



MEETING : EXECUTIVE
VENUE : COUNCIL CHAMBER, WALLFIELDS, HERTFORD
DATE : TUESDAY 4 DECEMBER 2012
TIME : 7.00 PM

MEMBERS OF THE EXECUTIVE

Councillor Tony Jackson	- Leader of the Council
Councillor Malcolm Alexander	- Deputy Leader and Executive Member for Community Safety and Environment
Councillor Mike Carver	- Executive Member for Strategic Planning and Transport
Councillor Linda Haysey	- Executive Member for Health, Housing and Community Support
Councillor Paul Phillips	- Executive Member for Economic Development
Councillor Michael Tindale	- Executive Member for Finance

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DISCLOSABLE PECUNIARY INTERESTS

1. A Member, present at a meeting of the Authority, or any committee, sub-committee, joint committee or joint sub-committee of the Authority, with a Disclosable Pecuniary Interest (DPI) in any matter to be considered or being considered at a meeting:
 - must not participate in any discussion of the matter at the meeting;
 - must not participate in any vote taken on the matter at the meeting;
 - must disclose the interest to the meeting, whether registered or not, subject to the provisions of section 32 of the Localism Act 2011;
 - if the interest is not registered and is not the subject of a pending notification, must notify the Monitoring Officer of the interest within 28 days;
 - must leave the room while any discussion or voting takes place.
2. A DPI is an interest of a Member or their partner (which means spouse or civil partner, a person with whom they are living as husband or wife, or a person with whom they are living as if they were civil partners) within the descriptions as defined in the Localism Act 2011.
3. The Authority may grant a Member dispensation, but only in limited circumstances, to enable him/her to participate and vote on a matter in which they have a DPI.

4. It is a criminal offence to:

- fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register;
- fail to notify the Monitoring Officer, within 28 days, of a DPI that is not on the register that a Member disclosed to a meeting;
- participate in any discussion or vote on a matter in which a Member has a DPI;
- knowingly or recklessly provide information that is false or misleading in notifying the Monitoring Officer of a DPI or in disclosing such interest to a meeting.

(Note: The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.)

AGENDA

1. Apologies

To receive apologies for absence.

2. Minutes (Pages 7 - 12)

To approve the Minutes of the meeting held on 6 November 2012.

3. Leader's Announcements

4. Declarations of Interest

To receive any Member(s) declaration(s) of interest.

5. Issues Arising from Scrutiny

To follow

6. Cardboard in the Organic Waste Stream (Pages 13 - 36)

7. Final Task and Finish report on Review of Grounds Maintenance Contract (Pages 37 - 50)

8. Vehicle Removals Policy (Pages 51 - 62)

9. Policy on Mobile (ANPR) Enforcement (Pages 63 - 72)

10. Car Park Fees and Charges (Pages 73 - 80)

11. Council Tax Discounts and Premium (Pages 81 - 86)

12. Affordable Housing: Planning Policy Requirements (Pages 87 - 94)

13. Community Right to Challenge (Pages 95 - 108)

14. Community Assets (Pages 109 - 116)
15. Area Designation for Neighbourhood Planning: Bishop's Stortford (Pages 117 - 130)
16. Building Control Service Business Case (Pages 131 - 136)
17. District Plan Executive Panel - Minutes of the Meeting held on 28 November 2012

To receive the Minutes of the District Planning Panel meeting held on 28 November 2012 (to follow) and to consider recommendations arising from items 17a – 17g below.

Note – Members are reminded to bring their copy of the District Planning Panel agenda to this meeting.

- (A) Sub-District Population and Household Forecasts - Parish Groupings and Towns: Phases 1 and 2 (October 2012)
 - (B) Strategic Land Availability Assessment (SLAA) - Round 2 Final Report and Windfall Analysis (October 2012)
 - (C) Employment Forecasts and Strategic Economic Development Advice (October 2012)
 - (D) District Plan: Evidence Base - Technical Studies 2011/12 and 2012/13
 - (E) The Duty to Co-operate and East Herts District Plan
 - (F) District Plan Part 1 - Strategy Supporting Document: Member Comments
 - (G) District Plan Part 1 - Strategy Supporting Document: Update Report
18. Monthly Corporate Healthcheck - October 2012

To follow

19. Urgent Business

To consider such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration and is not likely to involve the disclosure of exempt information.

MINUTES OF A MEETING OF THE
EXECUTIVE HELD IN THE COUNCIL
CHAMBER, WALLFIELDS, HERTFORD ON
TUESDAY 6 NOVEMBER 2012, AT 7.00 PM

PRESENT: Councillor A Jackson (Chairman/Leader)
Councillors M Alexander, M Carver,
L Haysey and P Phillips

ALSO PRESENT:

Councillors S Bull, Mrs R Cheswright,
M McMullen, M Newman, T Page, J Ranger,
P Ruffles, S Rutland-Barsby and J Wing

OFFICERS IN ATTENDANCE:

Simon Drinkwater	- Director of Neighbourhood Services
Martin Ibrahim	- Democratic Services Team Leader
George A Robertson	- Chief Executive and Director of Customer and Community Services

382 APOLOGIES

An apology for absence was submitted on behalf of Councillor
M Tindale.

383 MINUTES

RESOLVED – that the Minutes of the Executive
meeting held on 4 September 2012, be confirmed as a
correct record and signed by the Leader.

384 LEADER'S ANNOUNCEMENTS

The Leader welcomed the press to the meeting. He also thanked non-Executive Members for their attendance at Executive meetings, stating that their input was greatly appreciated.

385 AGEING WELL - REVIEW OF PROGRESS

The Executive Member for Health, Housing and Community Support submitted a report on the progress made in developing the Ageing Well agenda. The Community Scrutiny Committee, at its meeting held on 28 August 2012, had also considered the progress made since making its original three recommendations.

The Executive Member referred to the ambitions detailed at paragraph 2.9 of the report submitted and sought the Executive's support for integrating these into the Council's strategic policy making. She advised that Community Scrutiny Committee would be receiving a further report on this at its next meeting.

In response to various Members' comments and questions, the Executive noted that the developing District Plan would need to take account of the changing demographics of the District. The Executive Member commented that the Ageing Well agenda would need to be developed in partnership with other agencies and that funding could be considered if specific projects were identified. Reference was also made to the work of the Buntingford Youth Council as an example of intergenerational links.

The Executive supported the recommendations as now detailed.

RESOLVED - that (A) the progress made by Members and Officers against the three recommendations made at the Community Scrutiny Committee meeting on 28 February 2012 be noted and supported;

(B) the ambitions set out in paragraph 2.9 of the report

now submitted, be supported and are integrated into the strategic policy making of the Council via the Equalities Impact Assessment; and

(C) the Ageing Well agenda be developed within the context of the Council's corporate priority to enhance the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.

386 MONTHLY CORPORATE HEALTHCHECK -
AUGUST/SEPTEMBER 2012

The Leader submitted an exception report on the finance, performance and risk monitoring for August and September 2012.

In respect of the proposal to vire the £10,000 capital budget for the ventilation improvements to the Café kitchen at Hertford Theatre to replacing the roof at the Castle Gardens bungalow, the Executive Member for Health, Housing and Community Support sought assurance that this item would be reconsidered if the catering situation at Hertford Theatre changed. The Chief Executive and Director of Customer and Community Services confirmed that whilst the ventilation item was not needed now, it would be resubmitted with a business case for consideration if necessary as the programme developed.

In respect of the The Bourne, Ware play development scheme, the Executive noted that this item had not been implemented as the anticipated match funding had not been realised. The Executive Member for Health, Housing and Community Support confirmed that alternatives were being sought.

In response to a question from Councillor J Ranger on the training budget figures and those reported to Human Resources Committee, the Chief Executive and Director of Customer and Community Services undertook to provide a written response.

The Executive supported the recommendations as now detailed.

RESOLVED - that (A) the budgetary variances set out in paragraph 2.1 of the report be noted;

(B) £20,000 of the IT Network, Servers and Storage capital budget is re-profiled from 2012/13 into 2013/14, as detailed at paragraph 2.34 of the report;

(C) £30,000 of the Hardware Funding capital budget is re-profiled from 2012/13 into 2013/14 as detailed at paragraph 2.35 of the report;

(D) £40,000 of The Bourne Ware play development area capital budget is re-profiled from 2012/13 into 2013/14 as detailed at paragraph 2.36 of the report;

(E) £25,000 of the Hartham Common parks development plan project capital budget is re-profiled from 2012/13 into 2013/14 as detailed at paragraph 2.37 of the report;

(F) the £10,000 capital budget for the Ventilation improvements to the Café kitchen at Hertford Theatre is vired to replacing the roof at the Castle Gardens bungalow as detailed at paragraph 2.38 of the report;

(G) action taken to control strategic risks during the period July to September 2012, be noted; and

(H) the list of 2011/12 Unit Cost performance indicators as detailed in paragraph 2.42 and Essential Reference Paper 'G' of the report submitted, be noted.

387 CAR PARKS PAY BY PHONE SERVICE (RINGGO)

The Leader had agreed to accept this item onto the agenda as an urgent matter in order that an extension of an economic development initiative could be considered without delay.

The Executive Member for Economic Development submitted

a report seeking to extend the pilot “pay by phone” service for the Council’s car parks. He proposed that the current arrangement with Cobalt Telephone Technologies be extended until the end of 2012/13 and that the 20p transaction charge is absorbed by the Council. The Executive Member detailed the scheme and commented that this would extend choice for the motorist as stated in the Parking and Transport Strategy agreed earlier in the year.

In response to Members’ questions and comments, the Executive Member stated that signage would be improved and that greater publicity for the scheme would be needed.

The Executive supported the recommendations as now detailed.

RESOLVED - that (A) the current agreement with Cobalt Telephone Technologies be extended until the end of 2012/13, and

(B) a change to the current operating terms whereby the service will be offered free to the user, with the transaction costs absorbed by East Herts Council, be approved, by use of New Homes Bonus as set out in the report submitted.

The meeting closed at 7.38 pm

Chairman

Date

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EAST HERTS COUNCIL

THE EXECUTIVE – 4 DECEMBER 2012

REPORT BY THE EXECUTIVE MEMBER FOR COMMUNITY SAFETY AND ENVIRONMENT

CARDBOARD IN THE ORGANIC WASTE STREAM

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- To provide background to the issues with cardboard collection and processing in Hertfordshire.
- To consider the options available to address the cardboard issue and increase recycling in the future.

<u>RECOMMENDATIONS FOR THE EXECUTIVE:</u> That:	
(A)	the issues associated with cardboard in the organic stream be considered and officers be instructed to bring forward costed options for modifying recycling services in the new year.

1.0 Background

1.1 Hertfordshire's 471,000 households present around 125,000 tonnes of organic waste in wheeled bins for kerbside collection each year. In addition, they take about 12,000 tonnes to Household Waste Recycling Centres (HWRC). Although there are no accurate figures, estimates for the amount of cardboard this includes range between 11,000 – 18,000.

1.2 East Herts Council collects around 16,000 tonnes of organic waste per annum of which perhaps, 1,100 to 1,500 tonnes is card.

1.3 Waste collection and processing in Hertfordshire is co-ordinated by the Herts Waste Partnership (HWP), made up of the 10

districts and the County Council. This body has a Member Board, consisting of the Executive councillors from each authority and an officer structure involving Directors and Heads of Service. The Partnership manages the delivery of the Hertfordshire Municipal Waste Management Strategy, co-ordinates waste and recycling publicity and media (WasteAware) and procures consortium contracts for a range of waste activities including abandoned vehicle collection, the sale of recyclable materials and organic waste processing.

- 1.4 The Herts Waste Partnership successfully achieved its target of recycling and composting 50% of household waste by 2012. It has set an aspirational target of achieving 60% by 2020. The performance of the individual authorities is shown in the table below.

Local Authority	Percentage Recycling		
	2009/10	2010/11	2011/12
Broxbourne	35.5	39.3	39.6
Dacorum	47.3	47.7	46.7
East Herts	41.4	48.3	48.4
Hertsmere	39.4	42.5	46.7
North Herts	48.7	50	49.5
St Albans	49.7	50.2	48.3
Stevenage	31.9	39.1	40.0
Three Rivers	49.5	50.9	60.5
Watford	39.7	40.2	41.2
Welwyn Hat.	34.1	36.5	49.9
Herts CC.	68.9	69.2	67.9
H W P	46.4	48.5	50.4

- 1.5 Given the technical nature of this report a 'Glossary of Terms' is provided at **Essential Reference Paper 'C'**.
- 1.6 The County Council is the lead authority for organic waste processing and has procured four waste processing contracts to treat the garden, food and card waste collected by the district councils. Purpose built facilities were provided under contract at Ridge (near South Mimms) for five districts; and Cottered for two districts (East and North Herts councils). The remaining three

district use existing facilities in the west of the County and in Bedfordshire.

- 1.7 These processing plants used a technology known as 'In-vessel Composting' (IVC) which basically use large enclosed containers to heat treat the organic waste to kill bacteria. This is necessary to comply with the 'animal by-products' regulations and eliminate the risk of the spreading of diseases such as 'Foot and Mouth' and CJD. This is followed by a secondary process, where material is screened, graded and stored until it becomes a compost suitable for use in agriculture. The process is strictly regulated by the Environment Agency and the Animal Health and Veterinary Laboratories Agency (AHVLA), on behalf of the Department for the Environment (DEFRA). Failure to meet environmental standards could result in enforcement action and ultimately suspension of the IVC plants operation. In these circumstances it might be necessary to send organic waste to landfill at a very high additional cost to the tax payer of c. £35 a tonne.
- 1.8 East Herts Council has collected garden waste in brown bins for many years and added food and cardboard from 2009. This significantly reduced the amount of waste sent to landfill which fell from 39,000 tonnes in 2007/08 to 27,700 in 2011/12, whilst property growth has been around 3.9%. It also supported the introduction of the Alternative Refuse Collection Scheme (ARC) in the same year by allowing residents to dispose of food waste every week if they wished in either the black or brown bin.
- 1.9 In 2011 following odour complaints by local residents, The Environment Agency carried out an investigation into the operations at the Ridge site, operated by Agrivert. This resulted in the Partnership revisiting the design of the facilities, the way they were being operated and the mix of materials. Although there were a number of contractual and operational issues to address, an important issue appeared to be the amount of card being delivered in organic waste bins and its impact upon the composting process. At the same time changes to European legislative standard for compost, known as PAS 100:2011, were introduced. This reduced the tolerance for organic material that could be classified as compost, fit to be used in agriculture and also raised questions about contamination levels in IVC processes. Concerns were raised by the Association for Organic Recycling (AfOR) in June 2011. AfOR advised that where local authorities were collecting high levels of card and paper with organic waste this was preventing IVC processes from working

properly. They recommended that whenever possible, paper and cardboard should not be collected with organic waste.

- 1.10 An officer group set up by the Partnership identified that the issues experienced at Ridge were common to many IVC plants in the UK that were allowing card to be processed with food and garden waste.
- 1.11 The amount of card in the organic stream has grown rapidly following its inclusion. Hertfordshire has been extremely successful in diverting this material away from landfill and in addition to the environmental benefits, there have been significant savings to Council Tax Payers.
- 1.12 In addition, there has been a growth in the use of card as retail packaging due to its lightness, cost and ability to be recycled. Unfortunately, a significant proportion of this packaging is now plastic coated or heavily dyed to the extent that it will not break down easily in a composting process.
- 1.13 Recent surveys have shown that waste sent to Hertfordshire's IVC plants can contain as much as 10%-15% card in the summer months and between 50% - 80% in the peak winter months when there is little garden waste. By contrast the non-card contamination is quite low at around 2%. The percentage of card in the mix is the key factor in determining whether the composting process will be successful.
- 1.14 A range of options have been tried by IVC plant operators including picking some card out following delivery ('front end picking'), different types of screening and shredding machinery, holding back garden waste to improve the mix and recirculation of material back into the process. However, these attempts have been only partially successful. The result has been a high level of non-compostable material coming out of the process that must be sent to landfill or incineration. For 2012/13 it is estimated that 8,500 tonnes arising from the Ridge site will be land filled at a cost of around £745,000. Under this contract Hertfordshire County Council is responsible for the cost of disposal of any non-compostable contamination that is delivered to the plant. Other contracts require plant operators to be responsible for the cost of disposal and this impacts upon the viability of the business model and potentially the future of contracts long term. At the Cottered IVC plant operated by Cumberlow Green Farm, problems have been less severe, but several hundred tonnes have needed to be sent to landfill.

- 1.15 Costs to the County Council of disposing of the non-compostable waste may ultimately be borne by district councils through a reduction in payments received for landfill diversion under a funding scheme known as the 'alternative financial model'. As this is a County wide scheme the financial impact on any one district is uncertain.
- 1.16 The Partnership officer group has looked in detail at Hertfordshire's IVC plants, carried out benchmarking with other authorities to consider whether there are alternative approaches. It has concluded that the large volumes of non-compostable card in the winter months present a risk of failure to meet environmental standards, odour issues and difficulties for re-processors in finding outlets for their product. Continuing as we are is likely to mean an ever present risk of suspension of composting operations, diversion of high volumes of non-compostable material to landfill and an unplanned change imposed on collection services.
- 1.17 In the medium term, EU legislative changes may mean that if the product of an IVC plant does not meet the regulatory standards for compost it cannot be used for agricultural use or count towards local authority recycling targets. From a procurement perspective, retaining card in the organic bin is likely to mean contractors are unwilling to bid, place restrictions on the type of material delivered or require higher gate fees, reflecting the risk.

2.0 Report

- 2.1 A key finding of the Partnership's officer group was that it is not viable in the long term for card to be collected and processed commingled with organic waste and a transition plan is needed to move to alternative collection and processing arrangements.
- 2.2 This presents a serious issue for Hertfordshire district councils, all of which are including card in their organic waste collections. Each authority will need to consider how to proceed based on the costs of change and their current collection methods, vehicles and infrastructure. There is no single answer and there may be different solutions depending upon local circumstances.
- 2.3 The main options available to East Herts Council are evaluated at **Essential Reference Paper B**. These range from 'do nothing' to a redesign of recycling collection services with different types of vehicles.

- 2.4 The options available are summarised in the following paragraphs.

Option 1 - 'Do Nothing'

- 2.5 The Council could choose to 'do nothing'. However, there is a real possibility that IVC plants will not be able to continue processing brown bin organic waste mixed with card. If there were an unplanned requirement to immediately remove card from brown bins this would take some months to achieve. It would take time to communicate the change to residents and card would continue to be placed in the brown bin until all residents understood and complied with the request. This might mean sending all brown bin material to landfill until the level of card fell to an acceptable level. Clearly this would be undesirable from an environmental perspective.

Option 2 - Cardboard collected in the Black Bin

- 2.6 The Council could introduce a planned programme of change asking residents to place their card in the black bin. For some residents this will not be a problem as their bin is not currently full. For others, particularly households that produce a great deal of card this could cause bin capacity problems. The Council will not collect overflowing bins for health and safety reasons and residents with excess materials would need to take them to the nearest Household Waste Recycling Centre.
- 2.7 Both the above options could be achieved at no additional operational cost to East Herts Council but there would be an increase in costs to the County Council from the extra waste sent to landfill. There might be a need for additional expenditure on media and promotion, depending on how quickly residents received and understood the message. This option effectively represents a reduction in recycling service provision and there would be a small reduction in the Council's recycling rate. Some residents may also be disappointed that material previously sent for 'recycling' is going to landfill.

Option 3 - Cardboard Bring Banks

- 2.8 Alongside asking residents not to place cardboard in the brown bin, the Council could convert its existing network of paper bring banks to allow the inclusion of cardboard. This would result in a net cost around £15,000 per annum. However, for convenience reasons some residents would not wish to use these sites and of the 1,100 to 1,500 tonnes of card collected in the brown bin, it is

estimated that only 200 – 400 tonnes would find its way to banks. The remainder would end up in the black bin and be sent to landfill.

Option 4 - Collecting card with dry recycling – Kerbside Sort

2.9 One option is to change the Council's dry recycling (paper, cans, glass, plastics) collection services to allow card to be included with these materials. While this might seem an obvious solution there are factors which fundamentally impact upon the operational arrangements and costs of adding card. These are as follows:

- Material prices. The effect that mixing material has on the sale price and therefore income. The Council is currently receiving approximately £1,050,300 per annum from '*recycling credits*' and the sale of materials and this makes a significant contribution to service costs.
- Vehicle configuration and collection capacity. How materials are collected, in which container, their volume, weight and how they are loaded to the vehicle affects the number and type of vehicle needed and the number of staff to operate them.

Material Prices

2.10 The sale of recyclable material is made under consortium contracts managed through the Herts Waste Partnership. A new contract has recently been let for the sale of paper and a contract for the sale of other recyclables is currently being re-tendered.

2.11 Around 4,200 tonnes of paper is collected each year contributing approximately 63% of the Council's income from recyclables. Mixing in cardboard with paper would result in a significant reduction in the price paid by the reprocessing contractor (around £49 per tonne less) and therefore a loss of income of c.£150,000 per annum.

2.12 Mixing card with other recyclables (cans, plastic and glass) also reduces the value but by a lesser amount depending upon the mix. The Partnership does not currently have prices for '*commingled*' materials under its existing contracts and therefore the exact impact is not currently known, however, some basic market testing suggests a loss in income of around £36,500 per annum.

2.13 Extensive analysis has been undertaken by officers under the auspices of the Herts Waste Partnership and this demonstrates

that from a material price perspective alone it is better to keep paper separate rather than mix it with other materials. A Hertfordshire wide consortium contract for commingled material will be tendered shortly through the Partnership and establish firm prices in January 2013.

Vehicle Configuration and Capacity

- 2.14 The Council's contractor is Veolia Environmental Services Ltd, which owns and provides collection vehicles. The recycling 'Kerbsiders' have three compartments (separated by internal doors). Crews separate materials on collection between paper, glass and cans/plastics. The latter are sorted by the re-processing contractor into different metal and plastic types. This kind of collection system is known as '*kerbside sorting*'.
- 2.15 The Council's vehicles are operating close to their capacity and adding cardboard would result in a need for additional contractor resources and therefore higher collection costs.
- 2.16 A key limitation of collecting cardboard with existing kerbsider vehicles is that these are not designed to take large cardboard boxes, even when flattened and if cardboard were added residents would need to break it up to fit in the existing recycling collection boxes. Attempting to load large sheets of card would result in blockages in the vehicle and material blowing away on windy days. St Albans Council is currently piloting the collection of card with Kerbsider vehicles and results should be known shortly.
- 2.17 If the 'kerbside sort' option were chosen, card and paper banks could be provided as described in section 2.8 above. This would provide an outlet for larger cardboard boxes in addition to the Household Waste Recycling Centres operated by the County Council.

Option 5 - Collecting card with dry recycling – Commingled

- 2.18 Another option involves changing the Council's collection arrangements so that materials are collected together in a wheeled bin. This type of collection system is known as '*Commingled collection*'. Rather than residents sorting their recycling into different boxes that the crews then separate on the vehicle, all material is placed together in a wheeled bin and presented for collection. The material is later sorted by the re-processor at a '*Materials Recovery Facility*' (MRF).

- 2.19 Council's throughout the UK operate this system of collection. Some are '*fully commingled*' i.e. all recyclables are collected together or '*part commingled*' i.e. one or more of the materials (usually paper or glass) is kept separate.
- 2.20 At the present time paper has a much higher value when not mixed with other materials and therefore collecting it separately makes financial sense. Neighbouring Welwyn and Hatfield Council launched such a system in March 2011.
- 2.21 Although material prices are lower for mixed materials, this type of collection system is more efficient as wheeled bins can be loaded to the vehicle more quickly than recycling boxes. Fewer vehicles and crews are needed. However, vehicles are more expensive to purchase and run. Whether it is a lower cost overall depends upon the relative material prices for mixed or separated recyclables.
- 2.22 East Herts Council has looked at commingled collection systems in the past, including when the current waste contract was let in 2010. However at that time kerbside sort systems offered better value for money due to limited availability of MRFs and high '*gate fees*'. Most Hertfordshire council's are now considering moving to commingled collection arrangements and this presents an opportunity for a County wide consortium MRF contract which should deliver better prices.
- 2.23 Lower material prices can be offset if more recyclables are collected. Evidence from local authorities that have introduced this type of collection system is that there would be a significant increase in the amount of waste that households recycle. This is because it is easier for residents to place their recycling into a single bin than sort it into boxes and extra materials, such as cardboard, tetrapack cartons and aluminium foil can be added.
- 2.24 East Herts residents are currently recycling and composting around 48% of their waste. It is estimated that '*fully commingling*' would increase this to around 58% and part co-mingling to around 52%. The top performing authorities are achieving around 65%, but this involves collecting food waste weekly, which would require a very significant additional cost with no additional income.
- 2.25 Under a part commingled system, as described above, the Council might reasonably expect to attract a further 2,500 tonnes of recycling per annum. A fully commingled system might achieve as much as 5,000 tonnes extra per annum. This performance has

been achieved by similar shire district councils using these collection systems.

- 2.26 These extra materials may attract additional income from sale of recyclates and East Herts Council would receive a 'recycling credit' from the County Council (for diversion from landfill) of around £40 per tonne. This extra income may offset the lower market price for mixed materials. Which option is the best from a financial perspective depends upon the relative market prices for mix materials with or without paper.
- 2.27 For East Herts a part commingled collection system would involve most residents continuing to have 4 containers for their waste (three wheeled bins and a paper box rather than two wheeled bins and two boxes). A fully commingled system would involve 3 containers (all wheeled bins).
- 2.28 Many will prefer the simplicity of this type of collection system and the extra recycling capacity this gives. However, some residents may not like a third wheeled bin in their garden.
- 2.29 Moving to this type of collection system would result in very significant one off capital investment to supply residents with new 240 litre wheeled bins and replace the existing 10 'kerbsider' vehicles with 8 rear loading 'split bodied' collection vehicles with bin lifts.
- 2.30 At the time of writing this report this is significant uncertainty about the costs of some options because the actual prices the Council would receive for the sale of commingled recyclables is unknown. A variation of only £10 either way could make a difference of £90,000. Firm prices will be known in January, once the Herts Waste Partnership consortium contract for material sales is awarded. This contract will have a number of 'lots' to establish prices for different mixes of materials and the Council will have an opportunity consider the relative costs of different collection systems.
- 2.31 In this context it would be prudent to wait until this information is known before reaching a decision on which option is best for the Council. It is therefore proposed that officers bring forward a further report including detailed costings for each option in the new calendar year.

3.0 Implications/Consultations

- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

None

Contact Member: Councillor Malcolm Alexander – Executive
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Contact Officer: Cliff Cardoza – Head of Environmental Services
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ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives (delete as appropriate):	<p>Place</p> <p><i>This priority focuses on the standard of the built environment and our neighbourhoods and ensuring our towns and villages are safe and clean.</i></p>
Consultation:	<p><i>There has been no specific consultation in relation to this report. Resident's satisfaction with waste and recycling services is captured through the residents survey, every 2 years. This was last conducted in November last year and reported to Joint Scrutiny Committee on 14th February 2012. Results showed that public satisfaction with recycling and composting services increased by 9% from 68% to 77%. Satisfaction with the types of material collected rose 28% from 51% to 79%.</i></p>
Legal:	<p><i>The Council has a statutory duty to provide recycling services but the design of collection systems is at each local authority's discretion.</i></p> <p><i>Although risks are very low, Members are asked to note the following legal challenge to the UK Government's approach to commingled collection services.</i></p> <p><i>The EU passes Directive 2008/98/EC known as the revised Waste Framework Directive(WFD) on 19 November 2008. Among many requirements, by 2015 Member States must put in place separate collections for paper, metal, plastic and glass. No comment was made on commingled collections in the WFD.</i></p> <p><i>The provisions of the WFD apply from 12 December 2010. The Waste (England and Wales) Regulations 2011 were passed by Parliament on 28 March 2011. This transposed the WFD into English law with effect from 29 March 2011. Section13 included the following: -</i></p> <p><i>"For the avoidance of doubt, co-mingled collection (being the collection together with each other but separately from other waste of waste streams intended for recycling</i></p>

	<p><i>with a view to subsequent separation by type and nature) is a form of separate collection.”</i></p> <p><i>In 2011 the Campaign for Real Recycling (CRR), a special interest group of recycling reproprocessors and other organisations initiated a judicial review against the Government on the basis that the 2011 Regulations did not transpose the WFD into national law correctly. The basis of the argument was that the WFD sought to deliver higher quality outputs of recyclates as required by reproprocessors; and that co-mingled collections do not provide the same quality of recyclates as separate collections. The purpose of the judicial review was to seek amendment of the 2011 Regulations to properly reflect the WFD.</i></p> <p><i>The Government has introduced regulations from 1st October 2012 which clarify the position and is confident in its approach but the CRR is continuing to pursue action through the courts.</i></p> <p><i>The general view in the industry is that there is little chance of the CRR being successful in achieving a change in the law to require recyclates to be collected separately. The Hertfordshire Waste Partnership has considered this issue and officers believe the risks of changing to co-mingled collections is very low. Consortium contracts for processing commingled materials will ensure that reproprocessors operate to a high standard.</i></p>
Financial:	<p><i>There are none for this report.</i></p> <p><i>It is proposed to bring forward a further report in the new year once prices for the sale of materials are known, following a procurement exercise. This will provide costs for each option in the form of a business case.</i></p>
Human Resource:	<p><i>There are none</i></p>
Risk Management:	<p><i>It is essential that the Council continues to promote and encourage recycling services to improve both environmental and financial performance.</i></p> <p><i>Market prices for the sale of recyclable materials are volatile. Variations have and will continue to pose a risk to the Council’s income stream. The Hertfordshire Waste</i></p>

	<p><i>Partnership seeks to manage these risks by procuring Hertfordshire wide consortium contracts. These give economies of scale and protect partners from unexpected variation by fixing prices within bands for a period of years. This approach has been successful in delivering significant benefits to East Herts Council in the form of financial certainty and higher income levels than could otherwise be achieved.</i></p>
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CARDBOARD IN THE ORGANIC WASTE STREAM (RECYCLING OPTIONS)**IMPLICATIONS OF MAIN OPTIONS (NON-FINANCIAL)**

	Option	Implications	Risks	Costs
1	Do nothing Continue to allow residents to include all card in the Brown Bin	IVC plant cannot continue to process the volume of card received. Fails to meet regulatory standards for the process and / or the product	IVC contracts fail resulting in no outlet for organic waste. All Brown Bin waste sent to landfill at a cost of c.£0.5m to County Council. Significant reputational damage. Reduction in EHC's recycling rate from 48% to under 20% if organic waste were sent to landfill for an extensive period.	No immediate operational costs for EHC although payments from County Council under the alternative financial model for landfill diversion (c.£270k in 2013/14) would be substantially reduced if organic waste were sent to landfill for an extensive period.
2	Require residents to put card in the Black Bin	No additional contract collection resources required. Bin capacity issues for some residents that have a lot of card and a full Black Bin Increase in complaints.	Problems with side waste, 'crocodile bins', and possible short term fly tipping, dissatisfaction with Council. Possible increase in recycling arising from residents seeking to make more space in Black Bin to accommodate card. Likely continued contamination of the Brown Bin unless enforced.	No additional contract costs for collection. Possible increase in street cleansing costs. Possible need for additional publicity depending upon level of understanding and compliance with the change. Possible impact on payments under the alternative financial model, but difficult to

			Potential fall in public satisfaction with recycling services	quantify.
3	<p>Card moved to Black Bin / Card Bring Banks introduced</p> <p>Residents required to cease putting all card in the Brown Bin and either take it to Bring Banks or place in the Black Bin. This would be enforced after a transition period.</p> <p>Existing Paper Bring Banks converted to Paper and Card</p>	<p>No additional contract collection resources required. Bin capacity issues for some residents that have a lot of card and a full Black Bin</p> <p>Increase in complaints</p> <p>Positive message that card can be recycled, which is better for the environment than composting it.</p>	<p>Problems with 'side waste', 'crocodile bins', and possible short term fly tipping – though less than option 2, Possible dissatisfaction with Council.</p> <p>Possible increase in recycling arising from residents seeking to make more space in Black Bin to accommodate card. Likely continued contamination of the Brown Bin unless enforced.</p> <p>Potential fall in public satisfaction with recycling services</p>	<p>No additional contract costs for kerbside collection.</p> <p>Possible increase in street cleansing costs. Possible need for additional publicity depending upon level of understanding and compliance with the change.</p> <p>Additional cost of converting Bring Banks to paper and card</p>
4	<p>Card moved to Dry Recycling Service (Green Boxes) mixed with cans, plastics and glass.</p> <p>Residents required to cease putting all card in the Brown Bin and place in Recycling Box co-mingled with other materials or put in the Black Bin.</p> <p>Removal from the Brown Bin would be enforced after a transition period.</p> <p>Larger card items would need to be flattened and cut up to fit</p>	<p>Reduction in card at IVC plants ensures they can operate effectively. Risk of failure reduced.</p> <p>Significant education and publicity campaign required to explain reasons.</p> <p>Positive message that it is better for the environment if card is recycled rather than composted.</p> <p>No loss in paper income from mixing with card. Smaller loss</p>	<p>Residents dissatisfied that they need to cut up larger card items to make them fit in the Green Box (vehicles cannot accommodate large cardboard boxes).</p> <p>Recycling performance may fall as larger card items placed in Black Bin</p> <p>Possible increase in litter if card left by Green Box or Black Bin.</p> <p>Likely continued contamination of the Brown Bin unless</p>	<p>Additional collection resources required to accommodate increase in dry recyclable stream.</p> <p>Publicity cost and temporary additional staff costs</p> <p>Capital costs of providing additional boxes upon request.</p> <p>Loss in income from mixing card with cans, plastics</p>

	<p>the Green Box.</p> <p>Paper and Card Bring Banks could also be introduced for larger card items</p>	<p>in income from commingling card with other dry recyclables</p> <p>Short term increase in complaints from householders that produce a lot of card</p> <p>Positive message that card can be recycled, which is better for the environment than composting it.</p>	<p>enforced.</p>	<p>Possible increase in income from County Council under the alternative financial model for taking card out of organic waste.</p>
5	<p>Change service to wheeled bins for all dry recycling (except paper)</p> <p>Residents are provided with a new wheeled bin for dry recyclables, including cardboard. Paper is kept separate and collected in the existing blue box</p> <p>Removal from the Brown Bin would be enforced after a transition period.</p>	<p>Reduction in card at IVC plants ensures they can operate effectively. Risk of failure reduced.</p> <p>Significant education and publicity campaign required to explain reasons for change.</p> <p>Positive message that card can be recycled, which is better for the environment than composting it.</p> <p>No loss in paper income from mixing with card.</p> <p>Significant growth in recycling over time as commingled systems are easier for residents and other materials can be added. Council's recycling rate likely to increase by 4%</p>	<p>Significant change in operational arrangement (new rounds, new vehicles)</p> <p>Some residents will be unhappy at having three wheeled bins and a box. (Others may prefer it).</p> <p>Volatility of material markets present risks to budgets if prices go down over the life of the investment in new vehicles.</p>	<p>Additional contract costs</p> <p>Publicity cost and temporary additional staff costs (recycling advisors)</p> <p>Additional income from extra recycling generated</p> <p>Capital costs of providing new vehicles if funded by EHC OR additional contract costs if vehicles funded by contractor</p> <p>Capital costs of new bins</p>

ESSENTIAL REFERENCE PAPER ‘C’

CARDBOARD IN THE ORGANIC WASTE STREAM

GLOSSARY OF TERMS USED IN THE REPORT

Animal By Products Regulations (ABPR)	The current Animal By Products Regulation (EC) No. 1774/2002 was introduced to respond to concerns regarding public and animal health from a number of EU crises including BSE, Foot and Mouth Disease and dioxin and lays down rules for the use and disposal of ABPs including carcasses, manure, wool and fur and catering waste not intended for human consumption.
Association for Organic Recycling (AfOR)	The Association for Organics Recycling is a trade organisation for the biodegradable waste management industry in the UK
Bring Banks	Network of sites for residents to take certain dry recyclables. In Hertfordshire these are operated largely by District and Borough Councils. To some extent these have been replaced by kerbside collection services. East Herts Council continues to provide paper and textile banks.
CJD	<p>Creutzfeldt–Jakob disease - degenerative neurological disorder (brain disease) that is incurable and invariably fatal. CJD is at times called a human form of mad cow disease (bovine spongiform encephalopathy or BSE) even though classic CJD is not related to BSE. However, given that BSE is believed to be the cause of variant Creutzfeldt–Jakob (vCJD) disease in humans, the two are often confused.</p> <p>See Also – Animal By Products Regulations</p>
Commingled	<p>A waste collection system that involves collecting different dry recyclable material together at the kerbside and later sorting them at a Materials Recovery Facility (MRF) before recycling them into new products.</p> <p>These can be ‘fully commingled’ - all dry recyclables collected in one container (normally a wheeled bin).</p> <p>Or ‘part commingled’ – most are collected in one container but one material (normally paper or glass) is collected separately. This is sometimes called ‘two</p>

	stream collection' of dry recyclables.
Consortium contract for dry recyclables	The Hertfordshire Waste Partnership lets contracts for the sale of dry recyclables on behalf of its partners. These are managed by Welwyn and Hatfield Council. The Partnership has an ongoing contract for paper and mixed paper and card. A new contract for other dry recyclables is currently being procured and is expected to commence in April 2013.
Dry Recyclables	Normally refers to materials collected for reprocessing into new products. In East Herts this is the domestic kerbside collections of paper, glass, cans and mixed plastics. Cardboard and other 'fractional' material are also considered dry recyclables and may be collected depending upon the type of collection system and availability of markets to reprocess them into a saleable product. Materials collected in recycling banks such as textiles and shoes also come under this category. Organic waste sent for composting is not a 'dry recyclable' but counts towards overall local authority recycling targets.
Foot and Mouth	<p>'Foot-and-mouth' disease (Aphthae epizooticae) is an infectious and sometimes fatal viral disease that affects cloven-hoofed animals. The foot-and-mouth disease virus can be transmitted in a number of ways, including close contact animal-to-animal spread, long-distance aerosol spread and fomites or inanimate objects, typically fodder and motor vehicles. The clothes and skin of animal handlers, such as farmers, standing water, and uncooked food scraps and feed supplements containing infected animal products can harbor the virus as well.</p> <p>See Also – Animal By Products Regulations</p>
Gate fee	The sum of money charged (usually per tonne) by the reprocessor or treatment contractor for the materials received. This can be negative (i.e. a charge to the local authority for taking the materials) or positive (i.e. income received for the sale of the material to the reprocessor). Paper commands a high price and generates income. Compost attracts a high charge for treatment. Other dry recyclables may be positive or negative depending upon the market and whether these materials are mixed or not.
Household Waste Recycling Centres	Waste and recycling sites for residents to take their household waste operated by the County Council.
In-vessel composting (IVC)	A type of commercial composting process that usually involves organic materials being treated in metal or concrete bunkers in which temperature and air flow

	can be controlled. Higher temperatures mean that the composting process is speeded up and harmful bacteria are killed. This system of composting is commonly used in the UK and Europe and complies with Animal By Products Regulations for treating food waste.
Kerbsider / kerbside sorting	Type of recycling collection vehicle used to collect materials that are separated at the time of collection (source separated). Crews place different materials into a hopper which, when full, is tipped into different compartments in the vehicle. In East Herts there are three compartments for paper, glass and mixed cans/plastics. This type of collection system avoids the need for materials to be separated at a MRF although some sorting (e.g. cans from plastic) may be done by the reprocessor.
Materials Recovery Facility (MRF)	Processing plant for dry recyclables which uses complex machinery to separate them into their component materials for sale or onward transportation to a final reprocessor. The reprocessor will turn the recyclable into a raw material or new product e.g. paper is turned into newsprint.
Non-compostable material	Phrase used by the Hertfordshire Waste Partnership to signify material that cannot be treated in an IVC plant or is the by-product of an IVC process. Once mixed with food waste in the brown bin any material must be considered potentially contaminated with food and therefore is subject to Animal By Products Regulations.
Recycling credits	A statutory payment made by the Waste Disposal Authority (County Council) to the Waste Collection Authority (District Council) for each tonne of waste recycled. The objective is to encourage diversion from landfill.
Refuse Collection Vehicle (RCV)	Can be any vehicle used to collect waste but in the context of this report refers to the large, rear loading vehicles with bin lifts and waste compaction currently used in East Herts for the collection of black bin (residual) waste and brown bin(organic) waste.
Reprocessing contractor	Company or organisation that receives recyclable materials for separation, processing, treatment or onward transport to a final conversion into a raw material or new product
Split Bodied Refuse Collection Vehicle	Similar to a Refuse Collection Vehicle (RCV) but has two rear loading compartments with bin lifts and compactions. Sometime called 'twin pack' vehicles, these can be used to collect two materials in one visit. Differs from Kerbsider vehicles which can collect three or four materials separately in one visit.

Tetra pak carton	Packaging carton originating in Sweden, commonly used for milk and fruit juices. Usually made from paper or card with a plastic or aluminium lining.
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EAST HERTS COUNCIL

ENVIRONMENT SCRUTINY COMMITTEE – 13 NOVEMBER 2012

EXECUTIVE – 4 DECEMBER 2012

REPORT BY THE CHAIRMAN OF THE GROUNDS MAINTENANCE CONTRACT REVIEW TASK AND FINISH GROUP

GROUNDS MAINTENANCE CONTRACT REVIEW – RECOMMENDATIONS FROM THE TASK & FINISH GROUP

WARD(S) AFFECTED: All

Purpose/Summary of Report

- To advise the Committee on the results of the review of the contract by the Task & finish Group.

<u>RECOMMENDATIONS FOR ENVIRONMENT SCRUTINY COMMITTEE: That:</u>	
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(A)	The Committee considers and endorses the approach and findings of the Task and Finish Group;
(B)	The Committee recommends to the Executive that the current contract represents good value for money and that an extension to this contract is the option most likely to deliver best value to the Council; and
(C)	The Committee recommends to the Executive their preference of a 3 or 5 year extension.

<u>RECOMMENDATIONS FOR EXECUTIVE: That:</u>	
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(A)	Council be recommended to extend the current grounds maintenance contract for a further period; and
(B)	the length of a contract extension be determined, taking into account the risks of a longer period against the greater financial benefits, and in the context of the Council's Medium Term Financial Plan objectives.

1.0 Background

1.1 The grounds maintenance contract was tendered for a period of 6 years and nine months. It terminates at the end of December 2013. Provision was made for a possible extension of up to 7 years.

1.2 The contract covers the majority of routine grounds maintenance work on East Herts Council's land including:

- amenity area grass cutting on verges and open spaces
- the care of ornamental fine turf and sports facilities, including bowling greens, sports pitches and tennis courts
- hedge maintenance
- shrub bed maintenance
- planting and maintenance of annual bedding schemes
- maintenance and inspection of ditches, ponds and watercourses
- Litter picking on verges and open spaces
- Emptying of litter and dog waste bins on open spaces
- weed control including cleansing of paths, car parks and internal roads on open spaces
- maintenance and inspection of children's play areas and equipment

1.3 Grass cutting, shrub and hedge maintenance is also carried out on highway verges (under contract to Hertfordshire County Council) and in social housing estates on behalf of Riversmead Housing Association.

1.4 An Environment Scrutiny Committee Task & Finish Group was set up in August 2012 to undertake a review of the Grounds Maintenance Contract and the implications of either extending the current contract or re-tendering, with a view to providing recommendation to the Council on which way to proceed.

1.5 A presentation was given to Environment Scrutiny Committee on 11 September 2012 to explain the structure of the contract and confirm the approach being taken by the Task and Finish Group.

2.0 Report

Aims and Objectives

2.1 The Task and Finish Group considered evidence that explored the performance of the Grounds Maintenance Contract and other

information to help inform a procurement decision as the contract comes towards its end. At the initial meeting a process was determined that Members agreed would provide sufficient information to lead to a decision whether to retender or extend the contract.

Review Process

2.2 The process was designed to answer the following questions:

- What are the cost, timescale and other implications of retendering the contract?
- Has the current contract performed satisfactorily?
- Does the current contract offer value for money?
- How does the current cost of the contract compare to the market given the recent changes in the economic climate?
- Is the incumbent contractor able to offer any financial, productivity or developmental incentives to seek retention of the contract for a further period?
- Are the standards of maintenance set out in the existing contract still relevant and delivering customer satisfaction?
- Does the current contract specification deliver an enforceable and effective tool for contract management?
- Are our partners satisfied with the performance of the existing contract?

2.3 **The process agreed to deliver answers to these questions was to:**

- Analyse performance indicators and audit systems designed to monitor the performance of the contract.
- Analyse corporate customer surveys and data from the Environmental Services Customer Enquiry system (Mayrise) to gauge levels of satisfaction and complaints.

- Undertake market research to establish whether tendered prices are still competitive and whether savings from a new contract would outweigh the cost of re-tendering.
- Consider whether the incumbent contractor is prepared to extend the contract and under what terms.
- To hold discussions with partners and seek feedback on their overall view of contract performance and to review previously recorded feedback throughout the life of the contract. Also to establish whether partners wish to continue with the contract beyond the existing term or make separate arrangements for the provision of services to their customers.
- To review any information that may be available from benchmarking groups that would provide comparisons with other contracts.
- To review the contract standards to ascertain whether they still meet the Council's objectives for this service.
- To review officers' experience of managing the contract using the existing specification.

Review Findings

- 2.4 The performance indicators and audit systems analysed as part of this review indicate that the contract has consistently delivered the required standards of maintenance. A broad and robust audit inspection carried out on a weekly basis captures the level of defects both geographically and according to work type. There have been no significant problems either with individual areas of the district or with particular types of operations. For instance, the unusually high rainfall across the summer months this year has resulted in prolific grass growth. The contractor has dealt with this by employing sufficiently well equipped and trained staff to cut grass to the expected standard without adversely affecting performance in other areas such as shrub pruning or litter picking. Environmental operation's contract performance, including the Grounds' Maintenance Contract is scrutinised by Environment Scrutiny every year at its June meeting. These reports show a trend of improving performance since the start of the contract in 2007.

- 2.5 Levels of enquiries and complaints are closely monitored through the Environmental Services Customer Enquiry and Contract Management system (Mayrise). All enquiries including those by telephone, email and post are carefully logged and dealt with. The information gathered is analysed and complaints validated to determine whether they indicate a failure by the contractor. Some complaints relate to issues that customers have concerns about but that are not the responsibility of the contractor. (e.g. the work of another contractor; land or functions that are outside the Council responsibilities). The numbers of complaints which are attributed to the contractor have remained low throughout the contract when compared to performance experienced with the previous contract. Whilst the nature of complaints often relates directly to seasonal changes in the weather, there have been no periods of failure linked to any specific operations. This has indicated that resources have been adequate and evenly committed. The level of validated complaints has remained consistently well below the level expected and allowed for under the contract.
- 2.6 The Task and Finish Group considered the Agency Agreement with Hertfordshire County Council for verge maintenance which is carried out under this contract. Hertfordshire Highways stipulates lower standards for grass cutting for its verges as they deem the cuts to be for safety reasons not for visual amenity. It would allow its grass to get to 150mm (urban) or 250mm (rural) depending on the location – which is much higher than East Herts Council (EHC) sets for its amenity land. The Council has previously made the decision to have all the grass cut to the better standard (shorter grass) and so pays for the additional work to be done (a top-up). This is the approach taken by district and borough councils across Hertfordshire.
- 2.7 Currently the income received from Hertfordshire Highways for core works under the agency agreement is £172,400 per annum. The implications of not continuing with the top-up to provide residents with an acceptable ‘amenity’ standard are the prospect of a significant increase in complaints. There would also be an inconsistent standard of grass cutting between verges owned by the County and EHC in the same housing estates. Evidence based on the period in 2006/7 when a previous contractor was ‘failing’ and the grass was not being cut to the better standard shows that this provoked over 2000 complaints per annum. This level of complaints has resource implications not only for dealing with customers and managing the contract but it also delays progress on other projects and has an adverse affect on the

Council's reputation. For these reasons the Task and Finish Group felt that in principal the top-up arrangements should continue with the proviso that contributions from the Council remain at the previously agreed level.

- 2.8 Overall satisfaction with the Council has been measured in recent years through the biannual Residents Survey which include our customer's views relating to the upkeep of parks and open spaces. The 2011 survey showed that 7 in 10 residents were satisfied with various services including parks and open spaces which was rated at 74%. This was set against results which showed that more than a fifth of residents were dissatisfied with some services such as local transport information. When asked "Thinking generally, which of the things below would you say are most important in making somewhere a good place to live." 30% of respondents included parks and open spaces. When asked "Thinking about this local area, which of the things below, if any, do you think most need improving?" only 8% chose parks and open spaces. The Priority Analysis Summary which reflected responses to a range of services thus grouped parks and open spaces together with only three other areas of provision as "More Important / Least Needs Improving" indicating that this area of the Council's services is one of its key strengths. Whilst some of this success relates to overall parks improvements developed through both external and Council funded capital projects, it also suggests that the parks and open spaces across the district are maintained to a good standard through the Grounds Contract.
- 2.9 A company specialising in helping local authorities to procure environmental contracts was commissioned to undertake specific market research as part of this review. Their brief was to assess whether the contract is giving good value for money from a financial perspective and if the Council would be likely to achieve savings if the contract were retendered in 2013. The work required that they must have access to an existing database of market prices for similar contracts to compare to and that the data used must be no more than 3 years old. The comparison authorities had to be of a similar size and character to East Herts operating a similar maintenance specification. The result of this assessment was that the contract is giving good value in financial terms and that retendering is unlikely to achieve significant savings at this time. They advised that the Council might seek to obtain efficiencies through the negotiation of an extension. In particular it was noted that the Council might seek to negotiate a change to contract indexation, which is currently based upon the Retail Price

Index (RPI). This is no longer considered by Government or the public sector to be an accurate measure of inflation.

2.10 At the request of the Task and Finish Group, Officers have undertaken extensive negotiations with the existing contractor to consider opportunities for efficiency improvement that will deliver financial and non-financial benefits.

2.11 The following have been proposed as the contractor's final offer in the event of an extension.

- Year on year guaranteed savings depending on the length of the extension period (see section 2.20).
- A commitment to help the Council reach its long term commitment of reducing carbon emissions by 25% by 2020
- Better incentivisation of staff to communicate a wider range of observations on the ground, from alerting the Council to trip hazards to the fine tuning of specialist pruning activities. This should help to reduce unforeseen risks to the public and to ensure that operatives are even more encouraged to take pride in their work and to deliver the best possible service
- Improved interaction with community groups enabling local residents involved in Friends of Parks groups for instance to benefit from a more direct service from the contractor relating to on the ground tasks and to have greater opportunity to refine the specific delivery of grounds care in their own parks
- Capital investment into new equipment to ensure that new developments in the industry are utilised in the contract and that machinery is always in good condition and operating to its full potential
- Developments to improve colourful flower displays in a sustainable way such as perennial and annual seed mixes used at prime locations. These require less water than traditional bedding and have been received well by customers in other authorities
- Expanding the number of staff involved in the Community Safety Accreditation Scheme to help support the work of the local police and the Council's own enforcement officers
- Helping to promote healthy activities on open spaces with new running tracks to encourage physical fitness
- Further developing initiatives to improve staff qualifications and to employ people through their apprenticeship scheme

The contractor considers a three year extension to be the minimum period of time needed to enable a significant saving to be offered,

while maintaining and protecting the high level of service delivery that local residents and communities expect.

- 2.12 The review sought feedback from the major partners who commission work through the contract. Officers have met the new senior highways staff now covering East Herts some of whom have worked with the Council previously offering an element of continuity. The Agency Agreement provides grounds maintenance to highway verges across the District with the exception of the A roads and the B1000. Hertfordshire Highways have confirmed after a brief period of negotiation around the price that they would like to continue with the current Agency Agreement arrangements whether the contract is extended or retendered. It was made clear that if the contract were to be retendered, the costs would be reassessed according to new rates. Under an extension the charges would remain as they are. It was acknowledged that both the County and the District Council benefit from the continuity of a good standard of maintenance across the district in terms of customer satisfaction and the minimisation of complaints. This commitment to continue working in partnership with the Council provides surety to a decision to extend. The Highways element of the contract accounts for 25% of the value and so might attract contractual claims were it to be omitted from the contract on the grounds that the contractor's income in relation to the tendered Bill of Quantities would reduce.
- 2.13 Senior Managers from Riversmead Housing Association confirmed they are generally satisfied with the performance of the contract. They would like to continue with the current arrangements under a contract extension and would be pleased to be a named party as an option in any future retender. They expressed confidence in the Council to develop a real opportunity to further improve customer satisfaction. This is a particular focus for their organisation at present. It would involve working more closely together to understand the specific needs of their customers and to ensure that any limitations of service delivery are understood. Where customer expectations seek improvements that are outside the current arrangements, Riversmead would like to explore making more proactive use of the additional schedule of rates works that can be offered. It would also like to work more closely with officers to benefit further from their expertise, developing Riversmead's in-house capabilities in areas such as contract management and the use of mapping systems.

- 2.14 South Anglia Housing Association (part of the Circle Group) currently makes its own arrangements for the grounds maintenance of its housing estates. It is satisfied with its current contract, which runs until 2016. It has advised that it may consider a joint contract with East Herts in the future if this could be demonstrated to deliver its financial and customer services objectives. Whether the Council decides to extend or re-tender the contract, officers will work with South Anglia to ensure that there is a co-ordinated approach to grounds maintenance and opportunities for joint working are considered as they arise.
- 2.15 Information gathered through the Hertfordshire Association of Cultural Officers (HACO), Environmental Sub Group has been considered by officers as part of this review but has not been found to be relevant in determining specific performance of the contractor. Some data is available to compare general contract rates between participating authorities but these are not sufficiently recent to provide meaningful results for this review.
- 2.16 The review has considered the current contract standards and specification with considerable exploration of the service delivered through the current arrangements. The Task and Finish Group notes that minor changes to grass cutting standards would have little or no effect on price, however significant changes to standards would be likely to result in significant public dissatisfaction. On the basis that these provide a satisfactory level of service delivery to customers, it is recommended that the specification is not altered within any extension of the contract.
- 2.17 Officers have offered their own evidence from contract monitoring data for consideration as part of the review. They have confirmed that the incumbent contractor has operated in an honest and reliable way demonstrating a crucial understanding both of the importance of customer care and of staff training to deliver horticultural quality. They refer to some notable contract improvements brought about by John O'Conner as part of this effective working relationship:
- The introduction of regular meetings between client inspection team and contractor's staff
 - Joint auditing of health and safety and management procedures
 - A partnership approach to In Bloom and Green Flag development.
 - Installation of tracking devices on vehicles.
 - Installation of inclinometers on grassing cutting machinery to minimise risks on slopes.

- Sourcing plants from peat free suppliers.
- Training staff to NVQ standards and introducing an apprenticeship scheme.
- Play area inspections recorded on database and input from personal digital assistant (PDA) handheld computers on site.
- Customer calling cards to leave in the event of any problem on site.
- Proactive use of shrub manual (annual audit of beds) to inform winter additional works.
- Assisting client to develop a programme of works to maintain and develop woodland/scrub areas that were not initially included in the schedule of rates
- Developing maintenance regimes to help secure Green Flag accreditation

Officers concluded that they would approach a recommendation to extend the contract with confidence that services could not only be maintained at their current high level but that they could be further improved.

Summary

2.18 The evidence concludes that the contract delivers value for money and predicts that there would be no benefit to the Council or its customers in retendering the contract given that the contractor's proposed enhancements are accepted.

2.19 Performance of the incumbent contractor has improved significantly in comparison with the previous contract and shows consistent levels of improvement throughout the period of the contract to date. The evidence from partners and officers demonstrates that the contract provides a service to the Council's customers that meets their expectations and is to a standard that delivers its corporate objectives; for maintaining the standards of the built environment and our neighbourhoods and ensuring our towns and villages are safe and clean.

2.20 The financial benefits to the Council from an extension offering a real reduction in base budgets are as follows:

- Option 1 presenting a 5 year extension offering a saving of £50,000 per annum or
- Option 2 suggesting a 3 year extension with savings of £22,000 per annum.

- A change of the existing annual review mechanism from the Retail Price Index (RPI) to the Consumer Price Index (CPI). John O'Conner would accept a change to CPI but, to limit the risk to them, this would be capped at a maximum difference between the indices of 0.4% either way in the event of a 3 year extension. With a 5 year extension John O'Conner would offer to change the index to CPI without any cap. To clarify; John O'Conner have estimated that £8,000 is the maximum average saving per annum for the Council based on their forecast of the expected difference between the two indices over the extension period based upon a difference in rates of 0.4 percent compounded.
- The estimated one off cost of retendering a contract is in the order of £60,000 including both officer time and external support. The process involves a 12 month programme of work. There is therefore a "cost avoidance" benefit to an extension by increasing the number of years before this expenditure is required.

2.21 On this basis it is concluded that the value of retaining continuity, a proven quality of service, the interests of our current potential partners and the financial and service improvement benefits of an extension outweighs the potential benefits of retendering the contract.

2.22 It is proposed that the Executive be asked to consider which of these options (3 years or 5 years) is preferred in the context of the Medium Term Financial Plan. The longer extension period delivers greater financial savings, but in the context that it increases the risk by limiting the ability to respond to a change in circumstances.

3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Contract Performance – Environmental Operations (report by Head of Environmental Services to Environmental Scrutiny Committee on 26 June 2012)

<http://online.eastherts.gov.uk/moderngov/ieListDocuments.aspx?CId=154&MId=1760&Ver=4>

Contact Member: Graham McAndrew –Chairman of the Environment Scrutiny Committee Task & Finish Group set up to undertake a review of the Grounds Maintenance Contract
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ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives:	<p>Place</p> <p>This priority focuses on the standard of the built environment and our neighbourhoods and ensuring our towns and villages are safe and clean.</p>
Consultation:	<p>As part of the process of undertaking this review there has been consultation Hertfordshire County Council and Riversmead Housing Association as the key partners that receive services under agency agreements as part of this contract. Officers have also consulted with Circle Anglia Housing Association as a previous and potential partner.</p> <p>The existing grounds maintenance contractor has been consulted about its willingness to extend the existing contract and the additional benefits this might deliver to the Council.</p> <p>The Task and Finish Group has considered consultation results on parks and open spaces from the last residents survey and customer complaints data in relation to this contract.</p>
Legal:	<p>Under EU and UK procurement law the Council may extend the Grounds Maintenance contract for a period not exceeding that stated in the original invitation to tender, i.e. up to 7 years.</p> <p>Should the Council determine to let a new contract from January 2014, the size of the contract requires that it be procured in accordance with EU procurement regulations and advertised in Official Journal of the European Union (OJEU).</p>
Financial:	<p>As part of the review process negotiations have been conducted with the current contractor to ascertain whether service benefits and financial savings could be achieved in the event of a contract extension.</p> <p>Paragraph 2.20 of the report describes the options if an extension were to be agreed.</p>

	<p>Option 1 – 5 year extension – would deliver a part year saving of £12,500 in 2013/14 and £50,000 per annum in the following years.</p> <p>Option 2 – 3 year extension – would deliver a part year saving of £5,500 in 2013/14 and £22,000 per annum the following years.</p> <p>These sums represent a real reduction in the Council's base budget and therefore an ongoing contribution towards efficiency savings.</p> <p>For both options additional savings of up to £8,000 per annum may be achieved from 2014/15 onwards from a change to contract indexation (from RPI to CPI) subject to the levels of inflation for each indicator in future years.</p>
Human Resource:	There are none for this report.
Risk Management:	<p>It is important to note that although a longer extension period will deliver a greater financial benefits, this must be considered in the context that it limits the Council's ability to significantly change its approach for a greater period. In the knowledge of the current uncertainties about the future of local government finance, these risks need to be carefully weighed and assessed against Medium Term Financial Plan Objectives.</p> <p>Should the Council decide not to extend the contract there is a risk that a tender process could deliver higher prices to deliver the same service levels.</p>

EAST HERTS COUNCIL

ENVIRONMENT SCRUTINY COMMITTEE – 13 NOVEMBER 2012

EXECUTIVE – 4 DECEMBER 2012

REPORT BY EXECUTIVE MEMBER FOR ECONOMIC DEVELOPMENT

VEHICLE REMOVALS (TRAFFIC MANAGEMENT ACT 2004

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- To confirm the policy framework and priorities for the operation of a vehicle removal service in East Herts.
- To confirm the mechanism by which the associated charges will be set.

RECOMMENDATION FOR ENVIRONMENT SCRUTINY COMMITTEE:

That:

(A)	The policy framework and priorities for operation of the East Herts vehicle removal service as set out in ERP 'B' are supported and recommended to the Executive for adoption.
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RECOMMENDATIONS FOR EXECUTIVE: That:

(A)	adopts the policy framework and priorities for the operation of the East Herts vehicle removal service as set out in Essential Reference Paper 'B' be adopted; and
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(B)	the inclusion of the proposed removal, storage and disposal charges within the Council's forthcoming Fees and Charges report, be approved.
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1.0 Background

- 1.1 By virtue of decisions made at the Executive on 7 February 2012 and full Council on 22 February 2012 East Herts Council has extended its Civil Parking Enforcement (CPE) powers to permit the

removal of vehicles parked in apparent contravention. It is necessary to set the policy framework and priorities to underpin the delivery of this new service and to set the associated charges.

2.0 Report

2.1 Statutory Guidance issued by the Secretary of State for Transport emphasises the traffic management purposes of CPE. In respect of vehicle removals the following extracts from Statutory Guidance are pertinent:

- “Where an authority has to immobilise or remove a vehicle outside London, the charges **must** accord with guidelines set by the Secretary of State....The charges should be set no higher than required to meet the reasonable costs of the immobilisation/removals procedure. They should not generate a surplus.” (Paragraph 23).

- “An enforcement authority should formulate and publish clear guidelines for Civil Enforcement Officers on when it will be appropriate to immobilise or remove. The guidelines should cover the order of priority in which vehicles should be dealt with, based on the nature of the contravention.” (Paragraph 52).

- “When parked in contravention, a persistent evader’s vehicle should be subject to the strongest possible enforcement...This is likely to involve immobilisation or removal.” (Paragraph 66).

2.2 When letting its current enforcement contract in 2011, East Herts Council invited tenderers to propose how a vehicle removals service might operate in East Herts. The most economically advantageous tender, from NSL, contained a proposal based on the Council leasing a removals vehicle on an occasional basis together and the use of an existing NSL car pound in Edmonton. The cost to the Council would be approximately £440 a day for the vehicle with the provision of five storage spaces at NSL’s pound costing approximately £35 a day.

2.3 Funding of £20,000 for the introduction of a removal capability was agreed from 2012/13 through the MTFP process; however implementation did not take place in 2012/13 due to a requirement to spend longer than might have been anticipated on ‘bedding in’ the new enforcement contract.

- 2.4 The mixture of removal and storage days this £20,000 might fund would depend on how long vehicles were stored before they were claimed or destroyed; however officers are working on the assumption that a maximum of three removal days a month could be funded.
- 2.5 Revenue will accrue from motorists' payment of the recovery and ancillary charges; however this is a new service and the Council will not be in a position to identify the true (i.e. net) cost of the service until up to a full year of operation has elapsed. Officers therefore recommend adoption of the maximum permitted charges at the outset to maximise the likelihood of the service achieving cost neutral status. These charges, as currently permitted by the Secretary of State are £105 for retrieval of a vehicle, £12 a day for storage and £50 for disposal. The cost of the removal service would be reviewed annually, just as the Council's other parking fees and charges are reviewed. These financial considerations are summarised in '**Essential Reference Paper 'A'**'.
- 2.6 The Council is required to adopt formally the charges proposed in (2.5) above. It is recommended that this is done as part of the Council's forthcoming annual Fees and Charges setting exercise.
- 2.7 To ensure compliance with Paragraph 52 of Statutory Guidance, it is important to set policies against which the vehicle removal service will operate. Members are asked to agree and adopt these priorities for the use of this service as proposed in **Essential Reference Paper 'B'**.
- 2.8 A fast track statutory representations and appeals process exists for motorists whose vehicles have been removed and who wish to challenge the Council's actions.
- 3.0 Implications/Consultations
- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

None

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ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives (delete as appropriate):	<p>People</p> <p>This priority focuses on enhancing the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.</p> <p>Place</p> <p>This priority focuses on the standard of the built environment and our neighbourhoods and ensuring our towns and villages are safe and clean.</p>
Contribution to the Council's parking policies:	We will seek to develop and implement parking solutions that reflect local needs.
Consultation:	<p>A survey of East Herts residents undertaken in late 2011 confirmed broad public support for traffic management and enforcement measures that would promote the safety related aspects of Civil Parking Enforcement. It is suggested that if used appropriately vehicle removals can help promote this objective.</p> <p>Member approval for the implementation of this service was given through the 2012/13 MTFP process.</p>
Legal:	<p>The removal of vehicles for enforcement purposes is governed by Statute, Regulation and Guidance as identified in the report.</p> <p>Statutory Guidance requires a clear policy framework to be adopted by a local authority before undertaking vehicle removals.</p>
Financial:	<ul style="list-style-type: none">• Additional provision of £20,000 per annum has been made for the procurement of a vehicle removal service in East Herts.• The cost of hire of a removals vehicle through NSL would be approximately £440 a day and storage at NSL's vehicle pound would be at a daily cost to East Herts of £35 for a minimum of one month across a year.

	<ul style="list-style-type: none"> The maximum charges to the motorist for recovery of a removed vehicle are set by the DfT. These are currently: £105 for vehicle retrieval £12 a day for storage £50 for vehicle disposal (plus payment of the penalty charge). <p>Whilst revenue generated from the above will offset the cost of providing the service, the true cost is unlikely to be confirmed until up to one year of operations has been completed. For this reason Members will be asked to set the maximum charges as listed above in the Council's forthcoming Fees and Charges report.</p> <p>The Parking Service will monitor the cost of providing the service against revenue raised to ensure it remains compliant with Statutory Guidance in subsequent years.</p>
Human Resource:	N/A
Risk Management:	<p>The removal of vehicles, even on the basis of the priority list suggested in this report, is likely to attract media and public interest.</p> <p>A fast track statutory representations and appeals process exists for motorists who wish to challenge the removal of their vehicle under TMA 2004 powers.</p>

East Herts Council

Vehicle Removals Policy

Introduction

East Herts Council seeks to demonstrate a fair, transparent, equitable and proportionate approach all its parking enforcement activities. The Council will apply these principles to the removal of illegally parked vehicles. In support of this we will operate a removals policy which prioritises for attention vehicles that:

1. Are parked dangerously or obstructively.
2. Belong to motorists who have received a number of Penalty Charge Notices that have been neither paid nor challenged (persistent evaders).
3. Have received a Penalty Charge Notice that is unlikely to be unenforceable through other means.
4. Are disadvantaging other service users – for example blue badge holders, resident parking permit holders and users of limited waiting free parking bays.
5. Are parked in contravention in one of the Council's off-street car parks.

1. Dangerous or Obstructive Parking

Single and double yellow lines are the primary means of indicating to motorists where parking *may* be dangerous or obstructive. When in operation, single and double yellow lines have equal status. The essential difference is that double yellow lines operate 24hrs a day whilst single yellow lines operate for a shorter period.

*A vehicle parked in contravention on a double or single yellow line where a Penalty Charge Notice has been issued will be a **high priority** for removal as soon as the Notice has been served.*

Some yellow lines carry with them a ban on loading or unloading, denoted by the presence of kerb “blips”. Loading bans are typically imposed where it would be *particularly* unsafe for a vehicle to park.

*A vehicle parked in contravention on a double or single yellow line with a loading ban in operation and where a Penalty Charge has been issued will be a **high priority** for removal as soon as the Notice has been served.*

Zig-zag yellow lines in the vicinity of schools and white zig-zags leading up to pedestrian crossings are variants of the above.

*A vehicle parked on zig-zags which receives a Penalty Charge Notice will be a **high priority** for removal as soon as the Notice has been served.*

2. Persistent Evaders

Statutory Guidance issued by the Secretary of State for Transport defines a ‘persistent evader’ as a motorist who has incurred three or more recorded contraventions for their vehicle where the PCNs for these have not been paid, represented against or appealed against within the statutory time limits, or their representations and appeals have been rejected but they have still not been paid. Statutory Guidance also advises that when parked in contravention, a persistent evader’s vehicle should be subject to the strongest possible enforcement following the issue of the PCN.

*A vehicle belonging in the above category which receives a Penalty Charge Notice will be a **high priority** for removal no earlier than 15 minutes after the Notice has been served unless it falls into one of the categories detailed in (1) above.*

3. Otherwise Unenforceable PCNs

Motorists driving foreign registered vehicles have a high chance of evading liability for penalty charges they receive. The enforcement process is dependant on keeper information passed to the Council by the Driver and Vehicle Licensing Agency. Almost by definition foreign registered vehicles are not registered with the DVLA; therefore it is not possible to pursue payment. This is inequitable.

*Foreign registered vehicles that receive a Penalty Charge Notice will be a **medium priority** for removal unless they fall into one of the categories detailed in (1) above.*

4. Disadvantage to Other Road Users

A number of on-street parking bays are designated for the use of defined categories of motorist. Examples of these include bays designated for the use of blue badge holders and bays reserved for goods vehicles to load and unload. Additionally, a number of bus stops in East Herts restrict parking to allow bus services to pull in safely to the kerb – for the benefit of passengers and other road users.

*Vehicles parked in restricted bays or restricted bus stops and which receive a Penalty Charge Notice will be a **medium priority** for removal as soon as the Notice has been served.*

*Vehicles parked in limited waiting free bays and which receive a Penalty Charge Notice will be a **medium priority** for removal no earlier than 30 minutes after the Notice has been served.*

A number of streets in our towns are designated for resident permit parking only.

*A non permit bearing vehicle which receives a Penalty Charge Notice for being parked in a resident permit parking area will be a **medium priority** for removal no earlier than 30 minutes after the Notice has been served.*

5. Off-Street (Car Park) Contraventions

Vehicles parked in contravention in car parks are unlikely to be compromising road safety or impacting the expeditious movement of traffic to the same extent as vehicles parked in contravention on the highway.

*Vehicles parked in contravention in East Herts car parks which receive a Penalty Charge Notice will be a **low priority** for removal no earlier than 30 minutes after the Notice has been served, unless they fall into one of the high or medium categories above.*

PRIORITY FOR VEHICLE REMOVALS - SUMMARY

Priority	Manner of Parking	Comments
High	Where a vehicle with is parked on-street in apparent contravention of a single or double yellow line restriction.	The safety justification for this being a priority is clear and such enforcement has been accorded high priority by East Herts residents.
	Where a vehicle is parked on-street on a single or double yellow line where loading/unloading is prohibited.	Loading bans are typically imposed where it would be particularly unsafe for a vehicle to park.
	Where a vehicle is parked on-street in apparent contravention of school 'zig-zag' or zebra crossing 'zig-zag' restrictions.	The safety justification for this being a priority is clear and such enforcement has been accorded high priority by East Herts residents.
	Where a vehicle's owner is classed as a 'persistent evader' by virtue of the vehicle having three or more recorded contraventions where the PCNs have not been paid, represented against or appealed against within the statutory time limits or where representations/appeals have been rejected and the PCNs remain unpaid. (The PCN giving rise to the removal action with therefore be at least the fourth 'live' PCN issued to the vehicle in question).	Motorists sometimes fail to register their vehicle correctly with the DVLA in an attempt to avoid paying parking and other "fines". Removing the vehicle forces a motorist to identify him/her self to the Council.

Priority	Manner of Parking	Comments
Medium	Where a foreign registered vehicle parks in contravention.	The Council cannot pursue payment of Penalty Charge Notices issued to vehicles that are not registered with the DVLA. Removing the vehicle forces the motorist to identify him/her self to the Council
	Where a vehicle is parked on-street in an enforceable blue badge bay without displaying a valid blue badge.	Blue badge holders are particularly disadvantaged if their carefully sited parking bays are abused by non blue badge holders.
	Where a vehicle is parked on-street in an enforceable loading bay or bus stop.	Local businesses and public transport users are particularly disadvantaged if these bays are abused by non-eligible motorists.
	Where a vehicle is parked on-street in a limited waiting (free bay)	The economic well being of our towns depends in part on a healthy turnover of these limited waiting bays.
	Where a vehicle is parked on-street in a resident permit parking place without displaying a valid permit.	Part of the annual cost to the resident of a parking permit is designed to fund the enforcement of resident permit parking zones.
Low	All off-street (car park) contraventions (unless the motorist falls into the category of 'Persistent Evader' as described above).	Vehicles parked in apparent contravention in car parks are low priority for removal on traffic management grounds.

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EAST HERTS COUNCIL

ENVIRONMENT SCRUTINY COMMITTEE – 13 NOVEMBER 2012

EXECUTIVE – 4 DECEMBER 2012

REPORT BY EXECUTIVE MEMBER FOR ECONOMIC DEVELOPMENT

MOBILE, ANPR BASED PARKING ENFORCEMENT

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- To establish a policy framework and priorities for the operation of a mobile, ANPR based parking enforcement service in East Herts.

<u>RECOMMENDATION FOR ENVIRONMENT SCRUTINY COMMITTEE:</u>
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That:

(A)	The policy framework and priorities for the operation of a mobile, ANPR based enforcement service in East Herts set out in ERP 'B' are supported and recommended to the Executive for adoption,
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<u>RECOMMENDATION FOR EXECUTIVE:</u> That:

(A)	the policy framework and priorities for the operation of the mobile ANPR based enforcement service as set out in Essential Reference Policy 'B', be adopted.
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1.0 Background

- 1.1 By virtue of decisions taken by the Executive on 7 February 2012 and full Council 22 February 2012, East Herts Council has extended its Civil Parking Enforcement (CPE) powers to allow enforcement of parking contraventions using an ANPR equipped vehicle. It is necessary to set the policy framework to underpin their delivery of this new service.

2.0 Report

- 2.1 Automatic Number Plate Recognition (ANPR) is used to support a range of traffic and parking enforcement functions. In recent years the use of mobile ANPR based enforcement to supplement parking enforcement undertaken by foot-based Civil Enforcement Officers has grown in England and Wales.
- 2.2 An ANPR equipped enforcement vehicle would enable enforcement of parking controls on the basis of camera evidence. The Council's Traffic Regulation Orders (TROs) would be held on a secure database in the vehicle. A global positioning system (GPS) would be used to confirm the position of the enforcement vehicle and the contravening vehicle and relate the latter to the TRO(s) in operation. This would indicate whether a contravention is likely to have occurred. An inquiry would be made of the DVLA and a hybrid Penalty Charge Notice/Notice to Owner would be sent through the post to the person identified by DVLA as the keeper of the vehicle.
- 2.3 Statutory Guidance issued by the Secretary of State for Transport confirms that mobile, ANPR based enforcement has its limitations. For example, the process cannot always establish whether a vehicle apparently parked in contravention is exempt from the restriction in force at that location - perhaps because it is displaying a valid disabled person's badge or pay and display ticket. As advised in Statutory Guidance:
- "The Secretary of State recommends that approved devices [cameras] are used only where enforcement is difficult or sensitive and CEO enforcement is not practical. Approved devices should not be used where permits or exemptions (such as resident permits or Blue Badges) not visible to the equipment may apply."*
- 2.4 It should eventually be possible for the ANPR based vehicle to patrol East Herts resident permit parking areas, once the complete permit database can be interrogated as part of the enforcement process. Currently only resident permits can be viewed in this way; however it is the Council's intention to place the visitor voucher facility onto a similar, virtual platform at the earliest opportunity.
- 2.4 Mobile, ANPR based enforcement is particularly useful for the enforcement of parking "hot spots" where there is evidence of significant/chronic law breaking and where it can be difficult to take

orthodox enforcement action or achieve an adequate level of CEO coverage. Examples can include school zig-zags, pedestrian crossing zig-zags, parking on yellow lines at junctions and the misuse of designated blue badge bays and loading bays. In some of our smaller villages school zig-zags are the only enforceable restriction and with its current resources the Council can only guarantee attendance at these locations on a three week cycle at best. Such scenarios head the priority list proposed in **Essential Reference Paper 'B'**.

- 2.5 The Council has already set its penalty charges for PCNs served through the post. (PCNs issued using mobile, ANPR based enforcement fall into this category), These penalty charges are the same as for PCNs served on the vehicle or vehicle driver. The current penalty charge in both cases is £70 discounted to £35 for prompt payment in respect of on-street PCNs and £50 discounted to £25 for off street PCNs.

3.0 Implications/Consultations

- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

None

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ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives (delete as appropriate):	<p>People This priority focuses on enhancing the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.</p> <p>Place This priority focuses on the standard of the built environment and our neighbourhoods and ensuring our towns and villages are safe and clean.</p>
Contribution to the Council's Parking Policies	We will seek to develop and implement parking solutions that reflect local needs.
Consultation:	<p>A survey of East Herts residents undertaken in late 2011 confirmed broad public support for traffic management and enforcement measures that would promote the safety related aspects of Civil Parking Enforcement. It is suggested that if used correctly, mobile, ANPR based enforcement can help achieve this objective.</p> <p>Member approval for this service was given through the 2012/13 MTFP process.</p>
Legal:	The use of mobile, ANPR based enforcement is governed by Statute, Regulation and Guidance as identified in the report.
Financial:	<ul style="list-style-type: none"> • Funding of £29,000 per annum has been made through the 2012/13 MTFP process. • Penalty charge revenue arising from this activity will offset the cost of providing the service. <p>The costs of running the service will be reviewed after the first year of operation.</p>
Human Resource:	N/A
Risk Management:	<p>The use of mobile, ANPR based enforcement, even on the basis of the priority list suggested in this report, is likely to attract media and public interest.</p> <p>A clear policy and set of priorities for the use of mobile, ANPR based will assist the Council to meet the needs of our communities.</p> <p>A clearly defined representations and appeals process exists for motorists who wish to challenge the issuing of a Penalty Charge Notice on this basis.</p>

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East Herts Council

Mobile (ANPR) Based Enforcement Policy

Introduction

East Herts Council seeks to demonstrate a fair, transparent and proportionate approach to all its parking enforcement activities. The Council's use of mobile, ANPR based parking enforcement will operate in line with this commitment. In support of this we will prioritise for attention vehicles that:

1. Are parked on school or zebra crossing zig-zags.
2. Are parked in restricted bus stops.
3. Are parked in contravention in an enforceable loading bay
4. Are parked in contravention on single or double yellow lines where loading or unloading is prohibited.
5. Are parked in contravention in resident permit parking areas.

1. School and Zebra Crossing Zig-Zags

Parking on zig-zag lines outside schools has significant safety connotations. It can be difficult to take enforcement action against such activity using CEOs due to the relatively short time the vehicle may be parked there and the fact that the driver may be in the vehicle and is likely to drive away should a CEO approach.

*A vehicle parked in contravention on school zig-zags will be a **high priority** for camera based mobile enforcement.*

Parking on pedestrian crossing zig-zags is also a safety hazard and can also be difficult to enforce against using foot patrols.

*A vehicle parked in contravention on pedestrian crossing zig-zags will be a **high priority** for camera based mobile enforcement.*

2. Bus Stops

A number of bus stops in our towns and villages prohibit the parking of other vehicles between specified times. Illegal parking in these bays cause congestion and places in jeopardy those using public transport who can then have to board or alight in the road.

*A vehicle parked in contravention in an enforceable bus stop will be a **high priority** for camera based mobile enforcement.*

3. Enforceable Loading Bays

The economic wellbeing of our towns and villages depends, in part, on the ability of traders and shoppers to load and unload goods with relative ease. A number of on-street parking bays have been created in our towns for this purpose. Illegal parking in these bays by motorists not engaged in loading or unloading causes congestion and can delay by forcing vehicles to park elsewhere (e.g. on yellow lines).

*A vehicle parked in contravention in an enforceable loading bay will be a **medium priority** for camera based mobile enforcement.*

4. Loading Bans

Single and double yellow lines can be accompanied by a loading ban, signified by means of yellow 'blips' on the kerb. Loading bans are implemented where it would be *particularly* inappropriate for vehicles to park.

*A vehicle parked in contravention where a loading ban is in force will be a **medium priority** for camera based mobile enforcement.*

5. Resident Permit Parking Areas

Resident permit details are held in a database which cross references with the Council's parking enforcement system. Over time the Council hopes to also move the 'visitor voucher' service onto an electronic platform, doing away with the current scratchcards. Once this has been achieved resident permit parking areas will be patrolled using the ANPR based mobile service.

*A vehicle parked in contravention in a resident permit parking area will be a **medium priority** for camera based mobile enforcement.*

All Other On-street Contraventions

Certain other on-street contraventions may warrant enforcement using a mobile, ANPR equipped vehicle. The general rule for doing so will be that enforcement using an 'orthodox', foot based Civil Enforcement Officer would not be possible or has proved unsuccessful.

Examples might include locations where there is a record of threats offered to Civil Enforcement Officers and/or chronic abuse of parking restrictions.

PRIORITY FOR USE OF MOBILE, ANPR BASED PARKING ENFORCEMENT

SUMMARY

Priority	Manner of Parking	Justification
High	Where a vehicle is parked on-street in apparent contravention of school 'zig-zag' or zebra crossing 'zig-zag' restrictions.	Parking in this fashion has clear safety connotations and our residents have identified such contraventions as top of their priority list for enforcement.
	Where a vehicle is parked on-street in an enforceable bus stop.	Users of public transport are particularly disadvantaged by such parking, which can also lead to congestion on the highway.
Medium	Where a vehicle is parked in contravention in an on-street enforceable loading bay.	Loading bays are an essential support to traders in our towns and villages and commercial vehicles forced to park elsewhere can cause congestion.
	Where a vehicle is parked on-street on a double yellow line where loading/unloading is prohibited.	Loading bans are imposed where it is particularly unsafe for vehicles to park.
	Where a vehicle is parked on-street on a single yellow line where loading/unloading is prohibited.	Loading bans are imposed where it is particularly unsafe for vehicles to park.
Low	All other on-street contraventions.	

- ANPR based enforcement ***should not*** be used in off-street car parks due to its inability to detect pay and display tickets in vehicle windscreens
- ANPR based enforcement ***should not*** be used in resident permit parking areas where such schemes rely on the physical display of permits in vehicle windscreens. It may be used where permit details are held 'virtually' and where eligibility can be confirmed before enforcement takes place.

EAST HERTS COUNCIL

EXECUTIVE – 4 DECEMBER 2012

REPORT BY THE EXECUTIVE MEMBER FOR ECONOMIC DEVELOPMENT

CAR PARK FEES AND CHARGES

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- To identify whether Members wish to impose the inflationary increase of 2.5% to the pay and display budget required in the Council's MTFP.
- To identify options for change to the operating terms and charging structures of some East Herts car parks.
- To confirm the policy rationale for possible changes.
- To authorise officers to advertise Traffic Regulation Orders to facilitate these changes.
- To authorise officers to make a change to the designation of Gascoyne Way car park in Hertford.

<u>RECOMMENDATIONS FOR EXECUTIVE:</u> That:	
(A)	the Executive confirm whether they wish to impose the 2.5% uplift to the pay and display income budget required by the MTFP;
(B)	the Executive confirm which of the options for change outlined in this report they wish to be progressed;
(C)	officers be instructed to undertake further evidence gathering/research to inform decision making and bring a further report to the Executive in the New Year;

(D)	officers be instructed to advertise separate Traffic Regulation Orders to facilitate each of these changes;
(E)	officers be instructed to promote a further Traffic Regulation Order to bring about the change to Gascoyne Way car park as proposed in this report;
(F)	officers be instructed to implement a Notice of Variation to bring about any changes to existing car park tariffs not affected by the proposed Traffic Regulation Orders mentioned above.

1.0 Background

1.1 East Herts Council has adopted a set of principles on which fees and charges should be set:

- Any subsidy from council tax payers should be a deliberate choice.
- Discretionary fees and charges should generate income to help deliver improvements in priority services.
- Discretionary fees and charges should support the Medium Term Financial Plan.
- There should be a measure of consistency in setting charges for similar services.
- Levels should be set to avoid unnecessary subsidies from the council tax payer to commercial operations.
- If the impact is likely to be high, consideration should be given to phasing in changes.

1.2 Upon adoption of its Parking and Transport Strategy, East Herts Council adopted seven policy pillars for the development of its parking service:

- We will seek to maintain car parking income at current levels in real terms.

- We will seek to ensure that users pay for the parking service rather than the council tax payer.
- We will promote existing and explore new technologies to improve the overall convenience of parking in East Herts.
- We will seek where possible and appropriate to match parking capacity with demand.
- We will seek to develop and implement parking solutions that reflect local needs.
- We will make the economic vitality of East Herts a core consideration when developing parking services.
- We will continue to work with partners to look at what additional sustainable transport services may be appropriate and deliverable.

1.3 Pay and display charges were not increased in 2010/11, 2011/12 and 2012/13. The effect of the VAT increase to 20% in January 2011 was also absorbed by the Council. The benefit to car park users of this freeze to the pay and display budget is estimated at £400,000 in 2012/13. Should the Council decide not to increase charges for 2013/14, this figure would rise by a further £83,000.

2.0 Report

2.1 The Council's MTFP currently includes an annual uplift to the pay and display base budget of 2.5%. Members are asked to confirm whether they wish this increase to be implemented in 2013/14.

2.2 Members have asked for a number of further options to be investigated. These include:

- Introducing a £1 flat charge in town centre car parks in Bishop's Stortford, Hertford and Ware from 1600 to 2100, Monday to Saturday, or
- introducing a £1 flat charge in town centre car parks in Bishop's Stortford, Hertford and Ware from 1830 to 2100, Monday to Saturday. (Currently, charging hours end at 1830).

2.3 Applying the principle that the 'user pays', the potential for an evening charge is being investigated with the intention that any additional income generated is returned to car park users by way of further tariff changes/reductions. The Council does not seek to increase the net income from these changes. Options for such modifications include:

- Introducing a free or discounted first ½ hour in town centre car parks in Bishop's Stortford, Hertford and Ware.
- Introducing a discounted 2hr tariff in town centre car parks in Bishop's Stortford, Hertford and Ware.

The objective of these changes would be to encourage footfall in our town centres and so support the businesses that trade there, whilst remaining consistent with the principle that 'the user pays'.

2.4 It might be that no form of evening charge would, on its own, compensate fully for the financial effect of a free or discounted first ½ hour and/or 2hr tariff. The effect these options would have on parking patterns and pay and display income is untested. Because there is no history of evening charging in East Herts there is no data that would reliably inform modelling.

2.5 Officers will undertake further research aimed at quantifying the effect of some of these proposals and how they might be modified if necessary. These will be reported to a meeting of the Executive in the New Year. In the interim, officers will promote separate Traffic Regulation Orders, each promoting one of the above options to facilitate a number of possible scenarios.

2.6 In parallel, the Council will promote a Traffic Regulation Order aimed at bringing into effect the change proposed in (2.9) below and will enact a 'Notice of Variation' in respect of any change to *existing* car park tariffs not covered by the Orders detailed above.

2.7 The Council will have up to two years from the date of first advertisement of the Orders to bring them into effect. If a Traffic Regulation Order is not brought into effect within a two year period, it lapses. It is anticipated that the Order in relation to Gascoyne Way Car Park and the 'Notice of Variation' would be enacted by April 2013 if possible.

2.8 Other options considered but not pursued at this time, which might be employed to help rebalance the budget were:

- Introducing a flat rate charge for use of car parks in Hertford and Bishop's Stortford on Sundays.
- Introducing on-street pay and display charging.

Officers are given to understand that whilst these options have been considered, Members do not wish to pursue either at this time.

2.9 No changes to car park tariffs and tariff structures are proposed in Sawbridgeworth, Buntingford or Stanstead Abbots in 2013/14.

Additional Recommendation

2.10 In further support of the local economy, officers propose to use the Traffic Regulation Order making process required by the above changes to make the whole of Gascoyne Way multi-storey car park in Hertford mixed use (combined long and short stay parking on Saturdays. It is suggested this will maximise its benefit to shoppers and traders on this busy shopping day.

3.0 Implications/Consultations

3.1 Officers will promote separate Traffic Regulation Orders, each promoting one of the options listed in (2.2) and (2.3) above. Officers will promote a further Traffic Regulation Order promoting the change recommended in (2.10) above. Officers would also enact a 'Notice of Variation' to bring about any changes to *existing* tariffs that may be required.

- 3.2 The promotion of Traffic Regulation Orders is an important act of consultation as any interested party would be able to object to the proposals within 21 days of the Orders' advertisement. Significant objections would be reported to Members for ratification of officer recommendations. (This does not apply in respect of a 'Notice of Variation').
- 3.3 The provisions of a Traffic Regulation Order may brought into effect up to two years from the date of its advertisement.
- 3.4 The possible restructuring of pay and display tariffs discussed in this report poses a level of risk to the Council's current pay and display base budget which officers will attempt to model and quantify but which may not be fully understood until well into the financial year in question.
- 3.5 The Council's enforcement costs would increase in line with the requirement for evening enforcement of car parks in Bishop's Stortford and Hertford unless resource was diverted from daytime enforcement.

Background Papers

None

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Report Author: Andrew Pulham – Parking Manager

ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives	<p><i>Prosperity</i></p> <p>This priority focuses on safeguarding and enhancing our unique mix of rural and urban communities, promoting sustainable, economic and social opportunities.</p>
Contribution to the Council's Parking and Transport Strategy Objectives	<ul style="list-style-type: none">• We will seek to maintain car parking income at current levels in real terms.• We will seek to ensure that users pay for the parking service rather than the council tax payer.• We will make the economic vitality of East Herts a core consideration when developing parking services.
Consultation:	<p>Any re-designation of car parks and/or the introduction of new parking charges would require the advertisement of a Traffic Regulation Order (TRO).</p> <p>Promotion of a TRO is an act of consultation as any interested party is allowed to object to the Council's proposals within 21 days of its advertisement.</p>
Legal:	<p>The Council is required to set formally its fees and charges.</p> <p>Changes to car park fees and charges that include a change to car park designation and/or operating hours require the promotion and enactment of a TRO before they can have legal effect.</p>
Financial:	<ul style="list-style-type: none">• The Council's financial model/MTFP requires an inflationary uplift of 2.5% to the pay and display base budget in 2013/14.• The introduction of a free or discounted first ½ hour and/or 2hr charge in car parks in Hertford, Bishop's Stortford and Ware will reduce car park income unless adjustments are made elsewhere.• The financial effect of these significant changes might only be known as the year unfolded. The Council might therefore find it necessary to make further corrective changes during 2013/14 should

	<p>the effect on the pay and display base budget prove unsustainable.</p> <ul style="list-style-type: none"> • The cost to the Council of advertising a number of separate Traffic Regulation Orders in parallel plus a Notice of Variation would be significantly greater than the cost of advertising a single, unified Order.
Human Resource:	N/A
Risk Management:	<ul style="list-style-type: none"> • The Council's financial model requires a 2.5% uplift to the 2012/13 pay and display budget in 2013/14. Should this not be implemented, matching efficiencies might have to be found. • Although occupancy counts are being undertaken, preliminary financial modelling indicates that after the evening flat rate charges have been taken into account there could still be a deficit on the pay and display base budget created by giving a free or discounted first ½ hour and/or 2hr charge in Hertford, Bishop's Stortford and Ware. • Should budget monitoring show that these changes were having an unacceptable adverse effect on the budget Members might wish officers to promote a further TRO during 2013/14 to aid in recovering the position.

EAST HERTS COUNCIL

EXECUTIVE - 4 DECEMBER 2012

REPORT BY EXECUTIVE MEMBER FOR FINANCE

COUNCIL TAX DISCOUNTS AND PREMIUM

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- For Members to consider how the Council will exercise discretions in respect of council tax discounts and premium with effect from 1 April 2013.

RECOMMENDATIONS FOR THE EXECUTIVE:

That Council be recommended to approve the following discounts in respect of council tax with effect from 1 April 2013:

(A)	a discount of 50% for any period of up to six months in respect of dwellings which become empty and unfurnished;
(B)	a discount of 50% where a dwelling is empty undergoing major repair for such minimum period as prescribed by regulation; and
(C)	a discount of nil in respect of second homes.

1.0 Background

1.1 As part of its localism agenda the government proposes to allow local discretion to set discounts to replace some of the currently prescribed exemptions and discounts applied to council tax.

1.2 The consultation paper summarised the purpose of the proposals:

- “These proposals will help local authorities keep the overall level of council tax down, supporting hard-working families and pensioners by adjusting the tax relief in respect of

second homes and empty properties when authorities judge that they do not merit the special treatment they currently get”

- “The Government has no plans to change the rules on exemptions currently available in respect of properties left empty because a person has moved into a hospital or care home, or has died, or has moved to provide care to another.”

2.0 Report

2.1 The current scheme of exemptions and discounts over which discretion becomes available reduces annual council tax income by:

- Empty and unfurnished £885,000 [no tax payable]
- Empty undergoing repair £108,000 [no tax payable]
- Second homes £ 20,000 [90% payable]

2.2 The loss of income is shared by East Herts, the County Council, Police Authority and Town and Parish Councils pro rata to each authority’s rate of council tax. Any reduction in discount will be for the benefit of all councils.

2.3 In addition to helping keep council tax down for the wider group of council tax payers a liability to pay some council tax may be an incentive to bring houses into occupation sooner by owners by compromising on sale prices and landlords on rents expected. This effect is difficult to quantify but making more effective use of the housing stock would be a useful contribution to the need for more housing.

2.4 However, the financial benefits to tax payers generally and any contribution to housing supply need to be considered against the impact on owners and landlords. Owners of empty property will most likely be paying council tax on another house they occupy and empty properties do not call on the full range of council services. For landlords council tax will be a cost at a time of loss of rent income for void periods.

2.5 The proposal to reduce the discount from 100% to 50% rather than withdraw the discount entirely achieves this balance. The council might assess impacts and review the discounts after a period and depending on the Council’s overall financial position.

2.6 Regulations with regard to current exemptions provide that a property must be occupied for at least six weeks after being empty before a further six months of exemption because empty

can be triggered. It is assumed that similar provisions will be prescribed with regard to the proposed equivalent scheme of discounts. This is important to avoid “game play” to avoid tax and if not carried forward the Council will need to consider how to put in place equivalent protection.

2.7 The discount on second homes was previously determined by the Council at the minimum of 10%. Removing the discount will avoid the need to track these properties but is unlikely to have much, if any, impact on the number of such properties in East Herts.

2.8 Exercising a provision to charge a premium rate of tax on properties which have been empty for two years may be seen as an incentive to bring properties back into use. However, keeping track of empty properties which have ceased to be in receipt of discount will require changes to procedures. On balance it is proposed that a premium is not charged.

3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper ‘A’**.

Background Papers

None

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ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives (delete as appropriate):	People This priority focuses on enhancing the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.
Consultation:	Proposals have been discussed and agreed with the Head of Revenues and Benefits and are administratively achievable.
Legal:	Changes to discounts require approval by Council
Financial:	Proposals contained within the report would generate additional income of around £517k of which £55k would accrue to East Herts.
Human Resource:	None
Risk Management:	Risks in relation to the achievement of the anticipated financial effects will depend upon actual levels of properties affected and Council Tax collection levels.

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EAST HERTS COUNCIL

EXECUTIVE - 4 DECEMBER 2012

REPORT BY EXECUTIVE MEMBER FOR STRATEGIC PLANNING AND TRANSPORT

AFFORDABLE HOUSING: PLANNING POLICY REQUIREMENTS

WARD(S) AFFECTED: All

Purpose/Summary of Report

- To consider the potential and impact of a possible temporary relaxation in affordable housing provision requirements.

<u>RECOMMENDATION FOR EXECUTIVE:</u> That:	
(A)	consideration is given to a change to the Council's policy requirement for the provision of affordable housing as set out in paragraph 4.1 of this report.
<u>RECOMMENDATION FOR COUNCIL:</u> That:	
(A)	the Council's policy requirement for the provision of affordable housing in category 1 and 2 Villages be amended and the revised wording for policy HSG3(II) and (III) as set out in paragraph 4.1 of this report be agreed:
	As a result, the threshold and requirement for provision of affordable housing would be as follows: a) Main Settlements: Threshold: Sites over 15 units or 0.5ha Provision: Up to 40% b) Category 1 and 2 Villages Threshold: Sites of up to 3 units or 0.12ha Provision: none Threshold: Sites of 4-14 units or 0.12 – 0.5ha

	<p>Provision: Up to 25%</p> <p>Threshold: Sites over 15 units or 0.5ha</p> <p>Provision: Up to 40%</p> <p>The time period for the commencement of development of any planning permissions that come forward as result of this policy change shall be one year.</p>
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1.0 Background

- 1.1 The general background to this issue is the current economic circumstances of the country. Members will be aware that, one strand of the measures the government is pursuing to improve these circumstances, is to encourage development projects to proceed. In particular, in relation to affordable housing, the government has recently indicated that it wishes requirements for its provision to be reviewed and, if possible reduced.
- 1.2 The provision of affordable housing represents a cost to development in general terms. Whilst subsidised to a degree through government funding provided through a range of channels, ultimately either the landowner of land coming forward for development or the developer (or usually both) have to accept a lower return on the development scheme to accommodate those costs. Reducing those costs would provide a driver for greater economic activity by stimulating development.

2.0 Current Policy Position

- 2.1 The Council's current policy in relation to the provision of affordable housing in association with development is set out in the Local Plan (April 2007). Policy HSG3 sets out the trigger and requirements which are:

(a) in the six main settlements, proposals for 15 or more dwellings or on sites over 0.5ha in extent;

(b) in the category 1 and 2 villages, proposals for 3 or more dwellings or on sites over 0.09ha in extent.

In all cases the policy sets out that, up to 40% of the overall proposed number of dwellings will be sought as affordable housing units.

(Note: the six main settlements include the five towns and the settlement of Stanstead Abbots/ St Margarets).

- 2.2 Members will be aware that the Council's policy is articulated in a way that does enable flexibility. The 'up to 40%' caveat enables discussions to be had with regard to the extent of affordable provision for each site.
- 2.3 When dealing with larger scale proposals the experience of Officers is that these have included the cost of 40%. Indeed, for schemes that are coming forward through pre-application processes now, 40% provision is still being put forward. Where a reduced provision is offered, it is based on a validated viability assessment. These larger scale proposals are usually, but not always, situated in the main settlements.

3.0 Benefits and Risks of change

- 3.1 The benefit of a reduced policy requirement is that development proposals may come forward for sites which would otherwise remain undeveloped. This would provide the associated benefit of construction employment and subsequent addition to general housing delivery.
- 3.2 It is difficult to anticipate the extent of this. Sites which may be seen as more attractive to development as a result of an affordable housing requirement policy change may still be subject to other policy restrictions that prevent their development. They may be located in the green belt or in isolated locations where development would generally not be supported. There may be some sites which landowners or developers have not brought sites forward solely because of the Councils affordable housing policy requirements.
- 3.3 The risk of a relaxed policy requirement is that, whilst development generally may increase, the provision of affordable housing will be reduced in comparative terms. Given that large sites are being proposed on the basis of the current policy requirement however, the risk of any policy change can be significantly minimised if it is made only in relation to the village settlements thresholds and proportion requirements.

- 3.4 In the category 1 and 2 villages, relaxation of the policy requirement to a threshold of 4 or more dwellings (and a comparable site size threshold of 0.12ha) would constitute a modest change which may encourage a limited number of additional development sites to come forward. The effect would be that developers could propose a scheme of up to three new properties in these locations before there would be any policy requirement to provide affordable housing. In addition, a change in the proportion of provision required for schemes which comprise 4 or more dwellings would also reduce costs. It is suggested that the proportional requirement be reduced to up to 25% for schemes in category 1 and 2 villages of between 4 and 14 units. Above that scale, that is 15 or more units, up to 40% provision would be required.
- 3.5 This aligns with a concern that has been articulated that the current policy is acting in a way that prevents the modest scale developments coming forward, those which are located away from the towns and which may provide a limited number of new properties.
- 3.6 There is also a need to consider the timescale impact's of any policy change. It is suggested that, once the Councils District Plan Core Strategy is adopted that this should then become the Councils adopted policy position on this matter. That will lead to a period of policy relaxation of some 18 months. Planning permissions, once granted, normally have an implementation timescale of up to three years however and therefore, without further restriction, it may be possible to deliver development schemes under this reduced policy position for a period of 4.5 years.
- 3.7 It is suggested therefore that normal timescales for implementation are curtailed where schemes come forward under this proposed policy relaxation. Instead of the normal 3 year time limit, a 1 year time limit be applied. The rationale for this is clear. Development proposals that come forward in this way are given weight due to their more immediate beneficial economic impact. To then allow them to remain unimplemented for three years clearly runs counter to this desire to drive economic activity.
- 3.8 One other point to consider in relation to policy relaxation is that, whilst likely to be supported by the development industry, it may lead to more vigorous testing of the remaining policy or of any

subsequent policy position that is put forward through the Councils District Plan.

- 3.9 These proposed policy changes leave the situation in relation to development across the remainder of the district unchanged. That is, there is no policy support for residential development in general terms. Schemes which comprise solely affordable housing (exception schemes) would be supported however under policy HSG5. Members may wish to express their continuing commitment to supporting schemes which could come forward under this policy and which may be proposed by any community based organisation.

4.0 Revised Affordable Housing Policy HSG3 (II)

- 4.1 If Members adopt the revised policy position set out in this report the revised policy part (II) and (III) would be amended as shown in bold below:

(II) Affordable housing provision will be expected on sites:

(a) proposing 15 or more dwellings, or over 0.5 hectares, in the six main settlements; and

(b) proposing **4** or more dwellings, or over **0.12** hectares, in the category 1 and 2 villages.

(III) On suitable sites (in accordance with policy HSG4)

(a) in the main settlements the inclusion of up to 40% affordable homes will be sought as part of the proposed development of the site.

(b) in category 1 and 2 villages the inclusion of up to 25% affordable homes will be sought for schemes which comprise between 4 and 14 units inclusive (between 0.12ha and 0.5ha inclusive) as part of the proposed development of the site and up to 40% affordable homes will be sought for schemes which comprise 15 or more units or over 0.5ha in size as part of the proposed development of the site.

5.0 Implications/Consultations

- 5.1 The corporate issues raised by the issues addressed in this report are as set out above. Details of consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

None

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ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives	<i>People</i> This priority focuses on enhancing the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.
Consultation:	Housing Manager, Planning Policy Manager, Development Control Manager, Legal Service Manager
Legal:	Provision of affordable housing has an established legislative background within which the Council can establish its own policy.
Financial:	Policy change is largely without financial cost to the Council.
Human Resource:	n/a
Risk Management:	The risks of policy change are set out in the main report.

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EAST HERTS COUNCIL

EXECUTIVE - 4 DECEMBER 2012

REPORT BY LEADER OF THE COUNCIL

COMMUNITY RIGHT TO CHALLENGE - GOVERNANCE ISSUES

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- This report recommends the arrangements which the Council should adopt in order to operate the new Community Right to Challenge.

<u>RECOMMENDATIONS FOR EXECUTIVE</u> That:	
(A)	the Council appoint the Director of Neighbourhood Services to be the proper officer for the receipt, validation and acceptance or rejection of expressions of interest;
(B)	the proper officer bring forward for approval by the Executive a timetable for the acceptance or rejection of expressions of interest;
(C)	the proper officer be authorised, after consultation with appropriate Heads of Service, to determine whether grounds exist to reject an expression of interest, and, subject to prior consultation with the appropriate Portfolio Holder, to accept or reject an expression of interest on behalf of the Council, with an instruction to refer sensitive expressions of interest to the Executive for consideration;
(D)	the proper officer report quarterly to the Executive on any expressions of interest received;
(E)	the Chief Executive Officer is appointed deputy for the proper officer to act in the situation where the proper officer is absent or if a conflict situation exists between the proper officer and the expression of interest submitted;

(F)	discussions take place with the authorities with whom the Council has joint arrangements about how expressions of interest are to be handled;
(G)	the Executive designate a procurement officer to act as the project lead for any procurement exercises;
(H)	the procurement officer be instructed to propose to the Executive timescales for the period between acceptance of an expression of interest and start of the procurement exercise;
(I)	the proper officer (or deputy) be responsible for managing each procurement exercise, subject to the settlement of the specification for the service and the evaluation of tenders being joint with the appropriate Head of Service or Director;
(J)	the procurement officer be instructed, after consultation with appropriate officers, to propose a timetable of periods within which expressions of interest for specified services will be received;
(K)	where a Head of Service, after consultation with the relevant Portfolio Holder, decides that an in-house bid will be prepared and submitted, he must agree with his Director arrangements for the identification of separate commissioning and bid preparation teams;
(L)	the Executive take a policy decision on whether it wishes to encourage community and voluntary participation, and/or staff mutual participation, in the provision of services; and
(M)	if so, that officers be instructed to report to the Executive on how such participation may be encouraged.

1.0 Background

- 1.1 From 27th June 2012, the Localism Act 2011 introduced a right for Parish Councils, community and voluntary bodies, charitable trusts and 2 or more local Council employees to submit an Expression of Interest in taking over the provision of a service on behalf of the Council. Where a valid expression of interest is

received, the Council is required to undertake a procurement exercise for that service, which may lead to the Council awarding a contract for the provision of that service. This report recommends the arrangements which the Council should adopt in order to operate the new Community Right to Challenge. This is an Executive Function.

2.0 Report

2.1 Who can submit an Expression of Interest?

2.1.1 An expression of interests can be submitted by a “relevant body”, comprising –

- (a) A Parish Council, but not limited to services or facilities within its area;
- (b) A Voluntary Body – a body, other than a local Council, the activities of which are not carried on for a profit;
- (c) A Community Body – a body, other than a local Council, which carries on activities primarily for the benefit of the community;
- (d) A body or trust established for charitable purposes;
- (e) 2 or more employees of the Council, whether or not they have formed themselves into a body for this purpose, or
- (f) Such other persons or bodies as may be specified by the Secretary of State by regulations.

2.1.2 There is no requirement for a Voluntary or Community Body to have any local connection and any of these bodies can submit an expression of interest in partnership with any other organisation, including a commercial organisation, or propose to sub-contract the work to a commercial organisation. Providing that this is done, there is no requirement for the relevant body to undertake the majority of, or any particular share of the work.

3.0 What services can an Expression of Interest relate to?

3.1 The expression of interest must relate to the provision of, or assisting in the provision of, a “relevant service”, which means any service which is currently provided by or on behalf of the

Council. However, the following services are “excluded services” which cannot be the subject of an expression of interest –

- (a) Services provided in partnership with NHS bodies, or by an NHS body on behalf of the Council;
- (b) A service provided to a named person with complex individual health or social care needs; or
- (c) A service which includes the exercise of a statutory power which cannot be delegated. So, the setting of Council Tax or the determination of a planning application is not legally capable of being undertaken by anyone other than the local Council, and so cannot be the subject of an expression of interest.

3.2 An expression of interest can relate to services such as management and maintenance of playing fields or parks, refuse collection and re-cycling, running a leisure centre, or operation of off-street car parks. Equally, a team of Council staff might consider taking on a back office activity.

4.0 The Expression of Interest

4.1 The Expression of Interest must be in writing and meet certain requirements. These include the provision of -

- (a) Information about the financial resources of the relevant body which is submitting the expression of interest;
- (b) Evidence that demonstrates that by the time of any procurement exercise the relevant body submitting the expression of interest will be capable of providing or assisting in providing the relevant service. This is particularly important when dealing with an emergent staff mutual or voluntary body, which may not be fully operational at the date of submitting an expression of interest;
- (c) Information about the relevant service sufficient to identify it and the geographical area to which the expression of interest relates;
- (d) Information about the outcomes to be achieved by the relevant body or, where appropriate, the consortium of

which it is a part, in providing or assisting in the provision of the relevant service, in particular—

- how the provision or assistance will promote or improve the social, economic or environmental well-being of the relevant Council's area; and
 - how it will meet the needs of the users of the relevant service; and
- (e) Where the relevant body consists of employees, details of how that relevant body proposes to engage other employees of the relevant Council who are affected by the expression of interest.

5.0 Validation of Expressions of Interest

5.1 The first stages comprise the validation and acceptance or rejection of each expression of interests

5.2 What happens when an Expression of Interest is received.

5.2.1 When an expression of interest is received, the Council needs to check that it is submitted by a "relevant body" for a "relevant service" which is not an "excluded service". If it fails to meet these requirements, the Council notifies the person who submitted the expression of interest that it is not a valid expression of interest, but need take no further action.

5.3 Can the Council reject a valid Expression of Interest ?

5.3.1 There are 10 grounds on which the Council may reject a valid expression of interest –

1. That the expression of interest does not meet the statutory requirements, because it is not from a relevant body or is not for a relevant service;
2. That the supporting information is inadequate or incorrect;
3. That any member of the body making the bid, or of their consortium, is not suitable to provide the service. This would cover absence of a necessary qualification, or past conduct;

4. That the Council has already taken a formal decision to cease to provide the service. So an expression of interest cannot be used as a means to challenge the Council's decision to close a facility or cease a service;
5. That taking this service in isolation would result in a loss of integration with NHS services to the detriment of users of the integrated service;
6. That the service is already the subject of a procurement exercise.
7. That the Council is already in negotiations in writing with a third party for the provision of the service;
8. That the Council has already published its intention to consider the provision of the service by a body to be set up by 2 or more employees;
9. That the expression of interest is vexatious or trivial; and
10. That the acceptance of the expression of interest is likely to lead to a breach of law or statutory duty. This would cover an expression of interest which would require delegation of statutory powers which cannot be delegated or where it would lead to a breach of the Council's duty to secure best value, for example by causing greater cost by the break-up of shared service arrangements.

5.3.2 In addition, the Localism Act provides that the Council may define services and set periods during which expressions of interest may be submitted for those services, and may then refuse to consider an expression of interest which is submitted at the wrong time. This enables the Council to ensure that, for example, it receives any expressions of interest for different parts of the waste collection and recycling services at the same time so that it can deal with them in a co-ordinated manner.

5.3.4 The Act also requires the Council, in considering an expression of interest, to consider whether the acceptance of the expression of interest would promote or improve the social, economic or

environmental well-being of the area, but this does not form a separate ground for rejecting an expression of interest.

5.4 Acceptance or rejection of an Expression of Interest

- 5.4.1 Once an expression has been validated, it is necessary for the proper officer to conduct a review of the expression of interest to determine whether it falls within any of these criteria. This is partly a matter of fact and law, and partly a question of collecting information from the officer currently responsible for the running of the service. It is also a question of policy because, where an expression of interest falls within one of these grounds for rejection, the Council still has a discretion and may decide to accept the expression of interest anyway. It must then notify the persons or body who submitted the expression of interest of its decision and of the reasons for that decision.
- 5.4.2 If the Council acted unreasonably in rejecting an expression of interest, that decision would be open to judicial review.

5.3 Shared services

- 5.3.1 Particular attention needs to be given to how the Council will deal with expressions of interest for services which are provided on a joint arrangement with other authorities. Where this would result in the loss of efficiencies, it may justify rejection of the expression of interest on best value grounds. However, it is possible that expressions of interest for the relevant parts of the service have been submitted to each participating Council, so there may be a need to co-ordinate with the other participating authorities.

5.4 Timescale

- 5.4.1 The Council must set and publish the maximum period which will elapse between receipt of an expression of interest and the Council notifying the body which submitted the expression of interest of its acceptance or rejection of that expression of interest, but may set different maximum periods for different cases.

6.0 **A Procurement Exercise**

- 6.1 Once a valid expression of interest has been accepted, the Council moves into procurement mode, and must conduct an appropriate procurement exercise.

6.2 The Scale of the Procurement Exercise

- 6.2.1 The scale of the procurement exercise will be dictated by the nature and value of the service concerned. So, for a service which exceeds the procurement thresholds (currently £173,934), the Public Contracts Regulations will require a formal OJEU procurement. The Procurement Regulations will need to be followed.

6.3 Timescale

- 6.3.1 The Council is required to adopt and publish minimum and maximum periods between the acceptance of the expression of interest and the start of the procurement exercise, but may set different periods for different cases.

6.4 Specifying the service

- 6.4.1 The range of the service (in terms of the service and the geographical area) to be subject to a procurement exercise will be set by the expression of interest. The Council may only vary the range of services with the agreement of the body or persons who submitted it. The specification for the service to be provided, the contract terms and conditions, and the criteria for evaluation of tenders are for the Council to determine.

6.5 Tenders

- 6.5.1 An expression of interest may be submitted by a genuine community or voluntary organisation, and the Council may wish to encourage such community involvement in service provision. Once the Council goes out to open tender, it cannot prevent tenders being submitted by purely commercial organisations. It will be required to evaluate all tenders received on the same evaluation criteria.

6.6 In-house bids

- 6.6.1 There is nothing in the legislation to prevent the Council submitting an in-house “tender” for the provision of the service, on the basis of its own employees. Such an in-house “tender” would not be a part of the statutory procurement exercise, but should be evaluated on exactly the same criteria as any third party bids, and can lead to the Council determining on best value grounds not to

accept any of the third party tenders. However, it will be necessary for reasons of propriety to ensure that the team preparing any in-house “tender” are treated in exactly the same way as external tenderers and do not improperly influence the manner in which the procurement exercise is conducted and do not receive any information which is not made available to all other bidders which might give the in-house bid team an unfair advantage in the preparation of their bid.

6.7 Timescale

- 6.7.1 The Council must set a minimum and a maximum time from the acceptance of an expression of interest to the start of the procurement exercise. This allows time for the preparation of a specification for the service and for the invitation to bidders. Where the expression of interest comes from 2 or more staff, it could allow time for them to form a staff mutual as a separate legal entity to prepare and submit the bid.

6.8 Acceptance of Tenders

- 6.8.1 The Council’s Procurement Regulations set out how a tender may be accepted.
- 6.8.2 This phase of the process is essentially a procurement exercise, requiring a procurement officer designated to run the process, but with the appropriate Head of Service or Director taking a leading role in settling the service specification and in the evaluation of tenders, with appropriate legal, financial, human resources and other support.

7.0 Encouraging Voluntary Participation in Service Provision

7.1 Encouraging Community and Voluntary Bodies

- 7.1.1 As set out above, once the statutory process is activated, there is no guarantee that the community or voluntary organisation which initiated the process will be successful in the procurement exercise. Indeed, such a local community or voluntary body will normally be at a considerable disadvantage by reason of its smaller size, limited track record of service provision and lack of funds for bid preparation. The formal procurement process also leads to a formality of service contract which may work against a genuine partnership for local service delivery.

7.1.2 If the Council wishes to encourage community involvement in service provision, it may be preferable to encourage direct negotiation with community and voluntary bodies instead of a formal procurement exercise. So, for example, the Council has the ability to enter an agency arrangement with a Parish Council, or to grant a lease of local community facilities to such a community or voluntary body, and to enter a grant agreement, without having to undertake a competitive procurement. This will only be possible where the grant agreement does no more than cover costs, and where there is no developed commercial market for the services. It must still be satisfied that such an arrangement provides best value for the Council, but such a voluntary arrangement can avoid the costs to the Council and to bidders of a formal competitive procurement.

7.2 Encouraging the development of staff mutuals

7.2.1 Equally, the Council can provide support and encouragement for staff to establish mutuals (co-operatives and other employee-owned bodies) and to take on service provision.

7.2.2 So, the Council can agree to allow staff time within their employment to prepare such proposals and can provide financial assistance for consultancy in the preparation of a business case, the establishment of the mutual as a separate legal entity and dealing with the consequential issues such as staff transfer and leasing of premises.

7.2.3 Again, there is scope for a lease of premises and a grant agreement in appropriate cases without competitive procurement, where the Council is satisfied that this provides best value, where the grant agreement is for no more than costs and there is not a developed commercial market for the services.

7.2.4 Once the mutual is in existence and preparing its bid in competition, further assistance would constitute State Aid which is unlawful.

8.0 Conclusion

8.1 This report recommends the arrangements which the Council should adopt in order to operate the new Community Right to Challenge.

9.0 Implications/Consultations

- 9.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

- Sections 81 - 86 of the Localism Act 2011
- The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012 [SI 2012 No. 1313] - <http://www.legislation.gov.uk/ukSI/2012/1313/contents/made>
- The Community Right to Challenge (Fire Services and Rejection of Expressions of Interest) (England) Regulations 2012 [SI 2012 No. 1647 - <http://www.legislation.gov.uk/ukSI/2012/1647/contents/made>
- DCLG Statutory Guidance - <http://www.communities.gov.uk/publications/communities/righttochallenge/allengestatguide>

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ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives (delete as appropriate):	<p>People This priority focuses on enhancing the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.</p> <p>Prosperity This priority focuses on safeguarding and enhancing our unique mix of rural and urban communities, promoting sustainable, economic and social opportunities.</p>
Consultation:	There has been no consultation.
Legal:	Legal implications are considered in the report.
Financial:	The Community right to challenge may result in expressions of interest leading to procurement processes which would result in additional costs to the Council. Officer time will need to be redirected which could impact upon existing service delivery. Costs will be evaluated further in future reports which will be needed under the processes outlined within this report. Government grant of £8,547 has been received (under the New Burdens funding arrangement) which is available to support initial work
Human Resource:	No Comments
Risk Management:	The Council needs to have adequate processes to consider expressions of interest and manage the procurement process.

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EAST HERTS COUNCIL

EXECUTIVE - 4 DECEMBER 2012

REPORT BY EXECUTIVE MEMBER FOR COMMUNITY SAFETY AND ENVIRONMENT

COMMUNITY ASSETS

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- This report outlines the provisions relating to the 'Community Right to Bid' and the implications for the Council resulting from the requirement to hold the list of assets of community value.

<u>RECOMMENDATIONS FOR EXECUTIVE: That:</u>	
(A)	the proposed process for compiling the list of assets of community value involving the Director of Neighbourhood Services in consultation with Executive Member for Community Safety and Environment and ward Members be approved; and
(B)	the proposal that internal reviews of listing decisions and compensation decisions are undertaken by the Director of Finance and Support Services be approved.

1.0 Background

- 1.1 As a result of the Localism Act local communities have the ability to nominate assets of community value for inclusion on a list maintained by the Council. This report outlines the provisions relating to the 'Community Right to Bid' and the implications for the Council resulting from the requirement to hold the list of assets of community value.

2.0 Report

- 2.1 The Localism Act put in place provisions to help community interest groups take over local amenities called “assets of community value” that are threatened with closure. Assets may be nominated for inclusion on a list and the disposal of listed assets is delayed to allow local groups time to put together a bid to acquire them. This could delay a proposed disposal by up to six months.

Many disposals will not in fact be included as the moratorium appears not to apply as long as the property is occupied at the time of the disposal. The regulations exempt disposals within a group of companies and the sale of shares in the property owning company appears not to be affected.

Compensation will be payable for loss or expense incurred as a result of the property being listed.

What is an Asset of Community Value?

Land or buildings can qualify as assets of community value if their current or recent non-ancillary use “furthers the social well-being or social interests of the local community” and it is “realistic” to think that such a use can continue, whether or not in the same way. A decision needs to be made about when is a use “non-ancillary”. It is not clear what evidence needs to be before the Council in determining whether in their opinion a relevant use is “realistic”. If in the opinion of the Council there is a time in the recent past when an actual non-ancillary use fulfilled the two objectives and it is realistic to think that in the next 5 years there could be a non-ancillary made which met either of the two objectives then it is land of community value. “Recent past” is not defined.

Examples include a village shop, pub, community centre, children’s centre and allotments. Under the regulations, residential property is excluded but a building only partly used as a residence is not. So, for example, a shop or a pub with living accommodation above could be listed. Hotels and holiday homes count as residential for this purpose. Simply having planning permission for a residential development does not bring property within the exclusion, even if construction of the development has started.

Compiling the List

There is an obligation for the Council to maintain lists of land that

is of community value and land which has been the subject of unsuccessful attempts to have it listed. Nominations for listing may be made by a Town or Parish Council or a “voluntary or community body with a local connection” as defined in the regulations. Once a nomination is made, the Council must notify the owner and occupiers of the property and will have eight weeks to decide whether to list the property. If the property is listed, there is another eight week period during which the owner can request a review of the decision. The review must then be carried out within eight weeks and if the decision is still to list the property, the owner has a right of appeal to the First-Tier Tribunal. Once listed, the property will remain on the list for a maximum of five years.

Which Disposals Are Affected?

The rules apply to disposals of the freehold or a leasehold interest of at least 25 years with vacant possession. The moratorium will not apply as long as the property is occupied at the time of the disposal. Certain disposals are exempt, such as gifts, disposals to family members or by personal representatives and a disposal of part of a business sold as a going concern.

The regulations add some further exemptions including disposals in pursuance of a planning obligation, option or pre-emption right made before the land was listed, disposals by a mortgagee under a power of sale and disposals within a group of companies. The disposal of shares in the property owning company appears not to be covered.

The Moratorium

If the owner of a listed asset of community value wishes to make a disposal to which the rules apply, the first step is to notify the Council of the owner’s wish to enter into a relevant disposal. There appears to be no requirement to give details of the price or any other terms of the proposed disposal. There is then a six week interim moratorium on entering into the disposal to give community interest groups an opportunity to make a written request to be treated as a potential bidder for the property. If such a request is made during that six week period, then a full moratorium comes into effect, which lasts until six months after the original notification was made. The full moratorium is to give the community interest group time to make a bid for the property. If the group makes a bid, the owner is not obliged to accept it, even if it matches or exceeds the owner’s asking price or terms

which the owner has agreed with a proposed purchaser. Once the full moratorium has ended, there is a protected period of eighteen months from the original notification during which the relevant disposal may be entered into, but after that period has ended the procedure must start again.

A disposal is “entered into” when an agreement for the disposal becomes binding, which means that it will not be possible to exchange an agreement during the moratorium to be completed afterwards. It is not clear whether an agreement conditional on no bid being made by a community interest group would be regarded as “binding” for this purpose.

The timing of the notification to the Council is important. It seems it is not necessary to wait until terms are agreed in principle before giving the notice and the longer the owner waits before giving the notice, the longer the delay before the disposal can proceed. However, if notice is given too early it will start the eighteen month protected period running, with the risk that time could run out before agreements are exchanged and the whole process would have to be gone through again.

If a disposal is made in breach of the rules, the regulations provide that it will be ineffective unless the owner was unaware that the property was listed, having made all reasonable efforts to find out if it was.

Compensation

Compensation can be claimed for loss or expense incurred as a result of the property being listed. That may include loss resulting from a delay in disposal caused by the moratorium and also reasonable legal expenses incurred in a successful appeal to the Tribunal (but not costs in connection with a review of the authority’s decision on listing or on compensation). The claim must be made to the local authority within 13 weeks after the loss or expense was incurred and must state the amount claimed and include supporting evidence. Once the claim is decided, there is an eight week period to request a review of the decision. If a review is requested it must be carried out within eight weeks. There is a right of appeal to the First-Tier Tribunal.

Procedure

The Council will be required to maintain a list of assets of community value and maintain a list of properties where

nominations have failed. The Council will be responsible for notifying owners and occupiers of listings and receipt of notices, and for publicising the possible sale of a listed asset. The Council will also administer the compensation scheme.

The recommended approach is:

1. Officers would receive a nomination and ensure that the nomination was from valid community group and establish whether the property appears to fit the criteria. If the nomination is clearly invalid or incomplete, the applicant would be informed with the reasons for the decision.
2. Consultation would take place with the owner and any other interested parties who would be given up to 6 weeks to respond. Ward Members would be consulted at this stage.
3. Officers would prepare a report with a recommendation.
4. The Director of Neighbourhood Services in consultation with Portfolio Holder for Community Safety and Environment makes the decision. The owner and nominating body would be informed of the decision.

Internal Review Process

An owner has the right to have the decision to list a property reviewed. The request for the review has to be made within 8 weeks and the review determined within 8 weeks (unless otherwise agreed with the owner). The provisions require that the review is to be undertaken by a senior officer not involved in the initial decision. Similarly no elected Member involved in the decision to list may be part of the review process.

It is proposed therefore, that the Director of Finance and Support Services undertakes the review. Similarly it is suggested that they would undertake any review relating to compensation.

There is no provision within the legislation for review of an unsuccessful community group nomination. It would not therefore be within the Council's powers to make provision for such a review as this would be unenforceable and open to challenge by an owner.

Compensation: it is not clear what might constitute a claim for compensation but the DCLG has indicated that it will for the time being fund the cost of compensation (although the local authority will administer the claim). It is proposed that officers assess the compensation claims and decisions on eligible costs and levels of compensation are made by the Director of Finance and Support Services.

Council owned property: the List of Assets of Community Value and the corresponding community right to bid apply equally to Council owned property and to privately owned property.

3.0 Implications/Consultations

- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Localism Act 2011

The Assets of Community Value (England) Regulations 2012-

<http://www.legislation.gov.uk/ukdsi/2012/9780111525791/contents>

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ESSENTIAL REFERENCE PAPER ‘A’

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives (delete as appropriate):	<p>People This priority focuses on enhancing the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.</p> <p>Place This priority focuses on the standard of the built environment and our neighbourhoods and ensuring our towns and villages are safe and clean.</p> <p>Prosperity This priority focuses on safeguarding and enhancing our unique mix of rural and urban communities, promoting sustainable, economic and social opportunities.</p>
Consultation:	<i>There has been no consultation.</i>
Legal:	<i>Legal issues are considered in the report.</i>
Financial:	<p>There will be an increased cost to the Council to administer the regime. However, the Department for Communities and Local Government (DCLG) has stated that for the time being it will meet the costs associated with administering the list and any compensation. (Unclear currently whether DCLG will only meet the compensation claims that exceed £20,000 in financial year.)</p> <p>The procedure is summarised in the flowchart in Essential Reference Paper “B”.</p>
Human Resource:	No comments
Risk Management:	The Council is required to have adequate processes in place to comply and manage the list of community assets.

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EAST HERTS COUNCIL

EXECUTIVE – 4 DECEMBER 2012

REPORT BY EXECUTIVE MEMBER FOR STRATEGIC PLANNING AND TRANSPORT

REQUEST FOR AREA DESIGNATION FOR NEIGHBOURHOOD PLANNING: BISHOP'S STORTFORD

WARD(S) AFFECTED: Bishop's Stortford Meads and Silverleys and
wider Bishop's Stortford and surrounding
wards

Purpose/Summary of Report

- To enable the consideration of an application for the designation of a Neighbourhood Area

<u>RECOMMENDATIONS FOR EXECUTIVE:</u> That:	
(A)	the application for the designation of a Neighbourhood Area, submitted by Bishop's Stortford Town Council, be supported.

1.0 Background

1.1 Bishop's Stortford Town Council (BSTC) submitted an application for the designation of a Neighbourhood Area to the Council on 9 July 2012. Agreement to the designation of a Neighbourhood Area is required by the Council as Local Planning Authority (LPA) before a Neighbourhood Plan can be formulated.

1.2 The application was made in the form of a letter from BSTC with an attached plan setting the area to which the application relates. The area is co-incidental with the two wards of Bishop's Stortford Silverleys and Bishop's Stortford Meads. The letter and plan form **Essential Reference Paper B** to this report.

2.0 Consultation

2.1 The Council has undertaken the appropriate consultation with regard to the application submission. The feedback is summarised here as follows:

2.2 Seven representations have been received in support of the proposal, two by Members of the Council, one from the Maple Avenue Management Company and the others from local residents. In addition to general expressions of support the representations set out the following issues (in summary):

- responsibility for planning issues should be delegated to Town Councils as they are most aware of local issues and constraints;
- ensures appropriate input and effective consultation;
- encourage both sets of developers for land at Bishop's Stortford North (BSN) to adopt a co-ordinated approach;
- formulating a Neighbourhood Plan for the whole town may be too complicated and time consuming, this request represents a reasonable 'test' of the processes and procedures;
- should be Councillor led process to ensure engagement;
- will identify key infrastructure requirements for BSN development.

2.3 In objection to the application there are submissions from two parties. These are Countryside Properties and DLP Planning Ltd on behalf of the BSN Consortium. The points made can be summarised as:

- would fail to secure the objectives of designation of the requirements of the Localism Act;
- purpose of designation undermined because of the physical and functional context of the proposed area and its inter-relationship with the wider town as opposed to whole town designation;
- not appropriate or sustainable and may result in a plan which fails to meet strategic requirements and priorities for wider town;
- the Council is required to consider the desirability of designating the whole of the Town Councils area as a neighbourhood area;
- not demonstrated that it is not inappropriate to designate such an area;

- justification is focussed too narrowly on the emerging development proposals at BSN, these are already supported by Council policy and by a need to meet housing requirements;
- justification of a structured forum for engagement of community representatives fails to recognise processes already in place, public engagement that has been undertaken and that the Consortium has and will actively seek further engagement. The Town Council has accepted this offer of engagement;
- insufficient justification provided for the proposed designation;
- serious consideration required to be given to how the area relates to the wider area, given inter-relationships, wider impacts and the influence this should exert;
- an indication that a neighbourhood plan that may run contrary to the extant development plan would be likely to be found unsound and fail;
- resources and uncertain outcome make the approach far from desirable;
- potential to add delay and significantly impact on the deliverability of housing at BSN, the delay would be contrary to the strategic needs and priorities of the wider area;
- public confusion;
- no detailed timetable and issues raised by the area covered will be large and complex;

3.0 Considerations

- 3.1 Two main areas of consideration to be taken into account when determining an application for the designation of a Neighbourhood Area are set out in Schedule 9 of the Localism Act 2011. One of these is that the authority determining the application must have regard to the desirability of maintaining the existing boundaries of areas already designated.
- 3.2 No weight needs to be given to this consideration in this case as no other Neighbourhood Areas are currently designated in Bishop's Stortford or the district.
- 3.3 The other area of consideration is the desirability of designating the whole of the area of a parish council as the Neighbourhood Area. This is a point made by submissions in objection to the proposed designation.
- 3.4 In this case, the area proposed covers existing residential areas to the north and north west of the town centre, retail development, educational establishments, employment locations, leisure

facilities and countryside which surrounds the town. It also includes part of the town centre area, to the east of Potter and South Streets and north of Station Road. Clearly there will be linkages between all elements of that existing development and new development proposed in the area and other parts of the town. Proposals set out in any Neighbourhood Plan will also have an impact on parts of the town beyond its boundaries.

- 3.5 The submission in support of the designation sets out that its designation is considered appropriate because of the development that is likely to come forward on land at BSN. In relation to the scale of development which may take place in the town in forthcoming years, that at BSN will be significant. Given that the purpose of neighbourhood planning is to enable communities to have a role in influencing the shape and content of future development, a Neighbourhood Plan that seeks to focus on these particular development proposals would appear to be one which is well suited to the aspirations of the Localism legislation.
- 3.6 In addition, any area that is designated, whether it be the whole of a town or smaller areas, cannot be considered in isolation. Whilst the town overall would be a more cohesive unit, in formulating a plan that dealt with the whole of the town, regard would still have to be paid to the issues that arise as a result of the linkages beyond it. Any Neighbourhood Plan then, whatever its boundaries, will still have to recognise the linkages to land uses and development beyond it and the impact that its proposals will have on areas beyond it.
- 3.7 With regard to this issue it is considered that it would ultimately be a preferable position for the whole of the area of the Town Council to be designated as a Neighbourhood Area. However, given the focus of the proposed Neighbourhood Area, the ability to identify linkages in any event and the additional time and resources that would be involved in the delivery of a wider area Neighbourhood Plan, it is not considered that such weight should be attached to this wider area desirability that it outweighs support that can be given to the more limited area designation.
- 3.8 The position of the Council in relation to the timing of neighbourhood planning has been that bringing forward plans at an early stage is not appropriate. This is because the Council's emerging Core Strategy has not yet been formulated and, as a result, the strategic policy base to which Neighbourhood Plans

should align is not available. This could lead to abortive work. However, in this case, the identification of land for development at BSN has been a stated policy in the Councils current Local Plan. This lends support to both the timing matter in bringing forward a Neighbourhood Plan for this area now and for spatial matter of confining the plan to the particular area identified. This policy basis is not in place in relation to other parts of the District and it remains the case therefore that it would not be appropriate to bring forward Neighbourhood Plans in other areas.

3.9 The other issues raised by the submissions which are made in objection to the area designation are that:

- a further forum or process for the consideration of development issues will duplicate those already in place and lead to confusion;
- a further process may lead to delay in development proposals coming forward;
- any such plan based on the area if designated may be found unsound if it runs contrary to the extant development plan.

3.10 It is considered that little weight can be attached to the first of these. In drawing up the legislation that enabled the formulation of Neighbourhood Plans and the additional processes involved in their preparation, the government would have been mindful of the resources involved and the potential for duplication and possible confusion. That is the inevitable result of the implementation of an additional layer of plan making.

3.11 It cannot be the case then that this implication can then be subsequently advanced as a reason not to support the preparation of a Neighbourhood Plan when the request for an area designation is submitted.

3.12 In relation to the third of these areas of concern again, it is considered that no weight of any significance can be attached to this point. This seeks to set out that, because a plan may not complete its path to fruition, for any number of reasons including conflict with the development plan, that it simply should not be commenced in the first place. Clearly a positive outcome is to be favoured and advice and guidance from the LPA will, in the event that this submission is supported, be provided to seek to achieve that. Regardless, little weight can be assigned to the possibility of an unsuccessful plan as a reason not to commence in the first place.

- 3.13 That leaves then the issue of potential delay to the proposals for development which may come forward at BSN. Whilst there may be some potential for this, the implications are considered to be limited. As set out, the proposals for development at the BSN site are significant in relation to the town and lead in times are lengthy. Information from the developer parties suggests that, generally, formal planning application proposals may be with the LPA in early 2013. Given determination timescales, starts on site are anticipated later in 2013 or into 2014.
- 3.14 Clearly, for a Neighbourhood Plan to have value, it needs to be prepared to form an input into planning application decision making. Its preparation time may have some impact in this respect but it would appear possible that sufficient progress to be achieved to ensure that the existence and content of a Neighbourhood Plan can be acknowledged when it is appropriate to make decisions with regard to formal planning application proposals. Given this, and the additional value that the Neighbourhood Plan proposals could bring to the development considerations, it does not seem reasonable to attribute the potential for delay significant weight.

4.0 Conclusion

- 4.1 Neighbourhood planning is now an integral part of the planning system with legislative backing through the Localism Act. Whilst the LPA is charged with determining applications for the designation of Neighbourhood Areas, and issues to be considered in that determination are set out in the legislation, there is no indication of the degree of testing that has to be applied to any submission in reaching that determination.
- 4.2 Given that Neighbourhood Plans are part of the legally endorsed planning system, turning down requests for area designations without substantive reasoning is not to be favoured. In this case, it is considered that the formulation of a plan for the entirety of the Town Councils area would be an ideal plan making scenario. It is also acknowledged that the processes leading to the formulation of any plan may lead to some delay if they are to be taken into account in the determination of planning submissions in relation to land at BSN.
- 4.3 However it is considered that these potential disadvantages are outweighed by the significant advantages of enabling the bringing forward of a plan which, in its most positive manifestation, can

assist in the delivery and assimilation of a significant amount of development for the town.

- 4.4 It is recommended therefore that the application for the designation of a Neighbourhood Area, submitted by Bishop's Stortford Town Council, be supported.

5.0 Implications/Consultations

- 5.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Comments received in response to consultation on the application for designation of a Neighbourhood Area.

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ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives	<p>People This priority focuses on enhancing the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.</p> <p>Place This priority focuses on the standard of the built environment and our neighbourhoods and ensuring our towns and villages are safe and clean.</p> <p>Prosperity This priority focuses on safeguarding and enhancing our unique mix of rural and urban communities, promoting sustainable, economic and social opportunities.</p>
Consultation:	The application for the designation of a Neighbourhood Area was the subject of consultation
Legal:	The formulation of Neighbourhood Plans is established in the Localism Act 2011
Financial:	The formulation of a Neighbourhood Plan, if it progresses to the stages of referenda and adoption will lead to costs for the Council.
Human Resource:	There will be a requirement for Planning Officers to provide advice and guidance in relation to the formulation of any Neighbourhood Plan
Risk Management:	The issues which are favourable or otherwise to the formulation of a Neighbourhood Plan are considered in the report

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Kevin Steptoe
East Herts District Council,
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Hertford

9th July 2012

Dear Mr Steptoe Application for designation of a Neighbourhood Area

Bishop's Stortford Town Council, being a relevant body for the purposes of section 61G of the Town and Country Planning Act 1990 (as amended by the Localism Act 2011), hereby requests that the area comprising Silver Leys and Meads Ward (taken together) and outlined in red on the enclosed map be designated as a neighbourhood area as specified in Schedule 9 61G of the Localism Act 2011.

The Town Council considers this an appropriate area for designating as a Neighbourhood area for the following reasons:

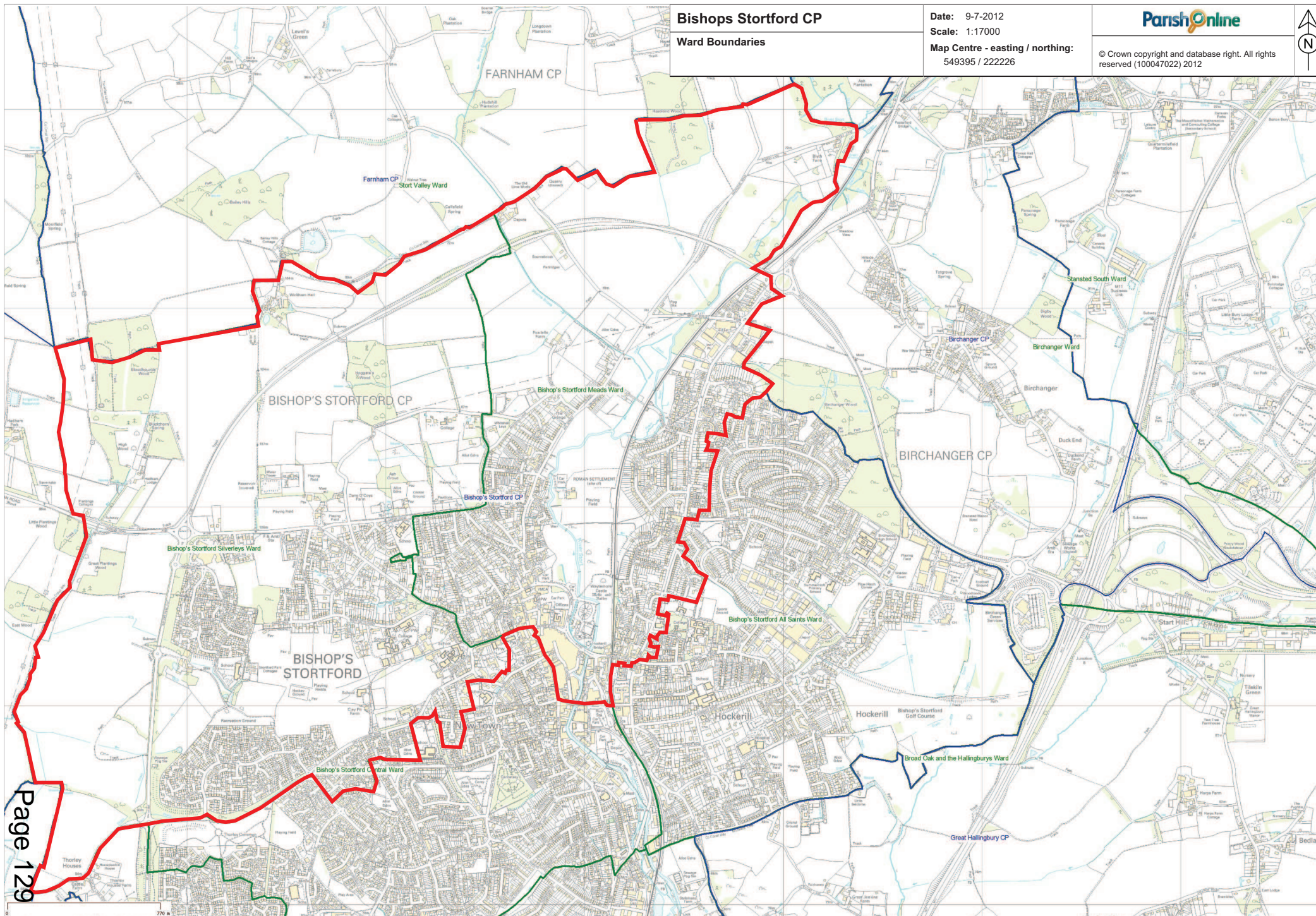
1. It lies entirely within the Civil Parish of Bishop's Stortford
2. The boundaries represent existing and well established boundaries
3. The area includes the entirety of that area in Bishop's Stortford designated as 'Areas of Special Restraint 1-5' as specified in paragraph 3.6 of the Local Plan second review 2007 (saved policies) and scheduled for potential residential development as well as the surrounding areas most immediately affected by any development

In the opinion of the Town Council the formulation of a neighbourhood plan for this area is timely in view of the likelihood that planning applications will shortly be submitted for ASRs1-5 and will provide a structured forum for engagement of community representatives in the planning process and with both developers.

Yours sincerely

James Parker
Chief Executive

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EAST HERTS COUNCIL

EXECUTIVE - 4 DECEMBER 2012

REPORT BY EXECUTIVE MEMBER FOR COMMUNITY SAFETY AND ENVIRONMENT

BUILDING CONTROL BUSINESS CASE

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- This report discusses alternative options for delivering Building Control Services more efficiently. It considers setting up a separate entity for Building Control Services and makes a number of initial recommendations for approval pending further detailed report on the way forward.

<u>RECOMMENDATIONS FOR EXECUTIVE: That:</u>	
(A)	the Council seeks quotations from business advisors and appoints a business advisor to advise the Building Control Service and develop a business case for the creation of a mutual to deliver Building Control Services.

1.0 Background

1.1 The Council's Building Control Service has provided a high standard of quality assured services for many years with a high level of customer satisfaction (98%). The current economic recession has seen a significant reduction in income due to a reduced volume of work. Steps are being taken to reduce staff costs. This will still leave a shortfall in income. Improvements in the IT system allowing for more efficient working and remote working will bring additional efficiency benefits.

1.2 However, the Building Control Service needs to respond to a changing market place where the service competes for much of its work. Simply reducing costs by cutting staff costs will result in a service which will have less opportunity to respond to changes in

the construction world with a reduced selection of skills available and less opportunities for staff in terms of variety of work and promotion. In this context, it has become necessary to explore other means for providing the service.

2.0 Report

- 2.1 One option is to create a mutual. There are various models for a mutual such as a wholly owned company. Mutuals offer a way of delivering the service within an accountable though framework independent of the Council. Mutuals offer:

Accountability to stakeholders, the community and staff;

Robust corporate governance for delivery of efficient public services;

Providing employee engagement and participation;

Opportunity to enhance recruitment and retention of staff;

Financial benefits to employees such as performance related pay;

Opportunity to provide services outside the Council's building control functions.

- 2.2 The reason for setting up a mutual to deliver services to the Council is not solely to enable trading of Building Control services. It was also to provide a catalyst for the cultural and operational changes needed to facilitate a platform for trading and to give an identity to the Building Control service that would support a commercial approach to business, with detailed service specifications in place between the Council and the mutual. It is hoped that the mutual, as service deliverer could work with other Councils to develop collaborative opportunities in shared services. There would be an opportunity to make modest profits from working with other Councils.

- 2.3 The legal framework surrounding local authority trading is complicated so that legal advice will be necessary to finalise the form of the mutual.

- 2.4 One option is to set up a set up a wholly owned company to deliver services to the Council. This may prevent the mutual from being able to work with other customers beyond the Council.

Therefore, once the mutual is established and operating successfully, a different form of mutual will be required to enable it to trade more widely to generate income from offering a wider range of services beyond Building Control.

- 2.5 A draft business case business case for the mutual will be developed to ensure that the Building Control service offers:
- efficiency
 - effective service delivery
 - use of new technology
 - a change in culture and new arrangements that allow the mutual to implement an entrepreneurial philosophy and advance shared services opportunities
 - ensure customer orientated services continue.
- 2.6 The draft business case will give details potential income streams and initial set up costs and establish whether or not the business case is viable. There is evidence to suggest that there is a potential market for Building Control services but further detailed research and a thorough risk assessment is required in order to deliver a robust business case.
- 2.7 The business case should ensure that the outcomes of the business case are capable of being delivered. The business case including all the options will be presented to Members with an assessment of the risks of implementation.
- 2.8 A specification for the services falling under Building Control will be prepared. This specification will be incorporated in a service level agreement between the Council and Building Control Services.
- 3.0 Implications/Consultations
- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers
None

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Report Author: Simon Drinkwater- Director of Neighbourhood
Services

ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives (delete as appropriate):	<p>People This priority focuses on enhancing the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.</p> <p>Place This priority focuses on the standard of the built environment and our neighbourhoods and ensuring our towns and villages are safe and clean.</p> <p>Prosperity This priority focuses on safeguarding and enhancing our unique mix of rural and urban communities, promoting sustainable, economic and social opportunities.</p>
Consultation:	Building Control staff have been consulted.
Legal:	Legal implications are contained in the report.
Financial:	The concept of a mutual is new within our accounts some outside advice may be needed on the treatment and issues arising from this business setup.
Human Resource:	<ul style="list-style-type: none"> • HR advice and expert employment law advice would need to be obtained on the setting up of Mutuals and any arising staff issues. • Staff and UNISON will need to be consulted • TUPE regulations may apply. If applicable this will impact on staff terms and conditions and pension rights. The Mutual may be required to achieve admitted body status to the Local Government Pension Scheme or set up a comparable pension. • A review of the potential staffing needs of the mutual will be required and any redundancy costs may need to be met by the Council.
Risk Management:	The Building Control Service needs to respond to a changing market place where the service competes for much of its work. Simply reducing costs by cutting staff costs will result in a service which will have less opportunity to respond to changes in the construction

	world with a reduced selection of skills available and less opportunities for staff.
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