Development Orders

Neighbourhood planning has been introduced by the Localism Act 2011. This allows town and parish councils to prepare statutory Neighbourhood Plans, which form part of the Development Plan against which planning applications will be assessed. Neighbourhood planning enables communities to shape the development and growth of their local area.

Neighbourhood planning can include the production of a Neighbourhood Plan or a Development Order (including community right to build orders). Development Orders can be produced instead of, or in conjunction with, a Neighbourhood Plan and can be used to grant planning permission for certain types of development in specified areas.

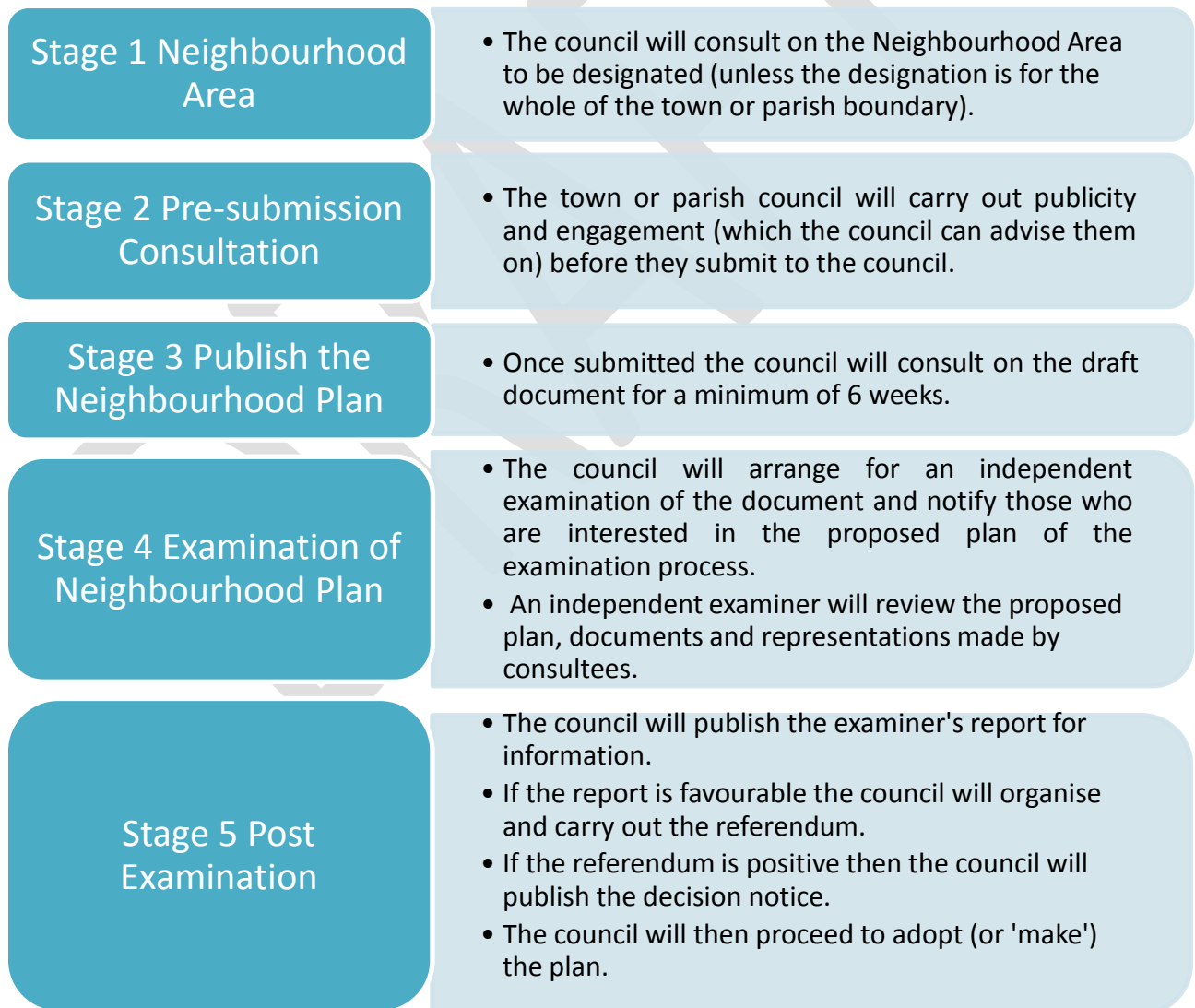
As Neighbourhood Plans and Development Orders are not prepared by the council, this SCI cannot prescribe what methods of community engagement they must follow. However, the council will expect groups preparing Neighbourhood Plans to meet the requirements set out in legislation and to follow wherever possible the general principles and techniques set out in this SCI. The council will meet all statutory requirements and will give advice and assistance to communities wishing to make a Neighbourhood Plan or Order by undertaking the following actions:

Meet the town or parish council as soon as possible.	Provide feedback in the form of written comments on draft Neighbourhood Plans or Orders.
Explain the different stages involved with a Neighbourhood Plan or Order.	When a Plan or Order is submitted, assess the document's compliance with statutory requirements.
Direct the relevant body towards information relevant to the Neighbourhood Plan or Order.	When submitted, host the consultation on the council's website with details of how to make representations for a minimum period of six weeks.
Where possible, share any data already held which may inform the evidence base (such as mapping information).	Assist with the appointment of the Neighbourhood Plan Examiner.

Highlight potential issues around compliance with the Local Plan and national policy.	Arrange for the referendum and (if approved) bring the plan into force.
Support the town or parish council to undertake any necessary environmental or habitat assessments.	

The Neighbourhood Planning consultation process is illustrated below and the consultation requirements are outlined in Table 3 in Appendix B.

Figure 4 Neighbourhood Plan Process



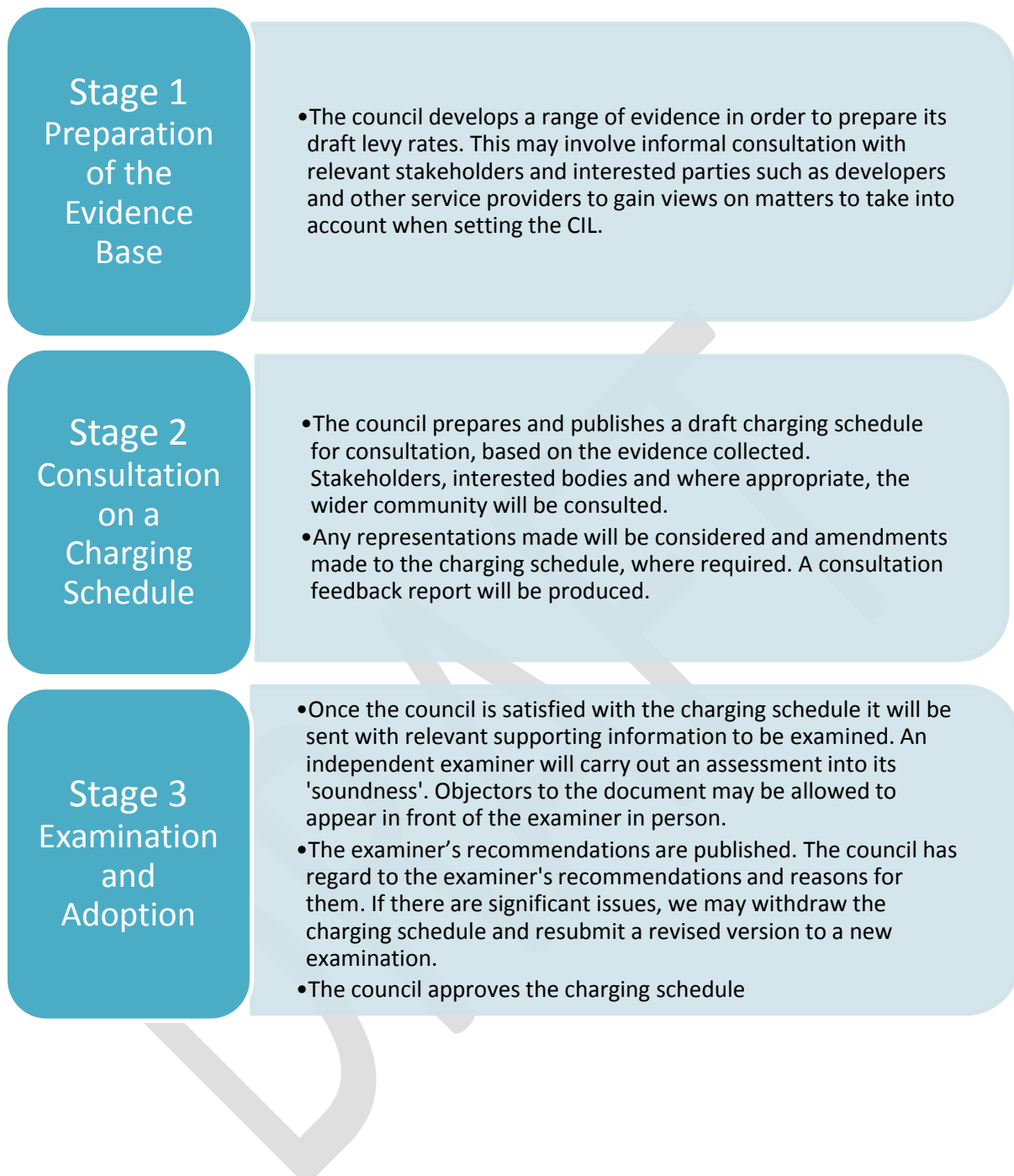
12. Consultation on a Community Infrastructure Levy (CIL) Charging Schedule

The council adopted a Community Infrastructure Levy (CIL) in August 2016 and has collected receipts from liable development since this time to support the provision of new infrastructure to encourage sustainable growth. The CIL Charging Schedule is currently being reviewed to bring it up to date with the Core Strategy Review (2022).

The CIL Charging Schedule sets out the levy that applies to specified types of development and different areas of the district, subject to exemptions set out in regulations. The consultation requirements for a CIL Charging Schedule are set out under the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 and are broadly in accordance with the consultation process for a Local Plan. Although the regulations do not specify for how long or how many times the council should consult, the length of consultation should reflect the complexity of any changes.

The preparation of a CIL Charging Schedule involves the stages shown below:

Figure 5 Community Infrastructure Levy Process



PART THREE: DEVELOPMENT MANAGEMENT

13. Community involvement on planning and related applications

Our consultation procedure through the planning application process from start to finish is as follows:

Pre-application Advice

Folkestone & Hythe District Council encourages applicants to seek pre-application advice prior to the submission of applications. This can save time, effort and expense during the course of an application for planning permission. Details of the services we provide, including fees, are available on the council [website](#). The council has no statutory duty to consult on pre-application requests for advice and we only do so with the permission of the applicant.

Applicants for all proposed developments are encouraged to discuss their proposals with those likely to be affected or to express an interest in an application. For larger or particularly sensitive developments, applicants are encouraged to consult with the local community prior to making a request for pre-application advice to the council and/or submitting a planning application.

In such circumstances, the applicant should consider how and when consultation will be carried out and how the needs of equality groups will be considered when running the consultation. Subsequent submissions to the council (either by way of a request for pre-application advice or a planning application) should set out the issues raised as a result of the consultation and whether any changes have or have not been made to the scheme as a result.

Particularly sensitive types of development include (but are not limited to):

- Major applications that are a departure from the development plan
- Environmental Impact Assessment (EIA) applications
- Large scale retail (20,000sq. m or more or 2,500sq. m if combined with an existing building would be in excess of 20,000sq. m)
- 150 dwellings or site is five hectares or more on greenfield land
- Development proposed on playing fields
- Onshore wind developments involving more than two turbines or where the hub height of any turbine exceeds 15 metres.

For larger scale and/or sensitive types of development, the council may consider it appropriate, at pre-application stage, to do some or all of the following:

- Hold public meetings and exhibitions (these would normally be advertised by the applicant or developer)
- Hold workshops or surgeries

- Conduct a Place Panel review, where experienced independent professionals from the development industry (architects, urban designers, sustainability and landscape practitioners) provide feedback and suggested improvements on the design principles of the proposed scheme.
- Development briefs
- Look to involve parish councils and community forums in pre-application discussions.

For the larger sites allocated in more rural areas, the council seeks to involve the local community at an early stage and therefore look to set up design workshops with parish councils and local communities to help shape more detailed proposals before planning applications are submitted.

Planning and related applications

We undertake statutory publicity on all applications in accordance with current legislation. The government may change the statutory publicity requirements at any time and our future approach will reflect any changes that are made⁴.

Councils have a duty to consult on applications that they receive. How they will go about notifying people about the applications is set out in Table 2 below. It is not necessary to have received a letter from the council in order for you to comment. Through our website you can sign up to MyAccount where you can view applications in your area. Further information on this is below.

You are encouraged to comment on all planning applications you consider yourself to be affected by no matter what the scale of development proposed. For some major or strategic schemes, we will seek to publicise applications in additional ways over and above the statutory publicity requirements.

⁴ The SCI applies the statutory requirements for publicity as set out in Article 15 of the Town and Country Planning (Development Management Procedure) Order 2015 (as amended) for all planning applications (<https://www.gov.uk/guidance/consultation-and-pre-decision-matters#Public-consultation>)

Application Type	Publicity				Minimum length of publicity
	Advert in local newspaper	Identified on Council's website	At least 1 site notice	Neighbour letter	
Development where application: <ul style="list-style-type: none"> Is accompanied by an environmental statement 	✓	✓	✓		30 days , including bank holidays, from date of publication or placing of notice (whichever is later)
Development where application: <ul style="list-style-type: none"> Is a departure from the Development Plan Affects a public right of way 	✓	✓	✓		21 days from date of publication or placing of notice (whichever is later)
Major development: <ul style="list-style-type: none"> 10 or more dwellings. Creation of 1,000 square metres or more floorspace or the site exceeds one hectare Mineral working or use of land for mineral working deposits All waste related developments, including waste treatment, storage and transfer as well as tipping. 	✓	✓	✓		21 days from date of publication or placing of notice (whichever is later)
All other planning applications for "Minor" and "Other" developments	✓	✓		✓	21 days from date of publication or placing of notice (whichever is later)

Development affecting the setting of a listed building	✓	✓	✓		21 days from date of publication or placing of notice (whichever is later)
Development affecting the character or appearance of a conservation area	✓	✓	✓		21 days from date of publication or placing of notice (whichever is later)
Application for listed building or conservation area consent	✓	✓	✓		21 days from date of publication or placing of notice (whichever is later)
Application related to a Tree Preservation Order			✓	See application type section below	21 days from date of publication or placing of notice (whichever is later)
Permitted development requiring prior approval or notification to the local planning authority				See application type section below	14 days or 21 days (depending on the type of prior notification) from placing of site notice
Lawful Development Certificate		✓			None
Advertisement consent		✓			None
Re-notification – relating to amendments to planning applications currently under consideration, amendments to approved schemes				See application type section below	None
Submission of details and schemes to comply with and / or discharge conditions					None

Permission in principle		✓	✓		14 days from placing of site notice
Application for technical details consent which is not a departure from the Development Plan, or affecting a public right of way, or major development		✓	✓		21 days from date of publication or placing of notice (whichever is later)

Table 2 Publicity requirements for all applications

NB. Definition of ‘days’ – with the exception of the first row which is development where the application is accompanied by an environmental statement, where the table refers to ‘days’, it means any day of the week that is not a bank holiday or public holiday.

Applications related to a Tree Preservation Order and trees in conservation areas

It is not necessary or required to provide site notices for every application, but where planning officers consider that there is a significant public interest then site notices can be erected.

Permitted development requiring prior approval or notification to the planning authority

Some types of development have already been granted a blanket planning permission by Parliament. However – for many of these, the developer is still required to submit applications for ‘prior notification’ or ‘prior approval’, relating to specific details of the development. The publicity for these applications is specified in the corresponding section of the legislation⁵. If the legislation requires the planning authority to give notice either by site display/notice or by serving notice to adjoining owners or occupiers, the council will display a site notice. In some circumstances the legislation requires the applicant to display a site notice themselves.

Planning conditions and non-material amendments

The council will not, in accordance with legislation, carry out publicity for applications to comply with or discharge planning conditions, or applications seeking non-material amendments to approved schemes.

⁵ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Un-amended legislation: <http://www.legislation.gov.uk/uksi/2015/596/contents/made>

The council will publicise applications to vary or delete conditions imposed on planning permissions in accordance with the information above.

14. Planning consultation methods

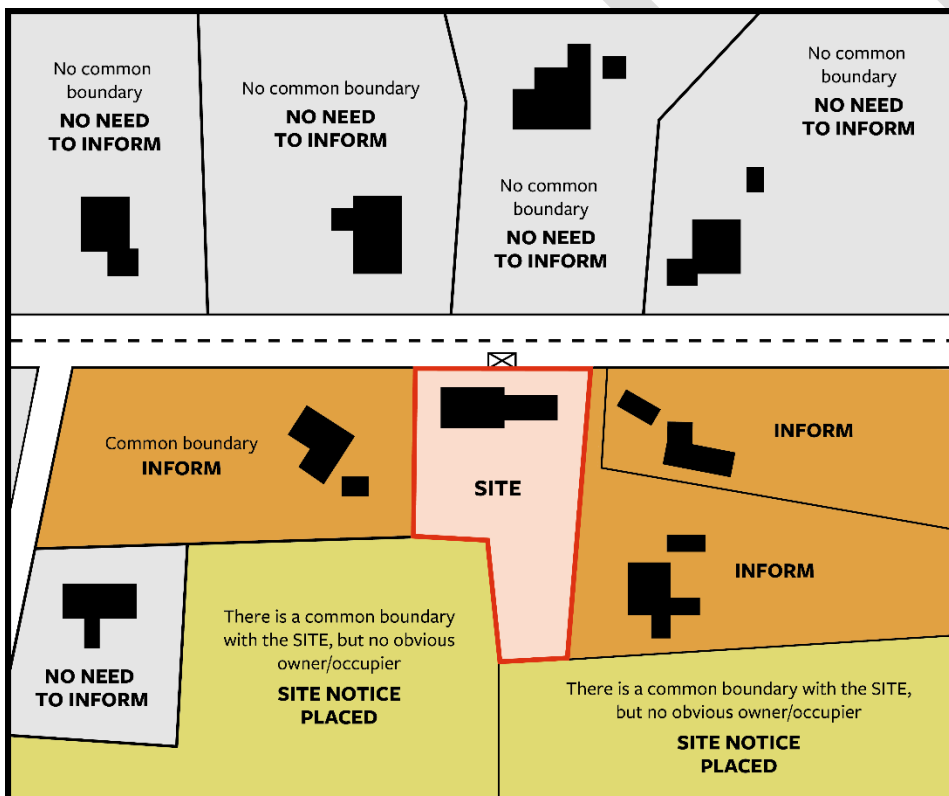
Depending on the type of the application and the legislation relating to such an application, consultation includes the following methods:

Letters to neighbours and statutory consultees

Neighbours will be notified by letter of most planning and listed building applications being considered.

Neighbour letters are sent to the occupiers of individual properties immediately adjoining, and in some cases opposite the site, but not on unbuilt land, in accordance with the principles set out in Figure 6 below.

Figure 6 Neighbour Consultation Diagram



As well as neighbour letters, notification correspondence will also be sent to organisations invited to comment on proposals in accordance with current legislation. District councillors are provided with the weekly list of new applications.

Notification of most planning and listed building applications will also be sent to the relevant parish or community council and responses will be invited within 21 days of the date of notification (or where longer periods of time are prescribed by different

legislation). Notification methods will indicate the date that comments are expected to be received by the council.

Site notices

For some application types (such as those with heritage considerations, those for prior approval, major developments and those not in accordance with the development plan) site notices are displayed.

Site notices are clearly visible, printed on yellow paper and usually attached to lamp posts, telegraph poles on, or adjacent to, the site.

Site notices will indicate the date that comments are expected to be received by the council. The application reference is also clearly stated, to enable the application paperwork to be viewed on the council website.

Local Press

Some applications are also advertised in a local newspaper. This applies in accordance with current legislation.

All copies of applications and plans are available for inspection on the council [website](#) usually within five working days of being registered. These are found using the search function of the planning section of the website. Weekly lists of applications, decisions and appeals are also available.

We are encouraging households to sign up to MyAccount feature on the council's website. You will then be able to view any planning applications being considered near where you live within 500m automatically and add planning applications to your watch list.

15. How to make a comment on an application

Anyone may comment on an application even if they have not been notified by the council. All comments are considered carefully.

The council receives and handles comments on planning applications by conventional post and email or by our online comments form on the council website. Making comments online is the quickest method for making comments.

Comments must be received within the consultation deadline (usually about four weeks from the application being registered by the council) to be certain of being considered.

The council does not respond to each comment made individually, due to the large number it receives. However, comments are summarised in the planning officer's report for each application. Officer's reports become public information on the application file found on the council's website following the application decision.

Care should be taken when making comments to the council to ensure that no personal data is included and that the information provided is relevant to the planning merits of the application only. Your comments, including your name and address, will be viewable on the website whilst the application or any subsequent appeal is being considered (your telephone number and e-mail address will not be viewable on this website).

Although the council reserves the right to remove inappropriate comments from the website as necessary, such comments may still be viewable prior to any removal and viewable online and by visitors to the Civic Centre. It is therefore your responsibility to ensure you do not include defamatory remarks in your comments as you could be held legally responsible for them in the future.

Subsequent correspondence received from the applicant or third party will be added to the website where this does not involve administrative matters or confidential information. This allows the public to track the progress of an application.

In some specific circumstances public comments may not be published on the council's website. This is usually when comments either contain sensitive information about the applicant or person making the comment, or the comments are of an inappropriate or defamatory nature bearing no relevance to the planning process.

Amendments to planning applications

Sometimes changes are made to 'live' planning applications. These changes may require a second round of consultation to ensure that interested parties can have their say on the changes.

If there are any significant amendments to the planning application before a decision is made, any relevant consultees will be notified. The period for commenting on amended plans will normally be 14 calendar days but this may be reduced to no less than 10 calendar days if circumstances such as the date of a planning committee dictate. In addition to consulting any relevant consultees, notifications will be sent to the relevant ward member, to people who were originally consulted and those who have already written in with comments.

How comments are considered by the council

Decisions on planning applications are made by the council's planning committee or decided by the Chief Planning Officer and other senior planning officers in accordance with the council's constitution and internal officer delegation arrangements.

The case officer considering the planning application should have all the necessary information they need to decide the application after the close of the consultation period (the time when all public comments should be made). Any relevant matters raised through comments will be summarised and considered in the officers' reports.

All decisions are made in relation to the statutory development plan for the district and any other material planning considerations. To see how an officer decided a particular planning application, you can view the officer's report on the council [website](#) by quoting the application reference number.

16. Consultation on decisions

In line with government advice, the majority of decisions are made by delegated authority. The planning committee also determines planning applications and meets on a broadly four week cycle, although occasionally additional special meetings may be called.

The planning committee comprises elected members who determine major, complex or controversial planning applications. The committee agendas are available on the council [website](#) and include reports on the individual planning applications being considered.

Information about how to speak in favour or against an application at planning committee is also available on the council [website](#).

Committee reports and the reports for applications decided by officers can be viewed on the planning file on the council website. Similarly, all decision notices are also viewable on the planning file. At the time a decision is issued on any application the council will notify by email all those who have submitted written comments on the application. This will state whether permission has been granted or refused. Parish and town councils will be notified too and provided with an electronic link to a copy of the decision notice.

17. Consultation on appeals

When the council receives an appeal relating to the decision on an application or relating to the non-determination of such an application, we will notify all those who commented on the original application either by letter or email. We will explain what the appeal is about, how people can be involved in the appeal process and the timescales for being involved. The Planning Inspectorate will decide if a hearing or public inquiry is required, where there may be more opportunities to put across your views.

However, if the appeal is about a householder application, (typically those for extensions or alteration to houses) then we will only let people know the appeal has been received. New comments on these types of appeals cannot be made at this stage.

For more information about planning appeals please visit the Planning Inspectorate [website](#).

18. Planning Enforcement

The council's role in enforcing planning regulations is set out on the council's website in the adopted Planning Enforcement Protocol. People with concerns regarding breaches of planning control should complete the online Planning Enforcement Complaint Form, or email planning.enforcement@folkestone-hythe.gov.uk.

19. Stakeholder forums

The council holds regular forums with agents and town and parish councils to help inform and improve the consultation and engagement process on planning applications, appeals and enforcement.

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PART FOUR: MONITORING AND REVIEW

We must review our Statement of Community Involvement every five years from the adoption date. It is important that Statements of Community Involvement are kept up to date to ensure effective community involvement at all stages of the planning process.

This SCI is flexible to allow for appropriate changes in our approach to community involvement in order to reflect changes in legislation, policy and opportunities that may arise with evolving digital engagement technology. For example, significant changes are likely to be made to the planning system through the Levelling-up and Regeneration Bill currently before Parliament, and a review of this SCI is likely to be needed when the Bill becomes law.

20. Further information and advice on planning

Department for Levelling Up, Housing and Communities (DLUHC)

The DLUHC supports communities across the UK to thrive, making them great places to live and work.

Website: www.gov.uk/government/organisations/department-for-levelling-up-housing-and-communities

Email: correspondence@levellingup.gov.uk

Postal Address: 2 Marsham Street, London, SW1P 4DF, United Kingdom

Telephone Number: 030 3444 0000

Locality

Locality is the national membership network for community organisations. Their goal is to help local community organisations be the best that they can be and to create a supportive environment for their work.

Website: <https://locality.org.uk/>

Email: info@locality.org.uk

Neighbourhood Planning

This is where you will find everything you need to know about how to develop a neighbourhood plan or neighbourhood development order and what support is available to you.

Website: <https://neighbourhoodplanning.org/>

Planning Aid England (PAE)

Planning Aid England provides free, independent and professional planning advice to communities and individuals who cannot afford to pay professional fees. It is provided by the Royal Town Planning Institute.

Website: www.rtpi.org.uk/planning-aid

Email: advice@planningaid.rtpi.org.uk

Postal Address: The Royal Town Planning Institute, 41 Botolph Lane, London EC3R 8DL

Telephone: 0330 123 9244

The Planning Inspectorate

The Planning Inspectorate processes planning appeals and holds examinations into planning policy documents and the Community Infrastructure Levy (CIL).

Website: www.planningportal.gov.uk/planning/planninginspectorate

Email: enquiries@pins.gsi.gov.uk

Postal Address: The Planning Inspectorate, Room 3/13, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN

Telephone: 0303 444 5000

The Planning Portal

The Planning Portal is the government's online 'one-stop-shop' for planning and building services. It provides information on the planning system, allows you to submit a planning application, find out about development in your area, appeal against a decision and research government policy. Website: www.planningportal.gov.uk Email:

support@planningportal.gsi.gov.uk

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21. Glossary

Community Infrastructure Levy (CIL) – a payment that is made to the council by developers when development commences. The payment is used to fund infrastructure that is needed to serve development in the area. This can include new transport schemes, community facilities, schools and green spaces.

Core Strategy Review (CSR) – a plan which sets out the long-term spatial vision for the district, along with the spatial objectives and strategic policies to deliver that vision.

Development Plan Document (DPD) – spatial planning documents that together with the Minerals and Waste Plans will form the development plan for the district. They are subject to Independent Examination before adoption.

Equality Groups - our Equality Impact Assessment sets out the protected characteristics as: Disability; Race (including Gypsy and Traveller); Age; Gender; Transgender; Sexual orientation; religion/belief; pregnancy and maternity; marriage or civil partnership status.

Local Development Scheme (LDS) – a timetable for preparation and adoption of future Local Plan documents and other planning policies over a three year period. It can be updated and amended as necessary by the council.

Localism Act – The Localism Act has devolved greater powers to local government and neighbourhoods and given local communities more rights and powers over decisions about housing. It also includes reforms to make the planning system more democratic and more effective.

Local Plan – the collection of development plan documents setting out the overall planning strategy, policies and proposals for the Council.

Material Consideration - a matter that should be taken into account in deciding a planning application or on an appeal against a planning decision.

National Planning Policy Framework (NPPF) – a document setting out the government’s national planning requirements, policies and objectives. The NPPF is a material consideration in the preparation of Local Plans and when considering planning applications.

Neighbourhood Plan – a duty under the Localism Act 2011 gives authorised groups the power to prepare a development plan for their area. This plan could include general planning policies and allocations of land for new development.

Places and Policies Local Plan (PPLP) – identifies small and medium sized sites for development across the district to meet the targets in the Core Strategy; as well as setting out detailed development management policies to assess planning applications.

Planning Inspectorate – an organisation which processes planning appeals and holds examinations into Local Plans and the Community Infrastructure Levy (CIL).

Stakeholder- a person, group, company, association, etc. with an interest in, or potentially affected by, planning decisions in the district.

Statement of Community Involvement (SCI) – the council’s policy for involving the community in plan making and when considering planning applications. It includes who should be involved and the methods to be used.

Supplementary Planning Document (SPD) – a document that expands or adds detail to policies laid out in Local Plans. They are not subject to independent examination.

Sustainability Appraisal and Strategic Environmental Assessment (SA/SEA) – a systematic and iterative appraisal process incorporating the requirements of the European Directive on Strategic Environmental Assessment. The purpose of the

Sustainability Appraisal is to appraise the economic, environmental and social effects of the strategies in a Local Plan from the outset of the preparation process.

A fuller glossary of common planning terms and phases can be found on the National Planning Portal at <http://www.planningportal.gov.uk/general/glossaryandlinks/glossary>

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Appendix A: Consultees in Plan-Making

The Town and Country Planning (Local Planning) (England) 2012 Regulations (Regulation 18) require the council to consult:

1. Specific bodies that we consider may have an interest in the subject of the proposed document.
2. General consultation bodies that we consider appropriate.
3. Residents or other persons carrying on business in the district from which we consider it appropriate to invite representations.

For clarity we have divided consultees into four groups. This may alter over time due to changes in legislation or re-organisations of public bodies, therefore the lists are reviewed regularly.

1. Statutory Consultees- Specific Bodies

- Local planning authorities that adjoin the district
- Kent County Council
- East Sussex County Council
- Parish councils within and adjoining the district
- Police
- The Coal Authority
- Environment Agency
- Historic England
- Natural England
- The Marine Management Organisation
- The Port Authority
- Network Rail Infrastructure Limited
- National Highways
- Mobile Phone Operators Association
- Mobile Phone Operators with apparatus situated in any part of the district
- Clinical commissioning groups
- Utilities and service providers
- Internal Drainage Boards
- Homes England.

2. Statutory Consultees- General Bodies

- Voluntary bodies, some or all of whose activities benefits any part of the area
- Bodies which represent the interest of:
 - Different ethnic or national groups in the area
 - Different religious groups in the area
 - Disabled people in the area
 - People in business in the area

The council must also seek to ensure a wide range of other consultation bodies and organisations have opportunities to become involved at any stage if they wish or where their input will be useful.

3. Other consultation bodies and organisations

- Environmental groups
- Groups representing users, and the providers, of leisure, sport and recreation
- Health, education, social service and community-based service providers
- Civic societies, cultural, historical and archaeological groups or bodies
- Citizen, district, tenant panels
- Associations of local residents and communities
- Registered social landlords
- House builders and developers
- Landowners and land agents
- Public transport users and providers
- Groups representing retired and elderly people
- Groups representing young people
- Local businesses and the voluntary and community sector
- Council elected members who provide important channels of communication to and act as advocates for their local communities.

4. The Wider Community

The council maintains a database of individuals, landowners, developers, and businesses that have taken part in past consultations or wish to be involved in future consultation events. We ensure that information received through consultation processes complies with all Data Protection legislation.

Duty to Co-operate bodies

- Neighbouring local planning authorities
- Kent County Council
- East Sussex County Council
- The South East Local Enterprise Partnership (SELEP)
- Environment Agency
- Historic England
- National Highways
- Natural England
- The Office of Rail Regulation

- Clinical commissioning groups
 - The Civil Aviation Authority
 - The Port Authority
 - Homes England
- In addition, the National Planning Policy Framework requires local planning authorities to work collaboratively with Local Nature Partnerships.

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Appendix B: Summary of the consultation stages, duration and methods that the council may use when consulting on a Local Plan

Table 3 Consultation on Development Plan Documents

Key Stages	What we will consult on	How we will inform you	Regulatory Requirements
All Development Plan Documents including the Local Plan. Some of these stages will also be relevant to consultation on the Community Infrastructure Levy Charging Schedule			
Stage 1 Preparation of the evidence base	Evidence base documents necessary for plan making are developed with engagement from a range of stakeholders and communities with local knowledge, views, and expertise.	This is an informal stage, however evidence base documents should be made available on the council's website as soon as they are completed.	Not applicable.
Stage 2 Preparation of a Local Plan	This stage gives stakeholders the opportunity to comment on draft plans for the district. This is an options testing phase and may be repeated if necessary.	<p>Notify specific consultation bodies that may have an interest in the document.</p> <p>Engage with general consultation bodies, and other consultation bodies as appropriate.</p> <p>If it is decided to carry out a wider public consultation the council will:</p>	Before preparing a new Local Plan (Regulation 18), the council will need to notify specific consultation bodies who have an interest in the subject of the proposed plan, appropriate general consultation bodies, residents, and businesses (from the consultation database) in the area from which the local planning authority considers it appropriate to invite representations.

Key Stages	What we will consult on	How we will inform you	Regulatory Requirements
		<ul style="list-style-type: none"> • Publish the consultation document on the council website for a minimum of six weeks • Notify people on the council's consultation database of the start of the consultation • Make printed copies of the consultation document available for inspection at the council's office and other inspection points. • Advertise the consultation through the council social media channels. <p>In addition, if appropriate, the council will aim to do one or more of the following:</p> <ul style="list-style-type: none"> • Seek coverage in local media • Presentations • Interactive workshops or focus groups 	

Key Stages	What we will consult on	How we will inform you	Regulatory Requirements
		<ul style="list-style-type: none"> • Exhibitions • Surveys and questionnaires • Include article in council magazine • Council member workshops • Meetings (one to one or group) <p>All comments received will be made publicly available</p>	
<p>Stage 3</p> <p>Publication of a Local Plan</p>	<p>The council will ask you what you think of the draft plan in accordance with a formal procedure. It will be made clear that members of the public have a right to comment at this stage. And if they comment they then have the right to be involved in the Examination In Public (EiP).</p>	<p>The council will:</p> <ul style="list-style-type: none"> • Publish the draft plan and supporting documents on the council website for a minimum of six weeks • Notify those specific, general and other consultation bodies that were invited to make representations at an earlier stage • Consult the wider community (as appropriate to the document) 	<p>Publication of a Local Plan (Regulation 19)</p> <ul style="list-style-type: none"> • Before submitting a plan to the Secretary of State (SoS) under Section 20 of the Planning and Compulsory Purchase Act 2004 the local planning authority must (a) make a copy of each of the proposed submission documents and a statement of representation procedures in accordance with Regulation 35 and (b) ensure that a statement of the representations procedure (including, where and when for inspection) is sent to each of the general consultation bodies and each of the specific consultation bodies and each of the specific

Key Stages	What we will consult on	How we will inform you	Regulatory Requirements
		<ul style="list-style-type: none"> • Make printed copies of the draft plan and supporting documents available for inspection at the council's office and other inspection points • Advertise the consultation through the council social media channels • Seek coverage in local media. <p>In addition, the council will aim to do one or more of the following:</p> <ul style="list-style-type: none"> • Presentations • Digital tools e.g. mapping and videos • Exhibitions and roadshows. 	<p>consultation bodies invited to make representation under Regulation 19.</p> <p>Representations relating to a Local Plan (Regulation 20)</p> <ul style="list-style-type: none"> • Any person may make representations to the council about a local plan which the council proposes to submit to the Secretary of State. Any such representations must be received by the council by the date specified in the statement of representations procedure.
<p>Stage 4</p> <p>Examination</p>		<ul style="list-style-type: none"> • The council will: • Publish all relevant submission documents on the council website 	<p>Independent Examination (Regulation 24)</p> <p>At least six weeks before the examination starts, the council must:</p>

Key Stages	What we will consult on	How we will inform you	Regulatory Requirements
		<ul style="list-style-type: none"> • Make printed copies of the submission documents available for inspection at the council office and other inspection points • Notify all those specific, general consultation bodies, and other bodies who have previously been invited to make representations on the plan, about the submission of the plan to the Secretary of State • Notify anyone else who requested to be notified of the submission of the plan to the Secretary of State • Notify all those who commented on the plan at stage 3 with details of the examination. 	<ul style="list-style-type: none"> • Make the plan and all documents submitted to the Secretary of State available at the places the plan was made available during Stage 3 • Publish the plan on the council website as well as advertise the time and place of where the examination will be taking place and the name of the person carrying out the examination. • Notify anyone who has made comments under Stage 3 and has not withdrawn those comments by the time and date of the examination.
Stage 5 Adoption		The council will: <ul style="list-style-type: none"> • Publish the Inspector's report and notify anyone 	Adoption of a Local Plan (Regulation 26) Once the Local Plan has been adopted, as

Key Stages	What we will consult on	How we will inform you	Regulatory Requirements
		<p>who requested to be notified</p> <ul style="list-style-type: none"> • Make the adopted document, a sustainability appraisal report, relevant information and adoption statement available for inspection at the council offices and on the website • Send the adoption statement to the Secretary of State and any person who asked to be notified. 	<p>soon as practicable the council must:</p> <ul style="list-style-type: none"> • Make the Local Plan and an adoption statement available for viewing in the places where the proposed Local Plan was provided in Stage 3. • Publish the adoption statement on the council website • Advertise details of where and when the Local Plan and the adoption statement are available to view • Send the adoption statement to anyone who has asked to be notified of the adoption of the Local Plan. • Send a copy of the adoption statement to the Secretary of State.

Table 4 Consultation on Supplementary Planning Documents (SPD)

Key Stages	What we will consult on	How we will inform you	Regulatory Requirements
<p>Stage 1</p> <p>Preparation of the evidence base and drafting of plan</p>	<p>The council will gather a range of evidence and ideas to inform the development of the draft plan.</p>	<p>The council will:</p> <p>Engage with specific consultation bodies that may have an interest in the document.</p> <p>Consult more widely if it is considered relevant and appropriate to do so.</p>	<p>Not applicable</p>
<p>Stage 2</p> <p>Publish draft for consultation</p>	<p>The council will consult on the draft Supplementary Planning Document (SPD). Publishing a draft provides an opportunity to get comments on the document before it is finalised.</p> <p>Any representations made will be considered and used to prepare the final document.</p>	<p>The Council will:</p> <p>Publish the draft SPD and supporting documents on the council website for a minimum of six weeks.</p> <p>Consult the specific, general and other bodies who are relevant to the topic of SPD being prepared.</p> <p>Consult the wider community as appropriate to the document.</p> <p>Make printed copies of the draft SPD and supporting documents available for</p>	<p>Public participation (Regulation 12)</p> <p>Before the council can adopt an SPD, they need to:</p> <p>Prepare a statement that lists the persons consulted when preparing the SPD; a summary of the main issues raised by those persons; and how the issues have been addressed in the SPD.</p> <p>Make copies of the statement and the SPD available with details regarding the date by which representations must be submitted and the address to which they must be sent.</p>

Key Stages	What we will consult on	How we will inform you	Regulatory Requirements
		<p>inspection at the council offices and other inspection points.</p> <p>Advertise the consultation through the social media channels.</p> <p>Depending on the type of SPD the council will consider using one or more of the following:</p> <ul style="list-style-type: none"> • Presentations • Workshops and focus groups • Exhibitions • Surveys and questionnaires. 	
<p>Stage 3</p> <p>Adoption</p>	<p>Not Applicable</p>	<p>The Council will:</p> <p>Publish the adopted SPD and evidence base documents on the council website. This will include a consultation statement summarising all the comments received from the previous stages and how the comments were considered.</p>	<p>Application and interpretation (Regulation 11)</p> <p>Once the SPD is adopted, the council must publish an adoption statement that specifies:</p> <ul style="list-style-type: none"> • The date that the SPD was adopted • Any modification made pursuant to section 23 (1) of the Act

Key Stages	What we will consult on	How we will inform you	Regulatory Requirements
		<p>Send an adoption statement to those who commented on the draft and those who have asked to be notified of the adoption of the SPD.</p> <p>Make printed copies of the adopted SPD and available for inspection at the council offices and other inspection points.</p>	<ul style="list-style-type: none"> • That any person with sufficient interest in the decision to adopt the SPD may seek permission from the High Court for judicial review of that decision, and • Such an application must be made no later than three months after the date on which the SPD was adopted. <p>Adoption of supplementary planning documents (Regulation 14)</p> <p>Once the Council adopt the SPD it must:</p> <ul style="list-style-type: none"> • Make the SPD and an adoption statement available in accordance with regulation 35.

Table 5 Consultation on Neighbourhood Plan and Development Orders

Key Stages	What we will consult on	How we will inform you	The Neighbourhood Planning (2012) Regulatory Requirements
<p>Stage 1</p> <p>Neighbourhood Area</p>	<p>The regulations only stipulate consultation for a neighbourhood area if the area does not follow the parish boundary (options include being an area smaller than the parish, including part of neighbouring parish area or two parishes working together).</p>	<p>If the neighbourhood area does not follow the parish boundary the council will publish the area application and details of how to make representations on the council website for a minimum of six weeks.</p> <p>Advertise the consultation through the council social media channels.</p>	<p>Application for designation of a neighbourhood area (Regulation 5)</p> <p>Where a town or parish council submits an area application to the LPA it must include:</p> <ul style="list-style-type: none"> • a map which identifies the area to which the area application relates • a statement explaining why this area is considered appropriate to be designated as a neighbourhood area • a statement that the town or parish council making the area application is a relevant body for the purposes of section 61G of the 1990 Act. <p>A local planning authority may decline to consider an area application if the town or parish has already made an area application and a decision has not yet been made on that application</p> <p>Designation of the whole of the area of a parish council (Regulation 5A)</p> <p>This regulation applies where:</p>

Key Stages	What we will consult on	How we will inform you	The Neighbourhood Planning (2012) Regulatory Requirements
			<ul style="list-style-type: none"> • a local planning authority receive an area application from a parish council • the area specified in the application consists of the whole of the parish council's area • if any part of the specified area is part of a neighbourhood area, none of that neighbourhood area extends outside the parish council's area. <p>The local planning authority must exercise its powers under section 61G of the 1990 Act to designate the specified area as a neighbourhood area.</p> <p>Where this regulation applies, regulations 6 and 6A do not apply</p> <p>Publicising an area application (Regulation 6)</p> <p>As soon as possible after receiving an area application from a town or parish, a local planning authority must publicise the following on its website and in such other manner as they consider it likely to bring the area application to the attention of people who live, work or run a business in the area to which the area application relates:</p>

Key Stages	What we will consult on	How we will inform you	The Neighbourhood Planning (2012) Regulatory Requirements
			<ul style="list-style-type: none"> • a copy of the area application • details of how to make representations • the date by which those representations must be received, being not less than six weeks from the date on which the area application is first publicised.
<p>Stage 2</p> <p>Pre-submission Consultation</p> <p>Following this consultation, the town or parish council must assess and take into consideration all comments received and make changes to the document if necessary.</p> <p>The town or parish council will then use its findings to create a document called the 'Consultation Statement'. The</p>	<p>The town or parish council will carry out publicity and engagement (which the council can advise on).</p>	<p>This will be for the town or parish council to decide. However as a minimum, the relevant planning regulations must be complied with.</p>	<p>Pre-submission consultation and publicity (Regulation 14)</p> <p>Prior to submitting a plan proposal to an LPA, a town or parish council must:</p> <ul style="list-style-type: none"> • Publicise the plan and bring it to the attention of the people who live, work, or run a business in the neighbourhood area • Provide details regarding: <ul style="list-style-type: none"> -the proposals for a Neighbourhood Plan (NP) -where and when the proposals for an NP may be inspected -how to make representations, the date by which representations must be received, not being less than 6 weeks from the date in which the draft proposal was first published.

Key Stages	What we will consult on	How we will inform you	The Neighbourhood Planning (2012) Regulatory Requirements
document can then be finalised and submitted to the council.			<ul style="list-style-type: none"> • Consult any consultation body whose interests may be affected by the proposals for an NP; and • Send a copy of the NP proposal to the LPA
<p>Stage 3</p> <p>Publishing the document</p>	All proposed documents prepared by the town or parish council.	Once submitted the council will consult on the draft document for a minimum of six weeks	<p>Plan proposals (Regulation 15)</p> <p>When submitting a plan proposal to the LPA the town or parish council must include:</p> <ul style="list-style-type: none"> • A map or statement that identifies the areas to which the proposed NP relates • A consultation statement • The proposed NP • A statement explaining how the proposed NP meets the requirements of paragraph 8 of Schedule 4B to the 1990 Act <p>Publicising a plan proposal (Regulation 16)</p> <p>After receiving an NP proposal, the LPA must:</p> <ul style="list-style-type: none"> • Publicise the plan proposal on its website • Provide details about the plan proposal

Key Stages	What we will consult on	How we will inform you	The Neighbourhood Planning (2012) Regulatory Requirements
			<ul style="list-style-type: none"> • Provide details of where and when the plan proposal may be inspected • Provide details about how to make representations • Issue a statement that any representations may include a request to be notified of the LPA's decision in relation to the NP • The date by which representations must be received, not being less than 6 weeks from the date in which the draft proposal was first published.
<p>Stage 4 Examination</p>		<p>The council will arrange for an independent examination of the document and notify those who are interested in the proposed plan of the examination process. An independent examiner will review the proposed plan, additional documents and representations made by consultees.</p>	<p>Submission of plan proposal to examination (Regulation 17) As soon as a person to carry out the examination is appointed, the local planning authority must send the following to the examiner:</p> <ul style="list-style-type: none"> • the plan proposal • the documents referred to in regulation 15 and all other documents submitted to the LPA by the town or parish council regarding the plan proposal • if the Conservation of Habitats and Species Regulations 2010

Key Stages	What we will consult on	How we will inform you	The Neighbourhood Planning (2012) Regulatory Requirements
			<p>applies, the information submitted in accordance with regulation 102A of those Regulations</p> <ul style="list-style-type: none"> • a copy of any representations that have been made in accordance with Regulation 16.
<p>Stage 5</p> <p>Post Examination</p>		<p>The council will publish the inspector's report and notify those who work and live in the neighbourhood area.</p> <p>If the report is favourable, then the council will organise and carry out the referendum.</p> <p>If the referendum is positive, then the council will publish the Decision Notice.</p>	<p>Publication of the examiner's report and plan proposals decisions (Regulation 18)</p> <p>Following examination of the plan, the examiner will write a report stating that:</p> <ul style="list-style-type: none"> • further modifications are required before the plan can proceed to the referendum stage • the plan does not meet the basic conditions and therefore should not proceed to the referendum stage • the plan can proceed to the referendum stage without any changes <p>Decision on a plan proposal (Regulation 19)</p> <p>Once a decision is made, the local planning authority must:</p> <ul style="list-style-type: none"> • publish a statement outlining the decision and their reasons for

Key Stages	What we will consult on	How we will inform you	The Neighbourhood Planning (2012) Regulatory Requirements
			<p>making the decision on its website</p> <ul style="list-style-type: none"> • provide details of where and when the decision statement may be inspected • A copy of the decision statement must also be sent to the town or parish council and any person who asked to be notified of the decision <p>Publicising a neighbourhood plan (Regulation 20)</p> <p>Once the neighbourhood plan is made the local planning authority must:</p> <ul style="list-style-type: none"> • Publish the neighbourhood plan on its website • Provide details of where and when the NP may be inspected • Notify any person who asked to be notified of the making of the NP that has been made and where and when they can inspect it

DRAFT

This Report will be made public on 13 September 2022



Report Number **C/22/34**

To: Cabinet
Date: 21st September 2022
Status: Key Decision
Responsible Officer: David Whittington Strategy & Policy Senior Specialist
Cabinet Member: Councillor David Monk Leader of the Council

SUBJECT: LYMINGE NEIGHBOURHOOD AREA

SUMMARY: Lyminge Parish Council has submitted a 'neighbourhood area' application, the first stage in producing a neighbourhood development plan. As the proposed area is the same as the parish boundary, the District Council must now designate it.

REASONS FOR RECOMMENDATIONS

Regulation 5A of the Neighbourhood Planning (General) Regulations 2012 (as amended) indicates that if the local planning authority receives an area application from a parish council that consists of the whole of the parish council's area, then it must exercise its powers under section 61G of the Town and Country Planning Act 1990 (as amended) to designate the specified area as a neighbourhood area.

RECOMMENDATIONS:

1. To receive and note report C/22/34.
2. To designate the Lyminge Neighbourhood Area.

1. BACKGROUND

- 1.1 Neighbourhood planning was introduced by the Localism Act in 2011. The idea behind localism is that decision-making be passed to a more local level, from national or local government to local communities. Parish and town councils or neighbourhood forums (in unparished areas) can produce neighbourhood plans for their local areas, putting in place a strategy and policies for the future development of the area.
- 1.2 There are two main routes for neighbourhood planning, neighbourhood plans¹ and neighbourhood development orders (including community right to build orders)². The production of each generally follow the same plan making process. Within the Folkestone & Hythe District, there is currently only one neighbourhood development plan that has been brought into force, St. Mary in the Marsh. There are no development orders.
- 1.3 Lyminge Parish Council has decided to undertake a neighbourhood development plan. The first stage in producing either a plan or an order is to designate the 'neighbourhood area', an identified geographical area in which the planning policies will operate.
- 1.4 When designated this will be the sixth neighbourhood area in the district, the others being St Mary in the Marsh, Hythe, New Romney, Sellindge and Lympne. (As noted above, St Mary in the Marsh went on to complete a neighbourhood development plan for the parish, but the remaining four areas did not proceed beyond designation stage.)

Consideration of the Neighbourhood Area Application

- 1.5 The Neighbourhood Planning (General) Regulations 2012 (as amended) and the Town and Country Planning Act 1990 (as amended by the Localism Act 2011) set out the considerations for the neighbourhood area application by the district council.
- 1.6 Essentially the district council as local planning authority must:
 - Ensure the correct information has been submitted in the application;
 - Consider the desirability of designating the whole of the area; and
 - Consider whether the area submitted should be designated as a 'business area'. A 'business area' would be a neighbourhood area which is wholly or predominantly business in nature.
- 1.7 Regulation 5 (1) sets out what a parish council must include in their application. These requirements are:

¹ A neighbourhood plan puts in place planning policy for a neighbourhood area to guide future development. A neighbourhood plan sets out the use and development of land and may contain a vision, aims, planning policies, proposals for improving the area or providing new facilities, or allocation of key sites for specific kinds of development. The legislation only permits one plan in one neighbourhood area.

² A neighbourhood development order is a means for parish and town councils to grant planning permission for certain kinds of development within a specified area. For example, a neighbourhood development order could allow improvements to shop fronts or extensions to houses or other buildings. The legislation permits multiple orders in one neighbourhood area.

- a) a map which identifies the area to which the area application relates;
- b) a statement explaining why this area is considered appropriate to be designated as a neighbourhood area; and
- c) a statement that the organisation or body making the area application is a relevant body for the purposes of section 61G of the 1990 Act.

1.8 Lyminge Parish Council's application for a neighbourhood area is attached in Appendix 1. The requirements set out above have been met as the parish council's application includes:

- a) a map outlining the parish boundary as the neighbourhood area;
- b) a statement setting out why the parish council has decided on the parish boundary. They have stated that the '...area has been selected as it is the borders of the Lyminge Parish, and the Council have taken the leadership in developing the plan with our community...'; and
- c) a statement that the parish council is a qualifying body under Section 61G (2) of the Town and Country Planning Act 1990 (as amended).

1.9 A local planning authority may decline to consider an area application if the relevant body has already made an area application and a decision has not yet been made on that application (Regulation 5(2)). There are no alternative neighbourhood areas for Lyminge being considered at this time.

1.10 The Regulations were updated in 2016 to enable the designation of an area without consultation if a parish or town council submitted an area the same as their parish boundary (Regulation 5A). The area submitted by Lyminge Parish Council is the same as their parish boundary. Therefore, consultation by the district council is not required.

1.11 Regulation 5A then states that '...the local planning authority must exercise their powers under section 61G of the 1990 Act to designate the specified area as a neighbourhood area'. Cabinet must, therefore, now designate the neighbourhood area.

Next Stages

1.12 When the Neighbourhood Area is designated the district council must publish it on the web site and '...in such a manner to bring it to the attention of people who work, live or carry on business in the neighbourhood area'.

1.13 The parish council will produce the neighbourhood development plan and carry out the pre-submission consultation in line with the legislation. Local planning authorities have a duty to support parish councils with their neighbourhood development plans. This can include officer time and the provision of data but does not include financial assistance. Grants are available for parish and town councils to assist with their work (please see paragraph 1.21 below).

- 1.14 When the plan is ready, the Lyminge Parish Council will submit the plan to the district council. The district council will publicise the plan for consultation and arrange for the independent examination.
- 1.15 If successful at the examination stage, with modifications if necessary, then the district council will arrange the neighbourhood development plan referendum. A referendum will be held of all registered voters within Lyminge parish; voters will be asked a 'yes' or 'no' question as to whether they want the district council to use the neighbourhood development plan to help it decide planning applications in the parish. If there is a majority 'yes' vote, then the plan will need to be formally brought into force by the district council and becomes part of the statutory development plan for the area against which planning applications will be assessed.
- 1.16 The development plan for the district currently consists of the Core Strategy Review (2022), the Places and Policies Local Plan (2020), the Kent Minerals and Waste Local Plan (2020) and the St Mary in the Marsh Neighbourhood Development Plan (2019). The neighbourhood development plan will need to be in 'general' conformity with the strategic policies set out in the development plan.

Financial Assistance

- 1.17 The Department for Levelling Up, Housing and Communities has confirmed funding for the 2022/23 financial year to support the '...vital role...' local authorities play in the neighbourhood planning process.
- 1.18 Local authorities can claim £5,000 per area designation but only for the first five designated areas. This will be the sixth in the district so the district council will not be able to claim this funding.
- 1.19 Local authorities can claim £20,000 from when the decision statement detailing the intention to send the plan to referendum has been issued (after a successful examination).
- 1.20 It should be noted that the Department for Levelling Up, Housing and Communities reviews funding each year and whilst funding has been provided for local authorities since the neighbourhood plan process was first introduced, it is not guaranteed this will continue in the future.
- 1.21 The Government has also provided grant funding to parish and town councils consisting of a Basic Grant Funding (up to £10,000) and Additional Grant Funding (up to a further £8,000). Both are subject to eligibility criteria. Parish and town councils can also apply for technical support.

Future Planning Reforms

- 1.22 The Levelling-Up and Regeneration Bill, currently before parliament, proposes major changes to the planning system.
- 1.23 While the draft legislation may change, the explanatory notes to the Bill indicate that the Government's intention is for neighbourhood planning to

continue as part of the new system. The notes state that local plans will be given more weight in planning decisions and this increased status will also apply to other types of plan, including neighbourhood plans.

- 1.24 The Bill will introduce a new neighbourhood planning tool called a 'neighbourhood priorities statement'. This is intended to provide communities with a simpler and more accessible way to set out their key priorities and preferences for their local areas. The Bill will also prescribe in more detail what communities can address in their neighbourhood plans and ensure that neighbourhood plans are aligned with wider changes to the planning system.

2. CONSULTATION

- 2.1 Regulation 5A of the Neighbourhood Planning (General) Regulations 2012 (as amended) indicates that if the local planning authority receives an area application from a parish council that consists of the whole of the parish council's area, then it must exercise its powers under section 61G of the Town and Country Planning Act 1990 (as amended) to designate the specified area as a neighbourhood area.
- 2.2 The Regulations only stipulate consultation for a neighbourhood area if the area does not follow the parish boundary (options include being an area smaller than the parish, including part of neighbouring parish or two parishes working together).
- 2.3 As set out above, the parish council will carry out consultation with the local community when developing the plan. When the parish council submit the plan, the district council will publish the plan for consultation and arrange for the examination. If successful at examination, the district council will also prepare and hold the referendum.

3. OPTIONS

- 3.1 The options the district council can consider are limited. A local planning authority can decline an area application if the required information is not submitted. The application submitted by Lyminge Parish Council meets the requirements set out in the Regulations so cannot be declined.
- 3.2 The application can be declined if there is another area application currently being considered. There are no other area applications for Lyminge currently being considered.
- 3.3 Regulation 5A of the Neighbourhood Planning (General) Regulations 2012 (as amended) indicates that if the local planning authority receives an area application from a parish council that consists of the whole of the parish council's area, then it must exercise its powers under section 61G of the Town and Country Planning Act 1990 (as amended) to designate the specified area as a neighbourhood area. As outlined above, the submitted neighbourhood area is the same as the parish boundary. The Council must, therefore, designate the neighbourhood area.

3.4 The Act (S61H) indicates that the local planning authority must consider whether the area be designated as a business area. As indicated above, the area must be wholly or predominantly business in nature, such as an industrial estate, town centre or business park, but this application covers the whole of a rural parish and therefore does not meet the requirement.

4. RISK MANAGEMENT ISSUES

4.1 There is not a great deal of risk management involved in the designation of the neighbourhood area. The Government’s legislation provides clear guidance on the process that will need to be followed.

4.2 In the longer term, the risk would be associated with the Neighbourhood Development Plan, which could fail at the examination stage or at the referendum.

Perceived risk	Seriousness	Likelihood	Preventative action
Plan fails at examination	High	Medium	Working with the parish council to ensure their emerging plan meets the requirements in the legislation such as having ‘regard’ to national legislation and is in ‘general conformity’ with the strategic policies in the development plan.
The plan fails to get a majority ‘yes’ vote at referendum	High	Medium	Working with the parish council to ensure engagement with the community has been undertaken and policies and proposals reflect the community’s needs.

5. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

5.1 Legal Officer’s Comments (EC)

There are no legal implications arising directly from this report.

5.2 Finance Officer’s Comments (RH)

Financial implications are noted within the report (Financial Assistance). It is noted that currently F&HDC can claim £20,000 to cover costs incurred, however the Department for Levelling Up, Housing and Communities does review funding each year.

5.3 Diversities and Equalities Implications (GE)

There are no equality and diversity implications directly arising from this report. A draft of the neighbourhood development plan developed by Lyminge Parish Council will be subjected to a public consultation and independent examination arranged on their behalf by the district council. The district council should ensure suitable awareness is raised of the public consultation and independent examination through its communication channels at the appropriate times to allow for local communities impacted by the plan to have their say.

5.4 **Climate Change Implications (DW)**

There are no Climate Change implications relating to the designation of the neighbourhood area. When the parish council submit their neighbourhood development plan, the policies within it will have to have 'regard' to national policy and be in 'general conformity' with the strategic policies in the district's development plan. This will include those for climate change.

6. **CONTACT OFFICERS AND BACKGROUND DOCUMENTS**

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

David Whittington Strategy & Policy Senior Specialist
Telephone: 01303 853375
Email: david.whittington@folkestone-hythe.gov.uk

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

Appendices:

Appendix 1: Lyminge Neighbourhood Area application.

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Request for Official Designation for Lyminge Parish Neighbourhood Plan 4th July 2022

As the agreed representative for the development of the Lyminge Parish Neighbourhood Plan I would like to formally apply for approval to proceed with creating a plan for our Neighbourhood area.

Please find attached the map of the neighbourhood area that we are apply for designation for.

Figure 1: Proposed Lyminge Parish Neighbourhood Area



The area has been selected as it is the borders of the Lyminge Parish, and the Council have taken the leadership in developing the plan with our community. The area was approved by the full Lyminge Parish Council on 27th June 2020.

The qualifying body to take forward the Neighbourhood Plan will be led by the Parish Council and parishes are defined as a 'qualifying body' under Section 61G (2) of the Town and Country Planning Act 1990 (as amended) and will incorporate volunteers from the community. We have already requested volunteers via the parish newsletter and will use the engagement events with the wider community and specific stakeholders to also develop a diverse body.

Please can you confirm to me when you will be making the decision on the designation of the proposed neighbourhood area so that we can proceed with our engagement.

Regards

Cllr Simon Hayward – Lyminge Parish Council

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This Report will be made public on 13 September 2022



Report Number **C/22/38**

To: Cabinet
Date: 21st September 2022
Status: Key Decision
Responsible Officer: Andy Blaszkowicz, Director – Housing & Operations, Simon Baxter - Chief Officer - Development
Cabinet Member: Councillor David Monk, Leader of the Council, Councillor David Godfrey – Cabinet Member for Housing and Special Projects
Councillor John Collier – Cabinet Member for Property Management and Grounds Maintenance

SUBJECT: SHIP STREET DEVELOPMENT – NEXT STEPS

SUMMARY: This report updates Members on the work that has been undertaken since the acquisition of the former gas works site at Ship Street, East Folkestone, and seeks authority to proceed with the next steps to deliver a mixed tenure housing led development.

REASONS FOR RECOMMENDATIONS:

Cabinet formally approved the purchase of the Ship Street site in October 2019 (report no. C/19/30). The purchase was concluded in March 2021. Since then, a number of activities have taken place to further understand the site and the views of the local community and stakeholders. The report sets out details of the evolving brief and next steps to bring forward the Housing led regeneration of the site and seeks Cabinet authority to proceed.

RECOMMENDATIONS:

1. To receive and note report C/22/38.
2. To note the works carried out to date.
3. To note the funding agreed with Homes England, Market, Partners and Places (MPP) Resource Funding to assist with the master planning of the scheme.
4. To note that Officers have applied for grant funding from One Public Estate (Brown Field Land Remediation Fund) and may seek further funding from Homes England's Infrastructure Delivery Fund and the Affordable Homes Fund.
5. To provide delegated authority to the Director, Housing & Operations in consultation with the Leader of the Council, The Cabinet Member for Housing & Special Projects and the Cabinet Member for Property Management and Grounds Maintenance to negotiate and agree to

receive Homes England's Affordable Homes grants, Infrastructure Delivery Grant and One Public Estates Brownfield Land Remediation Fund to support the remediation of the land.

6. To note that officers will procure and evaluate tenders from the Homes England Multi-Disciplinary framework for a Design led team to develop the design of the scheme to RIBA stage 3 (and submit a planning application).
7. To provide delegated authority to the Director, Housing & Operations in consultation with the Leader of the Council, The Cabinet Member for Housing & Special Projects and the Cabinet Member for Property Management and Grounds Maintenance to award the contract to the winning tenderer for the scheme design and planning submission.
8. To agree that Officers submit a report to Full Council requesting an additional £350K to supplement the existing capital budget of £230k to be met from capital receipts, together with the £60K received from Homes England, to pay the professional fees associated with the scheme design and planning application and submission.
9. To bring forward a further report on the proposed development of the site after planning permission has been granted.

1. BACKGROUND

- 1.1 The former Gas Works site at Ship Street has been largely derelict since the late 1960's with some 'meanwhile' uses. With no market intervention the Council stepped in to buy this key regeneration site in East Folkestone. Formal approval was obtained from Cabinet in October 2019 (report no. C/19/30) with the purchase concluding in March 2021.
- 1.2 The Ship Street site is approximately 1.54 hectares and is allocated land for residential purposes under the FHDC Local Plan UA7 2020.
- 1.3 The site was purchased for £400K with a 70/30 split between the General Fund (70%) and the HRA (30%).
- 1.4 Development of the site contributes to all four of the service ambitions in the Council's Corporate Plan 2021-30, 'Creating Tomorrow Together', but most notably – 'Quality Homes and Infrastructure'.
- 1.1 Informal discussions with the Local Planning Authority suggest an urban density scheme of 150+ homes would be acceptable. In accordance with the current policies a minimum of 22% would be affordable Council housing.

2. RECENT WORK

- 2.1 Capacity studies have been undertaken to investigate density / layout / public realm.
- 2.2 Early market engagement showed interest but also a clear need to de-risk site.
- 2.3 Site maintenance has been undertaken to minimise future ecological risks.
- 2.4 Positive discussions and bids have been made relating to potential gap / Infrastructure funding with Homes England and One Public Estate.
- 2.5 More than 120+ residents attended a public engagement event with positive feedback supporting housing led regeneration on the site.
- 2.6 A structural condition survey of the retaining walls surrounding the site has been completed.
- 2.7 Extensive soil and site investigation works have been undertaken and costed.
- 2.8 A market intelligence report on the detail of future homes has been completed.
- 2.9 There has been continued engagement with key stakeholders.

3. REGENERATION MARKET INTELLIGENCE

- 3.1 In May 2021 FHDC advertised via the KCC Portal and an advert in Estates Gazette for a Joint Venture (JV) partner. Whilst there were reviews of the opportunity from 38 organisations working in property development, only one proposal was received which did not match the criteria set by the competition.
- 3.2 The Ship Street redevelopment has a number of challenges and constraints. In addition to scheme risk items like inflation, market conditions, sales risk and macro-economic issues we also have specific issues such as the relatively low value local house prices, ground remediation, substantial retaining walls and the work they require as well as the challenging topography of the site.
- 3.3 Council officers have had high level discussions with a number of Property Developers and Partnership development businesses in order to gauge interest in a JV arrangement and in the site specifically. Informal dialogue has taken place with six parties expressing interest in the Folkestone & Hythe area.
- 3.4 Four of these would be interested in partnering with the council in a Joint Venture type arrangement however all parties spoken to require:
- The land to be remediated ready for development or the Council to take financial and legal responsibility for resolving this.
 - The site to have a value, or at least not a negative value, when considered in development terms.
 - Ideally the scheme to have a sufficient number of market sale homes c.100+ in order to make their involvement and investment worthwhile from a return on capital perspective.
 - Two of the parties said it was not of sufficient size for them to actively pursue, however they might reconsider once the Project Brief once was issued.
- 3.5 Early capacity studies looked to deliver a scheme of 80-150 homes along with other non-residential land uses. If we chose to have just the required 22% affordable housing policy that would be between 18-33 affordable homes leaving 62-117 homes for market sale.
If, we seek to deliver more than the policy compliant 22% affordable housing, then the number of market homes reduces further.
- 3.6 If the Council choose to progress a scheme with little or no market sale housing then we may not necessarily need a Developer Partner, rather we could directly deliver the scheme ourselves. This would be a significant financial undertaking and would need a considered view on market risk, capacity and relevant skills and expertise within the Council to set up and deliver the scheme correctly as a good client and also by sourcing, engaging and contracting with a contractor to deliver the scheme to our preferred specification.
- 3.7 By doing this alone we would retain full design and scheme control however we also take the full risk for managing the costs and securing the income

levels we have assumed in our feasibilities. There are alternatives that will need to be considered.

- 3.8 A further report will be brought to Cabinet in due course to further consider development delivery options taking into consideration a range of factors.

4. TENURE MIX – OPTIMISING THE SITE

- 4.1 **Possible Tenure Options:** Officers have concentrated their efforts on financially appraising 4 differing tenure mixes of homes on the Ship Street site. Each of the four scenarios has been considered in financial terms and in order to provide economic outcomes for the benefit of comparison and to choose a preferred way forward.

- 4.2 The choice of the tenure on Ship Street, along with the quantum of homes assumed, will dictate the level of interest we receive from the private developers we're seeking as a partner. It will also lead us to finalise the Project Brief in a particular way that relates to the way we hope to deliver the scheme and for whom.

- 4.3 The scenarios have been appraised on the basis of 150 homes and also 175 homes. They are:

Scenario 1: Council Optimised Mix. This is a scheme that has no market sale but does include 20% of the homes as Market Rented.

30% Affordable Council Rented Homes
50% Shared Ownership Homes
20% Market Rented Homes

Scenario 2: Half affordable & half market housing. This is an even split of homes for private sale and affordable housing comprising of both Council rented and shared ownership homes.

50% Market Sale Homes
30% Affordable Council Rented Homes
20% Shared Ownership Homes

Scenario 3: Fully Affordable Mix. A scheme wholly of affordable housing broken down into shared ownership and affordable Council rented homes.

40% Affordable Rented Homes
60% Shared Ownership Homes

Scenario 4: Maximised market mix. This scheme has the minimum amount of affordable housing permissible under the F&HDC adopted planning policy at 22%. The remainder of homes are mainly market sale with some market rented housing that could remain within the council's ownership.

22% Affordable (70% AR & 30% S/O)

60% Market Sale Homes
18% Market Rented Homes

4.4 Summary Table

Ship Street - Tenure Scenarios	Council Housing (Affordable Rent-LHA)	Shared Ownership	Market Rent	Market Sale	Total
One	30%	50%	20%		100%
Two	30%	20%		50%	100%
Three	40%	60%			100%
Four(Policy Comp)	15%	7%	18%	60%	100%

4.5 The financial modelling on all of these scenarios produces at least a break even financial outcome, assuming we are successful in our bids for remediation and housing grant funding. The payback period on each of them ranges between 40 and 60 years.

4.6 At this stage it is not proposed to definitively recommend or commit to a particular tenure mix. There are competing desirable outputs which will be discussed more widely prior to arriving at a recommendation. For example whilst Scenario 3 on these assumptions is the most financially beneficial and delivers a 100% affordable housing, it may not be eligible for one of the funding streams we are seeking to access to carry out the remediation. Scenario 4 is the least attractive principally because it assumes no affordable housing grant and sales income is based on current market values in the area – a private house builder might well assume substantially better values than those used in our model.

5. PROJECT BRIEF/DEVELOPMENT OBJECTIVES

- 5.1 To provide at least 150 homes to NDSS space standards.
- 5.2 To design energy efficient homes using a fabric first starting point to support FHDC's aspiration towards Net Zero Carbon by 2050.
- 5.3 To provide at least a policy compliant level (22%) of affordable housing as part of the development to help meet the needs of local people.
- 5.4 To have regard in respect of buildability and viability of the site's historic usage as an industrial site.
- 5.5 To create a development which promotes safe walking and cycling linkages between Folkestone Central train station and the town centre.
- 5.6 To encourage through design, a transport strategy that promotes cycling, walking and use of public transport as its starting point.
- 5.7 To add to the cultural development of the town and build on the town's aspirations to be a creative destination through architectural expression

in for example public realm, wayfinding and events.

- 5.8 To consider encouragement for arts and the creative sector and the feasibility of the creation of live/work or workspace type approaches on a part of the development.
- 5.9 To consider providing creative sector/small maker/commercial space on a part of the development.

6. REMEDIATION & RETAINING WALLS

- 6.1 Previous site remedial works were carried out by National Grid to alleviate the company of its statutory responsibilities to decontaminate the site in 2009/10. This consisted of the removal of the most hazardous material and a capping layer placed over the site.
- 6.2 Additional site investigation works commissioned by the Council in 2022 have been carried out to assess the gap between those works already carried out by National Grid, and what works are still required to make the site suitable for residential development.
- 6.3 The additional survey work has informed a remediation plan for the site which will be developed further once the scheme design has evolved and we have a full understanding of building placement and site levels.
- 6.4 Remediation will involve the following:
 - Clean cover in areas of soft landscaping
 - Vapour protection measures in buildings
 - Upgraded water pipes
 - The use of impermeable surfaces (including below landscaping)
- 6.5 The site is currently enclosed by significant retaining walls. Officers commissioned Structural Engineers to review the 2015 wall condition report and completed a new survey:
 - The general conclusion is the walls are 'generally performing satisfactorily'
 - Defects like filling collapsed arches, vegetation removal, weathering and pointing are estimated at a cost of c.£800,000
 - This doesn't include having any major alterations to the walls
 - Works to walls will be prioritised in areas that are clearly seen once the scheme design is understood
 - Network Rail have confirmed ownership of the walls adjacent to the railway line

7. EXTERNAL FUNDING

- 7.1 Officers have had regular engagement with different departments from One Public Estate and Homes England both of whom ultimately report to DLUHC.

- 7.2 One Public Estate administer the Brownfield Land Release Fund (BLRF). The Council has had previous success with this fund with awards for two of our key development sites. The recent round of funding opened in July 2022 with a very tight submission deadline of August 19th 2022. Officers submitted a bid for £3.55M. The outcome of this submission is expected in November/December this year. A condition of the funding is that the Council must be in contract for the remediation contract by 31st March 2023. If the Council is successful in this funding round officers will prepare a tender for the remediation works so that the Council can comply with this condition. Works would then be able to commence after 1st April 2023. If this is not achievable, we may need to bid in a further round which is expected early next year.
- 7.3 Homes England have two relevant grant funds that are applicable to the Ship Street scheme.
- Infrastructure Delivery Fund
 - Affordable Homes Fund
- 7.4 Infrastructure Delivery Fund: This can be applied for where schemes have a viability gap to help bring the scheme forward. Discussions have taken place with Homes England which have been of a highly positive nature. Officers will consider an application to this grant fund once the outcome of the application to the BLRF is known.
- 7.5 Affordable Homes Fund: This fund is available as a subsidy for providing a higher percentage of affordable homes than is required by local planning policy. Local planning policy states that 22% of homes should be affordable (either affordable rent or shared ownership). Therefore if the Council provides more than 22% we will be able to claim grant on the additionality. Should the Council develop a scheme that provides more than 22% affordable housing officers will prepare a submission to this fund. Again, early engagement has been very positive.
- 7.6 During conversations with Homes England a further grant has been offered from the Market, Partners and Places (MPP) Resource Funding. £60K has been secured towards the scheme design costs and officers are currently working through funding agreement.

8. DESIGN TEAM AND REMEDIATION CONTRACTOR PROCUREMENT

- 8.1 It is clear that public funding is needed to remediate the site. The optimum means to secure that funding and produce a methodology and plan to effect the remediation, is by making a planning application for a residential led scheme. By doing so the Council can retain control of this critical housing led regeneration project and de-risk the site to attract (if desired or applicable) a commercial partner it is proposed that the Council will appoint a design team to develop the scheme to RIBA stage 3 and submit a full planning application.
- 8.2 It is proposed that the Council procures a design led team via the Homes England Multi-Disciplinary framework.

- 8.3 In parallel with this the Council will work up a specification and tender document to undertake the remediation of the site suitable for housing led redevelopment.
- 8.4 The requirements and methodologies of the remediation strategy will be a combination of the groundworks specification, the scheme design (which will set required ground levels) and the technical requirements identified in the remediation surveys already completed.
- 8.5 The planning application process will engage members of the public and statutory consultees such as the Environment Agency and Southern Water, to participate in setting quality standards for the site remediation. This will de-risk the development from a planning and delivery perspective.
- 8.6 Discussions with potential funders, in particular Homes England will continue to take place to secure funding for the land remediation costs.
- 8.7 Soft market testing with potential developers will continue to be explored throughout the design and remediation period.

9. BUDGET AND FUNDING

- 9.1 Financial modelling shows that the total scheme cost estimate (based on 150 homes) is in the region of £41M - £43M including abnormal land and remediation costs.
- 9.2 This includes retaining wall budget of £800K and a soil remediation budget of £2.2M (best estimate at this point). We have also budgeted £800K for public realm as this is a key regeneration project. Therefore, the abnormal and public realm costs are estimated at c.£3.8m at this point in time.
- 9.3 The expected income the Council could generate from 150 finished homes and 4 commercial units is between £36M - £40M depending on tenure mix and assumed sales values and grant contributions.
- 9.4 If the Council secure funding to wholly cover the cost of land remediation the land would have a neutral or positive residual value.
- 9.5 The estimated cost of the professional fees to appoint the design team including the associated consultants to get us to RIBA stage 3 and submit a planning application are c.£500K.
- 9.6 Cabinet have previously agreed a budget for Ship Street of £230K. Approximately £120K of this has been spent on site investigation works, wall surveys, site management, consultants, initial capacity studies and a resident engagement event. This leaves approximately £110K of available budget.
- 9.7 As referred to in paragraph 7.6 Homes England have offered funding of £60K towards the design development of the scheme. They have also indicated that they may be willing to provide further funding for RIBA stage 3, but not until the new financial year.

- 9.8 Cabinet is asked to approve that Officers request further funding of £350K from Full Council to cover the additional sums required for the design team and planning submission and a small contingency, to be split 70% to the General Fund (£245K) and 30% to the HRA (£105K) in line with the original site acquisition. The £350K can be met from capital receipts earmarked for the General Fund and HRA respectively.
- 9.9 Budget for the remediation of the site will be sought from external funders as outlined above and will be built into the capital programme through the usual budget setting process.

10. PLANNING

- 10.1 An Architect led multi-disciplinary team will be procured and appointed to develop a design in accordance with the development objectives and take it through the planning process, to achieve a consent. The appointment will initially be to RIBA stage 2 (Concept Design), with continuing appointment to stage 3 assuming satisfactory performance.
- 10.2 A functional separation agreement will be put in place as the Council will be both developer and Local Planning Authority.

11. TIMELINE

Event	Date/Target Date
Report to Cabinet on design brief and next steps	21 st September 22
Architect procurement / appointment	1 st November 22
Brownfield Land Remediation Fund outcome	November 22
Remediation Tender Invitation Documentation	Oct-22- May 23
Planning Submission	June 23
Resolution to Grant Planning	September 23
Market assessment & Engagement – Next Steps	Oct 23-Jan 24
Start on Site	Spring 2024

12. NEXT STEPS

- 12.1 Having a residential led planning consent in place and a remediated site will give the Council options as to how the regeneration is implemented.
- 12.2 A further report will be brought to Cabinet in due course to consider how the scheme is developed post planning and consider optimal tenure mixes.

13. RISK MANAGEMENT ISSUES

Perceived risk	Seriousness	Likelihood	Preventative action
Remediation costs escalate	Medium	Low	Extensive site survey work has been undertaken. Architects will design scheme

			accordingly. Active engagement with Homes England and OPE for funding. Seek further grants and / or retender the work
Fee tenders are higher than estimated	Medium	Low	Delay appointment. No contract will be let without there being an adequate budget

14. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

14.1 Legal Officer’s Comments (AK):

There are no legal implications arising directly from this report. Legal services will have oversight of any funding agreements where any grants are awarded. Procurement Officers will be involved in the tendering and award of the Architect contract through the Homes England Framework.

14.2 Finance Officer’s Comments (LW):

Section 9 of the report outlines the key financial implications regarding the £350k budget being requested to allow the planning application to be submitted and this has been prepared in consultation with Financial Services. The £60k Homes England grant will also need including in the updated budget for Full Council to approve. A further report will be made to Cabinet regarding the development of the site and Financial Services will be involved with this.

14.3 Diversities and Equalities Implications (AB):

There are no diversity or equality implications arising from the report.

14.4 Environmental Implications (AT):

The proposal would have a positive impact on emissions from travel, as it makes use of a brownfield, urban site that would be connected to footpaths, cycling and public transport routes, a short distance from Folkestone town centre and local shops and services on Black Bull Road, as well as employment sites at Park Farm, Highfield and Bowles Well Gardens Industrial Estates.

Emissions from the construction and the operation of the homes would be determined by the detailed design of the buildings but would need to meet local plan policies and Building Regulations.

The proposal would have a positive impact on pollution, in remediating a contaminated site to a higher standard than the initial remediation already undertaken by National Grid, making it suitable for residential use.

The proposal has the potential for a positive impact on biodiversity, following local plan policies for biodiversity net gain, but the extent of the impact will be dependent on the detailed design of the scheme.

15. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

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

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

Appendices: None