

Public Document Pack



**Assistant Director, Governance and
Monitoring**

Julie Muscroft

Governance and Democratic Services

Civic Centre 3

High Street

Huddersfield

HD1 2TG

Tel: 01484 221000

Direct Line: 01484 221000

Fax: 01484 221707

Please ask for: Andrea Woodside

Email: andrea.woodside@kirklees.gov.uk

Monday 18 July 2016

Notice of Meeting

Dear Member

Cabinet

The **Cabinet** will meet in the **Council Chamber - Town Hall, Huddersfield** at **4.00 pm** on **Tuesday 26 July 2016**.

This meeting will be live webcast. To access the webcast please go to the Council's website at the time of the meeting and follow the instructions on the page.

The items which will be discussed are described in the agenda and there are reports attached which give more details.

A handwritten signature in black ink, appearing to read "Julie Muscroft".

Julie Muscroft

Assistant Director of Legal, Governance and Monitoring

Kirklees Council advocates openness and transparency as part of its democratic processes. Anyone wishing to record (film or audio) the public parts of the meeting should inform the Chair/Clerk of their intentions prior to the meeting.

The Cabinet members are:-

Member

Councillor David Sheard

Councillor Shabir Pandor

Councillor Peter McBride

Councillor Naheed Mather

Councillor Musarrat Khan

Councillor Erin Hill

Councillor Viv Kendrick

Councillor Masood Ahmed

Councillor Graham Turner

Responsible For:

Leader / Strategy and Strategic Resources, New Council & Regional Issues

Deputy Leader / Strategy and Strategic Resources, New Council & Regional Issues

Economy, Skills, Transportation & Planning

Housing & Enforcement Management

Highways & Neighbourhoods

Family Support & Child Protection

Adults, Health & Activity to Improve Health

Community Cohension & Schools

Asset Strategy, Resources & Creative Kirklees

Agenda

Reports or Explanatory Notes Attached

Pages

1: Membership of the Committee

To receive apologies for absence of Members who are unable to attend this meeting.

**Wards
Affected:**

2: Minutes of previous meetings

1 - 8

To approve the Minutes of the meeting of the Committee held on 9 and 24 May 2016.

**Wards
Affected:**

3: Interests

9 - 10

The Councillors will be asked to say if there are any items on the Agenda in which they have disclosable pecuniary interests, which would prevent them from participating in any discussion of the items or participating in any vote upon the items, or any other interests.

**Wards
Affected:**

4: Admission of the Public

Most debates take place in public. This only changes when there is a need to consider certain issues, for instance, commercially sensitive information or details concerning an individual. You will be told at this point whether there are any items on the Agenda which are to be discussed in private.

**Wards
Affected:**

5: Deputations/Petitions

The Committee will receive any petitions and hear any deputations from members of the public. A deputation is where up to five people can attend the meeting and make a presentation on some particular issue of concern. A member of the public can also hand in a petition at the meeting but that petition should relate to something on which the body has powers and responsibilities.

**Wards
Affected:**

6: Public Question Time

The Committee will hear any questions from the general public.

**Wards
Affected:**

7: Member Question Time

To consider questions from Councillors.

**Wards
Affected:**

8: Amendments to Parking Tariffs within Wellington Road Station, Wellington Road West and Railway Street Car Parks in Dewsbury 11 - 14

A report seeking approval for amendments in parking tariffs within Wellington Road Station and Wellington Road West Car Parks.

Officer: Peter Margrave

Tel: 01484 221000

Wards

Affected: Dewsbury East

9: Regionalisation of Adoption Services 15 - 20

A report seeking approval of the formation of a Yorkshire and Humber adoption service.

Officer: Lorraine Wood

Tel: 01484 221000

Wards

Affected: All Wards

10: Update on the implications of the Supreme Court Ruling on Deprivation of Liberty Safeguards 21 - 34

A report providing an update, further to the report to Cabinet on 30 June 2015, on the impact and risks of the 2014 Supreme Court judgement on Deprivations of Liberty (DoLS).

Officer: Keith Smith

Tel: 01484 221000

Wards

Affected: All Wards

11: Proposals to update the Council's RIPA Policy 35 - 78

A report seeking approval to the adoption of an amended Regulation of Investigatory Powers Act 2000 (RIPA) Policy and Guidance document.

Officers: John Chapman

Tel: 01484 221000

Wards

Affected: All Wards

12: Freehold Asset Transfer of Howden Clough Community Centre, Leeds Road, Birstall 79 - 84

A report setting out the proposal, and seeking approval, to transfer the land and buildings on a freehold transfer, which currently make up Howden Clough Community Centre, Leeds Road, Birstall, WF17 0HY to the Howden Clough Community Association. The conditions of the freehold transfer will include covenants to ensure that Howden Clough Community Centre is a building that remains available only for community use.

Officer: Mark Gregory

Tel: 01484 221000

Wards

Affected: Birstall and Birkenshaw

13: Freehold Asset Transfer of Marsden Mechanics Hall, Peel Street, Marsden 85 - 94

A report setting out the proposal, and seeking approval, to transfer the land and buildings on a freehold transfer, which currently makes up Marsden Mechanics building, Peel Street, Marsden, HD7 6BW to the Marsden Community Trust Limited. The conditions of the freehold transfer will include covenants to ensure that Marsden Mechanics Building is a building that principally remains available for community use.

Officer: Mark Gregory

Tel: 01484 221000

Wards

Affected: Colne Valley

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Contact Officer: Andrea Woodside

KIRKLEES COUNCIL

CABINET

Monday 9th May 2016

Present: Councillor David Sheard (Chair)
Councillor Jean Calvert
Councillor Steve Hall
Councillor Viv Kendrick
Councillor Peter McBride
Councillor Shabir Pandor
Councillor Cathy Scott
Councillor Graham Turner

Apologies: Councillor Erin Hill

273 Membership of the Committee

Apologies for absence were received on behalf of Councillor Hill.

274 Minutes of previous meeting

RESOLVED – That the Minutes of the meetings held on 8 March, 24 March and 5 April 2016 be approved as a correct record.

275 Interests

Councillor Calvert declared an ‘other’ interest in Agenda Items 8 and 10 on the grounds that a letter of support for funding had been submitted on behalf of the Ward Councillors.

276 Admission of the Public

It was noted that Agenda Item 10 would be considered in private session.

277 Deputations/Petitions

Cabinet received a deputation from Mr Ken Shaw in relation to the implementation of bus gates within Huddersfield Town Centre, and the impact upon disabled persons in terms of access to the town centre.

278 Public Question Time

No questions were asked.

279 Member Question Time

No questions were asked.

280 Proposed lease of land and buildings at Trident Business Park, Neptune Way, Leeds Road, Huddersfield HD2 1UA

Cabinet gave consideration to a report which sought approval for the grant of a lease of land and buildings at Trident Business Park to Sellers Global Engineers Ltd.

Cabinet noted that the Council lease in land and buildings at Trident Business Park to a private landlord, comprising part of Aviva Insurance Group. The lease was for a period of 12 years, expiring 31 December 2023 and the details of the existing lease were contained within the exempt appendix to the report.

An underlease had been granted to Sellers Engineers Ltd for a term of 12 years from 1 January 2011, with the underlease passed to Sellers Engineers Ltd with all liabilities and responsibilities, that the Council owned to the Head Landlord under the terms of the Headlease.

In September 2014, Sellers Engineers Ltd went into administration and that it had been intended that the administrator should therefore sell the assets of Sellers Engineers Ltd to Sellers Global Engineers Ltd and transfer the under lease to Sellers Global Engineers Ltd. Consequently, Sellers Engineers Ltd came out of administration before the transfer of the underlease had been completed, with the main reason why the transfer had not been carried out before the ending of the administration being that it was necessary to get approval of the Head Landlord to the transfer of the underlease to Sellers Global Engineers Ltd.

The report advised that immediately prior to the dissolution of Sellers Engineers Ltd, the Council terminated the underlease and then granted an oral tenancy at will to Sellers Global Engineers Ltd to enable the company to continue trading from the premises. All sums payable to the Council under the lease, with Sellers Engineers Ltd and the oral tenancy, with Sellers Global Engineers Ltd, had been paid.

The report advised that the proposed lease would ensure that the Council met its obligations under the Head Lease, at no cost by passing all of its obligations onto Sellers Global Engineers Ltd. Cabinet noted that the company would then reimburse the Council's reasonable legal costs incurred in granting the new lease and in obtaining the concerns of the Head Landlord to the grant of the new lease. In addition, Sellers Global Engineers Ltd, would reimburse the Head Landlord for its reasonable, legal and surveyor costs incurred in the giving of its consent to the grant of the new lease.

RESOLVED -

(1) That authorisation be given to the grant of a new lease to Sellers Global Engineers Limited, as detailed within the appendix of the report.

(2) That authority be delegated to the Assistant Director - Place to negotiate and agree the other terms of the lease, as referred to in paragraph 6.1 of the report, and any other relevant agreements or documents that relate to the grant of the lease.

(3) That authority be delegated to the Assistant Director – Legal, Governance and Monitoring, to enter into and execute the lease referred to in paragraph 6.1 of the

report, and any other relevant agreements or documents that relate to the grant of that lease.

281 Exclusion of the Public

RESOLVED - That acting under Section 100(A)(4) of the Local Government Act, 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Act, as specifically stated in the undermentioned Minute.

282 Proposed lease of land and buildings at Trident Business Park, Neptune Way, Leeds Road, Huddersfield HD2 1UA

(Exempt information under Part 1 of Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to information) (variation) Order 2006. The report contained commercially sensitive information about a third party and the public interest in maintaining confidentiality on the information, which, if no public were contravened data protection legislation outweighs the public interest in disclosing the information for the reasons of open governance)

Cabinet gave consideration to the information as set out within the exempt report prior to the determination of Agenda Item 8 (Minute No. 280 refers)

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Contact Officer: Andrea Woodside

KIRKLEES COUNCIL

CABINET

Tuesday 24th May 2016

Present: Councillor Peter McBride (Chair)
Councillor Steve Hall
Councillor Erin Hill
Councillor Viv Kendrick
Councillor Shabir Pandor

Apologies: Councillor David Sheard (Chair)
Councillor Cathy Scott
Councillor Graham Turner

283 Membership of the Committee

Apologies for absence were received on behalf of Councillors Scott, Sheard and G Turner.

284 Interests

No interests were declared.

285 Admission of the Public

It was noted that all agenda items would be considered in public session.

286 Deputations/Petitions

No deputations or petitions were received.

287 Public Question Time

No questions were asked.

288 Member Question Time

No questions were asked.

289 Early review of general fund revenue outturn 2015-16

Cabinet received a report which provided an indicative outturn financial position for 2015/16, including a range of proposals. It was noted that the finalised revenue outturn position for 2015/16, in conjunction with the capital outturn position, and proposals for rollover would be reported to the meeting of Council on 29 June 2016.

The report highlighted that Quarter 3 Monitoring to Cabinet during March 2016 had reported a forecast Central Budget saving of £4.1m, largely attributable to Treasury

Management at £2.3m and the Central Contingencies at £1.6m. There had also been a forecast saving on joint services at £0.7m.

Since Quarter 3 Monitoring, there had been a further increase in Central Budget underspend by £2.7m, to £6.8m. The shift from Quarter 3 included further treasury management underspend of £0.6m, and within central budget contingencies, a dividend payment from Yorkshire Purchasing Organisation at £0.4m, insurance fund surplus of £0.7m and a further £0.5m relating to a one off supplementary new burdens (property searches) grant allocation from the Government. Consequently, an opportunity had been created to fund existing capital expenditure differently and instead of utilising planned borrowing it was proposed to use this unspent central contingency which in turn would reduce future year financing costs with an estimated Medium Term Financial Plan annual saving of £320k against the Treasury Management Revenue Budget, from 2016/17 onwards.

Furthermore the report advised that it was also proposed to defer drawdown of £1.3m earmarked reserves from 2015-16 to 2016-17, which related to uncommitted public health funding contributions which had built up from previous years.

Paragraph 2.11 of the report provided an overview of the updated provisional General Fund Revenue outturn position for 2015/2016 having taken into account all of the proposals set out within the content of the report. It was noted that the provisional General Fund Revenue outturn position indicated a net underspend of £5.8m (1.8%) against £314.1m revenue budget, across Directorates and District Committees. The report advised that it was anticipated that the District Committees saving would be automatically rolled forward into 2016-2017 and it was noted that the finalised revenue outturn position would be reported to Council on 29 June 2016.

RESOLVED -

- (1) That approval be given to applying Central Budget underspend to existing capital spend, as detailed in paragraph 2.3 of the considered report.
- (2) That approval be given to deferring the drawdown of earmarked reserves from 2015-2016 to 2016-2017 as outlined in paragraph 2.4 of the considered report.
- (3) That approval be given to providing additional resource to support the New Council Transformation reserve, as detailed in paragraph 2.8 of the considered report.
- (4) That further reports detailing the finalised revenue outturn position be submitted to the meetings of Cabinet on 28 June 2016 and Council on 29 June 2016.
- (5) That (i) the additional resource requirement arising from the issues set out in paragraphs 3.2 to 3.4 and (ii) the proposed draw down of organisational risk reserve be noted.
- (6) That further updated reports be received as part of the Corporate Financial Monitoring Reports during 2016-2017.

290 Children's Development Plan

Cabinet received a report which provided an update on the position of the Family Support and Child Protection Services. It provided information on the steps taken to develop social work practice and management in Kirklees and specifically outlined issues that had already been identified relating to social work practice and management, the action already taken, and key priorities for the service going forward.

The report advised that an internal of services had begun in late 2015 and set out at Paragraph 3 the identified aspects of practice development which were required.

The report also set out the next steps in terms of ensuring that matters that had been identified within the review were addressed and these actions were set out at Paragraph 4.1.

Cabinet noted that the areas for development that had been identified through the review were not applicable to all areas of social work practice, but the expectation was that the same high standards of quality should be evident in all caseloads, and that this was the objective of the action plan. Paragraph 5 of the report set out information relating to structural changes within the service and highlighted the steps that had been put in place to ensure that high and consistent standards of service provision were delivered.

Cabinet noted the detail of the OFSTED Single Framework Inspection, which was attached at Appendix A of the considered A.

RESOLVED -

(1) That the content of the report, and the current position of the Family Support and Child Protection Service be noted.

(2) That the actions taken to date, and the actions going forward that have been planned to address identified issues, be noted.

(3) That the proposals as set out within the content of the report and presented at the meeting be approved.

(4) That approval be given to the resource allocation as set out in paragraph 6.2 of the report.

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KIRKLEES COUNCIL			
COUNCIL/CABINET/COMMITTEE MEETINGS ETC			
DECLARATION OF INTERESTS			
Name of Councillor			
Item in which you have an interest	Type of interest (eg a disclosable pecuniary interest or an "Other Interest")	Does the nature of the interest require you to withdraw from the meeting while the item in which you have an interest is under consideration? [Y/N]	Brief description of your interest

Signed: Dated:

NOTES

Disclosable Pecuniary Interests

If you have any of the following pecuniary interests, they are your disclosable pecuniary interests under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.

Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.

Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority -

- under which goods or services are to be provided or works are to be executed; and
- which has not been fully discharged.

Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.

Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.

Any tenancy where (to your knowledge) - the landlord is your council or authority; and the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where -

- (a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and
- (b) either -

the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.



Name of meeting: Cabinet
Date: 26th July 2016

Title of report: Amendments to Parking Tariffs within Wellington Road Station and Wellington Road West Car Parks in Dewsbury

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	NO
Is it in the Council's Forward Plan ?	NO
Is it eligible for "call in" by Scrutiny ?	YES
Date signed off by <u>Director</u> & name	Jacqui Gedman - 15.07.16
Is it signed off by the Director of Resources?	David Smith - 13.07.16
Is it signed off by the Assistant Director - Legal Governance and Monitoring?	Julie Muscroft - 15.07.16
Cabinet member portfolio	Councillor Peter McBride, Economy, Skills, Transportation and Planning

Electoral wards affected: Dewsbury East

Ward councillors consulted: Yes

Public or private: Public

1. PURPOSE OF THE REPORT

1.1 Cabinet are requested to consider amendments to parking tariffs within Wellington Road Station and Wellington Road West Car Parks.

2. KEY POINTS

2.1 Wellington Road Station (290 spaces) and Wellington Road West (56 spaces) are well maintained Council car parks, located within short walking distance of Dewsbury Town Centre.

2.2 **Wellington Road Station and Wellington Road West car parks.** Several service requests have been made by local businesses and members of the public attending the nearby health centre, for the Council to consider, introducing a one hour tariff for shorter visits to the two car parks. Current commuter tariffs for these two car parks are (£2 up to 5 hours and £4 over 5 hours).

- 2.3 The existing commuter tariff of £2 up to 5 hours and £4 over 5 hours will remain. However, the following options are presented for the consideration of Cabinet.

Wellington Road West and Station Car Parks

Options	Proposals	No Change
1	50p per hour	£2 up to 5 hours £4 over 5 hours
2	£1 (up to 2 hours)	£2 up to 5 hours £4 over 5 hours
3	Do Nothing	Do Nothing

3. IMPLICATIONS FOR THE COUNCIL

- 3.1 The Council's parking tariff, aim to maximise the availability of convenient town centre parking spaces for the benefit of the shopper and short-stay service user, in support of the retail and social vitality of each of its town centres.

Financial Implications: Undertaking this proposal will cost the Council £5,000 to implement, by way of an amendment to the existing parking places order and signage. In relation to income, it is anticipated that these minor changes will be cost neutral, as the increase in short stay use, will offset the cost of the order.

Legal Implications: Advertise by public notice.

HR Implications: There are no HR Implications

IT Implications: There are no IT implications

- 3.2 This proposal will facilitate prudent management of the Council's parking asset, as well as meet some of the concerns expressed by local businesses, visitors and patients attending the nearby health centre, that a more flexible tariff structure will support short stay visits, leading to better usage of the car parks.

4. CONSULTEES AND THEIR RESPONSES

- 4.1 Dewsbury East Ward Councillors have been consulted on these proposals and have responded, as detailed below:-

- *Cllr Eric Firth - I support the recommendation to introduce a 50p per hour tariff. This will facilitate shorter stays for patients attending the health centre and visitors to the nearby businesses, whilst maintaining all day tariffs for commuters.*

5. NEXT STEPS

5.1 Subject to approval:

- Advertise and amend the parking places order (21 days)
- Update and install new signage
- Implement August/September 2016.

6. OFFICER'S RECOMMENDATIONS AND REASONS

6.1 That Cabinet approve:

Option 1 for Wellington Road Station and Wellington Road West car parks - in Dewsbury from early July 2016:-

Option 1	50p per hour	£2 up to 5 hours £4 over 5 hours
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6.2 Parking customers (shoppers and commuters), will now benefit from a better, more flexible use of two of the Council's parking facilities, with the aim of providing a better service for customers, as well as give visitors to the health centre, more options, in terms of parking time and tariffs.

7. CABINET PORTFOLIO HOLDER'S RECOMMENDATIONS

7.1 The Cabinet Portfolio Holder for Economy, Skills, Transportation and Planning, Councillor Peter McBride agrees with the officer's recommendations, as detailed in this report, at 6.1 above and would ask that Cabinet approve Option 1 as recommended.

8. CONTACT OFFICER AND RELEVANT PAPERS

Peter Margrave - Senior Parking Officer
01484 221000
peter.margrave@kirklees.gov.uk

9. ASSISTANT DIRECTOR RESPONSIBLE

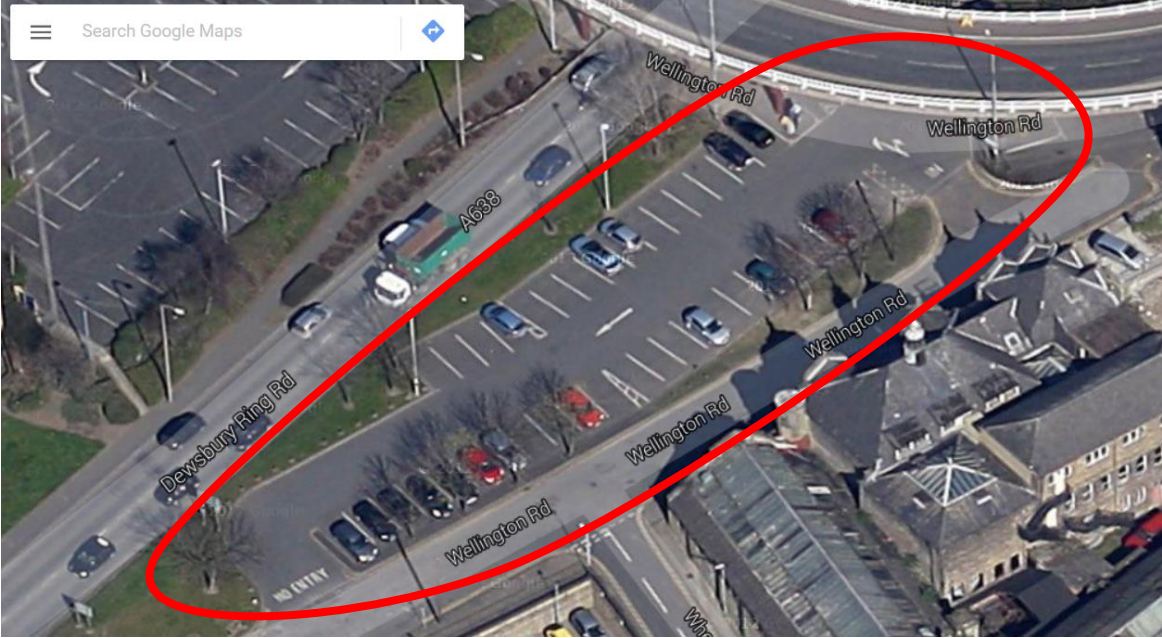
Paul Kemp, Assistant Director - Place
01484 221000
paul.kemp@kirklees.gov.uk

Appendix 1: Map of Car Parks

Wellington Road (Station) Car Park



Wellington Road West Car Park





Name of meeting: Cabinet
Date: 26th July 2016
Title of report: Regionalisation of Adoption Services

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes If yes give the reason why Will affect all Wards
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Key Decision – Yes Private Report/Private Appendix – No
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by <u>Director</u> & name Is it also signed off by the Director of Resources? Is it also signed off by the Assistant Director (Legal Governance and Monitoring)?	Sarah Callaghan, 18 July 2016 David Smith, 15 July 2016 Julie Muscroft, 18 July 2016
Cabinet member portfolio	Cllr Erin Hill, Portfolio Holder for Family Support & Child Protection

Electoral wards affected: All
Ward councillors consulted: None
Public or private: Public

1. Purpose of report

- 1.1 The purpose of this report is to provide information about the adoption reform proposals contained within the Education and Adoption Act 2016 with a view to report back in December 2016 with further detail of progress and an equality impact assessment and authorisation for the Director of Children's Services to continue to work with the other participating councils to progress the formation of the Hub and Spoke model for the regionalisation of adoption. The government is clear that all local authorities will be part of a Regional Adoption Agency (RAA) or will have delegated their adoption functions to a RAA by 2020.
- 1.2 Kirklees has been working in collaboration with other Local Authorities and Voluntary adoption agencies (VAA's) throughout the Yorkshire and Humber region to create a new model of service delivery for adoption services in line with the government's agenda

This report sets out the plan to develop a hub and spoke model of delivering adoption services in the region. The intention is that the regional hub will fulfil some functions and there will be three spokes: West Yorkshire, South Yorkshire and North and Humber spokes who will deliver adopter recruitment, assessment and adoption support at a local

level. The plan is that the five West Yorkshire Local Authorities will come together to form a West Yorkshire RAA, hosted by Leeds City Council. Agreement is sought in principle to implement the proposed model subject to the resolution of the issues detailed at 2.1.

2. Summary

2.1 Cabinet are asked to endorse in principle the proposed creation of a West Yorkshire Adoption Agency and that Leeds City Council becomes the host authority for the agency subject to the satisfactory resolution of the following:

- The establishment of a joint committee with appropriate membership under section 102 of the Local Government Act 1972 and the Local Government Act 2000, terms of reference and rules of procedure;
- The appointment of a management board including the West Yorkshire local authorities and third sector organisations through a partnership agreement;
- Proposed delegation of functions from the Joint Committee to the lead officer within the West Yorkshire Adoption Agency with regard to the recruitment and assessment of adopters, adoption panels, family finding and adoption support;
- Council procedures with regard to the service review and the transfer of staff (TUPE) from Kirklees Council into Leeds City Council on or around 1st April 2017;
- The establishment of a satisfactory budget for the new agency and a funding formula to reflect each Local Authorities' contribution to the regional agency budget in a fair and transparent way, detailing that there will not be a greater cost to Kirklees than current service delivery. Establish the commissioning needs of the new agency and the ICT requirements;
- The creation of an organisational unit within Leeds City Council for the new West Yorkshire Adoption Agency. The lead officer for this will be Leeds City Council's Director of Children's services and the unit will sit within children's services.

3. Information required to take a decision

Nationally

3.1 In 2015 the government published "Regionalising Adoption", a White Paper with the stated intention of improving the provision of adoption services through the establishment of regional adoption agencies. The key aims of this are:-

- To place more children in a more timely way
- To recruit more of the right families for the children waiting, preparing them consistently and well.
- To improve the range, accessibility and quality of adoption support

3.2 The issues that the government were seeking to address within the adoption reform are as follows:-

- Inefficiencies:
The current system is fragmented with around 180 agencies, both Local Authority and Voluntary Adoption Agencies (VAA), recruiting and matching adopters for 5000 children per year. The majority of agencies are operating at a very small scale and this hinders strategic planning and economies of scale.

- Timeliness of placing children:

Whilst there has been significant improvement in the performance of Local Authorities in placing children swiftly with adoptive families there is further progress that can be made. This is particularly the case with harder to place children, often older, within a sibling group or with a disability.

- Adopter recruitment:

There has been improvement in both the number of adopters recruited and the timescales to achieve this. However, whilst the number of approved adopters nationally is now greater than the number of children waiting, many of these adopters are less willing to consider those children who are harder to place.

- Adoption support:

The help that is offered to families after adoption is the responsibility of Local Authorities. However, it is currently fragmented and characterised by a combination of in-house and spot purchased arrangements with often significant variations between local authority areas.

West Yorkshire

- 3.3 The Education and Adoption Act 2016 is clear about the regionalisation agenda and government is clear that all local authorities will be part of a Regional Adoption Agency (RAA) or will have delegated their adoption functions to a RAA by 2020.
- 3.4 The plan is to develop a hub and spoke model of delivering adoption services in the region. The intention is that the regional hub will fulfil some functions and there will be three spokes: West Yorkshire, South Yorkshire and North and Humber spokes who will deliver adopter recruitment, assessment and adoption support at a local level. The plan is that the five West Yorkshire Local Authorities will come together to form a West Yorkshire RAA, hosted by Leeds City Council.
- 3.5 The Yorkshire and Humberside consortium have been successful in becoming an early adopter of the regionalisation agenda and have secured financial support, £1.6 million from the Department of Education to assist with the transition to the new hub and spoke model across the region.
- 3.6 In West Yorkshire, Leeds, Bradford, Wakefield, Calderdale and Kirklees local authorities and the VAA's have been working closely together to develop the West Yorkshire RAA as well as looking at the wider collaboration across the Yorkshire and Humber Region.
- 3.7 An options appraisal has been undertaken in West Yorkshire to determine the best model of delivery.
- 3.8 The first option is to maintain the status quo position and continuing with our present arrangements as an Adoption Agency. This has been ruled out as it does not meet the need to reduce the number of adoption agencies that the government requires. If Kirklees does not implement this proposal it would be out of step with the Yorkshire and Humber Local Authorities and will miss the opportunity of the central Government development funding to develop an alternative model.
 - The second option is to create a regional adoption service. This would make better use of resources to find adopters and match children to families quickly. If the Council does not implement this in a collegiate way with regional authorities it is likely to be forced by Central government to do so with less control over the process, arrangements and service delivery

In considering a preferred delivery model the West Yorkshire project board undertook an options appraisal and considered four options:-

- A regional adoption agency named accordingly, led by a host West Yorkshire local authority;
- A regional adoption agency, led by a local authority trading company;
- A new regional voluntary adoption agency established by partnership arrangements; and
- A regional adoption agency led by an existing voluntary adoption agency within the West Yorkshire region undertaking the role in the areas of the 5 LA's.

The outcome of the appraisal was that partners support the integration of the 5 Local Authority adoption agencies into a single regional agency led by a host local authority. All local authorities and the VA alliance indicated the choice for Leeds City Council to host the agency.

- 3.9 After considering the various options / models that might be available to achieve a regional approach it was concluded that West Yorkshire would create a joint committee structure. Members will be familiar with Joint committee arrangement through West Yorkshire Trading Standards and Yorkshire Purchasing Organisation. The creation of a joint committee will involve the appointment of a lead or host authority and it will require the delegation of activities/ responsibilities by the member authorities to the lead authority to run the activities on a day to day basis. It is envisaged that the new regional adoption agency joint committee arrangement will be hosted by a local authority (Leeds), with a localised presence while maintaining a local service in children's services offices across the across West Yorkshire area.
- 3.10 There is a clear transitional plan in place and the RAA will provide a centre of excellence for adoption practice. The plan is that the RAA will become operational by April 2017 providing a high quality service for children and adoptive families. This is a good opportunity to improve the current adoption system in relation to streamlining the recruitment and assessment of adopters; to improve the timely matching of children and adopters and the provision of adoption support services across the region. This will be of great benefit for Kirklees children waiting for adoption particular for those that are harder to place for example sibling groups and older children.

4. Implications for the Council

Financial Implications

- 4.1 One of the likely benefits of the regionalised approach will be the realisation of economies of scale. The management of the Kirklees adoption responsibilities are likely to require fewer resources once the regional agency is established. Any forecast savings will be clarified during the 2016/17 financial year once the identified model is confirmed and implementation plans are enacted. The Partnership Agreement will set out details of the Regional Adoption Agency budget, with an agreed funding formula. Further information will be available in December 2016 report.

Service Delivery and Governance implications

- 4.2 This is a good opportunity to improve the current adoption system in relation to streamlining the recruitment and assessment of adopters; to improve the timely matching of children and adopters and the provision of adoption support services across the region. The RRA will be registered with OFSTED to ensure compliance and quality.

- 4.3 The adoption functions to be delegated to the West Yorkshire RAA include adopter recruitment and assessment, adoption panels, family finding and adoption support. Each Local Authority will still retain the responsibility for decisions about the planning for children and the match with a family. There are opportunities for further funding across the RAA's with the DfE putting £16 million into looking at innovation and redesigning practice in this area and to improve the skills of the workforce to support permanence decisions and provide high quality adoption support. West Yorkshire Councils are currently part of an expression of interest to the DfE.
- 4.4 The new arrangements will be overseen by a Joint Committee of councillors representing the 5 local authorities, who have knowledge of and responsibility for children's services. It is proposed that this will meet as a minimum of one meeting per year with others to be arranged at the chair's discretion. This will enable flexibility in terms of number of meetings if Members feel more control is necessary in the early days but are happy to exercise a lighter touch as the RAA becomes established. The Director will appoint a Head of Service for the RAA and the Joint committee will receive the reports of performance and progress from the Head of Service and the Chair of the Management Board.
- 4.5 The management and performance management oversight of the RAA will be undertaken by a management board comprising local authorities' Directors of Children's Services or their delegates with co-opted representation on board from the voluntary adoption alliance. They will be supported by 4 nominated representatives from the voluntary adoption alliance (Y&H) the adopters' forum and the adoptees forum. The management board will meet 2 monthly to review both RAA functioning and also the impact for West Yorkshire's children, adopters and birth families.
- 4.6 The strategic direction of the RAA will be discussed and agreed by the Joint Committee following the advice of the Management Board. The Joint committee will provide support and challenge to the management board in exercising their corporate parenting role, regarding the functions delegated to the RAA. The strategy will set stretch targets with key performance indicators. The RAA will be required both to maintain the good performance in WY to date but also to evidence the added value that the RAA has brought to the outcomes for children, their adoptive families and the support for adoption in addition to evidencing value for money.
- 4.7 There is an ongoing scoping exercise to identify affected staff who are likely to transfer to Leeds. The intention is for the identified staff to remain located in Kirklees. The Council will comply with its statutory obligations to inform and consult with affected staff and Trade Unions.

5. Consultees and their opinions

- 5.1 There has been regional consultation with lead members for children across the region to keep them updated about progress and this has also taken place locally. Leaders of Councils and newly appointed Lead members have been briefed and there will be more detailed and ongoing consultation as the project develops.
- 5.2 The transfer of the adoption function to the regional agency and staff from other Local Authorities to Leeds will require detailed HR processes to address TUPE, assimilation, due diligence etc. as well as formal consultation with the staff and trade unions in the coming months.
- 5.3 Engagement of adopted young people, adoptive parents and birth families has being underway regarding this agenda, with adoptive parents on the project board to ensure that

the service is developed to meet the needs of adoptive families as the RAA is being developed

- 5.4 An equality impact assessment will be completed as part of the consultation process.
- 5.5 A further report to cabinet will be produced following the consultation period [with final decision being made by Cabinet once final arrangements are clearer .

6. Officer recommendations and reasons

- 6.1 It is recommended that Cabinet approve the formation of a Joint Committee comprising five West Yorkshire Councils with Leeds City Council being the 'host'. This will include sub-regional adoption agency arrangements for West, South and North Yorkshire. Kirklees, with the other West Yorkshire councils, will form the West Yorkshire Agency and this will take on the adoption functions of Kirklees Council. There is one exception; the Agency Decisions (whether adoption is in the children's best interests) for Kirklees children will remain with the Council.
- 6.2 It is recommended to give authorisation for the Director of Children's Services to continue to work with the other participating councils to progress the formation of the Hub and Spoke model for the regionalisation of adoption.

7. Cabinet portfolio holder's recommendations

The Portfolio Holder supports the recommendations for Cabinet to approve:

- the formation of a Joint Committee comprising five West Yorkshire Councils with Leeds City Council being the 'host'. This will include sub-regional adoption agency arrangements for West, South and North Yorkshire. Kirklees, with the other West Yorkshire councils, will form the West Yorkshire Agency and this will take on the adoption functions of Kirklees Council. There is one exception; the Agency Decisions (whether adoption is in the children's best interests) for Kirklees children will remain with the Council;
- authorisation for the Director of Children's Services to continue to work with the other participating councils to progress the formation of the Hub and Spoke model for the regionalisation of adoption.

8. Contact officer

Lorraine Wood – Head of Sufficiency, IT and Performance

9. Background Papers and History of Decisions

Regionalising Adoption White Paper,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437128/Regionalising_adoption.pdf

Education and Adoption Act 2016

<http://www.legislation.gov.uk/ukpga/2016/6/enacted>

10. Assistant Director responsible

Carly Speechley, Interim AD Family Support & Child Protection [is this correct title??]



Name of Meeting: Cabinet
Dates: Tuesday 26 July 2016
Title of report: Update on the implications of the Supreme Court Ruling on Deprivation of Liberty Safeguards (DOLS)

Is it likely to result in spending or a saving of £250k or more, or to have a significant effect on two or more electoral wards?	No
Is it in the Council's Forward Plan?	No
Is it eligible for "call in" by Scrutiny?	Yes
Date signed off by Director and name Is it signed off by the Director of Resources? Is it signed off by the Assistant Director, Legal, Governance and Monitoring?	Richard Parry, 5 July 2016 David Smith, 5 July 2016 Julie Muscroft, 5 July 2016
Cabinet member portfolio	Adults, Health & Activity to improve Health

Electoral [wards](#) affected: All
Ward Councillors consulted: Consultation with Ward Councillors is not applicable to this report
Public or private: Public

1. PURPOSE OF REPORT

- 1.1 Further to the report to Cabinet on 30 June 2015 [here](#), this report provides an update on the impact and risks of the 2014 Supreme Court judgement on Deprivations of Liberty (DoLS). The judgement changed the legal definition of and the test for deprivation of liberty and as a result significantly increased the number of people who could be considered as being deprived of their liberty; and therefore subject to the process for authorising that deprivation of liberty.
- 1.2 In particular the report provides information on the impact and risks of the increasing number of people living in the community (ie outside of care homes or hospitals) who could be considered to be being deprived of their liberty and therefore subject to the process for authorising that deprivation of liberty. The process for these deprivations of liberty is by application to the Court of Protection.

2. SUMMARY

- 2.1 A report to Cabinet on 30 June 2015 set out the then and anticipated impact of the increasing pressures and demands on the Council arising from a Supreme Court judgement on Deprivation of Liberty Safeguards (DoLS). Since that report there has been more than double the estimated number of applications in 2015/16 (1,752 not the anticipated 800) than were expected relating to people living in care homes and hospitals. In addition there are up to 100 people with a learning disability living in the community who could be potentially being deprived of their liberty, and therefore subject to application to the Court of Protection for authorisation of a DoL. Work is taking place to identify the number of people with dementia living in the community who may require Court of Protection consideration.

- 2.2 This report provides an update on the impact and risks to the Council arising from the continued increase in the number of applications, together with information about the national response and local action taking place to deal with the unremitting pressures and workload on the Council. DoLS processes are complex and costly. The average cost in Kirklees of a DoL in a care home or hospital is £1,300 although a single non-complex case can incur up to £4,000 costs if it needs to be considered by the Court of Protection; a complex case will cost considerably more. It is anticipated that the cost of a DoL for a person living the community will be the same or more than the cost of a DoL in a care home or hospital.
- 2.3 In the past year the Safeguarding Adults Partnership Team has incurred additional expenditure in excess of its budgeted allocation for DoLS in care homes and hospitals to the tune of £98,000. During 2016/17 additional resources will be required to ensure that when DoLS in the community are identified the Court of Protection process can be utilised. It is anticipated that any overspend in this area will be drawn down from reserves as a volume pressure, consistent with the approved principle of drawing down volume pressures from reserves in other areas.

3. INFORMATION REQUIRED TO TAKE A DECISION

Background

- 3.1 DoLS are part of the Mental Capacity Act 2005. They were introduced in 2009 to offer protection to anyone over the age of 18 receiving care in a registered home or hospital who lacks the mental capacity to consent to those arrangement and is therefore being deprived of their liberty. The aim of DoLS is to ensure that if a person's life is being so restricted that their liberty is taken from them there should be an independent assessment and authorisation process for the deprivation.
- 3.2 DoLS is a lengthy and complex process which if not followed precisely may lead to individuals being unlawfully deprived of their liberty which is a breach of article 5 of the Human Rights Act, giving the individual or their representative the right to seek damages against the supervisory authority (the Local Authority) responsible for assessment and authorisation of the deprivation.

Supreme Court Judgement

- 3.3 A Supreme Court judgement handed down in March 2014 ([here](#)) changed the legal definition of and the test for deprivation of liberty. There are now two key questions that need to be considered when authorising a Deprivation of Liberty (DoL) (known as the 'acid test'):
- i. Is the person subject to continuous supervision and control?
 - ii. Is the person free to leave?

For a person to be deprived of their liberty they must be subject both to continuous supervision and control and not free to leave.

Implications

- 3.4 The implications of the judgement are:
- a) That every person who lacks capacity to agree to being accommodated in a residential care home and /or to their care plan and is not free to leave could be considered as being deprived of their liberty; therefore the process for authorising a DoL must be followed. This has now meant the threshold for when someone is being deprived of their liberty is lower.

Potentially anyone who lacks capacity and is in a care home or hospital may meet the acid test, 24 hour care may meet the continuous supervision and control aspect, although this is for the Best Interests Assessor (BIA) to assess and determine.

(Information about the DoLS process for people living in care homes, including scenarios, is attached at Appendix 1).

- b) To broaden the scope of DoLS for people living in the community (ie outside of care homes and hospitals) which now includes people living in supported living, shared lives, post 18 residential college provisions and hospices as well as in their own homes. In these settings the Local Authority is not able to authorise a deprivation, it has to be done by application to the Court of Protection. (The Court of Protection makes decisions and appoints deputies to act on behalf of people who are unable to make decisions about their personal health, finance or welfare - see [here](#).)

If the care the person is receiving is funded by the Local Authority then the Local Authority will be the applicant and will bear the majority of the court costs. If the person is funded by Health then Health will be the applicant but if the Local Authority has had any involvement in the person's care assessment the Local Authority is likely to be involved in the application.

(Information about the DoLS process for people living in the community, including scenarios, is attached at Appendix 2.)

Following the Supreme Court judgement the Court of Protection launched a new streamlined procedure to assist with dealing with the increased demand for DoLS for people living in the community. This is known as the RX procedure and is supported by a new Court of Protection application form and practice direction. The responsibility remains with those who fund care in community settings (predominately Local Authorities and CCGs) to ensure they have a procedure and policy in place for these deprivations of liberty. For more complex cases the standard process for the Court of Protection remains.

3.5 Impact of the Supreme Court judgement nationally – Local Authority DoLS applications (for all Councils who submitted data for at least 1 month over the period) for people living in care and nursing homes

	Number of Applications	Number Granted	% Granted	Number Not Granted	% Not Granted	Number Not Signed Off or Withdrawn	% Not Signed Off or Withdrawn
2014/15							
Q1	24,000	13,400	56	3,400	14	7,200	30
Q2	33,100	13,000	39	3,600	11	16,500	50
Q3	36,300	11,600	32	3,500	10	21,200	58
Q4	38,700	11,100	29	4,300	11	23,300	60
Total	132,100	49,100	37	14,800	11	68,200	52
2015/16							
Q1	44,000	12,700	29	4,700	11	26,600	60
Q2	40,200	10,200	25	3,600	9	26,400	66
Total	84,200	22,900	27	8,300	10	53,000	63

Data source: DoLS Quarterly collection [here](#) Table 2

3.6 Impact of the Supreme Court judgement locally – Kirklees Council DoLS applications for people living in care and nursing homes

	Number of Applications	Number Granted	% Granted	Number Not Granted	% Not Granted	Number Not Signed Off or Withdrawn	% Not Signed Off or Withdrawn
2014/15							
Q1	77	46	59.7%	22	28.6%	9	11.7%
Q2	88	53	60.2%	19	21.6%	16	18.2%
Q3	89	56	62.9%	19	21.3%	14	15.8%
Q4	129	97	75.2%	14	10.9%	18	13.9%
Total	383	252	66%	74	19%	58	15 %
2015/16							
Q1	304	265	87.2%	11	3.6%	28	9.2%
Q2	415	281	67.7%	23	5.5%	111	26.8%
Q3	269	209	77.7%	12	4.5%	48	17.8%
Q4	388	217	55.9%	13	3.4%	158	40.7%
Total	1376	972	71%	59	4%	345	25%

NB: A further 376 cases were still in process; therefore the year-end figure is 1,752.

3.7 Impact of the Supreme Court judgement nationally – DoLS applications to the Court of Protection for those living in community settings

Applications increased from 109 in 2013 to 525 in 2014 and to 1,499 in 2015. A breakdown of the applications received between October and December 2015 shows that of the 489 received, 317 (65%) came from Local Authorities, 147 (30%) from solicitors and 25 (5%) came from others including CCGs.

Data source Family Court Statistics Quarterly, England and Wales, March 2016 [here](#)

3.8 Impact of the Supreme Court Judgement locally – Kirklees Council DoLS applications to the Court of Protection for those living in community settings

As a result of the developments of legal case practice (see 3.4b above) the scope of these DoLS is now expanding and therefore a number of additional individuals are now likely to be included within the DoLS remit. Work has commenced to identify a process for assessing and taking cases to the Court of Protection. Priority cases were identified as those in learning disabilities as a starting point. Work to date has identified up to 100 people with a learning disability living in the community and in shared lives placements. Work is currently underway to identify the number of people with dementia who may require Court of Protection consideration. Therefore during 2016/17 additional resources will be required to ensure that when identified the Court of Protection process can be utilised (as described in Appendix 2).

National Action

3.9 There have been some actions taken nationally to mitigate the effects, eg:

- a) A revised set of standard forms supporting the DoLS process was implemented (reducing the total number from 32 to 13).
- b) A more streamlined Court of Protection process was implemented for DoLS cases in the community (see 3.4 above).

- c) New guidance from the Law Society was published to assist practitioners in understanding what may constitute a DoL [here](#), including a quick reference guide to DoLS in the community [here](#).
- d) ADASS published guidance [here](#) for Local Authorities that included a screening tool to prioritise the allocation of requests to authorise a DoL.
- e) The Law Commission were tasked to re-look at the DOLs legislation. Their consultation paper was circulated for responses by 2 November 2015. The DoH response was published on 11 December 2015. The Law Society is expected to publish its final recommendations by the end of 2016 (for further information see [here](#)). An interim statement was published in May 16 [here](#). Local Authorities will continue to monitor closely formal arrangements that may arise.
- f) In March 2015 ADASS and the LGA published a briefing [here](#) calling for the Government to fully fund the costs of the changes to DOLS. In response the Government made a one-off contribution of £25m nationally (£198,387 for Kirklees) towards the cost of DoLS (see [here](#)). Despite these actions the indications are that the number of applications is continuing to grow week by week, and will do so for the foreseeable future; see 3.5 and 3.7 above for most recent published national figures. Also, even with the new forms, the paperwork associated with DoLS is weighty and there is still a complicated administration process that underpins the system.

Local Action

- 3.10 Since the judgement was first handed down, work has been ongoing to deal with the increased pressures and workloads being placed on the Council. An action plan is in place which is monitored and regularly updated. Actions include:
- a) The Safeguarding Adults Partnership Team has continued to review processes and have made practical adjustments to streamline them.
 - b) The service has increased capacity in business support for the DoLS processes based on previous projections of demand.
 - c) There is now a nominated DoLS Co-ordinator to manage the demand, further work is being done to widen this role to other managers to cover.
 - d) The number of signatories to sign off DoLS has been increased to ensure availability to deal with DoLS authorisations, training was commissioned to enable signatories in their roles.
 - e) Work has continued to increase the Independent BIA resource. Independent BIAs are being utilised wherever available to carry out assessments where the internal BIA resource has already been allocated.
 - f) In order to increase the BIA resource, internal BIAs have been offered casual contracts to work outside their contracted hours.
 - g) Adult Social Care has continued to work towards increasing the internal BIA by working towards training more staff.
 - h) Resource has been allocated to pilot and set up a small BIA team to meet some of the additional demand and improve practice.
 - i) Work is continuing to increase the pool of Mental Health Assessors.
 - j) The Contracts Team is working towards a commissioning framework for independent Doctors and BIAs.

- k) Legal advice is continually sought to ensure complex cases are appropriately managed.
- l) The service is continuing to look at where and how administrative support is being provided to the BIA Co-ordinator. New temporary administrative support is being recruited.
- m) BIAs are participating in regional conferences which act as refresher training for them.
- n) The contract for IMCs and paid RPRs (both of whom support the person being deprived of their liberty either when there is no suitable family member to support them or where support is required for the family member) is being continually reviewed to try and increase capacity. Additional funding was allocated to accommodate the increase in activity.
- o) Scoping and planning on dealing with DoLS in the community is continuing.
- p) Training for managing authorities, eg care homes, is being increased.
- q) DoLS continues to be on the Corporate Risk Register.
- r) Due to high demand DoLS applications are being screened using the ADASS priority tool mentioned in 3.9 (d) above.
- s) Further work is planned to attempt to further streamline the process using systems thinking principles.

As with the national picture, despite these actions the indications are that the number of applications is continuing to grow week by week, and will do so for the foreseeable future; see 3.6 above for the number of applications received by the Council.

3.11 Since the last report demand has been more than double the estimated 800 cases that were expected (see 3.6 above). Pressure has increased so much that service now has to operate a waiting list to prioritise applications for the DoLS process for people living in care and nursing homes. The risk to the Council arising from this is described in Section 4 below.

3.12 During the forthcoming year the service will:

- Continue to apply the ADASS risk approach to the management of cases.
- Continue to explore revised approaches to systems to streamline processes and optimise the efficient use of available resources.

4. **IMPLICATIONS FOR THE COUNCIL**

Cost of DoLS

4.1 The costs incurred by Local Authority supervisory bodies are highly variable depending on the complexity of the application. Research published in the British Journal of Psychiatry in 2011¹ found that the average cost of a DoLS assessment was £1,277, based on 2008 figures. However, the actual cost of a DoLS application can be far in excess of this figure, depending on whether legal advice / action is required and whether the application has come from outside the Kirklees area. DoLS reviews also incur a cost to the supervisory body; again the actual amount depends on the complexity of the case.

¹<http://bjp.rcpsych.org/content/199/3/232.abstract>

- 4.2 The average costs in Kirklees for DoLS in residential and care homes are continuing to run at £1,300 although a single non-complex case can incur up to £4,000 costs if it needs to be considered by the Court of Protection; a complex case will cost considerably more. It is anticipated that the cost of a DoL for a person living the community will be the same or more than the cost of a DoL in a care home or hospital. During 2016/17 additional resources will be required to ensure that when DoLS in the community are identified the Court of Protection process can be utilised.
- 4.3 During the past year the Safeguarding Adults Partnership Team has incurred additional expenditure in excess of its budgeted allocation to the tune of £98,000. Also the cost of approximately 300 Best Interest Assessments is reflected within the budgets for assessment within operational services (Social Care and Wellbeing for Adults). The real cost impact is therefore not apparent but is covered by the estimates elsewhere in this report.
- 4.4 The number of applications is continuing to increase rapidly. In the current year it is estimated that in excess of 2,000 referrals for consideration will be received, considerably more than the 800 previously estimated and the 1,752 requests received last year, which will place even more pressure on management and assessment resources, business support, external advocacy, Section 12 Doctors (doctors who have specific expertise in mental disorder and have additionally received training in the application of the Mental Health Act) and BIAs.
- 4.5 It is anticipated that any overspend in this area will be drawn down from reserves as a volume pressure, consistent with the approved principle of drawing down volume pressures from reserves in other areas.

Risk to the Council

- 4.6 In line with the national picture, the number of applications being received by the Council is continuing to increase and will do so for the foreseeable future. Despite the actions listed in 3.10 above, there remains a significant risk that the Council will not have enough Mental Health Assessors, BIAs, IMCAs and RPRs to be able to comply with the DoLS process within the statutory timescales in all cases.
- 4.7 The unremitting pressure arising from working to meet the statutory timescales is impacting on all the staff involved, ie Business Support Officers who administer the process; the Safeguarding Operational Team; BIAs and senior managers who attend the panels. Also pressure on the whole system will mean that the ability to support other complex tasks (eg large scale safeguarding investigations, domestic homicide reviews, safeguarding adults reviews, the Safeguarding Adults Board care management functions) is compromised. Consideration of the risk to the individual is a key part of how capacity and activity is prioritised.
- 4.8 The inability of the Council to discharge its legal duty to comply with the DoLS process could result in a costly claim for damages and/or a loss of reputation.

5. CONSULTEES AND THEIR OPINIONS

No consultations were required regarding the recommendations in this report.

6. NEXT STEPS

The actions described in Section 3.10 and 3.12 will continue.

7. OFFICER RECOMMENDATIONS AND REASONS

- 7.1 That the contribution of DOLS activity to overall pressure in the system is noted.
- 7.2 That any overspend in this area will be drawn down from reserves as a volume pressure, consistent with the approved principle of drawing down volume pressures from reserves in other areas.

8. CABINET PORTFOLIO HOLDER RECOMMENDATION

- 8.1 The Portfolio Holder for Adults, Health & Activity to Improve Health:
 - a) supports the acknowledgement of the overall pressure created by DOLS activity;
 - b) supports the use of reserves to address overspends created due to volume pressures.

9. CONTACT OFFICER/ASSISTANT DIRECTOR RESPONSIBLE

Keith Smith, Assistant Director for Commissioning and Health Partnerships, 01484 221000 Email: keith.smith@kirklees.gov.uk

10. BACKGROUND PAPERS

As referenced in the report.

APPENDIX 1

DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS) FOR PEOPLE IN CARE AND NURSING HOMES AND HOSPITALS

Process

1. The DoLS process involves 6 separate independent professional assessments which are undertaken by a Mental Health Assessor, usually a Consultant Psychiatrist and a Best Interests Assessor (BIA) most likely to be a Social Worker or Mental Health Nurse. The DoLS process must be completed within 21 calendar days for a standard application and 7 calendar days for an urgent application.
2. The BIA's main role involves independently assessing (the Best Interests Assessment) and deciding whether a person is deprived of their liberty, and deciding whether the DoL is in their best interests, necessary to prevent harm to them, and whether it is proportionate to the likelihood of that harm occurring. The Mental Health Assessor and BIA submit their assessments together with the recommendations of the BIA to a Local Authority supervisory body who then scrutinises the assessments and authorises or declines the DoL. In this way the DoL can be made compliant with Article 5 of the Human Rights Act 1998, the Right to Liberty.
3. Local Authorities are the supervisory body in England for all DoLS whether the person is resident in a care home or a hospital and for people who are ordinary residents of that Local Authority.
4. In some cases the Local Authority may need to seek legal advice on cases and / or make application to the Court of Protection. The person, or their representative, has the right to challenge authorisations in the Court of Protection.
5. If there is no appropriate family or friend who can support the person during the assessment procedure, an Independent Mental Capacity Advocate must be appointed by the supervisory body. An IMCA is an independent person with relevant experience and training who can make submissions to the people carrying out the assessments and challenge decisions on behalf of the person they are representing.
6. If authorisation is given, someone must be appointed as the Relevant Person's Representative (RPR) but the IMCA may still have a role in supporting that person. The role of the RPR is to keep in contact with the person and to make sure that decisions are being made in their best interests. The RPR will usually be a relative or friend of the person who is being deprived of their liberty. If there is no appropriate friend or relative, it will be someone appointed by the supervisory body (possibly a paid professional) who can keep in regular contact with the person.
7. A DoLS authorisation can last for a maximum of 12 months, and should remain in force for the shortest time possible. The managing authority (the care home or hospital) and the Local Authority as supervisory body must make regular checks to see if the authorisation is still needed, remove the authorisation when no longer necessary and provide the person's representative with information about their care and treatment. The supervisory body is responsible for review of an authorisation. Review can take place at any time after the authorisation. Review can take place at any time after the authorisation and must take place if the person's circumstances change or they or their representative requests a review.

Scenarios – extracted from the Law Society publication “Identifying a deprivation of liberty: a practical guide” [here](#).

1. Hospital Acute Ward

- 1.1 Mrs J is an 80 year old lady, who lives on her own in a semi-detached house. One evening her neighbours notice the smell of burning. Not finding anything in their house, they go next door. They find Mrs Jones slumped in her kitchen with the toaster on and a piece of burned charcoal in the toaster.
- 1.2 Mrs J is admitted to hospital with a diagnosis of severe community acquired pneumonia. She responds well to antibiotics and after a week tells the treating team that she wants to go home. She has been assessed during her admission by the physiotherapy and occupational therapy team, who feel that she has significant problems with her activities of daily living. Their professional opinion is that it would be unsafe for her to return home. The doctors treating her note that she is slightly confused, and she scores 8/10 repeatedly on a mini-mental test.
- 1.3 Mrs J is adamant that she will not consider anything other than returning home. Her neighbours, who have visited her daily in hospital, are very concerned about her returning home. The treating team considers that she should stay in hospital for further assessment and thereafter a suitable care home should be found for her. She will have to remain on the acute ward until then, and there is no immediate prospect of her returning home.
- 1.4 The key factors pointing to a deprivation of liberty are the:
 - monitoring and supervision of Mrs J on the ward;
 - decision of the treating team not to let her leave to return home;
 - potential that she will have to remain on the ward for a significant period of time.

2. Care Home for Older Adults

- 2.1 P is 78. He had a stroke last year, which left him blind and with significant short-term memory impairment. He can get disorientated needs assistance with all the activities of daily living. He needs a guide when walking. He is married but his wife J has struggled to care for P and with her agreement P has been admitted into a residential care home.
- 2.2 P has his own room at the home. He can summon staff by bell if he needs help. He tends to prefer to spend time in his room rather than with other residents in the communal areas. He can leave his room unaccompanied at any time he wishes. Due to his visual and cognitive impairments, he does not feel safe doing this. He has access to the communal garden, the dining room, the lounge area and any other resident's room. He is able to use the telephone when he wants. It is in a communal area of the home. He is unable to remember a number and dial it himself. He rarely asks to make phone calls.
- 2.3 He is visited regularly by. She has asked to be allowed to stay overnight with P in his room but this request has been refused. The home has a key pad entry system, so service users would need to be able to use the key pad to open the doors to get out into the local area. P has been taken out by staff after prompting and does not ask to go out. He would not be allowed to go out unaccompanied. Most of the time P is content but on occasions he becomes distressed saying that he wishes to leave. Members of staff reassure and distract P when this happens.
- 2.4 The key factors pointing to a deprivation of liberty are:
 - the extent to which P requires assistance with all activities of daily living and the consequent degree of supervision and control this entails;
 - P is not free to leave either permanently or temporarily.

APPENDIX 2

DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS) FOR PEOPLE LIVING IN THE COMMUNITY – THE STREAMLINED X PROCEDURE

Process

1. With the aim of reducing time, effort and cost, a streamlined procedure was introduced which allows for authorisation of a DoL by the Court of Protection without the need to necessarily go to court.
2. To bring proceedings an application must be submitted using a prescribed Court of Protection form [here](#). The form, which incorporates a signed statement of truth which attests to the accuracy of the information contained in it, must include/be accompanied by a range of evidence which includes:
 - Assessment of capacity - evidence is required from a GP, psychiatrist, psychologist or other medical professional who is competent to provide such evidence, which is not more than 12 months old and should make reference to the person's eligibility to be deprived of their liberty.
 - Mental health assessment – this should normally be provided by a registered medical practitioner, psychiatrist or psychologist who has examined and assessed the person.
 - The factual circumstances and details relating to the deprivation of liberty, eg relating to:
 - Is the person free to leave, under constant supervision and control, subject to physical restraint, sedated, prevented from having contact with others?
 - What restrictions, if any, are imposed or measures used which affect the person's access to the community?
 - Statement of best interests - information about why the arrangements in the person's care plan are necessary in the best interests of the person, what harm may occur or what the risks would be if the person were not deprived of their liberty, why the deprivation of liberty is proportionate and what less restrictive options have been tried/considered. The care plan and the best interests assessment must be attached to the form.
 - Consultees – consultation should take place with:
 - Any donee of a lasting power of attorney granted for the person; any deputy appointed for the person by the court.

And, if possible, with at least three people from the following categories:

 - Anyone named by the person to whom the application is about as someone to be consulted on the matters raised by the application; and anyone engaged in caring for the person or interested in their welfare.

Information has to be provided about the consultees and whether they support or object to the proposed arrangements including any views expressed. Information also has to be provided about people not consulted and why they were not consulted.

 - Litigation Friend – the names of people who would be prepared to act as a Litigation Friend must be provided. If no-one is prepared to act as a Litigation Friend the court will have to consider whether, if required, the Official Solicitor is invited to act on the person's behalf.

- The draft Order that is being sought.
- Copies of any relevant Advanced Decisions, relevant Lasting Power of Attorney, Court Orders.
- Consultation with the person the application is about – the person who the application is about should always be given the opportunity to join proceedings if he or she so wishes. The person undertaking the consultation should be someone who knows the person and who is best placed to express their wishes and views. It could be a relative or close friend, or someone who the person has previously chosen to act on their behalf (eg an attorney). If no suitable person is available then an Independent Mental Capacity Advocate or another similar or independent advocate should be appointed to perform the role.

Circumstances where in which there may need to be an oral hearing in court

There are a number of triggers which indicate an oral hearing in court:

- Any contest whether by the individual subject to the deprivation or by anyone else, to any of the matters referred to in application form.
- Any failure to take steps to notify the individual subject to the deprivation of liberty or relevant people in the individual's life who should be notified of the application and to canvass their wishes, feelings and views.
- Any concerns arising out of the information concerning the individual subject to the deprivation of liberty and other relevant person's wishes, reasons of urgency, other specified factors that should be brought to the court's attention.
- Any objection by the individual subject to the deprivation of liberty.
- Any potential conflict with any relevant Advance Decision made by the individual subject to the deprivation or under a Lasting Power of Attorney or the individual's deputy; or
- If for any other reason the court thinks that an oral hearing is necessary or appropriate.

Scenarios – extracted from the Law Society publication “Identifying a deprivation of liberty: a practical guide - supported living” [here](#).

1. Supported living

- 1.1 In this context supported living describes a form of domiciliary care where a local authority arranges a package of care and accommodation to be provided to a disabled, elderly or ill person. The individual lives in their own home and typically receives social care and/or support to enable them to be as independent as possible.
- 1.2 G is 30 years old and has autism, cerebral palsy, hearing and visual impairments and a learning disability. He resides in a one-bedroom flat with 1:1 staffing at all times. He requires a second member of staff to access the community who is available 35 hours per week. The front door is locked for his safety.
- 1.3 G cannot weight bear and pulls himself around inside, and requires a wheelchair outside. Due to a history of attempting to grab members of the public, a harness is used to strap his torso to the wheelchair, allowing free movement of his arms.
- 1.4 The key factors pointing to a deprivation of liberty are that G is under continuous supervision and control on a 1:1 basis at all times.

2. Shared Lives Placement

- 2.1 Shared Lives schemes differ from supported living arrangements as they involve the individual being placed in a family setting. They are likened to adult fostering arrangements and are available to those aged 16 and over. The schemes are designed for those who want to live independently but not on their own.
- 2.2 N is 18 years old with a moderate to severe learning disability. She lives in a stable and secure placement in which she is dependent on others as she cannot live independently,
- 2.3 N cannot go out on her own and has no wish to do so. She can communicate her wants and wishes in a limited manner. She lives in an ordinary domestic environment which she regards as home.
- 2.4 N is not restrained or locked in the house but if she tried to leave she would be prevented for her immediate safety. Continuous supervision and control is exercised over her to meet her care needs. Her limitations on movement are general dictated by her inability and lack of awareness of danger. There are no restrictions on social contacts except by court declaration. She goes to college where she is not under the control of her carer or the Local Authority.
- 2.5 N's mother accepts that N should remain where she is and has no objections to the care provided. Nor does she regard N as being confined or retained. N's sister also supports the placement.
- 2.6 The key factors pointing to a deprivation of liberty are:
- The continuous and complete nature of the control and supervision exercised over N (for beneficial reasons).
 - The steps that would be taken to prevent her leaving.

3. Extra Care Housing

- 3.1 Extra care housing represents a hybrid between living in at home and living in residential care. Usually purpose built, self-contained properties on a single site, schemes provide access to 24 hour domiciliary care and support and community resources.
- 3.2 C is 70 years old with Alzheimer's dementia and severe mobility difficulties. He was assessed by a social worker as lacking capacity to decide where to live in order to receive care. In consultation with C and family members, it was considered to be in his best interests to move out of his home into a housing with care setting.
- 3.3 C now resides in a one-bed apartment as part of a specialist dementia scheme of extra care housing which was purchased by his financial deputy. From 9 am to 8 pm he has a carer with him to assist him into and out of bed as well as attend to his everyday needs. During the night he has pressure sensors around the bed to alert staff to a fall. Occasionally he is aggressive to staff which requires them to withdraw. Staff have unrestricted access to the apartment by means of a safe key. C is able to leave the property but only with the carer.
- 3.4 The key factors pointing to a deprivation of liberty are:
- The extent of supervision and control exercised over C whilst he is awake and at night.
 - C is not free to leave without a carer.

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Name of meeting: Cabinet
Date: 26 July 2016

Title of report: Proposals to update the Councils RIPA Policy

<p>Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards? If the answer is yes cabinet is taking a “key decision”</p>	No
<p>Is it in the Council’s Forward Plan? All forthcoming “key decisions” should have been included at least 6 weeks in advance in the Council’s Forward Plan of key decisions (produced monthly) unless an urgent decision is required.</p>	No
<p>Is it eligible for call in by Scrutiny?</p>	Yes
<p>Date signed off by Director & name</p> <p>Is it signed off by the Director of Resources?</p> <p>Is it signed off by the Assistant Director – Legal, Governance and Monitoring</p>	<p>David Smith – 13 July 2016</p> <p>Yes</p> <p>Julie Muscroft – 13 July 2016</p>
<p>Cabinet member portfolio</p>	Resources

Electoral [wards](#) affected: All
Ward councillors consulted: None

Public

1 Purpose of report

1.1 To brief the Executive on the use of the Regulation of Investigatory Powers Act 2000 and to seek approval to the adoption of an amended Regulation of Investigatory Powers Act 2000 (RIPA) Policy and Guidance document. The role of Cabinet in RIPA matters is to provide strategic oversight and to keep the Council’s use of surveillance under review.

2 Key points

- 2.1 The Council is subject to the requirements of RIPA which sets out how and when a local authority such as Kirklees Council, can use covert surveillance. The three types of surveillance regulated by RIPA are directed surveillance, the use of covert human intelligence sources (informants) and the obtaining of communications data (which does not include obtaining the content of any electronic communication). The Cabinet adopted the current RIPA Policy on 4 June 2013 and it sets out in detail how the requirements of RIPA were to be met.
- 2.2 Surveillance can only be authorised via RIPA where it is both necessary and proportionate to the aims to be achieved and the intrusion into other people's privacy which may result. Accordingly covert surveillance will only be appropriate where other options are not available. The Council cannot authorise "intrusive surveillance" which is covert surveillance that is carried out in relation to anything taking place on residential premises or in any private vehicle and it is most unlikely that the Council would wish to use a covert human intelligence source as part of any investigation unless a request was made by West Yorkshire Trading Standards Service.
- 2.3 The Council was inspected by the Office of the Surveillance Commissioners on 18 July 2013 in relation to its use of directed surveillance and of covert human intelligence sources. The Inspector's Report forms Appendix 1 to this report. The Report included the following as part of its conclusions - *"Overall Kirklees is a well performing Council in regard to its RIPA obligations. The officers interviewed impressed with their knowledge and dedication to achieving RIPA compliance. Those issues raised could largely be addressed by more regular training"*. The inspector found that virtually all the recommendations made following the previous inspection in March 2011 had been implemented, although he referred to the need for more detail in the records of the cancellations of authorisations. The inspector made a small number of recommendations for further amendments to the RIPA policy and guidance document primarily to reflect legislative changes and good practice. Unfortunately due to changes in personnel; the recommended changes to the policy have not been made. This oversight has not had any practical consequences for the Council as the number of RIPA authorisations sought during the period has been very small (five in total and none in the last two years) and all have all been made in compliance with the law and with the approval of the Court.
- 2.4 The draft RIPA Policy at Appendix 2 is intended to replace the RIPA Policy approved by Cabinet on 4 June 2013 and incorporates the

amendments recommended by the Office of the Surveillance Commissioners and includes a revised list of officers with responsibilities for RIPA. The list of main statutory documents relevant to the policy at page 3 has also been updated.

- 2.5 It should be noted that a new Investigatory Powers Bill is currently being considered by Parliament and therefore there may be a future review of how we use this kind of activity moving forwards.

3 The Recommendations of the Office of Surveillance Commissioners

3.1 The Inspector made the following recommendations:

- 3.1.1 To include refusals on the central record. Where an authorising officer refuses to grant an authorisation for surveillance the fact of the refusal and the reasons for it will be kept on the electronic record. This change has been implemented .
- 3.1.2 To addresses the weaknesses highlighted in the report by the establishment of a programme of regular refresher training and to ensure that such training addresses the management of covert human intelligence sources. Officers have attended training provided by West Yorkshire Police and West Yorkshire authorities respectively on RIPA and the use of covert human intelligence sources. Further training is planned.
- 3.1.3 To ensure that cancellations are adequately articulated. The Inspector wished there to be more detail in the records of cancellations of authorisations to show what had or had not been achieved via the surveillance authorised. The Council's authorising officers have been advised accordingly.
- 3.1.4 To raise RIPA awareness. The Inspector was concerned about the risk of officers, especially those having little resort to covert surveillance, unwittingly carrying out covert surveillance without RIPA authorisation. Officers will take steps to communicate this to managers and others within the Council. Further training of officers whose role may involve them in regulated activities is planned.
- 3.1.5 To reduce the number of Authorising Officers. The Inspector recommended a reduction to two authorising officers plus the Chief Executive and the Director of Resources [as the Senior Responsible Officer for RIPA] to reflect the limited number of applications being made. The Chief Executive is concerned that this may be too few for an organisation of the size of the Council and has suggested to the Office of the Surveillance Commissioners that three authorising officers

would be more appropriate. At the present time there is only one authorised officer in addition to the Chief Executive and Director of Resources, this is due to changes in the personnel. For this reason it is recommended below that the Chief Executive be given delegated authority to nominate officers to be authorising officers and to remove officers from the list of nominated authorising officers in the RIPA Policy and Guidance document. It will be then possible for the Chief Executive to appoint an additional officer if thought necessary (and subject to that person having had the requisite training).

- 3.1.6 To amend the Council's RIPA Policy and Guidance, which the Inspector endorsed as "*excellent guidance for practitioners in the use of RIPA*". A revised version of the Policy and Guidance, incorporating the recommended amendments, forms Appendix 2 to this report.

4 Implications for the Council

- 4.1 It is important that the Council's limited use of covert surveillance is in accordance with the RIPA regime. Failure to do so could lead to legal challenge and/or evidence gathered via unlawful surveillance being ruled inadmissible in legal proceedings.

5 Consultees and their opinions

- 5.1 The following have been consulted on the contents of this report and have approved them:

5.1.1 The Cabinet Member for Resources.

5.1.2 The Director of Resources, as the RIPA Director and Senior Responsible Officer.

5.1.3 The Assistant Director of Legal, Governance and Monitoring.

5.1.4 The Council's proposed Authorising Officers for RIPA.

6 Next steps

- 6.1 To comply with the recommendations of the Inspection Report as set out at paragraph 3.1 above.

7 Officer recommendations and reasons

- 7.1 That members note the steps being taken to implement the recommendations of the Office of the Surveillance Commissioners.

- 7.2 That members approve the adoption of the revised RIPA Policy and Guidance document as set out at Appendix 2.
- 7.2 That the Chief Executive be given delegated authority to nominate officers who are to be authorising officers for the purposes of the RIPA regime and to remove officers from the role of authorising officer.

8 Cabinet portfolio holder's recommendations

- 8.1 The cabinet portfolio holder supports the officer recommendation.

9 Contact officer and relevant papers

- 9.1 John Chapman , Interim Deputy Head of Legal Services and nominated RIPA Monitoring Officer

Telephone: 01484 221000

Internal: 77881

E-mail: john.chapman@kirkles.gov.uk

10 Assistant director responsible

- 10.1 Assistant Director for Legal, Governance and Monitoring.



Office of Surveillance
Commissioners

Chief Surveillance Commissioner,
Office of Surveillance Commissioners,
PO Box 29105,
London,
SW1V 1ZU.

18th July 2013.

**INSPECTION REPORT
KIRKLEES COUNCIL**

Inspection 18th July 2013
Inspector His Honour Norman Jones, QC.
Assistant Commissioner

Kirklees Metropolitan Borough Council.

1. Kirklees is a Metropolitan Borough in West Yorkshire covering 157.8 square miles with a population of 423,000. Kirklees Council is the local government administrative body for the Metropolitan Borough with Huddersfield its principal town housing the Council headquarters.
2. The Senior Corporate Management structure is lead by the Chief Executive, Mr. Adrian Lythgo who heads a team of five Directors who in turn are supported by Heads of Services.
3. The Council was last inspected for the OSC in March 2011 by Mr. Neil Smart, Surveillance Inspector.
4. Since my last visit to the Council in 2009 there has been a substantial reduction in the number of authorisations granted. Some fifty five had been granted in the period preceding my visit. At the time of Mr. Smart's visit that had reduced to eighteen and at this time that figure has been halved to nine. The Council may now be regarded as a limited user of RIPA. All were for *directed surveillance* and none for CHIS, none were for *confidential information* or used the *urgency* procedure or were self authorised.
5. The Senior Responsible Officer (SRO) for RIPA is Dr. David Smith, Director of Resources with responsibility for Legal and Governance. The RIPA Monitoring Officer is Mr. Dermot Pearson, Senior Legal Officer and solicitor. Whilst both officers were in office at the time of the last inspection in Dr. Smith's case that had been for one month and in Mr. Pearson'sS only a matter of a day or so.

6. Some five officers are currently nominated as Authorising Officers with the CEO responsible for authorising for *confidential information* and juvenile and vulnerable *CHIS*.
7. The address of the Council is The Civic Centre, 3 Market Street, Huddersfield, HD1 1WG.

Inspection.

8. Dr. Smith, Mr. Pearson and Mr. Dave Thomas, Head of Customer Services and Authorising Officer extended a warm welcome to Kirklees. Later they were joined by Ms. Louise Carter, Assistant Legal Officer and *RIPA* Record Keeper. All officers afforded their enthusiastic assistance which was much appreciated and each impressed with their familiarity with their role and understanding of the *RIPA* process.
9. The inspection was conducted by way of interview and discussion with the officers in a group during which a wide range of *RIPA* topics was explored. Thereafter an examination took place of the Central Record of Authorisations and a sample of four of the most recent applications/authorisations, reviews, renewals and cancellations. The inspection was completed by a discussion concerning the findings from that examination.

Examination of Documents

10. The Central Record of Authorisations is maintained on an electronic spreadsheet. It is compliant with the *Codes of Practice* and well maintained. However it has not been the practice to include refusals on the record, a deficiency which should be addressed. It is the responsibility of Ms. Carter to populate it with information extracted from submitted documents. It can be used as a tool of the *RIPA Monitoring Officer* to ensure that actions are completed in a timely manner.

See recommendation

11. One case was reported to the OSC as a breach during the previous period. The concern arose from the fact that the activity was one which the Council suspected fell outside the parameters of their normal activities and was more within that of the police. However in the circumstances it would not normally attract consideration as a breach. No action was taken by the OSC.
12. Two authorisations have been subjected to Magistrate's approval since the commencement of the *Protection of Freedoms Act 2012* and the *RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500*. Both related to disruptive behaviour which was seriously criminal, namely using local government housing for the purposes of supplying drugs and prostitution. Both were approved by a single lay Magistrate.
13. Each authorisation was for the purpose of conducting surveillance by means of CCTV cameras and video recording equipment on the entrances to each address. The applications were of a high quality detailing the reasons for the application and the nature of the proposed surveillance. In each case the details were precise and in one supported by a photograph with the viewing angles clearly demonstrated. *Necessity and proportionality* were concisely but adequately articulated as was *collateral intrusion*. *Confidential information* was dealt with by a clear negative response. The only criticisms which could be made are that URNs were not entered on the documents, though they were on the Central Record, and

there was insufficient outline of the intelligence relied upon. The authorisations provided good detail of what was being authorised and in the earlier one (2012/004) of *necessity* and *proportionality*. The second (2012/005) failed to adequately articulate these issues. Review dates were set in both and a review carried out in one. Expiry dates were set from the date of authorisation and it should be noted that the duration of such authorisations now runs from the date of the Magistrate's approval. It was noted that both authorisations followed the best practice and were handwritten, as were all authorisations examined. Adequate summaries were provided for the Magistrate. The review would have benefitted from more detail and a fuller exposition of the continuing *proportionality* and *necessity*. A comment to the effect that the Authorising Officer was approving a continuation of the operation should have been supported by some reasoning rather than a comment that the decision had been taken following a conversation with the reviewing officer.

14. The two earlier authorisations examined requesting the installation of covert CCTV also related to instances of disorder though varying in type. One related to incidents of repeated human defaecation at night in a street. The intelligence provided in the application was limited and, although comments later in the *proportionality* box indicated with no detail some frequency and local concern, the box requiring the reasons for the application did not deal with those matters. On the basis of the content of the entries in those boxes proportionality may have been questioned. *Proportionality* and *necessity* were otherwise well considered as was *collateral intrusion* and *confidential information*. It was appropriately cancelled. The fourth authorisation relating to the usage of premises for prostitution was initially refused by the Authorising Officer with comments indicating his considerations at that time and inviting a resubmission when appropriately amended. This was not recorded in the Central Record although the document was filed. A resubmission with amendments was subsequently authorised. The application was in good form with sufficient detail of what was requested and good articulation of *proportionality* and *necessity*. The authorisation similarly was of adequate detail but deficient in its consideration of *proportionality* and *necessity*. Timing details were appropriate but a cancellation was lacking in detail about what had/had not been achieved.
15. Overall the quality was compliant with the legislation but attention should be paid in training to the issues raised, especially the requirement to fully articulate in the authorisations the considerations of the Authorising Officer relating to proportionality and necessity and the better detailing of cancellations, the latter being the subject of a recommendation in the last report (see paragraph 16.III below).

See recommendation

Previous Recommendations.

16. Mr. Smart made three recommendations in his previous report:

- I *RIPA training should be reviewed and focus on the issues of "painting the picture" as to why directed surveillance is required as a tactic, the documentation of an appropriate summary of supporting evidence, proportionality, confidential information and , in particular, what should be written on the RIPA forms including how an authorisation should be documented. The Council should also conduct a training needs analysis to ensure all staff engaged in RIPA processes receive the training they require for the roles they perform*

Following receipt of the report a debriefing meeting was held with all officers actively engaged with *RIPA*. The report was fully debated and all recommendations considered. The staff actively engaged with *RIPA* have subsequently been more closely identified and training provided by an external professional trainer who was invited to deal specifically with these issues. This recommendation has been discharged.

- II *A formal oversight process should be established recording the process and matters identified on a simple spreadsheet to enable analysis of issues over the year and the result. It is important that issues identified in the oversight process generate remedial action where required and in addition are fed into RIPA training to ensure others have the benefit of learning. A formalised process should also be established to ensure the Senior Responsible Officer is able to fulfil the role described in paragraph 3.29 of the Code of Practice for Covert Surveillance and Property Interference.*

A computerised spreadsheet has been adopted (see paragraph 10 above). The new Magistrates' procedure enforces the requirement for immediate oversight of the authorisation by the *RIPA Monitoring Officer* prior to submission for Magistrate's approval. In the event of documentation appearing to the *RIPA Monitoring Officer* to be sub standard the document is referred back to the Authorising Officer for reconsideration. That has been done twice recently. The SRO considered these processes with the *RIPA Monitoring Officer*. The SRO, who had been in post only one month at the time of the last inspection, has since received training from the *RIPA Monitoring Officer* and is well aware of his role as set out in the *Codes of Practice* and in the Council's *RIPA Policy and Guidance* document. He discusses *RIPA* issues with the *RIPA Monitoring Officer*, has examined specific cases, discussed issues with the West Yorkshire Trading Standards Service (WYTSS), considers *RIPA* policy and liaises with Elected Members. This recommendation has been discharged.

- III *The Council must ensure that authorisations are cancelled as soon as they are no longer required, and contain details of what surveillance activity was conducted, the reason for the cancellation, confirmation that equipment has been removed, give an account as to how the surveillance has assisted the investigation i.e have the objectives been achieved and the authorising officer provide direction for the management of the product.*

This recommendation was considered during the review of recent authorisations. (see paragraphs 13 and 14 above). Whilst cancellations are now effected timeously they are regularly not considered in the detail required and this issue remains to be addressed. This recommendation has been partially discharged.

See recommendation

RIPA Management

17. Since shortly before the last inspection there has been a substantial change in the management of *CHIS* and of the Authorising Officers. The former is spoken to above and the latter below under **Authorising Officers**. The process of

departmental authorisation has been abandoned for a more centralised and independent process based on fewer Authorising Officers. The *RIPA Co-ordinating Officer* has his responsibilities outlined in considerable detail in the *Procedures and Guidance* and has readily assimilated the role. It would be advisable to add to it the responsibility for ensuring *RIPA* awareness throughout the Council. The *RIPA Monitoring Officer* carries out some training himself and otherwise arranges for external training. He exercises oversight as described earlier in this report

18. A prime concern for all Councils, especially those having little resort to covert surveillance, is the risk of officers unwittingly carrying out such surveillance without authorisation. This requires a high degree of *RIPA* awareness throughout Councils. Kirklees has addressed this problem partly by assessing the degree of unawareness existing through the process of audit by the Audit Department and the inviting to training a limited number of officers from unlikely *RIPA* user departments. The feeling overall was that there was a low risk of such surveillance occurring. However it would be advisable to spread the information on as wide a scale as possible and suggestions were made to effect efficient cascading down of information from management meetings and the using of the Council's intranet to advertise the risks and identify the *SRO* and *RIPA Monitoring Officer* as officers to contact when in doubt

See recommendation

Authorising Officers

19. Since the last inspection when there were eight, there has been a further reduction in numbers of Authorising Officers (see paragraph 6 above). It is anticipated that one effect of the *Protection of Freedoms Act 2012* will be some further limited reduction in the number of applications made. At the present time the authorisations process is centralised and mainly concentrated on Mr. Thompson. It was readily appreciated that some Authorising Officers are not undertaking any authorisations and that the number could therefore be reduced further. During discussion that number was considered. There is a necessity to cover the usual contingencies and in those circumstances it was felt that two regular Authorising Officers would be sufficient. Dr. Smith, as *SRO*, should be an Authorising Officer but should only authorise in exceptional circumstances. The CEO and whoever may deputise for him in his absence, if not Dr Smith, should authorise the sensitive applications. All Authorising Officers must be trained to the requisite standard and it was encouraging to note that at Kirklees Council if an Authorising Officer fails to attend training s/he is not permitted to authorise until having done so.

See recommendation

Training

20. Kirklees does not have a *RIPA* training programme. Instead it has relied on a process of external training at intervals of about three years. Whilst such training is highly commendable there is a need to constantly keep officers refreshed, especially when the usage of *RIPA* is low. At present this is sought to be achieved by a *ad hoc* process of the *RIPA Monitoring Officer* providing training when he perceives a weakness occurring. It would be better addressed by establishing a corporate form of internal training provided by the *RIPA Co-ordinating Officer* or other member of the legal staff at intervals of 12/18 months. Authorising Officers and those likely to be applicants should be obliged to attend

or independently be provided with the training. It could be supported by the simple process of a PowerPoint presentation. By this system officers would be reminded of issues such as those presenting in the authorisations examined.

21. Consideration was given to the likely usage of CHIS by the Council. It has never authorised such and the officers considered it was unlikely to do so. Some circumstances which may require their employment were debated. These included the unexpected CHIS who suddenly present him/herself and the Council's duty requires it to employ him/her. The position of Social Networking Sites was also considered in this regard (see SNS below). At the present time the Council does not have trained controllers or handlers and this should be addressed by future training. It is noted that it is the Council policy that all CHIS authorisations must be by the CEO. It would be anticipated that any officer considering such an application would first speak to the *RIPA Monitoring Officer*

See recommendation

Social Networking Sites

22. The investigation of sites such as "Facebook" was considered. At the present time the Council does not hold a Facebook" or other SNS account for operational purposes. However accounts are held for public relations purposes. The Council has no proposal for engaging such methods but it is an issue which may arise in relation to WYTSS in the future, for whom the Council provides authorisation for operations undertaken in its area. It should also be observed that usage for housing benefit fraud may arise. In such cases the exploration of sites within the publicly available pages, "open source material", cannot be considered as requiring authorisation even if conducted using a covert account. However the progress beyond into areas requiring entry through privacy controls (becoming a friend) are likely to require *directed surveillance* authorisation if a covert account is used. Further progress involving the setting up of a contact personally with the account holder/operator is likely to result in the establishment of a "relationship" which would require CHIS authorisations and the statutory management by a controller and handler.

Protection of Freedoms Act 2012

RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500

23. This legislation commenced on the 1st November 2012 and the first application in Kirklees was made to the Magistrates on the 12th. November. As remarked above it was of good quality though the second which followed about two weeks later could have been improved in some areas. The legislation is likely to have some effect on the number of authorisations. Its major provisions are fully appreciated by the *RIPA* officers though one or two issues were drawn to their attention. In particular that the provisions for oral *urgency* are no longer available to the Council (See *Protection of Freedoms Act 2012, Schedule 9(9)(2)*) and that the period of duration commences at the date of the Magistrate's approval. *Protection of Freedoms Act 2012, Schedule 9(9)(3)*. It should be noted that most occasions when *urgency* has been used the provisions of *Section 26(2)(c) of RIPA*, the "immediate response" provisions, would have been available.
24. The appearance before the Magistrate was attended by the investigating officer and the *RIPA Co-ordinating Officer*. The investigating officer was sworn and some questions were posed by the Magistrate of which notes were taken, and which were closely pertinent to the application. Care must be taken to ensure that the investigating officer is competent to ask any questions posed. If questions are directly relevant to Authorising Officer considerations then that officer should give

the required evidence. It must be borne in mind that the application should be self standing and therefore of a quality which does not require further oral exposition.

25. The Council had established a liaison with the Magistrates' Court before the Home Office Guidance had been released. This has assisted in making convenient arrangements for hearings.

Policy and Procedures

26. The *RIPA* policy and procedures of the Council are to be found in the *Policy and Guidance on RIPA*. Mr. Smart observed in his report that it was "excellent guidance for practitioners on the use of *RIPA*" an observation which commands endorsement from this inspection. It is concise, succinct and easily assimilated. It drew from Mr. Thomas the accolade that he never grants an authorisation without having it by his side. It has been suitably amended to accommodate the recent legislation. Only four further amendments are suggested:

- Remove references to *urgency* authorisations and replace with a note indicating that such is no longer available.
- Add reviews to the list of items required for the Central Record. (However it is noted that the Central Record does already accord with this requirement).
- Add the raising of *RIPA* awareness to the *RIPA Monitoring Officer* responsibilities.
- Amend Appendix 6 concerning ASB to reflect the effect of the removal of "disorder" from the grounds available to the Council for *directed surveillance* and the provisions of *RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500*. (note that only offending within the parameters of 2012/1500 is embraced by this and that there are offences of violence, disorder and harassment which fall outside)

See recommendation

CCTV

27. The process is as it was at the last inspection. No protocol has been agreed with the WY Police on the provision of a redacted authorisation before use of the equipment. A form exists which requires completion by the police with the details of the authorisation relied upon to enable the CCTV Manager to assess whether the surveillance undertaken complies with the authorisation. Correctly completed this is, in effect, the same as a redacted authorisation. It suffers from the defects that it does not identify the authorisation by its URN nor does it bear the signature of an officer confirming on behalf of the WY Police that the details conform to the authorisation. This whole problem could be resolved if agreement could be achieved, as it is in many other parts of the country, that the police supply an appropriately redacted copy of the authorisation to be filed at the CCTV Control Centre.

28. Ultimately it should be borne in mind that, whilst the Council is desirous of assisting the police, the equipment nevertheless belongs to the Council and it is entirely the decision of the Council whether it is made available to the police. It is therefore for the Council to determine the conditions upon which this assistance will be provided.

Elected Members

29. As required by the *Codes of Practice* Councillors receive annual and quarterly reports of covert surveillance activity. It must be remembered that it is important to keep Elected Members informed when no *RIPA* authorisations have been granted as well as when they have been.

Other Issues

30. It was noted that the forms in use are Home Officer forms updated with prompts relating to the *Protection of Freedoms Act 2012*.
31. The use of *RIPA* for internal Council investigations was considered together with *C v The Police and Secretary of state for the Home Office*. The Council were advised in accordance with the *Code of Practice for Covert Surveillance and Property Interference*, 2.26.
32. The use of unauthorised covert surveillance with the Council's approval in cases falling outside of *RIPA* was discussed in the context of the Council using a *RIPA* type system of "authorisation." This would be designed to demonstrate that the Council had applied Human Rights considerations to the decision to take such action. It was pointed out that the provisions of the *Protection of Freedoms Act 2012* and the *RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500* were designed to limit local authority use of covert surveillance and that that consideration would be in the mind of any court or tribunal considering "authorisations" of this type, though it was appreciated that some local authorities did employ such means. In effect if this was done the Council must take its chances before the court or tribunal.

West Yorkshire Trading Standards Service.

33. Trading Standards powers within West Yorkshire are devolved by the five Metropolitan District Councils (Bradford, Calderdale, Kirklees, Leeds and Wakefield) to a Joint Services body, the West Yorkshire Trading Standards Service. The lead Council is Wakefield and each authority pays a contribution to Wakefield for the support of the Service. Wakefield is responsible for the payment of staff.
34. Mr. Mullins attended at the Bradford inspection to deal with Trading Standard issues relating to Bradford MDC. The opportunity was taken at this meeting, and a further meeting which he attended on the next day at the Wakefield Council inspection, to address Trading Standard issues which affected all five of the regional councils. This attendance would therefore avoid Mr. Mullins having to attend at each Council being inspected during this period. It follows that certain paragraphs of each report will be common to each other.
35. At the time of the last round of inspections of West Yorkshire Councils particular attention was paid to the position of the West Yorkshire Trading Standards Service. Comment was made in the report that the Service was operating in a manner appropriate for a local authority which was included within the schedule of such authorities for the purposes of *RIPA* when, in effect, the Service did not hold such status. Since that time the Service has given consideration to its position and has recognised the force of those observations, not least because it would mean that each

authorisation granted under the regime would fail to be compliant with *RIPA* and, if subjected to challenge in a courtroom, would undoubtedly fail to satisfy a judge.

36. Although it is somewhat regrettable that it took so long, nevertheless since November 2012 the Service has adopted a practice of seeking authorisation from an Authorising Officer of the Council in whose area the investigation requiring authorisation is being undertaken. Authorised investigations are therefore undertaken by the WYTSS acting as agent for that Council. Original authorisations are lodged with the Central Record of that Council and details are recorded within the Central Record. The Council will be responsible for ensuring that reviews, renewals and cancellations are appropriately undertaken. This ensures compliance with the legislation and the authenticity of authorised covert surveillance operations undertaken by the WYTSS.
37. One previous *directed surveillance* "authorisation" had been granted in 2010 for an operation in Kirklees and was therefore under the regime which prevailed at that time. It related to the surveillance of a petrol pump, which had been ordered to close on inspection by TS officers, to ascertain whether it was still in use. Granted under the provisions of preventing or detecting crime or preventing disorder it was questionable whether it was proportionate and whether other means could have been used, eg ascertaining if the fuel levels went down by dipping. Both the application and the authorisation were poorly constructed with no real detail of how observations were to be undertaken. Neither *necessity* nor *proportionality* was appropriately articulated - failing to address any of the essential elements, no review date was set and the expiry date was incorrect. It was appropriately cancelled but would not have been approved by the Magistrates.
38. It is fair to remark that this "authorisation" was undertaken before training was afforded to the Service by Mr. Richard Winter of Bradford City Council following the last inspection.
39. An excellent *RIPA Policy and Procedures to Obtain Authorisations* has been produced for the Service which was revised as recently as April 2013. It is concise and contains all that is necessary to guide officers seeking *RIPA* authorisation. It outlines procedures which include oversight procedures which lead to the authorisation by an Authorising Officer of the relevant Council where the investigation is to take place and thereafter to the obtaining of Magistrate's approval. The only amendment required is to remove reference to oral *urgency* applications which are no longer available to Local Authorities.

See recommendation

40. The WYTSS does monitor websites for the sale of counterfeit and illegal goods. However it only examines public page sites and uses information gained as a basis for investigation. The WYTSS does not have a ghost website or a covert Facebook account. It does have an overt Facebook account and information gleaned through it or from websites normally stimulates a warning letter being sent to the account holder. Any information requiring a deeper investigation would be reported to the Regional Trading Standards Service. WYTSS staff are aware of the pitfalls involved in the covert investigation of SNS and of having entered pages through privacy controls. Staff are aware that they must not set up relationships in their investigation of sites. Discussion did lead to some concern as to whether there was a full appreciation that an entry through privacy controls may in any event require a *directed surveillance* authorisation. It is appreciated that if the Service expands its operation in SNS to the extent that relationships are formed and *CHIS* authorisations are granted then the *CHIS* will need to be managed in accordance with *RIPA* requirements, namely by a controller and a handler with a full record being maintained.

See recommendation

Conclusions

Kirklees Council

41. Overall Kirklees is a well performing Council in regard to its *RIPA* obligations. The officers interviewed impressed with their knowledge and dedication to achieving *RIPA* compliance. Those issues raised could largely be addressed by more regular training.
42. Virtually all of the recommendations of the last report were fully discharged, though that relating to detail in cancellations requires to be further addressed.
43. The proposed further reduction in the number of Authorising Officers coupled, with the already existing centralisation of the authorisation process, can only lead to heightened efficiency.

WYTSS

44. The practices of the Service in relation to *RIPA* have recently shown a substantial improvement following the acceptance of the status of the Service and the adoption of an authorisation procedure which accords with the legislation.
45. The WYTSS is a limited user of covert surveillance within the region with its largest activity in the Leeds area. This situation is unlikely to change unless there is a dramatic increase in the investigation of counterfeit sales and other illicit goods through SNS.

Recommendations

46. Kirklees Council

- I Include refusals on the Central Record. (*Paragraph 10*)
- II Address the weaknesses highlighted in this report by the establishment of a programme of regular refresher training and ensure that such training addresses the management of *CHIS*. (*Paragraph 13-15, 20 and 21*)
- III Ensure that cancellations are adequately articulated. (*Paragraph 13-15 and 16.III.*)
- IV Raise *RIPA* awareness. (*Paragraph 18*)
- V Reduce the number of Authorising Officers. (*Paragraph 19*)
- VI Amend the Council's *Policy and Guidance for RIPA*. (*Paragraph 26*)

WYTSS

- I Amend the *WYTSS Procedure to Obtain Authorisations* to delete the reference to *urgency*. (*Paragraph 39*).
- II Ensure that officers are equipped to undertake and manage Social Networking Site investigations in accordance with *RIPA* requirements if and when authorisation for such is obtained. (*Paragraph 40*).

**His Honour Norman Jones, QC.
Assistant Surveillance Commissioner.**

**KIRKLEES COUNCIL
POLICY AND GUIDANCE ON**

**THE REGULATION OF
INVESTIGATORY POWERS ACT 2000
(RIPA)**

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Introduction

The Regulation of Investigatory Powers Act (RIPA) controls and regulates surveillance, and other means of gathering information, which public bodies employ in the discharge of their functions. Information gathering is one of the Council's many activities which could involve an interference with an individual's human rights, specifically an individual's rights under Article 8 of the European Convention on Human Rights to respect for his private and family life, his home and his correspondence. RIPA provides a statutory framework under which covert surveillance activity can be authorised and conducted compatibly with Article 8. The Home Office has issued Codes of Practice under RIPA which provide further guidance.

RIPA provides a statutory authorisation process for certain types of surveillance and information gathering. The Council may be required to justify, by reference to RIPA and the relevant Codes of Practice, the use or granting of authorisations in general or the failure to use or grant authorisations. No authorisation, renewal or notice issued by an authorising officer can take effect without judicial approval from a Justice of the Peace (magistrate). A failure to apply RIPA and the Codes of Practice in an appropriate manner may be considered by the courts in deciding whether material obtained via surveillance should be admissible in evidence or whether an individual's human rights have been infringed.

Unlike directed surveillance, which relates specifically to private information, authorisations for the use or conduct of a Covert Human Intelligence Source (CHIS) do not relate specifically to private information, but to the covert manipulation of a relationship to gain any information. Article 8 includes the right to establish and develop relationships. Accordingly, any manipulation of a relationship by the Council (e.g. one party to a relationship having a covert purpose on behalf of the Council) is likely to engage Article 8, regardless of whether or not the public authority intends to acquire private information.

The following are the main statutory documents relevant to this policy document:

- Regulation of Investigatory Powers Act 2000 (RIPA)
- Part II of the Protection of Freedoms Act 2012
- The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012
- Covert Surveillance and Property Interference Revised Code of Practice (2010)
- Covert Human Intelligence Sources Code of Practice (2014)
- Acquisition and Disclosure of Communications Data Code of Practice (2007) (This code does not relate to the interception of communications nor to the acquisition or disclosure of the contents of communications)

These Codes of Practice, along with the text of RIPA and copies of approved forms are available on the Home Office website or from Legal and Governance. This document reproduces material from the Codes of Practice.

The following terms are defined in RIPA and the definitions are summarised in the relevant Codes of Practice as follows:

“surveillance”

Surveillance, for the purpose of RIPA, includes monitoring, observing or listening to persons, their movements, conversations or other activities and communications. It may be conducted with or without the assistance of a surveillance device and includes the recording of any information obtained

“directed surveillance”	Directed surveillance is covert surveillance that is not intrusive but is carried out in relation to a specific investigation or operation in such a manner as is likely to result in the obtaining of <i>private information</i> about any person (other than by way of an immediate response to events or circumstances such that it is not reasonably practicable to seek <i>authorisation</i> under RIPA)
“intrusive surveillance”	Intrusive surveillance is covert surveillance that is carried out in relation to anything taking place on residential premises or in any private vehicle (and that involves the presence of an individual on the premises or in the vehicle or is carried out by a means of a surveillance device). The Council cannot authorise intrusive surveillance.
“interference with property or wireless telegraphy”	There is a procedure for obtaining authorisation for interference with property or wireless telegraphy set out in the Police Act 1997 to enable the maintaining or retrieving of any equipment, apparatus or device whose placing or use has been authorised under RIPA. This procedure is available to the Police and other agencies but is NOT available to the Council and advice should be sought immediately from the RIPA Monitoring Officer if any proposed surveillance by the Council might involve any act of trespass.
“covert human intelligence source ”	a person is a CHIS if: <ul style="list-style-type: none"> a) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph b) or c); b) he covertly uses such a relationship to obtain information or to provide access to any information to another person; or c) he covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship. <p>NB It is most unlikely that the Council would wish to use a CHIS for surveillance purposes.</p>
“private information”	Private information is any information relating to a person in relation to which that person has or may have a reasonable expectation of privacy. This includes information relating to a person’s private, family or professional affairs. Private information includes information about any person, not just the subject(s) of an investigation

“collateral intrusion”	Collateral intrusion is the risk of obtaining private information about persons who are not subjects of the surveillance
“communications data”	<p>The term ‘communications data’ embraces the ‘who’, ‘when’ and ‘where’ of a communication but not the content, not what was said or written. It includes the manner in which, and by what method, a person or machine communicates with another person or machine. It excludes what they say or what data they pass on within a communication including text, audio and video (with the exception of traffic data to establish another communication such as that created from the use of calling cards, redirection services, or in the commission of ‘dial through’ fraud and other crimes where data is passed on to activate communications equipment in order to obtain communications services fraudulently)</p> <p>NB The only form of communications data which the Council is ever likely to wish to obtain is the identity of individuals who are the subscribers for particular telephone numbers. To date the Council had not sought to obtain communications data.</p>
“subscriber information”	Subscriber information relates to information held or obtained by a Communications Service Provider about persons to whom the Communications Service Provider provides or has provided a communications service
“Confidential information”	Confidential information consists of communications subject to legal privilege, communications between a Member of Parliament and another person on constituency matters, confidential personal information, or confidential journalistic material.
“Confidential personal Information”	Confidential personal information is information held in confidence relating to the physical or mental health or spiritual counselling of a person (whether living or dead) who can be identified from it.
“Confidential constituent Information”	Confidential constituent information is information relating to communications between a Member of Parliament and a constituent in respect of constituency matters
“Confidential journalistic Material”	Confidential constituent information includes material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence, as well as communications resulting in information being acquired for the purposes of journalism and held subject to such an undertaking

“Legal privilege”

Legal privilege relates to communications between a lawyer and a client for the purposes of obtaining legal advice or conducting litigation but does not include communications made with the intention of furthering a criminal purpose

RIPA regulates the use of covert surveillance which consists of directed surveillance, intrusive surveillance, the conduct and use of covert human intelligence sources and the acquisition of communications data. Local authorities such as the Council can only authorise the use directed surveillance if:

- The authorisation is for the purpose of preventing or detecting conduct which constitutes one or more criminal offences; and
- The criminal offence or one of the criminal offences would be either –
 - Punishable, whether on summary conviction (in the magistrates’ court) or on indictment (in the Crown Court), by a maximum term of at least 6 months of imprisonment; or
 - Is an offence under:
 - section 146 of the Licensing Act 2003(2) (sale of alcohol to children);
 - section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children);
 - section 147A of the Licensing Act 2003(3) (persistently selling alcohol to children);
 - section 7 of the Children and Young Persons Act 1933(4) (sale of tobacco, etc, to persons under eighteen).”.

Local authorities such as the Council can only authorise the use of CHIS or the acquisition of communications data if *“for the purpose of preventing or detecting crime or the preventing of disorder”*

Where covert surveillance activities are unlikely to result in the obtaining of private information about a person, or where there is a separate legal basis for such activities, neither RIPA nor the relevant Code of Practice code need apply, but there is an assumption that intrusive surveillance will involve the obtaining of private information. It is important to distinguish between the types of surveillance and information gathering regulated by RIPA, and normal general observation, in the course of discharging the Council’s functions. It is acknowledged that low-level general observation will not usually be regulated under the provisions of RIPA. The relevant Code of Practice gives the following examples of this kind of general observation:

- patrolling to prevent and detect crime,
- review of images gathered by overt CCTV after the event to help identify the perpetrators of crime (however the use of such systems in a pre-planned manner to target a particular individual or group may require authorisation)
- officers attending a car boot sale where it is suspected that counterfeit goods are being sold, but where the intention is, through reactive “policing”, to identify and tackle offenders.

The Office of the Surveillance Commissioners (OSC) and the Interception of Communications Commissioner's Office (IOCCO)

The OSC is one of the statutory regulators for RIPA. The OSC's aim is to provide effective and efficient oversight of the conduct of covert surveillance and covert human intelligence sources by public authorities. This includes inspecting public authorities and publishing reports on their compliance with RIPA. The most recent report on the Council by OSC can be obtained from Legal and Governance. The regulator in respect of the acquisition of communications data is the Interception of Communications Commissioner's Office (IOCCO).

The Role of Elected Members

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

The Use of Home Office Forms

The forms which should be used in authorising, renewing, reviewing and cancelling surveillance are available via the RIPA part of the Home Office website. They are not reproduced as part of this document in order to avoid the use of out of date forms. Until the Home Office issue a revised form in relation to Directed Surveillance incorporating the requirements of the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 the RIPA Monitoring Officer will circulate a form to Authorising Officers for use in authorising directed surveillance.

Who Can Authorise Surveillance?

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 permits the following officers within a local authority to grant authorisations - "Director, Head of Service, Service Manager or equivalent". The Council officers who can authorise directed surveillance and CHIS are set out in Appendix 1.

There are specific reporting requirements for confidential information and the OSC must be advised whether confidential information has been acquired and if so it must be made available to the inspector. In any case where confidential information is likely to be acquired advice should always be sought from the RIPA Monitoring Officer.

When Can Covert Surveillance Be Authorised?

The only specified ground upon which the Council can grant an authorisation is preventing or detecting crime or preventing disorder. There are no other grounds available to local authorities.

RIPA stipulates that the person granting an authorisation for directed or intrusive surveillance must believe that the activities to be authorised are necessary *for the purpose of preventing or detecting crime or of preventing disorder*.

If the activities are deemed necessary on this ground, the person granting the authorisation must also believe that they are proportionate to what is sought to be achieved by carrying them out. This involves balancing the seriousness of the intrusion into the privacy of the

subject of the operation (or any other person who may be affected) against the need for the activity in investigative and operational terms.

The authorisation will not be proportionate if it is excessive in the overall circumstances of the case. Each action authorised should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. The fact that a suspected offence may be serious will not alone render intrusive actions proportionate. Similarly, an offence may be so minor that any deployment of covert techniques would be disproportionate. No activity should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means. The following elements of proportionality should therefore be considered:

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

It is important therefore that all those involved in undertaking directed or intrusive surveillance activities under RIPA are fully aware of the extent and limits of the authorisation in question.

All applications should include an assessment of the risk of collateral intrusion and details of any measures taken to limit this, to enable the authorising officer fully to consider the proportionality of the proposed actions. Where it is proposed to conduct surveillance activity specifically against individuals who are not suspected of direct or culpable involvement in the overall matter being investigated, interference with the privacy or property of such individuals should not be considered as collateral intrusion but rather as intended intrusion. Any such surveillance or property interference activity should be carefully considered against the necessity and proportionality criteria.

Judicial Authority

As above no authorisation, renewal or notice issued by an authorising officer can take effect without judicial approval from a Justice of the Peace (magistrate). Applications for Judicial Authority are the responsibility of the RIPA Monitoring Officer. The Home Office guidance suggests that investigating officers may be authorised to present such applications to the magistrates and such authorisation would be a matter for the RIPA Assistant Director.

Review of Authorisations

Regular reviews of all authorisations should be undertaken to assess the need for the surveillance activity to continue. The results of a review should be retained for at least three years. Particular attention is drawn to the need to review authorisations frequently where the surveillance involves a high level of intrusion into private life or significant collateral intrusion, or confidential information is likely to be obtained.

In each case the frequency of reviews should be considered at the outset by the authorising officer. This should be as frequently as is considered necessary and practicable. Any proposed or unforeseen changes to the nature or extent of the surveillance operation that

may result in the further or greater intrusion into the private life of any person should also be brought to the attention of the authorising officer by means of a review. The authorising officer should consider whether the proposed changes are proportionate (bearing in mind any extra intended intrusion into privacy or collateral intrusion), before approving or rejecting them. Any such changes must be highlighted at the next renewal if the authorisation is to be renewed.

Confidential Information

Special consideration must also be given to authorisations that involve confidential personal information, confidential constituent information and confidential journalistic material. Where such material has been acquired and retained, the matter should be reported to the OSC during the next inspection and the material be made available to him if requested. It is not anticipated that the Council would wish to engage in surveillance which would involve confidential information but if it did, only the Chief Executive could authorise the surveillance.

What Steps Must Be Followed in Authorising Covert Surveillance?

Responsibility for authorising the carrying out of directed surveillance rests with the authorising officer and requires the personal authority of the authorising officer.

The Code of Practice on Covert Surveillance and Property Interference refers to authorisations being granted verbally in urgent cases and records being made as soon as reasonably practicable but this procedure is NO LONGER AVAILABLE to the Council as it is incompatible with the requirements for obtaining judicial authority.

Authorising officers should not normally be responsible for authorising operations in which they are directly involved

A written application for a directed surveillance authorisation should describe any conduct to be authorised and the purpose of the investigation or operation. The application should also include:

- the reasons why the authorisation is necessary in the particular case and specify the criminal offences the directed surveillance is intended to prevent or detect;
- the nature of the surveillance;
- the identities, where known, of those to be the subject of the surveillance;
- a summary of the intelligence case and appropriate unique intelligence references where applicable;
- an explanation of the information which it is desired to obtain as a result of the surveillance;
- the details of any potential collateral intrusion and why the intrusion is justified;
- the details of any confidential information that is likely to be obtained as a consequence of the surveillance;
- the reasons why the surveillance is considered proportionate to what it seeks to achieve;
- the level of authority required (or recommended where that is different) for the surveillance; and,
- a subsequent record of whether authorisation was given or refused, by whom, and the time and date this happened.

Duration of Authorisations

A written authorisation granted by an authorising officer will cease to have effect (unless renewed or cancelled) at the end of a period of three months beginning with the time at which it took effect.

Renewal of Authorisations

If, at any time before a directed surveillance authorisation would cease to have effect, the authorising officer considers it necessary for the authorisation to continue for the purpose for which it was given, he may renew it in writing for a further period of three months but such authorisations do not take effect until judicial authority is granted by the Magistrates' Court. An application for renewal should not be made until shortly before the authorisation period is drawing to an end. Any person who would be entitled to grant a new authorisation can renew an authorisation. All applications for the renewal of a directed surveillance authorisation should record (at the time of application):

- whether this is the first renewal or every occasion on which the authorisation has been renewed previously;
- any significant changes to the information in the initial application;
- the reasons why the authorisation for directed surveillance should continue;
- the content and value to the investigation or operation of the information so far obtained by the surveillance;
- the results of regular reviews of the investigation or operation.

Authorisations may be renewed more than once, if necessary and provided they continue to meet the criteria for authorisation. The details of any renewal should be centrally recorded.

As above, for any renewal of an authorisation to take effect judicial authority must be obtained.

Cancellation of Authorisations

During a review, the authorising officer who granted or last renewed the authorisation may amend specific aspects of the authorisation, for example, to cease surveillance against one of a number of named subjects or to discontinue the use of a particular tactic. They must cancel the authorisation if satisfied that the directed surveillance as a whole no longer meets the criteria upon which it was authorised. Where the original authorising officer is no longer available, this duty will fall on the person who has taken over the role of authorising officer or the person who is acting as authorising officer.

As soon as the decision is taken that directed surveillance should be discontinued, the instruction must be given to those involved to stop all surveillance of the subject(s). The date the authorisation was cancelled should be centrally recorded and documentation of any instruction to cease surveillance should be retained. There is no requirement for any further details to be recorded when cancelling a directed surveillance authorisation. However effective practice suggests that a record should be retained detailing the product obtained from the surveillance and whether or not objectives were achieved.

The Keeping of Records

A record of the following information pertaining to all authorisations shall be centrally retrievable within each public authority for a period of at least three years from the ending of each authorisation. This information should be regularly updated whenever an authorisation is granted, renewed or cancelled and should be made available to the relevant Commissioner or an Inspector from the OSC upon request.

- the type of authorisation;
- the date the authorisation was given;
- name and job title of the authorising officer;
- the unique reference number (URN) of the investigation or operation;
- the title of the investigation or operation, including a brief description and names of subjects, if known;
- The date of any review and the details of the decision made.
- if the authorisation has been renewed, when it was renewed and who authorised the renewal, including the name and job title of the authorising officer;
- whether the investigation or operation is likely to result in obtaining confidential information;
- whether the authorisation was granted by an individual directly involved in the investigation;
- the date the authorisation was cancelled.

The following documentation should also be centrally retrievable for at least three years from the ending of each authorisation:

- a copy of the application and a copy of the authorisation together with any supplementary documentation and notification of the approval given by the authorising officer;
- a record of the period over which the surveillance has taken place;
- the frequency of reviews prescribed by the authorising officer;
- a record of the result of each review of the authorisation;
- a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
- the date and time when any instruction to cease surveillance was given;
- the date and time when any other instruction was given by the authorising officer.
- The order of the magistrates' court granting judicial authority for the surveillance, including judicial authority for the renewal of authorisations, or any such order refusing authority.

The written records of every directed surveillance and CHIS authorisation, review, renewal, refusal or cancellation must be sent to the RIPA Monitoring Officer for inclusion in the Central Record, which will be made available to the OSC upon request. It is the responsibility of all Authorising Officers to ensure that the RIPA Monitoring Officer receives the relevant forms within 7 days of refusal, authorisation, review, renewal or cancellation.

Retention and Destruction of Materials

The Council must ensure that arrangements are in place for the secure handling, storage and destruction of material obtained through the use of directed or intrusive surveillance. Authorising officers must ensure compliance with the appropriate data protection requirements under the Data Protection Act 1998 and any relevant codes of practice produced by the Council relating to the handling and storage of material.

Where the product of surveillance could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with established disclosure requirements for a suitable further period, commensurate to any subsequent review. There is nothing in RIPA which prevents material obtained under directed or intrusive surveillance authorisations from being used to further other investigations

Where surveillance is being carried out as part of a criminal investigation officers are reminded of the requirements of the Code of Practice issued under the Criminal Procedure And Investigations Act 1996.

The Roles of RIPA Officers

The Director of Resources is the Senior Responsible Officer and is responsible for:

- the integrity of the process in place within the Council to authorise directed surveillance, the management of CHIS and the acquisition of communications data;
- compliance with RIPA, the Code of Practice on Covert Surveillance and Property Interference, the Code of Practice on Covert Human Intelligence Sources and the Code of Practice on Acquisition and Disclosure of Communications Data;
- oversight of the reporting of errors to the relevant oversight Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;
- engagement with the Commissioners and inspectors when they conduct their inspections, and
- where necessary, overseeing the implementation of any post inspection action plans recommended or approved by a Commissioner.

The Assistant Director with responsibility for supporting the Senior Responsible Officer is the Assistant Director for Legal, Governance and Monitoring and is referred to as the RIPA Assistant Director.

The RIPA Monitoring Officer is the solicitor within Legal, Governance and Monitoring responsible for advising the Senior Responsible Officer and the Council upon RIPA issues and for providing day to day advice and support to investigating and authorising officers. The RIPA Monitoring Officer will:

- Take steps to raise awareness of the requirements of RIPA across the Council
- maintain a central record of all directed surveillance operations
- monitor the quality of authorisation, review, renewal and cancellation forms
- raise issues as necessary with the Applicant Officer, the Authorising Officers and/or the Senior Responsible Officer as relevant
- return an application for authorisation to the relevant Authorising Officer for further information if deemed appropriate as a result of the information on the form
- keep the Senior Responsible Officer informed about the Council's conduct of directed surveillance and compliance with the law and relevant codes of practice, etc
- act as the contact point for any enquiries from the Office of the Surveillance Commissioners
- provide first line advice to those involved in covert surveillance
- ensure that all areas which may undertake directed surveillance operations are familiar with the RIPA legislation and codes of practice and the Council's Policy and Code of Practice
- in conjunction with the RIPA Legal Advisers, may carry out spot checks on any forms/activity from department to department, or may visit departments to check knowledge of RIPA.
- provide or arrange RIPA training, awareness raising, briefing notes and other corporate

communications as necessary

- be responsible for applications to the magistrates' court for judicial authority

Overall responsibility for each directed surveillance operation will lie with the Authorising Officer in charge of the operation. Officers who authorise directed surveillance are responsible for granting, reviewing, renewing and cancelling authorisations. Corporate responsibility for monitoring the use of covert surveillance rests with the Senior Responsible Officer.

The RIPA Monitoring Officer in conjunction with the Senior Responsible Officer will ensure that relevant members of staff are suitably trained as applicants for RIPA authorisations and as authorising officers, as well as ensuring that relevant departments are kept informed of any significant changes in RIPA.

The Council's Internal Audit service will review this area of work when requested to do so by the RIPA Monitoring Officer.

APPENDIX 1

LIST OF OFFICERS RESPONSIBLE FOR RIPA DUTIES

Senior Responsible Officer	David Smith (Director of Resources)
RIPA Assistant Director	Julie Muscroft (Assistant Director (Legal, Governance and Monitoring))
RIPA Monitoring Officer	John Chapman (Interim Deputy Head of Legal Services)
RIPA Legal Advisors	Samantha Lawton (Senior Legal Officer) Louise Carter (Assistant Legal Officer)

LIST OF AUTHORISING OFFICERS

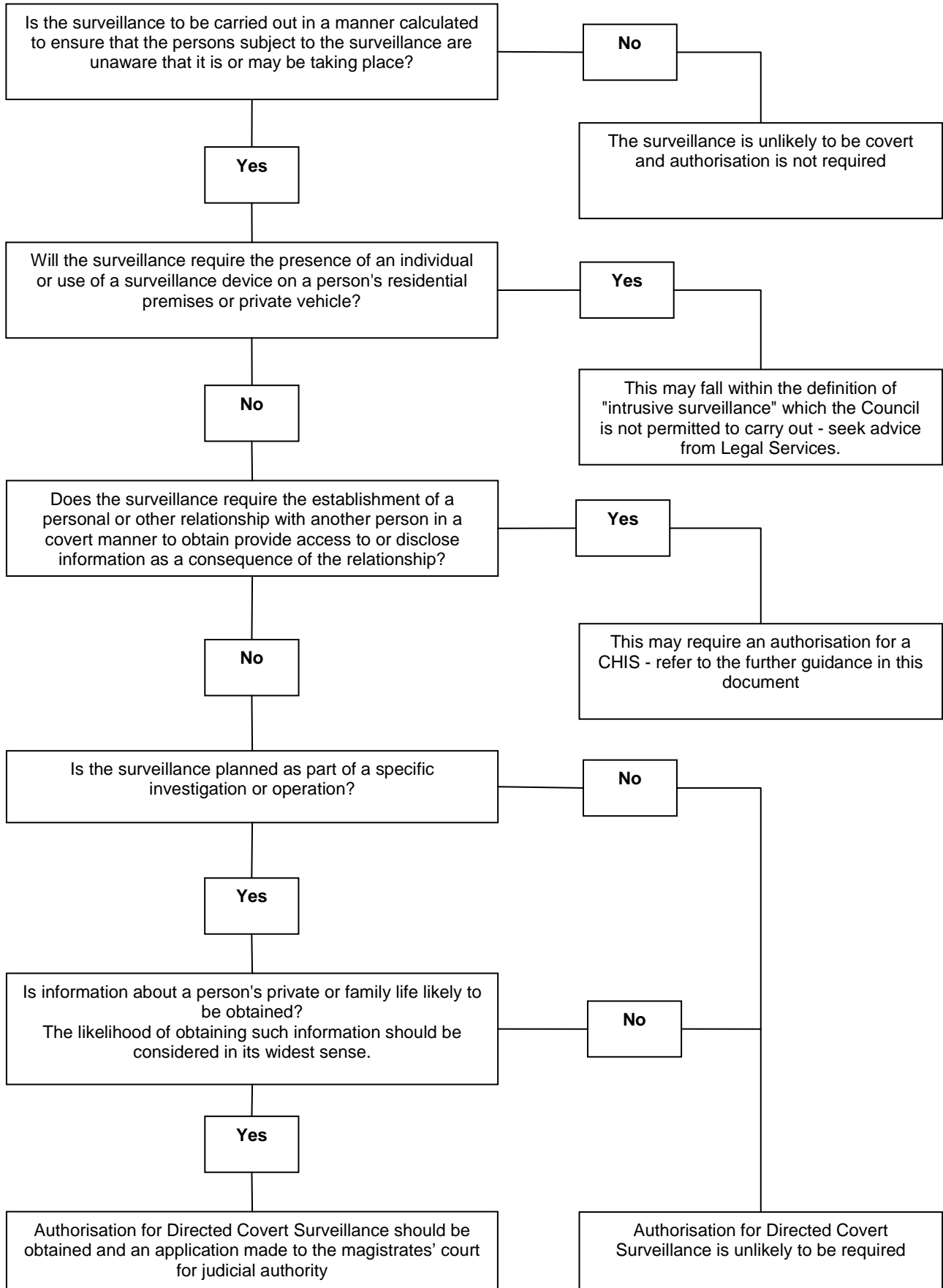
Adrian Lythgo	Chief Executive (for confidential information and juvenile CHIS authorisations)
David Smith	Director of Resources (for authorisation in exceptional circumstances)
Dave Thompson	Customer Services Manager (Customer and Exchequer)

NOTES

- A. Only the Chief Executive or in his absence, the Senior Responsible Officer can authorise activities involving confidential information or the use of CHIS
- B. No person shall become an Authorised Officer and/or an Applicant Officer without undergoing and maintaining RIPA training. In the case of Authorised Officers, no person shall become an Authorised Officer until their appointment is confirmed by the Senior Responsible Officer following training provided by or arranged by the RIPA Monitoring Officer.
- C. If an Authorising Officer is in any doubt about an individual matter they should consult the RIPA Monitoring Officer or RIPA legal advisers before any directed surveillance and/or CHIS is refused, authorised, reviewed, renewed or cancelled.

APPENDIX 2

FLOWCHART



APPENDIX 3

DUTIES OF AUTHORISING OFFICERS

- A. Nominate Applicant Officers within their Services who can make applications and ensure that any Applicant Officer who submits an application to them has received appropriate training prior to making the application
- B. Only grant an authorisation for directed surveillance if it is necessary for the purpose of preventing or detecting conduct which constitutes one or more criminal offences; and the criminal offence or one of the criminal offences would be either –
 - o Punishable, whether on summary conviction (in the magistrates' court) or on indictment (in the Crown Court), by a maximum term of at least 6 months of imprisonment; or
 - o Is an offence under:
 - section 146 of the Licensing Act 2003(2) (sale of alcohol to children);
 - section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children);
 - section 147A of the Licensing Act 2003(3) (persistently selling alcohol to children);
 - section 7 of the Children and Young Persons Act 1933(4) (sale of tobacco, etc, to persons under eighteen).”.
- C. Only grant an authorisation for CHIS or the acquisition of communications data if it is necessary for the purpose of preventing or detecting crime or of preventing disorder.
- D. Only grant an authorisation that is proportionate to what is sought to be achieved by carrying out surveillance
- E. Before authorising surveillance, take into account the risk of collateral intrusion
- F. Be aware of particular sensitivities in the local community where the surveillance is taking place and of similar activities that might be taking place by other public authorities
- G. Unless it is unavoidable, do not issue authorisations if you were directly involved in the original investigation(s)
- H. Ensure that you have sufficient information and justification to authorise an investigation, if in doubt seek further information
- I. Nominate the appropriate level of officer to be in charge of the investigation
- J. Determine how often a review should take place in each case and ensure that this is at intervals of no longer than one month and review authorisations granted, at intervals of no longer than one month, to assess the need for the surveillance to continue

- K. Ensure that the RIPA Monitoring Officer is informed whenever an authorisation is refused, granted, reviewed, renewed or cancelled and that the relevant form is sent to the RIPA Monitoring Officer within 7 days
- L. Ensure that no surveillance commences unless and until the RIPA Monitoring Officer has obtained judicial authority
- M. Only renew authorisations where appropriate
- N. Cancel the authorisation if you are satisfied that the surveillance no longer meets the criteria applied when it was authorised
- O. On cancellation, issue appropriate instructions to officers in charge of investigations
- P. In cases where confidential information is likely to be acquired ensure that the case is referred to the RIPA Monitoring Officer for a decision on authorisation to be made by the Chief Executive. If in doubt consult the RIPA Monitoring Officer
- Q. Provide an annual return to the RIPA Monitoring Officer recording the RIPA training which shows the RIPA training received by themselves and by their Applicant Officers

APPENDIX 4

DUTIES OF OFFICERS IN CHARGE OF INVESTIGATIONS

- A. Seek authorisation for surveillance where it is likely to interfere with any person's rights to privacy by obtaining private information about that person
- B. Make formal applications for Directed Surveillance and CHIS where appropriate
- C. Inform the Authorising Officer if the investigation unexpectedly interferes with the privacy of individuals who were not considered by the authorisation
- D. Make the Authorising Officer aware of particular sensitivities in the local community where the surveillance is taking place and of similar activities being undertaken by other public authorities which could impact on the surveillance
- E. Ensure that authorisations are regularly reviewed
- F. Apply for renewal shortly before the expiry of the authorisation period and at least 7 days before expiry where possible
- G. Cancel the authorisation when the surveillance is completed and advise any officers involved in the investigation accordingly
- H. Act immediately to terminate surveillance when instructed by the Authorising Officer
- I. Make the Authorising Officer aware of any likelihood that confidential information may be acquired if surveillance is authorised
- J. Properly store and retain the product of surveillance
- K. Ensure that no surveillance commences unless and until the RIPA Monitoring Officer has obtained judicial authority.

APPENDIX 5

MANAGEMENT OF COVERT HUMAN INTELLIGENCE SOURCES

Information Note: The use of a CHIS in Council investigations is most unlikely. Any officer contemplating such use should immediately seek advice from the RIPA Monitoring Officer

This is the text of the 2010 Home Office Code of Practice on Covert Human Intelligence Sources, Chapter 6 Management of Covert Human Intelligence Sources

Tasking

6.1. Tasking is the assignment given to the CHIS by the persons defined at sections 29(5)(a) and (b) of [RIPA], asking him to obtain, provide access to or disclose information.

Authorisation for the use or conduct of a CHIS will be appropriate prior to any tasking where such tasking involves the CHIS establishing or maintaining a personal or other relationship for a covert purpose.

6.2. Authorisations should not be drawn so narrowly that a separate authorisation is required each time the CHIS is tasked. Rather, an authorisation might cover, in broad terms, the nature of the source's task. If the nature of the task changes significantly, then a new authorisation may need to be sought.

6.3. It is difficult to predict exactly what might occur each time a meeting with a CHIS takes place, or the CHIS meets the subject of an investigation. There may be occasions when unforeseen action or undertakings occur. When this happens, the occurrence must be recorded as soon as practicable after the event and if the existing authorisation is insufficient it should either be updated at a review (for minor amendments only) or it should be cancelled and a new authorisation should be obtained before any further such action is carried out.

6.4. Similarly, where it is intended to task a CHIS in a significantly greater or different way than previously identified, the persons defined at section 29(5)(a) or (b) of [RIPA] must refer the proposed tasking to the authorising officer, who should consider whether the existing authorisation is sufficient or needs to be replaced. This should be done in advance of any tasking and the details of such referrals must be recorded. Efforts should be made to minimise the number of authorisations per CHIS to the minimum necessary in order to avoid generating excessive paperwork.

Handlers and controllers

6.5. Public authorities should ensure that arrangements are in place for the proper oversight and management of CHIS, including appointing individual officers as defined in section 29(5)(a) and (b) of [RIPA] for each CHIS.

6.6. Oversight and management arrangements for undercover operatives, while following the principles of the Act, will differ, in order to reflect the specific role of such individuals as members of public authorities.

6.7. The person referred to in section 29(5)(a) of [RIPA] (the "handler") will have day to day responsibility for:

- dealing with the CHIS on behalf of the authority concerned;*
- directing the day to day activities of the CHIS;*
- recording the information supplied by the CHIS; and*

- *monitoring the CHIS's security and welfare.*

6.8. *The handler of a CHIS will usually be of a rank or position below that of the authorising officer.*

6.9. *The person referred to in section 29(5)(b) of [RIPA] (the "controller") will normally be responsible for the management and supervision of the "handler" and general oversight of the use of the CHIS.*

Joint working

6.10. *In cases where the authorisation is for the use or conduct of a CHIS whose activities benefit more than a single public authority, responsibilities for the management and oversight of that CHIS may be taken up by one authority or can be split between the authorities. The controller and handler of a CHIS need not be from the same public authority.*

6.11. *There are many cases where the activities of a CHIS may provide benefit to more than a single public authority. Such cases may include:*

- *The prevention or detection of criminal matters affecting a national or regional area, for example where the CHIS provides information relating to cross boundary or international drug trafficking;*
- *The prevention or detection of criminal matters affecting crime and disorder, requiring joint agency operational activity, for example where a CHIS provides information relating to environmental health issues and offences of criminal damage, in a joint police/ local authority anti-social behaviour operation on a housing estate;*
- *Matters of national security, for example where the CHIS provides information relating to terrorist activity and associated criminal offences for the benefit of the police and the Security Service.*

6.12. *In such situations, however, the public authorities involved must lay out in writing their agreed oversight arrangements.*

6.13. *Management responsibility for CHIS, and relevant roles, may also be divided between different police forces where the Chief Officers of the forces concerned have made a collaboration agreement under section 23 of the Police Act 1996 or section 12 of the Police (Scotland) Act 1967, and the collaboration agreement provides for this to happen.*

Security and welfare

6.14. *Any public authority deploying a CHIS should take into account the safety and welfare of that CHIS when carrying out actions in relation to an authorisation or tasking, and the foreseeable consequences to others of that tasking. Before authorising the use or conduct of a CHIS, the authorising officer should ensure that a risk assessment is carried out to determine the risk to the CHIS of any tasking and the likely consequences should the role of the CHIS become known. The ongoing security and welfare of the CHIS, after the cancellation of the authorisation, should also be considered at the outset. Also, consideration should be given to the management of any requirement to disclose information tending to reveal the existence or identity of a CHIS to, or in, court.*

6.15. *The CHIS handler is responsible for bringing to the attention of the CHIS controller any concerns about the personal circumstances of the CHIS, insofar as they might affect:*

- *the validity of the risk assessment;*

- *the conduct of the CHIS; and*
- *the safety and welfare of the CHIS.*

6.16. *Where appropriate, concerns about such matters must be considered by the authorising officer, and a decision taken on whether or not to allow the authorisation to continue.*

Sections 7.3 and 7.4 of the same Code of Practice provide:

Individual records of authorisation and use of CHIS

7.3 *Detailed records must be kept of the authorisation and use made of a CHIS. Section 29(5) of the 2000 Act provides that an authorising officer must not grant an authorisation for the use or conduct of a CHIS unless he believes that there are arrangements in place for ensuring that there is at all times a person with the responsibility for maintaining a record of the use made of the CHIS. The Regulation of Investigatory Powers (Source Records) Regulations 2000; SI No: 2725 details the particulars that must be included in these records.*

7.4 *Public authorities are encouraged to consider maintaining such records also for human sources who do not meet the definition of a CHIS. This may assist authorities to monitor the status of a human source and identify whether that source becomes a CHIS.*

Officers should be particularly careful to ensure that individuals who are not a CHIS at the outset of an investigation do not inadvertently become a CHIS by a process of “status drift”. If, for example a complainant volunteers to obtain further information about a person being investigated, care should be taken to consider whether the proposed action would involve the complainant becoming a CHIS and if so whether that is appropriate and in accordance with RIPA and the CHIS Code of Practice.

Appendix 6

Policy Statement

Kirklees Council takes seriously its statutory responsibilities and will take great care at all times to make sure that the use of surveillance is proportionate to the desired outcome of that surveillance.

In addition the RIPA Monitoring Officer can be contacted for further advice and assistance and the officers with particular expertise in this area are also listed at Appendix 1 and referred to throughout this document as the RIPA Legal Advisers.

Kirklees Council will only use directed surveillance:

- where it is necessary to do so for the prevention or detection of conduct which constitutes one or more criminal offences; and the criminal offence or one of the criminal offences would be either –
 - Punishable, whether on summary conviction (in the magistrates' court) or on indictment (in the Crown Court), by a maximum term of at least 6 months of imprisonment; or
 - Is an offence under:
 - section 146 of the Licensing Act 2003(2) (sale of alcohol to children);
 - section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children);
 - section 147A of the Licensing Act 2003(3) (persistently selling alcohol to children);
 - section 7 of the Children and Young Persons Act 1933(4) (sale of tobacco, etc, to persons under eighteen).”.
- in a way that is proportionate to the circumstances

Kirklees Council will only use CHIS or the acquisition of communications data;

- where it is necessary to do so for the prevention or detection of crime or to prevent disorder
- in a way that is proportionate to the circumstances

Kirklees Council will when using directed surveillance:

- do so with due consideration of human rights issues
- properly investigate any complaints made about its use
- actively monitor its use
- observe the appropriate law and Home Office Codes of Practice

- ensure that staff (and contractors) are properly trained

In the normal course of any covert surveillance activity the Council will not use Covert Human Intelligence Sources unless the surveillance is for the purposes of the West Yorkshire Trading Standards Service. If there appears to be a need to employ such sources, the application must be authorised by either the Chief Executive or the Senior Responsible Officer. The appropriate Home Office Code of Practice will then be followed.

The Council will not carry out intrusive surveillance within the meaning of RIPA.

The Council will, through the RIPA Monitoring Officer, maintain a central record of all directed surveillance operations which it undertakes and will monitor the quality of all forms created for this purpose. Any issues will initially be raised as necessary with Authorising Officers and will be drawn to the attention of the RIPA Monitoring Officer.

Responsibilities

Overall responsibility for each directed surveillance operation will lie with the Authorising Officer in charge of the operation.

Officers who authorise directed surveillance are responsible for granting, reviewing, renewing and cancelling authorisations.

The RIPA Monitoring Officer will be responsible for making applications for judicial authority.

Corporate responsibility for monitoring the use of covert surveillance rests with the Senior Responsible Officer.

The Council's Internal Audit service will review this area of work when requested to do so by the RIPA Monitoring Officer.

In cases where the Council's equipment or premises are used by the Police for the purposes of their investigations, the Police will be responsible for obtaining the necessary authorisations under the Act. Council officers should ensure that an appropriate authorisation has been obtained. If the Council officer is not satisfied that an appropriate authorisation has been obtained the Police should not be allowed to use the Council's equipment or premises. In cases where joint operations are undertaken, the lead authority should obtain the authorisation.

APPENDIX 7

RIPA AND ANTI-SOCIAL BEHAVIOUR ENFORCEMENT

- 7.1 Persons who complain about anti-social behaviour and thereafter keep a diary or incident log sheet will not normally be a CHIS as they are not required to establish or maintain a relationship for a covert purpose.
- 7.2 Recording the level of noise such as the decibel level, will not normally capture private information and therefore does not require directed surveillance authorisation.
- 7.3 Recording sound with a DAT recorder or matron box on the complainant's private premises will be directed surveillance unless it is done overtly, for example by informing the alleged perpetrator that a complaint has been received and monitoring will take place. The alleged perpetrator should also be informed of the period when this monitoring is likely to take place (e.g. over the next three months) and what this monitoring may involve (e.g. the use of log sheets, matron boxes etc).

Placing a covert stationary or mobile video camera outside a building to record anti-social behaviour on residential estates will also require an authorisation for directed surveillance.

NB There will be types of Anti-Social Behaviour which no longer meet the conditions for the authorisation of directed surveillance because the underlying criminal conduct does not carry a penalty of at least 6 months imprisonment. Such conduct may involve minor offences of violence, disorder or harassment. If there is any doubt as to what the underlying offences might be or what penalties they carry advice must be sought from the RIPA Monitoring Officer.

APPENDIX 8

WORKING WITH OTHER AGENCIES

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

Where another agency such as the Police wishes to use the Council's resources (e.g. CCTV surveillance system), that agency must use its own RIPA procedures and before any officer agrees to allow the Council's resources to be used for the other agency's purposes, they must obtain a copy of that agency's RIPA form for the record or relevant extracts from the same which are sufficient for the purposes of protecting the Council and the use of its resources in accordance with any service/end agreement and/or Code of Practice in force between agencies.

Where another agency such as the police wishes to use the Council's premises for their own RIPA action and is expressly seeking assistance from the Council, the officer should normally co-operate with the same, unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. Suitable insurance or other appropriate indemnities may be sought, if necessary, from the other agency for the Council's co-operation in the agency's RIPA operation. In such cases, however, the Council's own RIPA forms should not be used as the Council is only assisting, not being involved in the RIPA activity of the external agency.

If the police or another agency wishes to use the Council's resources for general surveillance as opposed to specific RIPA operations, an appropriate information request and the proposed use, extent of remit, duration, who will be undertaking the general surveillance and the purpose of it must be obtained from the Police or other agency before the Council's resources are made available for the proposed use.

APPENDIX 9

COMMUNICATIONS DATA

There are two types of communications data which can be obtained by local authorities such as the Council. These are:

Service data (s21(4)(b)) This covers itemised telephone call records, connection records, timing and duration of calls, connection, reconnection and disconnection data, use of forwarding or redirection service, additional telecom services and records of postal items.

Subscriber Data (s21(4)(c)) This includes information on subscribers of E-mail and telephone accounts, account information, including payment details, addresses for installing and billing and abstract personal records such as sign-up data.

Accordingly the Council cannot access the content of communications. The Council has an agreement in place with an external agency who will contact a communications provider if data is required. For more information on this contact the RIPA Monitoring Officer or the RIPA Legal Advisers. Authorisations will only be granted where necessary and proportionate. It seems unlikely that the Council would wish to use this facility unless requested to do so by the West Yorkshire Trading Standards Service.

Any errors must be reported to the RIPA Monitoring Officer who in turn will notify IOCCO as appropriate.

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Name of meeting: Cabinet
Date: 26th July 2016
Title of report: Freehold Asset Transfer of Howden Clough Community Centre, Leeds Road, Birstall, WF17 0HY

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Key Decision - No Private Report/Private Appendix - No
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by <u>Director</u> & name	Jacqui Gedman - 15.07.16
Is it also signed off by the Director of Resources?	David Smith - 14.07.16
Is it also signed off by the Assistant Director (Legal Governance and Monitoring)?	Julie Muscroft - 14.07.16
Cabinet member portfolio	Asset Strategy, Resources and Creative Kirklees (Arts) - Cllr Graham Turner

Electoral wards affected: Birstall and Birkenshaw

Ward councillors consulted: Cllr Robert Light, Cllr Andrew Palfreeman, Cllr Elizabeth Smaje

Public or private: Public

1. Purpose of report

1.1. This report sets out the proposal to transfer the land and buildings on a freehold transfer, which currently make up Howden Clough Community Centre, Leeds Road, Birstall, WF17 0HY to the Howden Clough Community Association. The conditions of the freehold transfer will include covenants to ensure that Howden Clough Community Centre is a building that remains available only for community use.

2. Summary

2.1. Howden Clough Community Centre has been leased to Howden Clough Community Association for over 40 years and the current Association have recently formed a new group called Howden Clough Community Association which is a Charitable Incorporated Organisation (CIO) and the CIO is the proposed Association for the Asset Transfer.

The Association has brought forward plans to seek an asset transfer of the building and surrounding land. This paper sets out the background to this request and the Council's proposed response to transferring the asset at nil consideration but with restrictive covenants in place to protect community use.

3. Information required to take a decision

Background

- 3.1. Howden Clough Community Centre is situated on Leeds Road in Birstall, the community centre ("the Centre") is a venue that has been used by the local community for over 40 years. The Centre is currently leased to the Howden Clough Community Association and they are holding over on their current lease which expired in September 2007. The Centre has seen over the last few years an active interest from members of the community with the sole aim to maintain and develop the Centre.

More recently members of the Committee have met with Officers of Kirklees Council with a view to taking ownership of the Centre on a freehold basis and have worked to strengthen their committee.

The centre has a number of community users.

- 3.2. The Association have been running and managing the Centre since 1972. There is a lease in place with shared maintenance responsibilities, the Association have maintained the Centre to an acceptable standard and has completed maintenance and improvement works to the Centre over the term of their lease.
- 3.3. Howden Clough Community Association have submitted a robust application and business plan in line with the requirements of the Asset Transfer Policy, this includes the development of policies and capacity building which have been assessed by the Community and Engagement Team. It also includes financial planning and risk management which has been assessed by Locality, a third party who is also supporting groups working through Asset Transfer. Corporate Landlord have assessed the building related information provided in the application. The Centre is not used to capacity, however the Association have been trialling activities and sessions based around the community's health and well-being and this has received positive feedback.

The application and business case is assessed using the Asset Transfer Assessment Tool which assesses 5 main areas: financial, community impact, risk, organisation strength and the asset. This has been designed in line with the Hallmarks of an Effective Charity which is written and supported by the Charity Commission. All assessments are satisfactory.

Asset Transfer

- 3.4. The Council's Asset Advancement Policy was developed in response to the Quirk Review and subsequent localism agenda and was approved by Cabinet in October 2013. The policy allows for assets to be transferred either through a long term lease or a freehold transfer, both options will normally also have covenants that restrict use to community use.

The decision options for this asset transfer are:

- 3.4.1 Refuse the request for transfer. The Association are currently holding over on a 35 year lease and therefore have a leasehold interest, which means they have an entitlement to apply to a court for a new lease which might leave the Council with Landlord responsibilities for aspects of the maintenance and repair of the building, which in turn would continue to be a drain on the Council's resources. The Council would have the option of setting a Market Rent to the new lease.

Officers are of the opinion that this should not be the recommended option on the grounds that this would leave the Council with onerous responsibilities that would cost more for the Council to discharge, than any rent that would be received and the Association could be held back from developing their plans for the Centre and engaging the local community

- 3.4.2 Transfer the Centre either freehold or leasehold with restrictive covenants for community use with an exception for up to 30% commercial use in line with previous asset transfers. This would support the Associations Business Case which outlines how they intend to increase their community use to ensure continued sustainability of the Centre.

This would align with preceding transfer decisions that have occurred with other asset transfers.

Officers are of the opinion that freehold asset transfer with restrictive covenants for community use, with up to 30% commercial use should be the recommended option on the grounds that the future use of the Centre would be retained for the community and the Council would achieve revenue savings.

- 3.4.3 Transfer the Centre without restrictive covenants in place. Whilst this approach has not been adopted before it is recognised that, subject to approval, this option would fit within the current Asset Transfer Policy, however there is a risk that the Centres future use as a community centre could be lost.

Officers are of the opinion that this should not be the recommended option on the grounds that the future use of the community centre could be lost to the local community.

Costs

- 3.5 The Centre is in an acceptable state of repair, however, a 2006 Conditions Survey does identify works totalling £142,700. The main areas for investment works would be the roof which was estimated at £85,900, the external walls, doors and windows which were estimated at £16,000 and the electrical services which have been estimated at £23,000. The Association have reported that they have undertaken some of the remedial works for the roof, electrical services and the external doors and woodwork, however it is not known to what extent these works have been undertaken. Under the current lease the Council would be responsible for a number of these costs. In transferring the Centre the Capital Repayment Costs circa £9989 will be avoided.
- 3.6 The current building running costs are £4750, due to the lease currently holding over and having a shared responsibility for repairs and maintenance. The freehold transfer will result in a £4750 revenue saving to the Council.

3.7 Valuation

Unrestricted Value

The unrestricted value is the best price reasonably obtainable for the property and should be expressed in capital terms. It is the market value of the land as currently defined by the RICS Red Book (Practice Statement 3.2), except that it should take into account any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest (a "special purchaser"). When assessing unrestricted value, the valuer must ignore the reduction in value caused by any voluntary condition imposed by the Authority. In other words, unrestricted value is the amount that would be paid for the property if the voluntary condition were not imposed (or it is the value of the property subject to a lease without the restriction).

The unrestricted value of the Centre is: £100,000

Restricted Value

The restricted value is the market value of the property having regard to the terms of the proposed transaction. It is defined in the same way as unrestricted value except that it should take into account the effect on value of any voluntary condition(s).

The restricted value of the Centre is: £ Nil

Voluntary Conditions

A voluntary condition is any term or condition of the proposed transaction which the Authority chooses to impose. It does not include any term or condition which the Authority is obliged to impose, (for example, as a matter of statute), or which runs with the land. Nor does it include any term or condition relating to a matter which is a discretionary rather than a statutory duty of the Authority.

The value of voluntary conditions in the proposed transaction is: £ Nil

Amount of discount given by the Council

The difference between the unrestricted value of the land to be disposed of and the consideration accepted (the restricted value plus value of any voluntary conditions).

The amount of discount in the proposed transaction is: £100,000

In respect of *Local Government Act 1972 general disposal consents (England 2003) disposing of land for less than best consideration that can be reasonably obtained* the transaction does not require the Council to seek specific consent from the Secretary of State as the difference between unrestricted value of land to be disposed of and the consideration accepted is £2,000,000 or less

4 Implications for the Council

- 4.1 The Local Government Act 1972 General Disposal Consent, means that specific consent is not required for the disposal of any interest in land/buildings at less than best consideration, which the Authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. Following their assessment, the Council are confident that Howden Clough Community Association meets the economic and social factors for the Birstall area.
- 4.2 The transfer of the Centre will support the community and recognises the benefit of these groups in sustaining the economic, health and wellbeing of the local community.

5 Consultees and their opinions

Local Ward Councillors were consulted and the following comments were received:

Councillor Robert Light: *I support the Asset Transfer of HCCA.*

Howden Clough Community Association were consulted and the following comments were received:

1. *Local councillors have been consulted throughout the asset transfer preparation, and are supportive of the project.*
2. *Desktop and field research was conducted in March 2015 to provide insight for HCCA into four local community venues: Batley Girls' High School; Batley Sports and Tennis Centre; The Chatterbox Centre and St.Saviour's Church Brownhill. Themes of 'older' and 'younger' people were examined. The objective of this research was to provide the HCCA with information about broader community and 'competitor's activity, to base their business plan on.*
3. *Over ninety residents visited the centre in less than 24 hours over an open weekend in February 2015, where Locality and Kirklees Council community engagement staff were present. Many conversations took place, people enjoyed themselves and learnt about the centre and it's potential. Publicity was gained for the centre via local media, social media, leaflets and posters. Two films were made about the events.*
4. *Community support is also evident from the many current users of the centre, who have also been consulted and have offered help in light refurbishments/commitment."*

More generally, should this information be relevant, details of the work we have carried out on the Centre in recent years have been contained in other reports to Council bodies, as follows

funded by grants from the District Committee, and we also had our own conditions survey carried out, which should have been included with the business plan, also funded by the Council through Locality.

6 Next steps

6.1 Subject to the decision made by Cabinet, Officers from Physical Resources and Procurement will complete negotiations and agree terms of the transfer.

7 Officer recommendations and reasons

7.1 Members are requested to authorise officers to transfer the freehold of Howden Clough Community Centre to Howden Clough Community Association for nil consideration and to include covenants to ensure that the centre can be used for Community Use with an exception of up to 30% of commercial use in line with previous asset transfers.

7.2 Members are requested to note the Assistant Director - Place and Assistant Director Legal Governance and Monitoring have delegated authority to negotiate and agree the terms and red line boundary of the freehold transfer that relate to the transfer of the Howden Clough Community Centre to Howden Clough Community Association.

8 Cabinet portfolio holder's recommendations

The Portfolio Holder, Cllr Graham Turner recommends the freehold transfer of Howden Clough Community Centre to Howden Clough Community Association for no premium/nil consideration subject to the restrictive covenants discussed in paragraph 3.4.2 - which states that the proposed asset transfer route, subject to approval is to *transfer the Centre either freehold or leasehold with restrictive covenants for community use with an exception for up to 30% commercial use in line with previous asset transfers. This would support the Associations Business Case which outlines how they intend to increase their community use to ensure continued sustainability of the Centre.*

9 Contact officer

Mark Gregory,
Head of Corporate Landlord
mark.gregory@kirklees.gov.uk
(01484) 221000

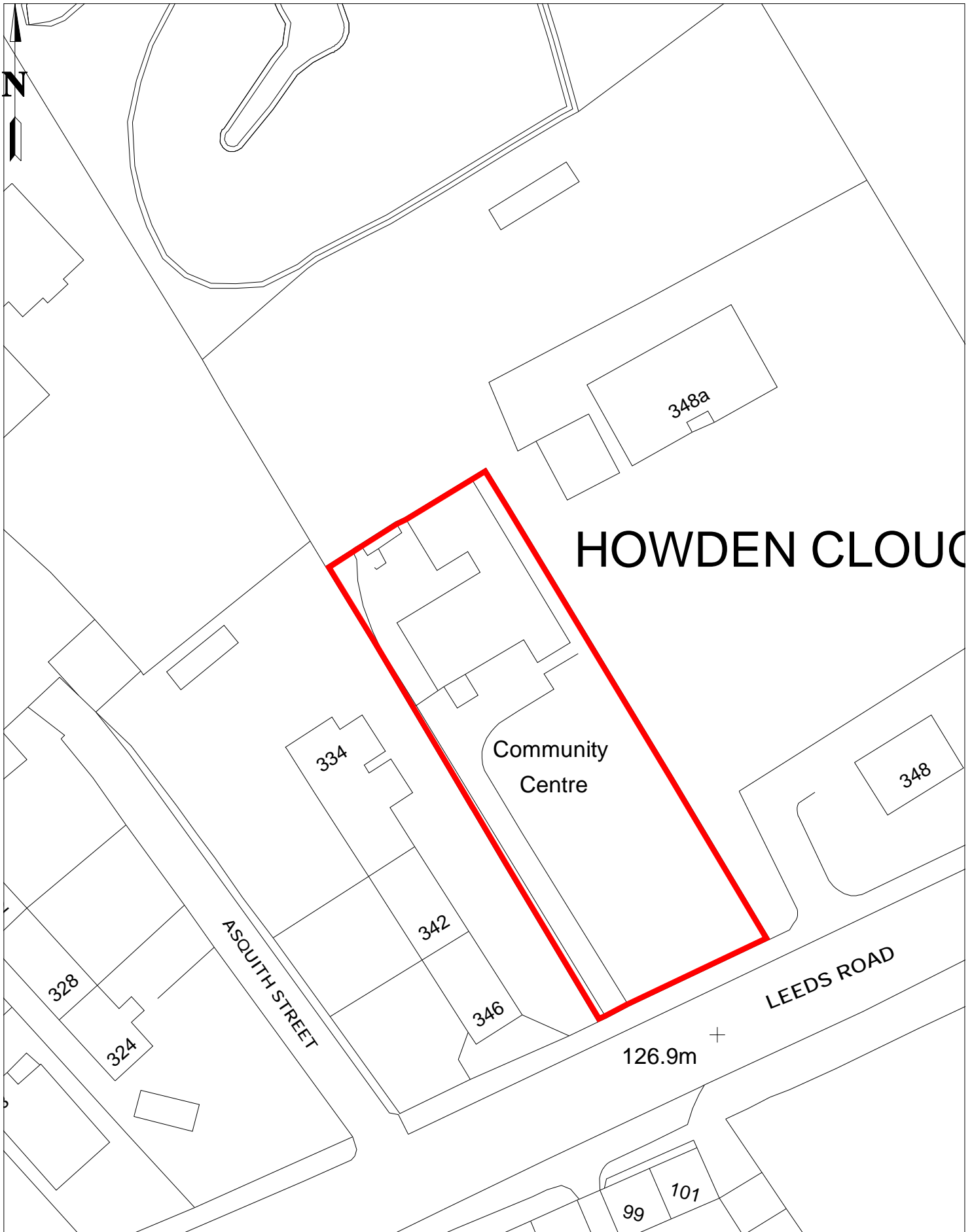
Jonathan Quarmby,
Corporate Facilities Manager
jonathan.quarmby@kirklees.gov.uk
(01484) 221000

10 Background Papers and History of Decisions

10.1 Howden Clough Red Line Boundary

11 Assistant Director responsible

Paul Kemp, Assistant Director - Place
paul.kemp@kirklees.gov.uk
(01484) 221000



HOWDEN CLOUD

Community Centre

ASQUITH STREET

LEEDS ROAD

126.9m +

PHYSICAL RESOURCES & PROCUREMENT

Plan No: 16-0256
 Scale: 500
 Required by:

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Name of meeting: Cabinet
Date: 26th July 2016
Title of report: Freehold Asset Transfer of Marsden Mechanics Hall, Peel Street, Marsden, HD7 6BW

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Key Decision - No Private Report/Private Appendix - No
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by <u>Director</u> & name Is it also signed off by the Director of Resources? Is it also signed off by the Assistant Director (Legal Governance and Monitoring)?	Jacqui Gedman - 15.07.16 David Smith - 14.07.16 Julie Muscroft - 18.07.16
Cabinet member portfolio	Asset Strategy, Resources and Creative Kirklees (Arts) - Cllr Graham Turner

Electoral wards affected: Colne Valley
Ward councillors consulted: Cllr Donna Bellamy, Cllr Nicola Turner, Cllr Robert Charles Walker
Public or private: Public

1. Purpose of report

1.1. This report sets out the proposal to transfer the land and buildings on a freehold transfer, for nil consideration, which currently makes up Marsden Mechanics building, Peel Street, Marsden, HD7 6BW to the Marsden Community Trust Limited. The conditions of the freehold transfer will include covenants to ensure that Marsden Mechanics Building is a building that principally remains available for community use.

2. Summary

2.1 Marsden Mechanics building has been partially leased to Marsden Mechanics Hall Management Association for a number of years. A second organisation, The Marsden Community Trust has evolved and brought forward plans to seek an asset transfer of the whole building and surrounding land. This paper sets out the background to this request and the Council's proposed response to transfer the building and courtyard at nil consideration but with restrictive covenants in place to protect community use.

This paper also addresses a request from the Trust for an adjacent property, the former Marsden Public Toilets which is currently being developed for additional school play space, to be included in the asset transfer to the Trust so that they can bring forward plans at some point in the future to extend the existing Marsden Mechanics Hall, to provide additional community, school and commercial space.

3. Information required to take a decision

Background

- 3.1. The Marsden Mechanics Building is situated on Peel Street in Marsden. It is a venue that has been used by the community for a number of years and the Meeting Room and Hall has been leased to the Marsden Mechanics Hall Management Association since 1996. The Association are currently holding over on the lease as this contractual term of the lease expired in 2014. The Mechanics Building has seen over the last couple of years an increased interest from members of the community with the sole aim to maintain and develop the building. The building also houses the Marsden Community Supported Library and Information Service and one of the conditions of the transfer will be, that the Trust must grant a leaseback of part of the building to the Council to enable the Council to maintain the provision of this service.
- 3.2. The Marsden Community Trust is a relatively new body and has been set up to potentially take on assets within Marsden beyond the Marsden Mechanics Building. The Trust is a company limited by guarantee and its directors comprise, of many of the officers of the Association. The Association plans to dissolve once the Trust has taken transfer of the Building. Recently members of the Trust have met with Officers of Kirklees Council with a view to taking asset transfer of the Marsden Mechanics Building, the external courtyard and the former public toilets on a freehold basis.
- 3.3. In order to ensure that the Council can continue to provide the Library Service from the building, the Council will be granted a "lease back" of part of the building. Member's attention is drawn to the fact that the Council will be granted a lease and or licence of a term of 5 years at nil rent but that the Council will have the option to terminate the agreement at any time giving one month's notice. This will in essence mean that the Council will be able to run the Library and Information Service from the site for the term of the agreement.
- 3.4. The Association have been managing the Community Space (hall and meeting room) within the Mechanics Hall since 1996. The lease in place leaves the responsibility for the repairs and maintenance of the Mechanics Hall with the Council.
- 3.5. The Building is not used to capacity, however, following on from a pre-feasibility study the Trust has undertaken, they are already changing their pricing and marketing policies to ensure that usage increases in the future.
- 3.6. Marsden Community Trust has submitted a robust application and business plan in line with the requirements of the Asset Transfer Policy, this includes the development of policies and capacity building which have been assessed by the Community and Engagement Team. It also includes financial planning and risk management which has been assessed by Locality, a third party who is also supporting groups working through Asset Transfer. Corporate Landlord has also assessed the building related information the group provided.

The application and business case is assessed using the Asset Transfer Assessment Tool which looks at 5 main areas: financial, community impact, risk, organisation strength and the asset. This has been designed in line with the Hallmarks of an Effective Charity which is written and supported by the Charity Commission. All assessments are satisfactory.

The Trust has submitted a business case which depends upon an element of Commercial use to provide revenue income to support the running of the building. The business case also requests that an area of land which is nearby, the former public toilets, is transferred to the Trust. However, plans are progressing to demolish the toilets and develop this parcel of land as compensatory school play space for Marsden Infants and Nursery School, which is having a Modular Classroom located within the grounds for September 2016 intake, due to rising pupil numbers. The Trust's future business plan proposes this area to be developed with an extension to the Mechanics Building and provision for class space for the school (see 10.3)

Asset Transfer

- 3.7. The Council's Asset Advancement Policy was developed in response to the Quirk Review and subsequent localism agenda and was approved by Cabinet in October 2013. The policy allows for the assets to be transferred with either a long term lease or a freehold transfer, both options will normally also have covenants that restrict use to community use.
- 3.8. Community Asset Transfer involves transferring ownership of land and buildings from a statutory body to a community organisation for 'less than best consideration' - that it is less than its full market value - in order to further social, economic and/or environmental objectives.
- 3.9. The Decision Options for this Asset Transfer are:

- 3.9.1 Refuse the request for transfer. This would mean the Trust would be unable to deliver the community benefit an asset transfer would bring. Also, the Association are currently holding over on an 18 year lease and therefore have a partial leasehold interest of the building, which means they have an entitlement to apply to a court for a new lease which will leave the Council with Landlord Responsibilities for the maintenance and repair of the building, which in turn would continue to be a drain on the Council's resources. The Council would, however, have the option of setting a Market Rent to the new lease.

Officers are of the opinion that this should not be the recommended option on the grounds that the Trust could be held back from developing their plans for the Centre and engaging the local community and this would leave the Council with onerous responsibilities that would cost more for the Council to discharge than any rent that would be received.

- 3.9.2 Transfer the Mechanics Building and the Courtyard only either freehold or leasehold with restrictive Covenants for community use with an exception for up to 30% commercial use, in line with previous asset transfers of public halls but with a requirement for a 'lease back' to the Council at nil rent, an agreed section of the building for the use of the Library and Information Centre.

There is a risk, by not transferring the Public Toilets, that if the school does move towards academisation they may be able to claim the land and therefore this will no longer be available for the Trust.

- 3.9.3 Transfer the Building, the Courtyard and the Public Toilets either freehold or leasehold with restrictive covenants for community use with an exception of up to 30% commercial use in line with previous asset transfers halls but with a requirement for a 'lease back' to the Council at nil rent, an agreed section of the building for the use of the Library and Information Centre. In addition to this there is a further requirement for the Trust to lease back the Public Toilet land to the Council at nil consideration, for school provision until such time that the Trust have the relevant funding and permissions to develop the land alongside the current Mechanics Hall. In doing so the Trust will create additional classroom space for Marsden Mechanics Infant and Nursery School, which will be chargeable to the school at an agreed rate.

Officers are of the opinion that option 3.9.2 is the preferred option as it supports the group in their plans to develop the building and it realises savings from ongoing revenue costs and future capital expenditure. Moreover the Trust would have the option of returning to the Asset Committee at some point in the future when it's plans to develop the extension and area of land, formally the public toilets, comes to fruition allowing them to request a transfer of the land for their development.

- 3.9.4 Transfer the building, either with or without the Public Toilers and without restrictive covenants in place. Whilst this approach has not been adopted before, it is recognised that, subject to approval, this option would fit within the current Asset Transfer Policy, however there is a risk that the buildings future use as a community centre could be lost.

Officers are of the opinion that this should not be the recommended option on the grounds that the future use of the Mechanics Hall could be lost to the local community.

Costs

- 3.10 The building is in a reasonable state of repair; however a 2009 conditions survey identifies works totalling £119,300. The main areas for investment works would be the mechanical services which total £115, 200, the remainder of the costs are split between ceilings and electrical services. The Trust has outlined how they intend to prepare for these ongoing costs as part of their Business Case. In transferring the Building the Council will avoid Capital Repayment Costs circa £8300.
- 3.11 The current revenue running costs to the Council are £25,600 due to the Association holding a partial lease of the Hall which in turn has meant that the Council is responsible for all repairs, maintenance and general running costs for the building. The freehold transfer will result in a £25,600 revenue saving to the Council.

Valuation

Unrestricted Value

The unrestricted value is the best price reasonably obtainable for the property and should be expressed in capital terms. It is the market value of the land as currently defined by the RICS Red Book (Practice Statement 3.2), except that it should take into account any additional amount which is or might reasonably be expected to be available from a purchaser with a special interest (a "special purchaser"). When assessing unrestricted value, the valuer must ignore the reduction in value caused by any voluntary condition imposed by the Authority. In other words, unrestricted value is the amount that would be paid for the property if the voluntary condition were not imposed (or it is the value of the property subject to a lease without the restriction).

The unrestricted value of the Marsden Mechanics is: £120,000

The unrestricted value of the Public Toilets is: £25, 000 - £30,000

Restricted Value

The restricted value is the market value of the property having regard to the terms of the proposed transaction. It is defined in the same way as unrestricted value except that it should take into account the effect on value of any voluntary condition(s).

The restricted value of the Marsden Mechanics is: £ Nil

The restricted value of the Public Toilets is: £ Nil

Voluntary Conditions

A voluntary condition is any term or condition of the proposed transaction which the Authority chooses to impose. It does not include any term or condition which the Authority is obliged to impose, (for example, as a matter of statute), or which runs with the land. Nor does it include any term or condition relating to a matter which is a discretionary rather than a statutory duty of the Authority.

The value of voluntary conditions in the proposed transaction (Marsden Mechanics) is: £ Nil

The value of voluntary conditions in the proposed transaction (Public Toilets) is: £ Nil

Amount of discount given by the Council

The difference between the unrestricted value of the land to be disposed of and the consideration accepted (the restricted value plus value of any voluntary conditions).

The amount of discount in the proposed transaction (Marsden Mechanic Hall) is: £120,000

The amount of discount in the proposed transaction (Public Toilets) is: £25,000 - £30,000

In respect of Local Government Act 1972 general disposal consents (England 2003) disposing of land for less than best consideration, that can be reasonably obtained, the transaction does not require the Council to seek specific consent from the Secretary of State as the difference between unrestricted value of land to be disposed of and the consideration accepted is £2,000,000 or less.

4 Implications for the Council

- 4.1 The Local Government Act 1972 General Disposal Consent means that specific consent is not required for the disposal of any interest in land/buildings at less than best consideration which the Authority considers, will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. Following their assessment, the Council are confident that Marsden Community Trust meets the economic and social factors for the Marsden area.
- 4.2 The transfer of the Marsden Mechanics Building will support the community and recognises the benefit of these groups in sustaining the economic, health and wellbeing of the local community.

5 Consultees and their opinions

Marsden Community Trust have met previously with Kirklees Council and Marsden I&N School to discuss the Public Toilet site and it was agreed that Kirklees Council will retain the Public Toilet site until such time that the Trust had the funding in place to progress with the development of the site.

Local Ward Councillors were consulted and the following feedback was received:

Councillor Donna Bellamy - I fully support the asset transfer of Marsden Mechanics to the trust, and I am happy with the proposal of option 2, as suggested by the Council, I am sure the trust will go from strength to strength and proceed to make the mechanics more viable and become a greater community hub than it already is.

Marsden Community Trust were consulted and the following feedback was received:

Marsden Community Trust is grateful for the opportunity to comment on the draft recommendation regarding asset transfer of the Mechanics Hall. We have considered the document carefully and respectfully suggest that some sections would benefit from a shift of tone to recognise more accurately and fairly the spirit of the collaboration that brings us to this critical moment.

As the draft current reads an impression is given that the idea of community control of the building is a recent development but the truth is very different@ from 1978 Marsden Community Association (MCA) was the driving force behind the refurbishment that was completed in 1991 and requested transfer of freehold into community ownership at the that time. That request was denied by Kirklees Council but a compromise was struck in the form of the Marsden Mechanics Hall Management Association (MMHMA) and the attendant lease.

*The capability of Marsden residents to manage under the terms of the lease is evident form the last quarter of a century, remaining in good financial health throughout. There has been a high degree of consistency in the personnel involved ever since then, with lineage connecting MCA through MMHMA to the present Marsden Community Trust (MCT * incorrectly identified in the draft as Marsden Mechanics Trust). Furthermore, discussion has taken place between MMHMA and various representatives of Kirklees Council over several years about the long term control and formation of MCT, which has emerged as a mutually agreed mechanism to work towards community ownership.*

Against this background we feel it is reasonable to request the rewording of the introductory section of the recommendation and the introduction of a fifth option to get around the issue of commercial uses threatening the future of community use [Fifth option reads: Transfer the building with the public toilets with restrictive covenants for community use, with the exception of any amount of commercial use provided that all income generated by such use be expressly for the purpose of sustaining community use of at least the main hall and some meeting facilities in the enlarged building]. This is an option we wouldn't heartily encourage you to recommend. An edited version is attached for your consideration by comparing documents and we would be more than happy to discuss the detail if you so desire.

Finally, you are aware that we are very concerned about the prospect of the toilet site being excluded from the transfer, so a separate submission is attached addressing the case for its inclusion in more detail. Please can this submission be made available to members at the same time as your own report?

6 Next steps

Officers from Physical Resources and Procurement will complete negotiations and agree terms of the transfer and lease back of the Library and Information Centre.

7 Officer recommendations and reasons

7.1 Members are requested to authorise officers to transfer the freehold of Marsden Mechanics Building and Courtyard to Marsden Mechanics Trust for nil consideration, subject to firstly the requirement that there should be a leaseback of part of the building for use of the library and information centre and secondly subject to covenants to ensure that the centre can be used for Community Use with an exception of up to 30% of commercial use in line with previous asset transfers.

7.2 Members are requested to note the Assistant Director - Place and Assistant Director Legal Governance and Monitoring have delegated authority to negotiate and agree the terms of the freehold transfer, including the red line boundary, that relate to the transfer of the Marsden Mechanics Building to Marsden Community Trust.

8 Cabinet portfolio holder's recommendations

The Portfolio Holder, Cllr Graham Turner recommends the freehold transfer of Marsden Mechanics Hall and Courtyard to Marsden Mechanics Trust for no premium/nil consideration subject to the restrictive covenants discussed in paragraph 3.9.2 - which states that the proposed asset transfer route, subject to approval is to *Transfer the Mechanics Building and the Courtyard only either freehold or leasehold with restrictive Covenants for community use with an exception for up to 30% commercial use in line with previous asset transfers of public halls but with a requirement for a 'lease back' to the Council at nil rent an agreed section of the building for the use of the Library and Information Centre.*

The Trust would have the option of returning to the Asset Committee at some point in the future when it's plans to develop the extension and area of land, formally the public toilets, comes to fruition allowing them to request a transfer of the land for their development.

9 Contact officer

Mark Gregory,
Head of Corporate Landlord
mark.gregory@kirklees.gov.uk
(01484) 221000

Jonathan Quarmby,
Corporate Facilities Manager
jonathan.quarmby@kirklees.gov.uk
(01484) 221000

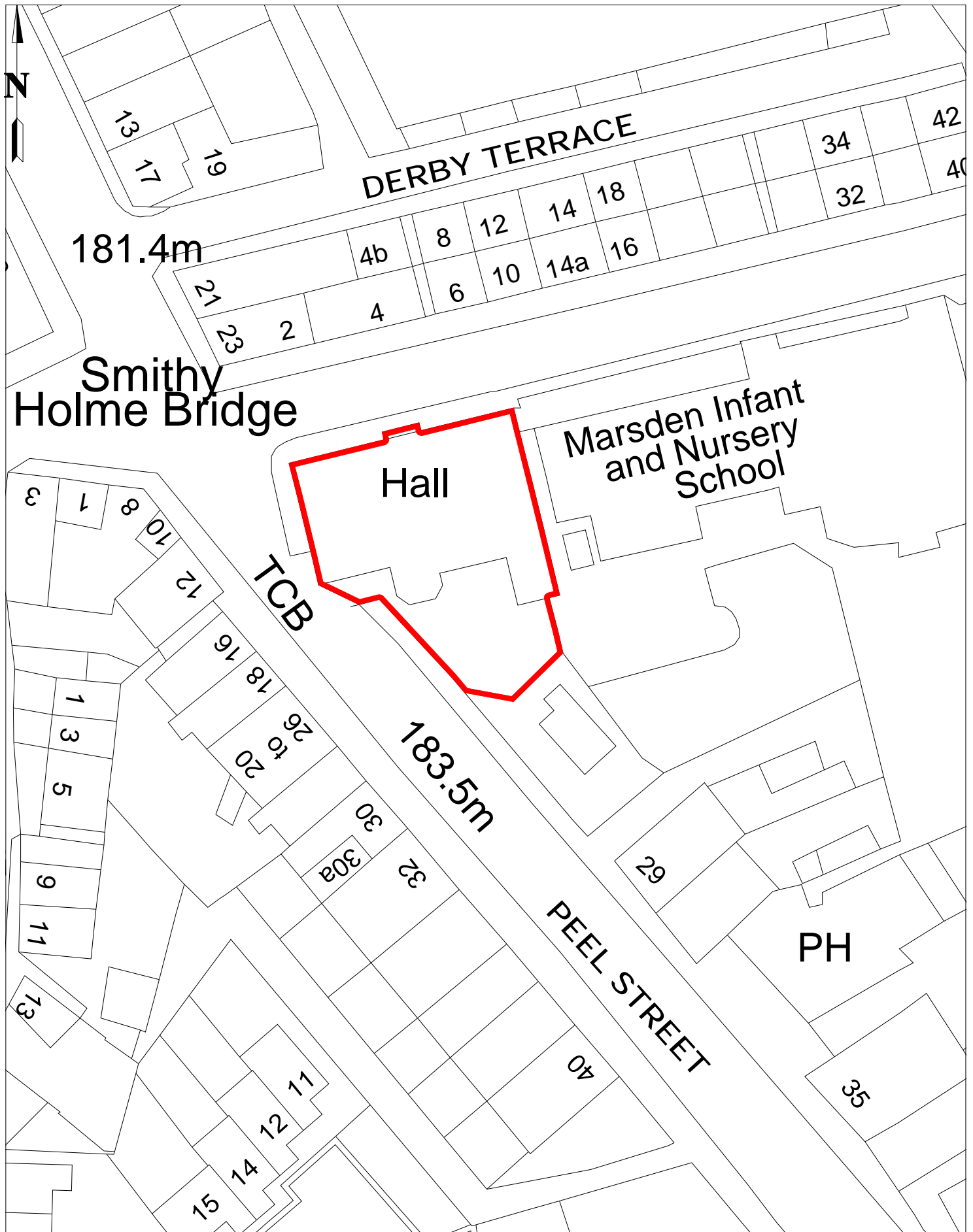
10 Background Papers and History of Decisions

- 10.1 Red Line Boundary – Without Public Toilet Land
- 10.2 Red Line Boundary – With Public Toilet Land
- 10.3 Marsden Mechanics Trust – Extension Plan

11 Assistant Director responsible

Paul Kemp, Assistant Director - Place
paul.kemp@kirklees.gov.uk
(01484) 221000

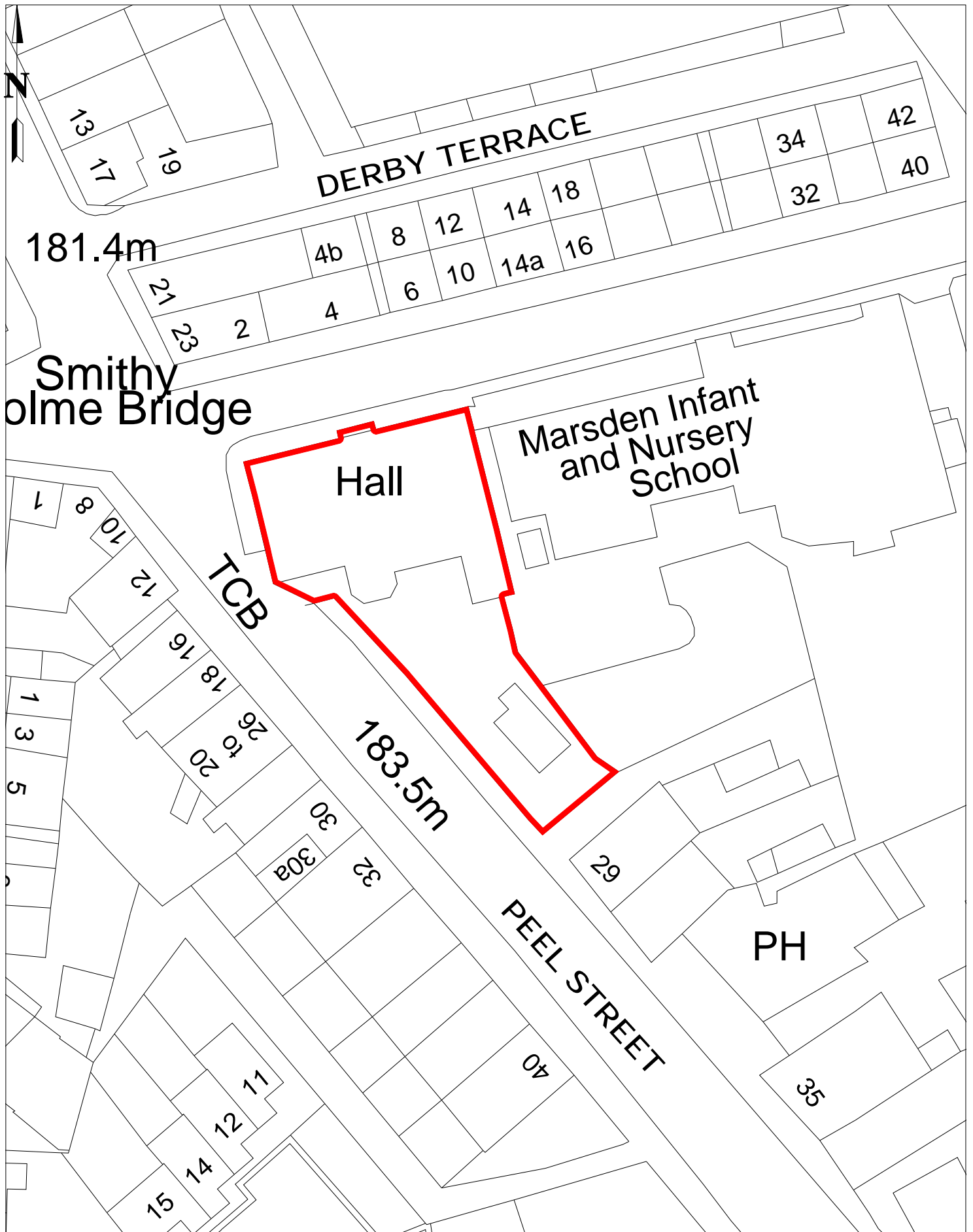
CAB - 16 - 003 - Marsden Mechanics



PHYSICAL RESOURCES & PROCUREMENT

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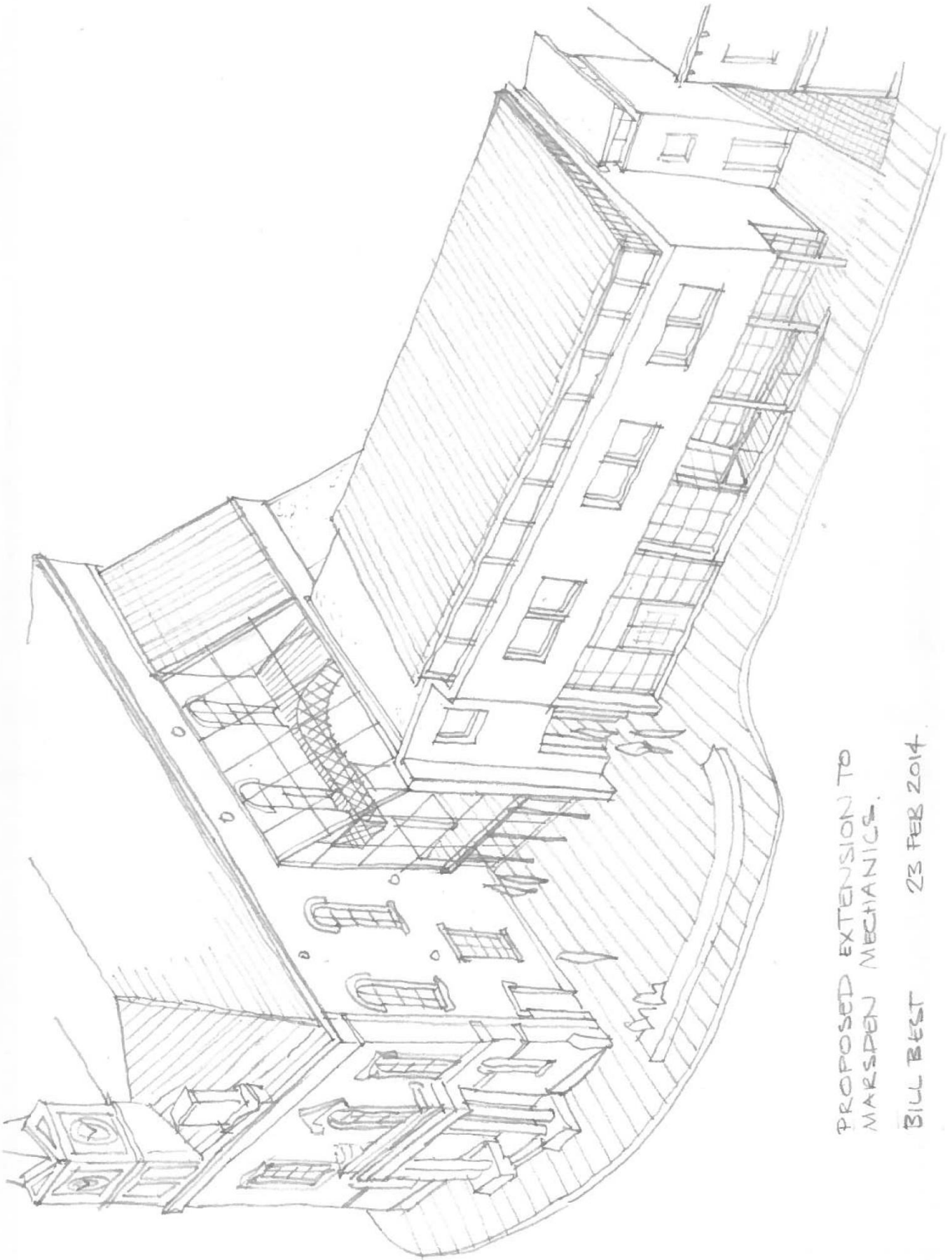
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PROPOSED EXTENSION TO
MARSPEN MECHANICS.

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