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29 August 2008

S U M M O N S

MEETING: Community and Environment Board
DATE: 8 September 2008
TIME: 6.00pm
PLACE: Committee Room 1, Town Hall, Gosport
Democratic Services contact: Catherine McDonald

LINDA EDWARDS
BOROUGH SOLICITOR

MEMBERS OF THE BOARD

Councillor Chegwyn (Chairman)
Councillor Smith (Vice Chairman)

Councillor Beavis	Councillor Langdon
Councillor Burgess	Councillor Murphy
Councillor Edgar	Councillor Salter
Councillor Mrs Forder	Councillor Wright

The Mayor (Councillor Kimber) (ex officio)

FIRE PRECAUTIONS

(To be read from the Chair if members of the public are present)

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IMPORTANT NOTICE:

- If you are in a wheelchair or have difficulty in walking and require access to the Committee Room on the First Floor of the Town Hall for this meeting, assistance can be provided by Town Hall staff on request

If you require any of the services detailed above please ring the Direct Line for the Democratic Services Officer listed on the Summons (first page).

NOTE:

- i. Members are requested to note that if any member wishes to speak at the Board meeting then the Borough Solicitor is required to receive not less than 24 hours prior notice in writing or electronically and such notice shall indicate the agenda item or items on which the member wishes to speak.
- ii. Please note that mobile phones should be switched off for the duration of the meeting.

AGENDA

RECOMMENDED
MINUTE FORMAT

PART A ITEMS

1. APOLOGIES FOR NON-ATTENDANCE

2. DECLARATIONS OF INTEREST

All Members present are required to declare, at this point in the meeting or as soon as possible thereafter, any personal or personal and prejudicial interest in any item(s) being considered at this meeting.

3. MINUTES OF THE MEETINGS OF THE COMMUNITY AND ENVIRONMENT BOARD HELD ON 16 JUNE 2008 AND 21 JULY 2008

To approve as a correct record the Minutes of the meetings of the Community and Environment Board held on 16 June 2008 and 21 July 2008 (copies herewith).

4. DEPUTATIONS – STANDING ORDER 3.5

(NOTE: The Board is required to receive a deputation(s) on a matter which is before the meeting of the Board provided that notice of the intended deputation and its object shall have been received by the Borough Solicitor by 12 noon on Thursday 4 September 2008. The total time for deputations in favour and against a proposal shall not exceed 10 minutes).

5. PUBLIC QUESTIONS – STANDING ORDER 3.6

(NOTE: The Board is required to allow a total of 15 minutes for questions from Members of the public on matters within the terms of reference of the Board provided that notice of such Question(s) shall have been submitted to the Borough Solicitor by 12 noon on Thursday 4 September 2008).

6. ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

To inform the Board of the results of stakeholder consultation on the Environmental Health Enforcement Policy.

Part II
Contact Officer:
David Palmer
Ext. 5509

7. GOSPORT HIGH STREET

To advise the Board of recent discussions regarding the relationship of the Market and the High Street Traders.

Part II
Contact Officer:
Ian Lycett
Ext. 5201

Continued

8. DEBATE ON STREETSCENE

Part II

To debate the recent move of Streetscene from the Depot to the Town Hall.

9. ANY OTHER ITEMS

which the Chairman determines should be considered, by reason of special circumstances, as a matter of urgency.

10. EXCLUSION OF PUBLIC

To consider the following motion:

RECOMMENDATION:

That in relation to the following item the public be excluded from the meeting, as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during the item there would be disclosure to them of exempt information within Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972, and further that in all the circumstances of the cases, the public interest in maintaining the exemptions outweighs the public interest in disclosing the information, for the reasons set out in the report.

**PART B ITEM
FOLLOWING THE EXCLUSION OF PRESS AND PUBLIC**

Item No.	Item	Paragraph no of Part I of Schedule 12A of the Act	
11	GROUNDS MAINTENANCE AND STREET CLEANSING CONTRACT	Paragraph 3 Reason: The report contains commercially sensitive information which would assist the existing contractor and potential contractors to price their tenders and consequently could distort the tender process.	Part II Contact Officer: David Jago Ext. 5517

**A MEETING OF THE COMMUNITY AND ENVIRONMENT BOARD
WAS HELD ON 16 JUNE 2008**

The Mayor (Councillor Kimber); Councillors Beavis (P), Burgess (P), Chegwyn (Chairman) (P), Edgar (P), Mrs Forder (P), Langdon (P), Murphy (P), Salter (P), Smith (P) and Wright (P).

The Chairman welcomed new Members to their first meeting of the Board.

5. APOLOGIES

An apology for inability to attend the meeting was received on behalf of The Mayor (Councillor Kimber).

6. DECLARATIONS OF INTEREST

There were no declarations of interest.

7. MINUTES

RESOLVED: That the Minutes of the meetings of the Board held on 3 March and 15 May 2008 be approved and signed by the Chairman as true and correct records.

8. DEPUTATIONS

It was reported that no deputations had been received.

9. PUBLIC QUESTIONS

No questions had been received from the public.

PART II

10. GREEN WASTE SERVICE

Consideration was given to a report of the Environmental Services Manager which informed the Board of a Health and Safety Executive (HSE) inspection of the green waste service provided by Verdant on the Council's behalf and the implications of that inspection.

The Chairman drew Members' attention to paragraph 2.1 of the report which stated that the change to the manning of the current operation would amount to £24,000 which was not in the Council's budget. He also referred to paragraph 2.2 and the options contained therein for the future of the Green Waste Service.

Members asked for confirmation that the terms of the original contract with Verdant were such that the cost of an additional operative would have to be

borne by the Council and not by Verdant. A copy of the contract was not available at the meeting but officers advised that they considered the cost should be borne by the Council. As the letter from the HSE referred to a longer term solution being required, Members considered it important that they have the opportunity to study the terms of the original contract.

Members were reluctant to discontinue the Service and were aware that increasing the cost of the green bags could result in a reduced uptake of the service, thus negating the increase in income that the higher cost of the bags was intended to achieve. If the Service could be increased across the Borough through educational initiatives and other promotional activities, this could generate additional income and make use of the spare capacity created by the need for a second operative to carry out the Service.

It was proposed that a copy of the contract with Verdant be made available to Members and that an Extraordinary Meeting of the Board be arranged at which a report could be presented with detailed costing information, options for the future operation of the Green Waste Service and proposals for promoting the Service. Members also concurred with a suggestion that a representative from Verdant be invited to the Extraordinary Meeting.

RESOLVED: That:

1. A copy of the contract with Verdant for the Green Waste Service be made available to the Leader of the Council and Group Leaders;
2. An Extraordinary Meeting of the Board be organised as soon as possible on a date to be agreed with the Chairman and Vice Chairman; and
3. A representative from Verdant be invited to attend the Extraordinary Meeting.

11. RECYCLING POLICY

Consideration was given to a report of the Environmental Services Manager which advised the Board of the procedure in use to address contamination in recycling bins.

Members were shown samples of the green and red tags referred to in paragraph 2.3 of the report and a sample of an information leaflet on the type of materials it was acceptable to recycle.

Members agreed that it was unfortunate that the Bin Inspectors were regarded with hostility by the public who considered them to be "snoopers". Members felt the Inspectors played an important role in educating the public as to what materials could be placed in recycling bins and what, despite their labelling to the contrary, could not be recycled as it was not economic or practical to do so.

Members were advised that the current recycling rate achieved in the Borough was 26% but the Government target was 27%. However, the target for 2010

was 40% which would not be achieved without educating and encouraging the public to recycle correctly. Contamination was a greater problem in certain areas and it was these areas that required a greater concentration of effort in educating residents. The use of red tags and personal visits by Inspectors had resulted in reduced rates of contamination.

Members were advised that the Government funding for the two Inspectors was for a limited period. One Inspector would be employed until November and one until December. Members were of the opinion that the opening of bins should cease due to the antagonism this caused. They requested information on how best to utilise the Inspectors' time in educating the public in order to increase the recycling rate throughout the Borough and to minimise incidents of contamination. The income from recycling would be reduced if contamination increased as a result of the termination of employment of the Inspectors. There would also be an increase in costs in redirecting loads to the incinerator that had been rejected at the recycling plant.

A further report was requested to go to the Extraordinary Meeting of the Board giving options for increasing recycling rates and for the most efficient use of the Inspectors' time in educating the public in recycling. Officers were also requested to consider appropriate wording for stickers to place on recycling bins detailing the materials that could be sent for recycling, in order to reduce contamination.

RESOLVED: That a further report be presented to the Extraordinary Meeting of the Board detailing the following:

- a. Options for increasing recycling rates;
- b. Efficient use of the Inspectors' time in educating the public in recycling; and
- c. Appropriate wording for a sticker to place on recycling bins detailing the materials that could be sent for recycling.

12. WASTE RECYCLING CENTRE – GRANGE ROAD

Consideration was given to a report of the Development Services Manager seeking approval for extending the area of land currently leased to Hampshire County Council for the purpose of improving safety and traffic management.

RESOLVED: That:

1. the Head of Property Services be authorised to agree Terms as set out in the report of the Development Services Manager;
2. the Borough Solicitor be authorised to enter into such documentation as is necessary to effect the above decision in consultation with the Head of Property Services; and
3. authorisation be sought from the Policy and Organisation Board to proceed with the above recommendations.

13. ENVIRONMENTAL HEALTH (COMMERCIAL) SERVICE PLAN REVIEW 2008/2009

Consideration was given to a report of the Environmental Services Manager requesting the Board to consider the Environmental Health (Commercial) Service Plan for 2008/2009.

Members were advised of certain errors within the Plan:

Paragraph 7.8 – the date should be 2008 and not 2007 as stated.

Paragraph 8.1 – HSC Guidance should read Food Standards Agency Guidance.

Paragraph 10.2.3 – Charter Mark status was renewed in January 2008 and not December 2007 as stated.

In answer to a Member's question, it was confirmed that there was no specific legislation on labelling food in respect of gluten free products and only voluntary guidance was given to food manufacturers by the Food Standards Agency. General food labelling legislation was enforced by Trading Standards which would be the agency to whom incorrect labelling should be reported. Environmental Health Officers were only able to enforce food hygiene legislation in respect of food businesses and refer any labelling issues to Trading Standards. However, with the increase in the number of people suffering food allergies, it was anticipated that legislation may be enacted in the future in respect of food labelling for the presence of food allergens.

RESOLVED: That approval be given to the Environmental Health (Commercial) Service Plan for 2008/2009.

14. TRANSFER OF PLAY AREA AT THE DAEDALUS ESTATE, LEE-ON-THE-SOLENT FROM TAYLOR WIMPEY TO GOSPORT BOROUGH COUNCIL

Consideration was given to a report of the Leisure and Cultural Services Manager which sought the Board's views to the transfer of the play area on part of the former HMS Daedalus site to Gosport Borough Council and requested the Board to make its recommendations to the Policy and Organisation Board.

Members welcomed the news of this transfer as they considered it would be beneficial to the Borough.

RESOLVED: That:

1. the Policy and Organisation Board be recommended to approve the transfer of the land identified in the report of the Leisure and Cultural Services Manager on the terms set out in the report; and
2. the Borough Solicitor be authorised to complete the necessary legal documentation to acquire the land as public open space.

15. SOUTHERN WATER SCRUTINY

Consideration was given to a report of the Borough Solicitor requesting the Board to consider the report and recommendations of the Overview and Scrutiny Committee following their scrutiny of Southern Water's plans for investment in infrastructure in the Borough.

Members commended the Overview and Scrutiny Committee for their thorough scrutiny of these issues. Instances of flooding in the Borough were increasing with the changes in weather patterns and it was important to maintain a dialogue with Southern Water in finding solutions to these problems.

Members welcomed the suggestion of the formation of a Forum of Representatives to discuss issues with Southern Water as recommended by the Committee. It was proposed that this should be on a 1:1:1 political group basis and Councillors Mrs Cully and Mrs Salter were nominated. The Conservative Group would confirm their Member in due course.

RESOLVED: That:

1. The report of the Borough Solicitor and the recommendations contained therein be noted; and
2. Members nominated to attend the proposed Forum of representatives from Southern Water, Gosport Borough Council and Hampshire County Council to be Councillors Mrs Cully, Mrs Salter plus one Member from the Conservative Group.

16. CHAIRMAN'S REMARKS

The Chairman reminded Members that there would be a tour of the Wildgrounds on 8 July 2008 at 6.30pm. He recommended this very worthwhile event which was something that could be enjoyed by the whole family.

The meeting commenced at 6.00 pm and concluded at 6.55pm

CHAIRMAN

**AN EXTRAORDINARY MEETING OF THE COMMUNITY AND
ENVIRONMENT BOARD
WAS HELD ON 21 JULY 2008**

The Mayor (Councillor Kimber); Councillors Beavis (P), Burgess (P), Chegwyn (Chairman) (P), Edgar (P), Mrs Forder (P), Langdon (P), Murphy (P), Salter (P), Smith and Wright (P).

It was reported that, in accordance with Standing Orders, notice had been received that Councillor Ms Ballard would replace Councillor Smith for this meeting.

Also In Attendance:

Roger Edwards, David Maidman and Ian Reck from Verdant

17. APOLOGIES

Apologies for inability to attend the meeting were received on behalf of The Mayor (Councillor Kimber) and Councillor Smith.

18. DECLARATIONS OF INTEREST

There were no declarations of interest.

19. DEPUTATIONS

It was reported that no deputations had been received.

20. PUBLIC QUESTIONS

No questions had been received from the public.

PART II

21. PRESENTATION BY VERDANT

A presentation was given to Board Members by Roger Edwards (RE) and David Maidman (DM) of Verdant. They stressed that their business was not based on a model contract but that each one was tailored to the needs of the local authority with whom they were contracted. Their business had gone through a number of changes during recent years as demand for recycling had increased. There was a growing interest in food waste collection and Verdant operated a successful subscription based Green Waste Club system for some authorities.

Verdant emphasised the importance of staff development, stating that they employed a number of trainees who had become valued staff members, the result of which was that no agency staff were employed on the Gosport

contract. This helped strengthen the partnership working ethos between the Council and Verdant.

Education was seen as the way forward to encourage recycling. There was a need to educate the general public to develop correct recycling habits and visits to schools was seen as the best way to encourage the recyclers of the future.

The representatives from Verdant had had a meeting during the afternoon with Council officers to discuss the letter from the Health and Safety Executive. Verdant were considering making operational changes to facilitate the use of smaller sacks for green waste collection.

The Chairman thanked RE and DM for their presentation.

22. GREEN WASTE COLLECTION SERVICE

Consideration was given to a report of the Environmental Services Manager which informed the Board of further details of the contract with Verdant on the green waste service.

Members were advised that the green waste collection service observed by the Health and Safety Executive (HSE) Inspectors in April was not the usual way the service operated. The vehicle normally used for green waste collection had a tail lift and tipping mechanism. However, this vehicle had been broken on the day of the inspection and another vehicle used which necessitated the increased manual handling of the green waste sacks. This would be pointed out to the HSE by Verdant.

Members discussed the letter received from the HSE which was attached to the report of the Environmental Services Manager. The use of green sacks was discussed and the Board were advised that the current sacks should only be filled to a weight of 13 kilos. Most members of the public were unaware of the correct weight and fitted as much into them as they could. As a result, the sacks were frequently too heavy. It was felt that the introduction of smaller sacks would address this problem as, even if filled to capacity, they were less likely to become too heavy.

Members raised concern that if the size was altered the price should reflect the fact that households would use a greater number of sacks to collect their green waste. It was acknowledged that Verdant's costs would also increase as a greater number of sacks would be handled to collect the same volume of waste. The cost of fuel for the vehicles had also increased since the original contract was entered into.

Members were committed to keeping the green waste collection and working with Verdant to find an affordable response to the HSE's concerns. At the present time the service was being double manned at an additional cost of around £6,000. It was suggested that this sum should be met with a 50/50 split

even though the Council were not contractually obliged to make any payment. However the offer was made to demonstrate the commitment to the partnership working with Verdant and in recognition that the intervention of the HSE was not due to any fault on the part of Verdant in operating the current contract.

Members were keen to include glass with the recycling collection. They were advised that glass collection bins could be provided that would fit into the top of the recycling bin. In answer to a Member's question, it was confirmed that the box would not cover the entire opening of the bin so that other recycling material could still be placed inside without the need to remove the box of glass. The box could also be placed alongside the bin for collection if the recycling bin was full.

Members were advised that the cost of collection would increase if glass was included, both for its collection and disposal. A different vehicle would be necessary but there would be no increase in the number of crews required. However, the tonnage of recyclable material collected would increase relative to the cost involved which would assist the Council in achieving its government targets for recycling.

The Borough Solicitor advised that she could not guarantee that there would be no legal challenge should the contract with Verdant be extended without going through a tendering process. The risk of challenge increased if the services provided differed from the original contract. The advice of Counsel could be sought once the details of any extension to the existing contract were known.

It was suggested that a feasibility study should be undertaken and Verdant invited to take part in a benchmarking exercise in order to ascertain the details of any extension to the contract. The cost of fuel would be taken into consideration during this process as well as an operational system for rolling out a glass collection service. The waste collection rounds would need to be reviewed but an increase in recycling collection would lead to a reduction in general waste collection, so the overall operation would remain the same.

The possibility of Verdant operating a Green Waste Club in Gosport was considered. However, Members felt that this type of scheme would preclude many Gosport residents who would not be able to pay by Direct Debit for a year's subscription but who could pay for bags as they were needed. Verdant confirmed that they would not be able to run both a subscribed club and a green waste collection service as they would require different vehicles and rounds and there would not be sufficient volume for both services.

In answer to a Member's question, it was confirmed that the green waste bags were split and emptied at the depot in Fareham. It was not possible at the present time to reuse the bags or use degradable bags. The HSE were keen to eliminate manual handling of bags and use wheelie bins. However, the Integra composting site could not handle green waste in bins.

A Motion was moved by two Board Members that consideration of Agenda items 5 and 6 be deferred until the financial and organisational implications of Streetscene moving from the Wilmott Lane Depot to the Town Hall had been resolved. The Chairman gave an undertaking that a debate would take place at the next meeting of the Board on the proposed move of Streetscene. Following this statement the Motion was withdrawn.

RESOLVED: That:

- 1) Council officers liaise with representatives from Verdant on achieving a satisfactory response to the HSE's letter;
- 2) the sum of £3,000 be paid as a one off contribution to the additional costs incurred by Verdant in double manning the green waste service;
- 3) Officers investigate future options for the waste collection service including smaller green bags, glass recycling and an extension to the existing contract; and
- 4) a debate on the proposed move of Streetscene from the Wilmott Lane Depot to the Town Hall take place at the next meeting of the Board.

23. RECYCLING PROMOTIONAL AND EDUCATIONAL ACTIVITIES

Consideration was given to a report of the Environmental Services Manager which advised the Board of the activities of the Recycling Inspectors to address contamination in recycling bins.

Members expressed their appreciation of the Appendices to the report as they provided useful information on the role of the Inspectors.

Members were advised of how the worst contamination areas were identified when the lorries were emptied at the recycling plant. The Inspectors targeted these areas and checked the bins when they were put out in the early morning. Tags were placed on contaminated bins which gave contact information for the householder to seek advice on correct recycling. It was confirmed that some householders did seek advice and that contamination was reduced as a result.

Members considered whether a personal approach by Inspectors to residents living in streets where the worst contamination occurred would be a cost effective use of their time. It was acknowledged that a personal approach may produce better individual results as the Inspectors had good communication skills. However, it was likely that during working hours many residents would be out at work, resulting in wasted visits and the need to call again outside working hours. Members concluded that, in view of the fact that the Inspectors' contracts would end in November and December respectively, it was not cost effective to change the way they currently carried out their roles.

Members were advised that a revised estimate of £8,750.00 had been received for the production of stickers; an example of which was shown at Appendix D to the report of the Environmental Services Manager. It was acknowledged that

this sum was not included in the budget. The possibility of producing a small amount of stickers just to target the areas of worst contamination was considered. However, it was felt this proposal would increase the cost per sticker if only a small number were produced. Members felt that more information was required on the most practical method for distributing and attaching the stickers to the recycling bins.

RESOLVED: That:

- 1) the Waste Management Team continues to use the general activities protocols to promote and provide educational material relating to kerbside recycling in Gosport; with exception of stand alone contamination monitoring; and
- 2) the Recycling Inspectors continue to inspect and tag bins in the areas of known contamination.

The meeting commenced at 6.00 pm and concluded at 8.01pm

CHAIRMAN

AGENDA ITEM NO. 6

Board/Committee:	Community and Environment Board
Date of Meeting:	8 September 2008
Title:	Environmental Health Enforcement Policy
Author:	Environmental Services Manager
Status:	FOR RECOMMENDATION TO POLICY AND ORGANISATION BOARD

Purpose

To inform the Board of the results of stakeholder consultation on the Environmental Health Enforcement Policy approved at the Meeting on 3 March 2008 and confirmed by Policy and Organisation Board and Full Council on 12 March and 2 April respectively. Approval was subject to a further report if the results of the consultation made this necessary.

Recommendation

- That the Board approves the amended Environmental Health Enforcement Policy.
- That the recommendation be referred to the Policy and Organisation Board.

1 Background

- 1.1 Following approval of the Enforcement Policy in April, various potential stakeholders were contacted and their opinions and suggestions requested. A copy of the Policy was posted on the Council's web site. Comments were invited from local businesses in an article in the Spring 2008 edition of the Business Information Newsletter published by the Economic Prosperity Section; an item also featured in Members Information Bulletin 21 (copies in Appendix B). A leaflet was prepared and sent to all relevant organisations or individuals (also in Appendix B). A further thirty five organisations were contacted direct, as were all Unit Managers and Environmental Health staff. A full list of consultees can be found in Appendix C.
- 1.2 Responses were received from Gosport Police, British Petroleum and one of the Council's Principal Environmental Health Officers.
- 1.3 The opportunity was taken to incorporate relevant parts of the model enforcement policy published by the Health and Safety Executive (HSE) in April. Some minor rearrangement of paragraphs also took place.

2 Report

- 2.1 A revised draft Environmental Health Enforcement Policy, incorporating recommendations from stakeholders and the HSE

model policy, is included as Appendix A. For ease of reference all changes have been highlighted.

3 Human Rights Implications

3.1 No additional issues identified.

4 Race, Equal Opportunities and Consultation

4.1 The consultation provided any potential stakeholder or interested party to make comments or suggestions about the Enforcement Policy. No equal opportunities issues have been raised by any consultee.

4.2 An updated Equalities Impact Assessment Screening has been approved by the Equality and Diversity Steering Group.

5 Sustainability

5.1 As stated in the previous report, a robust enforcement policy can make a positive contribution to sustainability by ensuring and promoting compliance, supporting local economic activity (by providing information and support to businesses) and, through the stakeholder consultation process, promoting equal opportunities.

6 Crime and Disorder

6.1 Unchanged from the previous report, namely that maintenance of an up to date Environmental Health Enforcement policy will assist the Council to meet its obligation to prevent crime and disorder in its area.

7 Risk Assessment

7.1 No comments were received which challenged the initial assessment that the Enforcement Policy meets the requirements of the Regulators Compliance Code.

8 Conclusion

8.1 Several changes to the Environmental Health Enforcement Policy have been made as a result of stakeholder consultation and by the incorporation of elements of the HSE model policy. A further report to the Board is therefore considered to be appropriate.

8.2 All relevant comments and suggestions have been incorporated. These enhance the previous version of the Policy.

8.3 A summary leaflet will be prepared once this revised Policy has been approved.

Financial Services comments:	None.
Legal Services comments:	None for the purposes of this Report.
Service Improvement Plan implications:	A revised EH Enforcement Policy is a requirement of the Environmental Services Unit SIP (reference ENV/EH/010).
Corporate Plan:	<p>This report contributes to the following core values of the Council :</p> <ul style="list-style-type: none"> • Participation – through the stakeholder consultation exercise • Performance – by ensuring that the service operates efficiently in compliance with national requirements • People – ensuring that enforcement activity is undertaken without prejudice whilst recognising diversity <p>and complies with the following strategic priorities :</p> <ul style="list-style-type: none"> • People – in respect of the reduction of crime and anti-social behaviour in a way which complies with national requirements • Prosperity – improving social inclusion and supporting businesses by maintaining a level playing field on enforcement issues • Pursuit of Excellence – delivering a quality Environmental Health service
Risk Assessment:	Contained in the body of the report
Background papers:	<ul style="list-style-type: none"> • The Legislative and Regulatory Reform (Regulatory Functions) Order 2007 • Regulator’s Compliance Code (BERR, 17/12/07) • The Hampshire Licensing Protocol • Hackney Carriage & Private Hire Conditions & Penalty Points Scheme
Appendices/Enclosures:	
Appendix ‘A’	Revised Environmental Health Enforcement Policy
Appendix ‘B’	Business Newsletter article, MIB article and explanatory leaflet used during the consultation period
Appendix ‘C’	List of consultees
Report author/ Lead Officer:	David Palmer, Head of Environmental Health, 023 9254 5509; e-mail david.palmer@gosport.gov.uk

Revised Environmental Health Enforcement Policy

Note – for ease of reference all changes to the previous version, excluding paragraph numbering, are highlighted thus.

ENVIRONMENTAL HEALTH ENFORCEMENT POLICY

This Policy is effective from 6 April 2008 and will form the basis of stakeholder consultation during 2008.

Note : The term “Improvement Notice” includes both Hygiene Improvement Notices and Improvement Notices for health and safety purposes, unless otherwise stated.

Authorisation of Officers

- 1 Authorisation of officers is of paramount importance in the effective delivery of the functions of the Environmental Health service. The officer having delegated responsibility to authorise enforcement officers is the Environmental Services Manager.
- 2 All authorisations of enforcement officers are in writing, specifying the limits of authorisation. This forms part of the identification cards shown during visits/inspections.

Decision Making, Consistency and Transparency

- 3 From HSE Model Enforcement Policy, April 2008 : Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. The Council recognises the importance of achieving and maintaining consistency in its approach to making all decisions that concern enforcement action, including prosecution. To achieve this the guidance given in Codes of Practice, LACORS¹ circulars and other advisory documents will always be considered.
- 4 From HSE Model Enforcement Policy, April 2008 (modified) : In practice consistency is not a simple matter. Enforcement officers are faced with many variables: the severity of the risk/hazard, the attitude and competence of management, the duty holder's compliance history. Decisions on enforcement action are discretionary, involving judgment by the officer. The Council has arrangements in place to promote consistency in the exercise of discretion, and these include liaison arrangements with the other enforcing authorities, the Health and Safety Executive (HSE) and Food Standards Agency (FSA).

¹ Local Authorities Coordinators of Regulatory Services, www.lacors.gov.uk

- 5 Elected Members will decide in general policy terms what attitude the Council will take to serious breaches of the law relating to food safety, health and safety and licensing matters. Having determined this policy, Members will not thereafter be involved in detailed consideration of individual cases other than in exceptional circumstances or where a licence may be revoked or refused.
- 6 The decision to issue or refuse a licence is made by the Licensing Board where a criminal record check indicates the applicant has relevant criminal convictions. The Board will also determine all other applications where there are relevant representations or where a licence is reviewed following representations or a conviction for failing to comply with licence conditions. Only the Licensing Board may refuse or revoke any licence.
- 7 The decision whether to prosecute or issue a formal caution is delegated to the Borough Solicitor following a recommendation from the Head of Environmental Health. That decision will be based on the legislation, statutory Codes of Practice, including the Code for Crown Prosecutors², and any guidance given by the HSE, HELA³, the FSA or LACORS.
- 8 Certain types of formal enforcement action, excluding prosecution and formal cautions, is delegated to those Officers who are deemed competent to do so by the Environmental Services Manager. In determining competence, due regard will be given to the qualifications, nature and extent of the experience in the relevant enforcement discipline held by the Officer concerned, and any relevant approved/statutory Code of Practice.
- 9 All regulatory activities by the Environmental Health Section will be carried out in a way which is transparent, accountable, proportionate and consistent. Activities will, so far as possible, be targeted only at cases in which action is needed.
- 10 From HSE Model Enforcement Policy, April 2008 : The Council will expect relevant good practice to be followed.
- 11 The Environmental Health Section will base all enforcement decisions on :
 - the severity and scale of the actual or potential harm arising from an incident
 - the seriousness of any potential breach of the law
 - the effect of the legislative breach upon the potential persons

² www.cps.gov.uk/publications/docs/code2004english.pdf

³ Health and Safety Executive/Local Authority Enforcement Liaison committee, www.hse.gov.uk/lau/hela/

affected

- the future consequences of failing to address the breach at the present time
- the track record of the duty holder or the business
- the enforcement priorities
- the practicality of achieving results
- the wider relevance of the incident including serious public concern
- any concurrent or potential action by other services and agencies and the suitability and effect of our action as opposed to combined with theirs in addressing the issues.

12 The Environmental Health Section will have due regard to the advice given in statutory Codes of Practice, strategic plans and guidance including :

- the Regulator's Compliance Code (Department for business, Enterprise and Regulatory Reform, December 2007⁴)
- the Central and Local Government Concordat on Good Enforcement (usually known as the Enforcement Concordat) where not superceded by the Regulator's Compliance Code
- advice from LACORS
- advice from the Food Standards Agency
- advice and guidance on licensing matters from the Department for Culture, Media and Sport (DCMS)
- advice from the Office for Criminal Justice Reform⁵ and associated LACORS guidance⁶
- advice from the Health and Safety Commission (HSC), the HSE and HELA
- advice from the Department of Health

and other relevant Government and professional bodies and to following appropriate national strategies.

13 For health and safety enforcement, in deciding the level of response to complaints, reports of injury or occupational ill health, Authorised Officers shall also have regard to the current HSE Incident Selection Criteria and will consider the seriousness of the offence in relation to the assessment process required by the HSE's Enforcement Management Model (EMM)⁷ and the likely effectiveness of the various enforcement options.

⁴ http://bre.berr.gov.uk/regulation/reform/enforcement_concordat/index.asp

⁵ see Home Office Circular 30/2005 on Cautioning of Adult Offenders : www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/d820bbad9e5edd8680257013004d1ccf?OpenDocument

⁶ LACORS Revised Guidance on Cautioning of Offenders, Issue 2 – January 2008

⁷ see link from www.hse.gov.uk/lau/lacs/45-24.htm plus explanatory note and the end of this document

- 14 The Council will use discretion in deciding the level of response to incidents, complaints or cases of ill health. In accordance with maintaining a proportionate response, most resources available for the investigation of incidents will be devoted to the more serious events.
- 15 In relation to taxis and private hire operators and drivers, the Council operates a points system to deal with infringements of its licensing conditions⁸. The Head of Environmental Health is authorised to issue points and the person concerned has the right of appeal to the Environmental Services Manager. The Head of Environmental Health has delegated authority to suspend a licence where the infringement is so serious as to place the public at risk or where the person concerned has accumulated 12 points in any 12-month period. Any suspension must be ratified at the next available Licensing Board.
- 16 The decision to issue or refuse a licence is made by the Licensing Board where a criminal record check indicates the applicant has relevant criminal convictions. The Board will also determine all other applications where there are relevant representations or where a licence is reviewed following representations or a conviction for failing to comply with licence conditions.
- 17 Only the Licensing Board may refuse or revoke any licence.
- 18 From HSE Model Enforcement Policy, April 2008 (modified) : Transparency means helping duty holders to understand what is expected of them and what they should expect from regulators. It also means making clear to duty holders not only what they have to do but, where this is relevant, what they do not. Officers will always distinguish between statutory requirements and advice or guidance about what is desirable but not compulsory.
- 19 From HSE Model Enforcement Policy, April 2008 (modified) : Transparency also involves officers keeping employees, their representatives, and victims or their families informed. These arrangements have regard to legal constraints and requirements.
- 20 From HSE Model Enforcement Policy, April 2008 (modified) : Officers will explain what to expect when they call and what the complaint procedure is. In particular:
 - when officers offer information or advice, face to face or in writing, including any warning, they will explain what has to be done to comply with the law, and explain why. If asked officers will confirm any advice in writing and distinguish legal requirements from best practice advice

⁸ see link from www.gosport.gov.uk/sections/environment/environmental-health/commercial-team/licensing/taxi-drivers

- in the case of Improvement Notices, the officer will discuss the content and, if possible, resolve points of difference before serving it. The Notice will say what needs to be done, why, and by when; in the case of a prohibition notice, the notice will explain why the prohibition is necessary.

Supporting Economic Progress

- 21 The Environmental Health Section will consider the impact of its interventions and ensure that the burden on 'regulated entities', i.e. businesses, is the minimum compatible with achieving the regulatory objective.

Risk Assessment

- 22 From HSE Model Enforcement Policy, April 2008 (modified) : Legislation makes some duties specific and absolute. Others require action so far as is reasonably practicable. Deciding what is reasonably practicable to control risks involves the exercise of judgment. In the final analysis, it is the courts that determine what is reasonably practicable in a particular case. Where duty holders must control risks so far as is reasonably practicable, the Council will, when considering protective measures taken by them, take account of the degree of risk on the one hand, and on the other the cost, whether in money, time or trouble, involved in the measures necessary to avert the risk. Unless it can be shown that there is a gross disproportion between these factors and that the risk is insignificant in relation to the cost, the duty holder must take measures and incur costs to reduce the risk.
- 23 The Environmental Health Section (From HSE Model Enforcement Policy, April 2008) has a system for prioritising contacts according to the risks posed by a duty holder's operations, and to take account of the hazards and the nature and extent of the risks that arise. We will ensure that our efforts are targeted on businesses where they are most needed and will apply a risk-based approach across all service areas.
- 24 Enforcement powers are only employed as a means to an end. Action will generally follow a hierarchy of alternatives unless urgent intervention is required.

Advice and Guidance

- 25 The Environmental Health Section will help and encourage businesses to understand and meet regulatory requirements more easily but this does not relieve regulated entities of their responsibility to comply with their obligations under the law.

- 26 The Section is committed to providing low cost training for businesses in an effort to bring about improved standards and place great emphasis on providing clear guidance, information and advice to persons, organisations, duty holders or businesses so as to encourage compliance with the legislation. The Council's web site is employed extensively to disseminate up to date information.

Inspections

- 27 From HSE Model Enforcement Policy, April 2008 (modified) : It is neither possible nor necessary for the Council to investigate all issues of non compliance with the law that are uncovered in the course of planned inspections or reported events.
- 28 The Environmental Health Section will ensure that regulatory effort is focussed on those businesses where non-compliance is likely and impact is high.
- 29 Food safety and health and safety regulation is undertaken by the same Team within the Section to ensure consistency, etc. Some joint working between regulators is already in place and more is planned.
- 30 From HSE Model Enforcement Policy, April 2008 (modified) : The Health and Safety Commission's priorities are used to target the Section's activities and resources as set out in the annual Commercial Service Plan, which also covers food safety, licensing and smoke-free enforcement. To maintain a proportionate response most resources available for investigation will be devoted to the more serious circumstances.
- 31 Whenever an enforcement decision needs to be made fair regard shall be given to the normal hours of trading of any business under investigation. When necessary, inspections and investigations will be carried out in the early morning, in the evening and at weekends, in order to obtain fair and representative evidence pertaining to the alleged breach(s).
- 32 Prior notification of an impending enforcement inspection will not be made where such notification would defeat the purpose for which the inspection was being undertaken.
- 33 From HSE Model Enforcement Policy, April 2008 (modified) : In conducting investigations the Council will take account of any likely complimentary or shared enforcement roles, e.g. where the HSE has jurisdiction over some of the activities of a duty holder and we have jurisdiction over the rest of the activities. We will also refer relevant information to other Regulators where there is a wider regulatory interest.
- 34 [text relocated but not changed] Wherever appropriate the Authorised

Officer will liaise with other Teams within Environmental Health, other enforcement agencies and the, Home⁹, Originating¹⁰ and Lead¹¹ Authorities or the Account Manager of a large, multi-site national organisation participating in the Large Organisations Partnership Pilot (LOPP)¹² will be advised of the action taken and its outcome. In addition, the Office of Fair Trading may be informed of details of any relevant conviction.

Information Requirements

- 35 Information Requirements on businesses will be weighed against the costs and benefits of providing it and the Environmental Health Section will seek to share this data to avoid duplication.

Compliance and Enforcement Actions

- 36 The Environmental Health Section will adopt positive incentives, such as a light touch or reduced data requirements. Action will be taken where appropriate but there will be discussion with the business first unless immediate action is warranted or delay would defeat the object of the enforcement action.
- 37 Schemes such as Safe2eat¹³ and targeted inspection programmes mean that effort is focussed on the worst performing businesses and that those which remain broadly compliant already receive a lighter touch.

Accountability

- 38 The Environmental Health Section has put in place effective consultation opportunities for businesses to provide feedback and also provides an effective complaints procedure.

Home, Lead and Originating Authority Principle

- 39 Where Officers are considering taking enforcement action that is contrary to the advice of the relevant Home, Lead or Originating Authority, this shall be discussed with that Authority before taking action. Where the action impacts on the enterprise's policy that has

⁹ the Home Authority, for food safety purposes, is the local authority where the relevant decision-making base of an enterprise is located.

¹⁰ the Originating Authority, for food safety purposes, is a local authority whose area a decentralised enterprise produces goods and services

¹¹ the Lead Authority acts as a focal point of liaison on health and safety issues between other local authorities, the HSE and a business, organisation or intermediary group with multiple outlets across the country or a national membership, whose decision making bases is within its district.

¹² LOPP is a joint HSE/LACORS initiative to coordinate health and safety enforcement involving large organisations such as ASDA and Tesco.

¹³ a web-based information source on standards of hygiene in food premises. See www.gosport.gov.uk/safe2eat

been agreed centrally by the decision-making base of the enterprise, then reference to the Home/Lead/Originating Authority is essential. Where appropriate, Home/Lead/Originating Authorities shall be advised of the action taken and its outcome.

Informal Action

- 40 Informal action will be appropriate in the following circumstances :
- the consequences of non-compliance will not pose a significant risk to public health or to employees or members of the public who may visit the premises, and
 - the act or omission is not serious enough to warrant formal action, and
 - from the past history of the individual, enterprise or duty holder it can be reasonably expected that informal action will achieve compliance, and
 - confidence in the individual or duty holder, or in the management of the enterprise, is high.
- 41 Even where some of the above criteria are not met there may be circumstances in which informal action will be more effective than the formal approach. This may apply to businesses and enterprises associated with voluntary organisations using volunteers where no one is employed to work. In taking health and safety enforcement action contrary to that identified by the Enforcement Management Model (EMM) Authorised Officers must identify the reason for the proposed action in the “Outcome of Management Review” of the Enforcement Assessment Record of the EMM.
- 42 When informal action is taken to secure compliance Officers will ensure that written documentation is provided that :
- contains all the information necessary to understand what work is required, why it is necessary and the timescale for compliance
 - offers the opportunity for discussion or for the individual or proprietor to make representations, including contact point(s) and name(s)
 - indicates the statute or regulation contravened, measures which will enable compliance with the legal requirements and that other means of achieving the same effect may be chosen
 - provides the details of any other Council services or outside Agencies that may be able to provide assistance or related services
 - clearly indicates that any recommendations of good practice are not legal requirements.

Surrender, Seizure and Detention of Food

- 43 Officers will encourage the voluntary surrender of food that is

suspected of not having been produced in compliance with the Food Hygiene (England) Regulations 2006¹⁴. Where voluntary measures are refused or inappropriate then Detention of Food notices will be served on the producer. Only Officers duly authorised by the Environmental Services Manager may serve notice to seize or detain food.

- 44 Where necessary, analysis of detained food will be undertaken as soon as possible by the Council's food examiner. Where detained food is considered to be in contravention of relevant legislation arrangements for its processing or destruction will be discussed with the producer. Where agreement on the destruction or processing with the producer is not reached, the matter will be brought before a Justice of the Peace for a Condemnation Order.
- 45 All food for destruction, either voluntarily or by way of a Condemnation Order, will be destroyed strictly in compliance with national guidance. The Council cannot accept voluntary surrender of raw meat or raw meat products.

Fixed Penalty Notices

- 46 A Fixed Penalty Notice may be issued for offences under the Health Act 2006 in respect of smoking in a smoke-free location or failing to display the required signs.
- 47 A Fixed Penalty Notice may be issued to an owner, occupier, manager or any other person in charge of smoke-free premises or a smoke-free vehicle for failing to display no smoking signs, or to an individual for smoking in smoke-free premises or in a smoke-free vehicle.
- 48 The amount of the penalty will be discounted if paid within a specified time period.
- 49 Persons to whom a Fixed Penalty Notice is issued may direct questions about the service of that Fixed Penalty Notice to the Head of Environmental Health. The Head of Environmental Health may decide upon the cancellation of a Fixed Penalty Notice.
- 50 If the person to whom a penalty notice has been given asks to be tried for the alleged offence proceedings may be brought against him.
- 51 Where the fixed penalty is not discharged the Council will consider action by way of legal proceedings.

¹⁴ www.opsi.gov.uk/si/si2006/20060014.htm

Issue of Penalty Points

- 52 The Council's Penalty Points Scheme forms part of the prevailing Hackney Carriage and Private Hire Conditions. This provides stepped enforcement for those licence holders who have contravened licence conditions or associated legal provisions. It does not, however, prejudice the Council's ability to take other actions which it is entitled to take under legislation, bye-laws or regulation.
- 53 The Head of Environmental Health is authorised to issue penalty points with the person concerned having the right of appeal to the Environmental Services Manager. The Head of Environmental Health has delegated authority to suspend a licence where the infringement is so serious as to place the public at risk or where the person concerned has accumulated 12 points in any 12-month period. Any suspension must be ratified at the next available Licensing Board.

Voluntary Closure of Food Premises

- 54 The Council will consider voluntary closure of food premises where a health risk condition exists (as defined by Regulation 7(2) and Regulation 8(4), i.e. there is a risk/imminent risk of injury to health) provided that this undertaking is confirmed in writing and that the food business will not re-open without the officer's prior approval. Voluntary closure will not be accepted where there is no confidence that the proprietor will close the premises or cease the use of any equipment, process or treatment associated with the imminent risk.
- 55 If the business operator offers to close voluntarily the officer will :
- consider whether there is a risk of the establishment being re-opened without his knowledge and/or agreement (if this were to cause food poisoning or injury the Council could be criticised for not having used statutory powers)
 - recognise that there is no separate legal sanction against a business operator who re-opens for business after offering to close, although enforcement action for the actual breaches (e.g. unsafe food, similar processing as before, etc.) remains available
 - explain to the food business operator that, by making the offer to close, any right to compensation if a Court subsequently declines to make a Hygiene Emergency Prohibition Order is lost, and
 - ensure that frequent checks can be made on the establishment to ensure that it is not operational.

Statutory Notices

- 56 Only Officers who are duly authorised by the Environmental Services Manager may issue (i.e. sign) Statutory Notices.

- 57 Authorised Officers must have personally witnessed the matter concerned, be satisfied that it is significant and that any other appropriate criteria are met before issuing or requesting any Statutory Notice. The Head of Environmental Health may issue certain Statutory Notices on the recommendation of Authorised Officers where the latter are not personally authorised to do so.
- 58 Authorised Officers shall endeavour to obtain the agreement of the duty holder regarding the placing of time limits on Statutory Notices, having taken due account of the risk. Authorised Officers will always discuss the works required with the duty holder, if possible resolve points of difference and fully consider alternative solutions.
- 59 When issuing a Statutory Notice the Authorised Officer will provide information about the right of appeal.
- 60 Failure to comply with a Statutory Notice will generally result in legal proceedings and/or work in default where appropriate and permitted.
- 61 Hygiene Improvement Notices : Officers will only consider the use of a Notice where one or more of the following criteria apply :
- there are significant contraventions of the legislation
 - there is a lack of confidence in the proprietor or enterprise to respond to the informal approach
 - there is a history of non-compliance with the Council's informal requests for action
 - standards are generally poor with little management awareness of statutory requirements
 - the consequences of non-compliance could be potentially serious to public health
 - in addition to any other formal action, e.g. prosecution, effective action also needs to be taken as quickly as possible to remedy conditions that are serious and deteriorating.
- 62 Hygiene Emergency Prohibition Notices : Officers will only consider the use of Hygiene Emergency Prohibition Notices where one or more of the following criteria apply :
- the consequences of not taking immediate and decisive action to protect public health would be unacceptable
 - an imminent risk of injury to health can be demonstrated; this might include evidence from relevant experts, including a food analyst or food examiner
 - the guidance criteria concerning the conditions when prohibition may be appropriate, specified in the relevant Code of Practice, are fulfilled
 - there is no confidence in the integrity of an unprompted offer

made by the proprietor to voluntarily close the premises or cease the use of any equipment, process or treatment associated with the imminent risk

- a proprietor is unwilling to confirm in writing his/her unprompted offer of a voluntary prohibition.

63 Where emergency action involving chemical contamination of food is being considered, Authorised Officers will normally take medical or other expert advice before reaching a final enforcement decision. The relevant guidance concerning which bodies are to be contacted will be consulted.

64 Where a Hygiene Emergency Prohibition Notice has been issued, an application for a Hygiene Emergency Prohibition Order must be made to the Magistrates' Court within three working days. Failure to do so will entitle the proprietor of the business to compensation.

65 The operator of a food business subject to a Hygiene Emergency Prohibition Order will be given not less than 24 hours notice of the intention to apply at the Magistrates' Court for such an Order.

66 Remedial Action Notices : Premises subject to approval(s) under E.C. Regulation 853/2004¹⁵ that are in breach of requirements of the Regulation(s) may be subject to a Remedial Action Notice to address the breach.

67 Health and Safety Improvement Notices : Officers will only consider the use of Improvement Notices where indicated by the HSE's Enforcement Management Model assessment.

68 Health and Safety Prohibition Notices : Authorised Officers will only consider the use of Prohibition Notices where one or more of the following criteria apply :

- the consequences of not taking immediate and decisive action to protect health and safety would result in an unacceptable risk of personal injury
- a serious risk of personal injury can be demonstrated; this might include evidence from relevant experts, such as a civil engineer or the Employment Medical Advisory Service
- the Authorised Officer has had regard to any relevant Approved Code of Practice or HSE, HELA or LACORS Guidance, concerning the conditions when Prohibition may be appropriate
- the Authorised Officer has no confidence in the integrity of an unprompted offer made by the duty holder to voluntarily close the premises or particular part of the premises or to cease the use of any equipment, process or treatment associated with the

¹⁵ www.food.gov.uk/multimedia/pdfs/h2ojregulation.pdf

- unacceptable risk to personal injury
- a duty holder is unwilling to confirm in writing his or her unprompted offer of a voluntary prohibition
- an assessment under the EMM identifies service of a Prohibition Notice as an appropriate course of action.

Simple Cautions

69 The following conditions will be met before a Simple Caution is administered :

- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction, and
- the suspected offender must admit the offence either verbally or in writing (there must be a record). A Simple Caution will not be appropriate where a person has not made a clear and reliable admission of the offence (for example where intent is denied or there are doubts about the person's mental health or intellectual capacity or where it is likely that the person could avail themselves of the provisions of a statutory defence), and
- it is in the public interest to use a Simple Caution as the appropriate means of disposal, and
- the suspected offender must understand the significance of a Simple Caution and give consent to being cautioned.

70 Simple Cautions cannot be given for smoke-free offences as none of these are indictable.

71 If all the above requirements are met, the Officer will always consider whether the offence makes it appropriate for disposal by a Simple Caution but where a suspect is under 18, a Simple Caution will not be given.

72 Where a person declines the offer of a Simple Caution the suspect will be advised that the Council has the discretion to proceed with the matter by way of legal proceedings.

73 Simple Cautions may be appropriate for individuals and corporate bodies. They will be used only in accordance with the relevant Home Office Circular, the Code of Practice made under section 22 of the Legislative and Regulatory Reform Act 2006¹⁶, the Code for Crown Prosecutors and relevant guidance from HSE, HELA, FSA, LACORS, etc.

74 When considering the disposal of a matter by way of a Simple Caution the Council will have regard to any aggravating or mitigating factors involved in the commission of the offence and determine which factors may be most appropriate in the local circumstances.

¹⁶ see further explanation at www.lacors.gov.uk/lacors/ContentDetails.aspx?id=14911

- 75 The Head of Environmental Health is the Officer duly authorised to issue Simple Cautions and will not be personally involved in the investigation of the offence. Should this be unavoidable, the Environmental Services Manager will make the necessary decisions. All decisions will be recorded in the Quality Log for the case.
- 76 The views of the victim, if any, will be taken into account and the proposal to offer a Simple Caution explained, though the fact that a victim declines to support a prosecution will not preclude the consideration of a Simple Caution. The final decision is at the discretion of the Council. The victim will be kept informed of the final outcome.
- 77 The suspect's criminal record will be checked to avoid inappropriate use of a Simple Caution. In particular, the Home, Lead or Originating Authority will be contacted for this purpose. If the suspect has previously received a Caution, then a further Simple Caution will not normally be considered unless the matter is trivial or unrelated.
- 78 The Simple Caution may be administered by post or in person. The suspect will be given adequate time to decide whether to accept, including the opportunity to seek independent legal advice.
- 79 Simple Cautions will be recorded and may be published.

Prosecution and/or Default Action

- 80 Where circumstances have been identified which may warrant a prosecution, all evidence and information will be considered to enable a consistent, proportionate and objective decision to be made. For health and safety enforcement any decision to initiate proceedings must be supported by an EMM assessment indicating prosecution as an appropriate response.
- 81 A decision to prosecute will be made in any of the following circumstances and at the earliest opportunity :
- where the alleged offence involves a flagrant breach (From HSE Model Enforcement Policy, April 2008) reckless disregard of the law such that public health, safety or well-being has or is being put at risk
 - From HSE Model Enforcement Policy, April 2008 : where death was a result of a breach of the legislation
 - where the gravity of the alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender, warrants it
 - the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of

an Authorised Officer

- where there has been a failure to pay the appropriate fine during the time specified on a Fixed Penalty Notice
- for persistently failing to comply with a Fixed Penalty Notice for failure to display the correct no smoking signs in smoke-free premises or a smoke-free vehicle or for smoking in smoke-free premises or in a smoke-free vehicle
- failing to prevent smoking in a smoke-free premises or a smoke-free vehicle
- a Simple Caution has been offered but rejected
- the alleged offence involves the failure to comply in full or in part with the requirements of a Statutory Notice
- there is a history of similar offences or persistent poor compliance
- there has been a failure to comply with a written informal warning or an Improvement Notice or Prohibition Notice
- Authorised Officers have been intentionally obstructed or assaulted in the lawful course and pursuit of their duties. This includes refusing to provide name and address when requested by an Authorised Officer.

82 The Borough Solicitor and the Head of Environmental Health will also consider prosecution where, following an investigation or other regulatory contact, the following circumstances apply :

- false information has been wilfully supplied or there has been intent to deceive
- there have been serious failures by the management of the business or organisation
- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law and the maintenance of standards required by law and conviction may deter others from similar failures to comply with the law.

83 When considering the decision to prosecute, Officers will also have regard to relevant Codes of Practice and guidance from the appropriate national regulator and consider the following factors :

- a) the seriousness of the alleged offence, e.g.
 - the risk or harm to public health
 - identifiable victims or potential victims
 - failure to comply with a Statutory Notice served for a significant breach of legislation
 - deliberate disregard for financial reward.
- b) the previous history of the party concerned, including :
 - offences following a history of similar offences
 - failure to respond positively to past warnings

- failure to comply with statutory notices.
- c) the competence of any important witnesses and their willingness to co-operate.
 - d) the willingness of the party to prevent a recurrence of the problem.
 - e) the probable public benefit of a prosecution and the importance of the case, e.g. whether it might establish legal precedent or address a high incidence of similar offences in the area. Advice on the public interest is contained in the Code for Crown Prosecutors. The general advice is that the more grave the offence, the less likelihood there will be that the public interest will allow anything other than prosecution.
 - f) whether any other action, such as issuing a Simple Caution or a Notice or imposing a Prohibition, would be more appropriate or effective. It is possible in exceptional circumstances to prosecute as well as issue a notice and failure to comply with a notice would be an additional offence.
 - g) Any explanation offered by the company or the suspected offender. Suspected offenders will always be given the opportunity to offer an explanation before prosecution decisions are taken.
 - h) Where applicable, the likelihood of the defendant being able to establish a 'due diligence' or 'best practicable means' defence. Where appropriate, reference will be made to case law and guidance issued by the Food & Drink Federation, FSA, LACORS, the Chartered Institute of Environmental Health, National Consumers Association, National Farmers Union and the Retail Consortium, etc.
- 84 Before a prosecution proceeds, the Borough Solicitor and Head of Environmental Health will ensure that they are satisfied that there is relevant, admissible, substantial and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction; a bare prima facie case will not be enough. Where there is insufficient evidence to prosecute, other types of formal action, such as Simple Cautioning, are not alternatives.
- 85 In circumstances where the Court must impose a Prohibition Order on a food business operator participating in the management of the food business due to a continuing risk to health, the Authorised Officer must obtain evidence in respect of the proprietor failing to take the necessary steps to ensure the provision of hygienic conditions and practices. This could include details relating to the

absence or inadequacy of any documented food safety management systems, including HACCP (Hazard Analysis And Critical Control Point techniques¹⁷) and SFBB (Safer Food, Better Business¹⁸).

- 86 Default action may be an option when a Statutory Notice has not been complied with. This may be in addition to, or instead of, prosecution. Where the law allows the Council will consider taking default action to remedy a condition, etc., to achieve compliance with a Statutory Notice, if necessary under a Warrant to Enter the premises and including the seizure of equipment, etc. Costs will be recovered from the person(s) responsible where possible.
- 87 Where appropriate, Home, Originating and Lead Authorities or the Account Manager of a large, multi-site national organisation participating in the Large Organisations Partnership Pilot (LOPP) will be advised of the action taken and its outcome. In addition, the Office of Fair Trading may be informed of details of any relevant conviction.
- 88 From HSE Model Enforcement Policy, April 2008 (modified) : Additionally, the Council will actively consider the management chain and the role played by individual directors and managers. Where appropriate we will seek disqualification of directors under the Company Directors Disqualification Act 1986.
- 89 From HSE Model Enforcement Policy, April 2008 (modified) : Where circumstances warrant it and the evidence to support a case is available the Council will prosecute without prior warning or recourse to alternative sanctions.
- 90 From HSE Model Enforcement Policy, April 2008 (modified) : In cases of sufficient seriousness, and when given the opportunity, the Council will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed. In considering what representations to make the Council will have regard to Court of Appeal guidance: the Court of Appeal has said "In our judgment magistrates should always think carefully before accepting jurisdiction in health and safety at work cases, where it is arguable that the fine may exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence".

¹⁷ HACCP is the main platform for international legislation and good manufacturing practices for all sectors of the food industry. It is an internationally recognised risk management tool which focuses on the hazards that affect food safety and establishes critical control limits at critical points during the production process.

¹⁸ a simple approach to food safety developed by the FSA and aimed at small catering businesses; see www.gosport.gov.uk/sections/environment/environmental-health/commercial-team/safer-food-better-business/

Revocation of Premises Approval

- 91 Where premises have been approved for the manufacture of foods under any specific food products Regulations and there is in force an Emergency Hygiene Prohibition Notice or a Hygiene Prohibition Order the Authorised Officer, in consultation with the Head of Environmental Health, shall consider the revocation of the approval.

Licensed Premises

- 92 Licensing Act 2003 : The Licensing authority is required to promote the following objectives in relation to premises and people licensed under the Act :

- preventing crime and disorder
- protecting public safety
- preventing nuisance
- protecting children from harm.

- 93 Gosport Borough Council recognises the interests of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law and the four licensing objectives it seeks to promote. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law.

- 94 The Hampshire Licensing Protocol formalises the working agreement between licensing authorities, Hampshire Constabulary and Hampshire Fire & Rescue Service in respect of licensing compliance. This includes the nomination of liaison officers, disclosure arrangements, provision of advice, complaint investigation, review of licences, prosecutions, cautions, etc.

- 95 The Protocol sets out the roles and responsibilities of the various enforcement agencies. It promotes the targeting of agreed problem and high risk premises which require greater attention, while providing a lighter touch in respect of low risk premises which are well run.

- 96 In respect of instigating legal proceedings, the typical division of responsibility is as follows :

Crime and Disorder	Hampshire Police
Public Safety	Licensing Authority (i.e. the Borough Council), Hampshire Fire and Rescue Service, Hampshire Constabulary and Hampshire Trading Standards
Public Nuisance	Licensing Authority or Hampshire Police
Protection of Children	Hampshire Police, Licensing Authority, Hampshire Trading Standards in

	consultation with Hampshire County Council Children Services
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- 97 In respect of making representations and seeking reviews, the division is as follows :

Crime and Disorder	Hampshire Police
Public Safety	Local Authority Health and Safety Service, Health and Safety Executive, Hampshire Constabulary and/or Hampshire Fire and Rescue Service
Public Nuisance	Local Authority Pollution Service and/or Hampshire Police
Protection of Children	Hampshire Children Services as the Child Protection Agency, and/or Hampshire Trading Standards

- 98 Gambling Licensing : The Head of Environmental Health is the appropriate person to initiate any enforcement action to be taken under the Gambling Act 2005.

Referral to Another Agency

- 99 Where any matter is found to fall more appropriately under the enforcement regime of another regulatory body or agency, e.g. the Police authority or HSE, the case will be referred to that agency by the Council. In all cases of referred enforcement the person(s) under investigation will be notified in writing by the Council of the reasons for referral.

Revisits to Premises

- 100 Following service of a Statutory Notice or a written informal warning and/or advice, officers will revisit the premises to check that compliance has been achieved. For very minor contraventions officers may advise that a check will be carried out at the next routine inspection. The decision on whether a follow-up visit is necessary will be based upon the seriousness of the non-compliance and the likelihood that further formal action will be taken as a direct result of the visit. Where practicable, the officer who undertook the original visit or inspection will carry out the revisit if there are significant breaches of legislation.

Enforcement At Premises In Which The Council Has An Interest

- 101 The Council will not take action against itself and where such action may prove necessary the matter will be passed to the Borough Solicitor for referral to the appropriate national enforcement authority, etc.

102 Where Council-owned premises are operated by a contractor or other occupier the Council shall retain responsibility for enforcement. Under these circumstances the Council will apply its enforcement policy and procedures in exactly the same way as it does in all other premises at which it has the enforcement responsibility.

From HSE Model Enforcement Policy, April 2008 (modified) :
Accident Investigation

103 Accidents will be investigated in accordance with the principles of proportionality, consistency, targeting, transparency and accountability.

104 The purpose of investigation is to :

- identify immediate and underlying causes
- ensure the duty holder takes appropriate remedial action to prevent reoccurrence
- evaluate compliance with the relevant statutory provisions
- apply the principles of the Enforcement Management Model and take enforcement action if appropriate.

105 Investigations will be :

- continued only so far as they are proportionate to the achievement of the objectives set for them [see below]
- conducted and/or supervised by staff who are competent
- provided with adequate resources and support, including information, equipment and staffing
- conducted so that efficient and effective use is made of the resources committed to them
- timely, so far as this is within the control of the investigating inspector
- subject to suitable management procedures for monitoring the conduct and outcome of investigations

106 Factors to determine whether an investigation continues to be proportionate :

- public expectation, for example, where there has been a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries
- the potential (taking into account whether the accident could have been reasonably foreseen) for a repetition of the circumstances to result in a fatality or fatalities, serious ill health, or an accident involving multiple serious injuries either in the activities of a specific duty holder or within industry generally
- the extent to which the available evidence allows conclusions as to causation to be drawn and supported with sufficient certainty,

including conclusions as to responsibility for alleged breaches of relevant legislation

- the extent to which the resources needed for the investigation are disproportionate to the hazard(s) or risk(s)
- the prevalence of the event, either in the activities under the control of a specific duty holder, or in an industry sector generally.

Death at Work

- 107 Where there has been a breach of health and safety law leading to a work-related death the Council will consider whether the circumstances of the case might justify a charge of manslaughter. Officers will liaise with the Police, Coroners and the Crown Prosecution Service (CPS) and if they find evidence suggesting manslaughter they will pass it on to the Police or, where appropriate, the CPS. From HSE Model Enforcement Policy, April 2008 (modified) : If the Police or the CPS decide not to pursue a manslaughter case, the Council will bring a health and safety prosecution if that is appropriate.
- 108 The Council will always carry out a site investigation of a reportable work-related death following liaison with the Police and where evidence indicates that a serious criminal offence or possible health and safety offences may have been committed. Such investigation will be undertaken in accordance with “Work Related Deaths: A protocol for liaison”¹⁹ and the associated “Work Related Deaths: Investigators Guide”²⁰ both published by the HSE. This specifically excludes deaths from natural causes or by suicide.

From HSE Model Enforcement Policy, April 2008 (modified) : **Publicity**

- 109 The Council may publicise the names of all the companies and individuals who have been convicted in the previous 12 months of breaking the law and will also consider drawing media attention to factual information about charges that have been laid before the courts, having due regard to publicity that could prejudice a fair trial.
- 110 The Council will also consider publicising any conviction that could serve to draw attention to the need to comply with legal requirements, or deter anyone tempted to disregard their duties under the law.

PACE Interviews – Police And Criminal Evidence Act 1984

- 112 Questioning of duty holders and other persons will be carried out as a formal interview where there is suspected involvement in criminal

¹⁹ www.hse.gov.uk/pubns/misc491.pdf

²⁰ www.hse.gov.uk/enforce/investigators.pdf

offences. All interviews shall be conducted with regard to the Act and associated Codes of Practice.

Human Rights Act 1998

113 Regard shall be had to the Human Rights Act 1998 when applying this Policy.

From HSE Model Enforcement Policy, April 2008 :

Explanatory Note : The HSE's Enforcement Management Model (EMM)

The EMM is not a procedure in its own right. It is not intended to fetter inspectors' discretion when making enforcement decisions, and it does not direct enforcement in any particular case. It is intended to:

- promote enforcement consistency by confirming the parameters, and the relationships between the many variables, in the enforcement decision making process;
- promote proportionality and targeting by confirming the risk based criteria against which decisions are made;
- be a framework for making enforcement decisions transparent, and for ensuring that those who make decisions are accountable for them; and
- help experienced inspectors assess their decisions in complex cases, allow peer review of enforcement action, and be used to guide less experienced and trainee inspectors in making enforcement decisions.

The EMM and the associated procedures enable managers to review the decision making process and their inspectors' enforcement actions to ensure the purpose and expectations of the HSE's Enforcement Policy Statement have been met.

The EMM does not exist in isolation. It is supported by quality procedures which address, amongst other things, the selection and investigation of accidents.

Extract from Economic Prosperity Newsletter, Spring 2008

Consultation on Revised Enforcement Policies

The Regulator's Compliance Code, published by the Government in December 2007, sets out new requirements for local authority environmental health enforcement.

As a result, Gosport Borough Council will be implementing a revised Environmental Health Enforcement Policy, covering key areas of food safety, health and safety, licensing and smoke-free enforcement. The policy becomes effective from 6 April 2008 and businesses are being invited to comment on the policy during the first three months of operation. Details can be found on the Council's web site, www.gosport.gov.uk/enforcement, from Monday 7 April. Printed copies are also available on request from the same date by contacting Environmental Health on 023 9254 5505 or by visiting Gosport Town Hall between 9am and 5pm, Monday to Friday.

The deadline for feedback on the policy is 1 July 2008. For further information contact David Palmer, Head of Environmental Health, on 023 9254 5509 or e-mail david.palmer@gosport.gov.uk.

Extract from Members Information Bullet No. 21, 11 April 2008

1. ENFORCEMENT POLICY REVIEW

The Council recently approved a revised generic enforcement policy and Environmental Health enforcement policy. This was to reflect requirements of the new national Regulators Compliance Code. The policies came into effect on 13 March and 6 April respectively.

Stakeholder consultation has now commenced and runs until 1 July. Members will receive a report during the September Board cycle where amendments can be made if necessary.

Further information on the policies and review process can be found at <http://www.gosport.gov.uk/sections/environment/revised-enforcement-policies>

Contact Officer: David Palmer – Head of Environmental Health

Email: david.palmer@gosport.gov.uk

☎ 023 9254 5509

Date Submitted: 1 April 2008

Summary Leaflet Used During the Consultation



REVISED ENFORCEMENT POLICIES

Revised Enforcement Policies

The Council recently revised its generic and Environmental Health-specific enforcement policies and now seeks the opinion of any stakeholder, whether from the business sector, private individuals, neighbouring Councils or other interested organisations.

Why is This Important to You?

The purpose of enforcement is to protect the public, the environment and groups such as consumers and workers. Enforcement can include offering advice and assistance as well as more formal action.

Formal enforcement action is usually an option of last resort, except in urgent or emergency cases, and remains an important part of the Council's approach to regulation. Most businesses want to comply with the law and the Council will, whenever possible, try to help businesses meet their legal obligations. Prevention is better than cure.

Enforcement action can make a positive contribution to economic growth by acting against rogue traders and helping to create a level playing field for businesses.

It is important that enforcement action taken by any regulator is always :

- **transparent** - i.e. is based on clear, understandable policies
- **accountable** - including consultation arrangements (such as this) and having complaint procedures in place in case things go wrong
- **proportionate to the risk** - ensuring that any action we require is not excessive
- **consistent** - although authorised staff are expected to exercise judgement in individual cases it is important to promote consistency
- **targeted** where it is needed, i.e. in the areas of greatest risk.

Reason for Revision of These Policies

In December 2007 the Government published the Regulator's Compliance Code. This covers a wide range of enforcement activity affecting businesses and sets out requirements for councils. It comes into effect on 6th April 2008.

Where the Code does not apply the Council will continue to follow the principles of the Cabinet Office Enforcement Concordat, which we adopted in 2000.

A number of national bodies have issued guidance on enforcement action. We take account of this in all our regulatory work.

As well as taking incorporating the requirements of the new Code, the revised Environmental Health enforcement policy merges three earlier versions (covering food safety, health & safety and licensing) into one together with the smoke free laws introduced in 2007.

Consultation

There was not enough time for the Council to consult on the revised enforcement policies before the April deadline. The new policies were therefore approved subject to consultation over the coming months.

Stakeholder feedback will be analysed and any amendments considered by Councillors in September 2008.

Who Are Our Stakeholders?

Stakeholders fall into the following categories –

business proprietors : this is the group most likely to be the subject of a 'regulatory intervention' by the Council, for instance in the areas of food safety or health and safety at work

people who make a complaint to the Council about anything which has a potential to become an enforcement issue. This encompasses the vast majority of our reactive work although only a very small proportion of these cases results in any formal enforcement action

'offenders' : these will be individual citizens who, perhaps through some form of anti-social behaviour, give rise to complaint and become the subject of a 'regulatory intervention'

the Police and local Court Service : the police, local Magistrate's and Clerks have an interest the new policies

neighbouring local authorities may be interested in our proposals, in terms of ensuring cross-boundary consistency.

Any of these stakeholders could be members of Black and Minority Ethnic Groups or other 'hard to reach' groups.

Stakeholder Consultation Process

The consultation will be carried out in the following ways :

mail shots : an invitation to contribute to the policy development process will be offered to businesses and local courts

web site : a copy of the revised policies will be posted on the Council's web site and responses invited

business newsletter : the Council's Economic Prosperity Section publishes a newsletter which is sent to all businesses within the Borough. The enforcement policy issue has been mentioned in an article and proprietors invited to participate in the consultation

individual discussion during visits to business premises : the issue will be raised by staff whilst visiting businesses in the course of routine duties and/or when investigating complaints, etc.

e-mail circulation to neighbouring local authorities and police

inclusion with customer satisfaction survey questionnaires

Further Information

Copies of the policies and response form can be downloaded from our web site : www.gosport.gov.uk/enforcement

Printed copies of the policies are available on request from the Environmental Health Section by :

- telephoning 023 9254 5505, 5506, 5507 or 5583 during office hours
- e-mailing a request to ehs@gosport.gov.uk at any time
- visiting the Environmental Health Reception at Gosport Town Hall (address overleaf) between 9 and 5, Monday to Friday.

Consultation Timetable and Process

The deadline for feedback is 1 July 2008. Consultees should send their responses to :

Enforcement Consultation
Gosport Borough Council
Environmental Health
FREEPOST PO 10870
Town Hall, High Street
Gosport PO12 1YZ

Use of the supplied response form, available on request or from our web site, www.gosport.gov.uk/enforcement, is preferred.

Officers will analyse the responses and prepare a report for Councillors who will consider what changes need to be made during their September Board and Council Meeting cycle.

Gosport Borough Council is committed to equal opportunities for all.

If you need this document in large print, on tape, in Braille or in other languages, please ask.

April 2008

Appendix C

List of Consultees

Organisation
Alverstoke Service Station
Anson Service Station
Any resident or other interested party – via GBC web site and leaflet
BP PLC
Budgens Local Petrol Station
Citizens Advice Bureau
Director of Regulatory Services, Fareham Borough Council
Environmental Health staff
GBC Councillors, via Members Information Bulletin dated 11 April
GBC Service Unit Managers
Gosport Access Group
Gosport Voluntary Action
Hanson PLC (local plus head office)
HCC Adult Services Equality, Diversity and Inclusion Manager
HCC Adult Social Services
HCC Children & Families
HCC Equality and Diversity Manager
HCC Youth Service
Head of Environment & Public Protection, Portsmouth City Council
Huhtamaki (UK) Ltd.
K&R Plant Hire
Local businesses via Economic Prosperity Newsletter
Manager of PRENO (Portsmouth Race Equality Network Org)
Morrisons (local plus head office)
Police
Pooles (Fareham) Ltd.
Portsmouth Housing Association
Portsmouth Magistrates' Court
Rusdene Services Ltd.
Scrusse & Crossland Ltd.
Solent Cleaners (local plus head office)
Somerfield Stores Ltd.
Star Forton Rd Service Station
Star Solent Service Station
Tyco Healthcare UK Ltd.
Vector Aerospace Ltd.
Victim Support

Agenda item no 7

Board:	COMMUNITY AND ENVIRONMENT BOARD
Date of meeting:	8 SEPTEMBER 2008
Title:	GOSPORT HIGH STREET
Author:	IAN LYCETT
Status:	FOR DECISION

Purpose

To advise the Board of recent discussions regarding the relationship of the Market and the High Street Traders.

Recommendation

1. That the Principal Enforcement Officer (post no. ES10) is authorised to be the Council's Authorised Officer for all purposes under the Agreement dated 17 December 2001 and is also the Council's Appropriate Officer for the purposes of the Licences granted under Section 115E of the Highways Act 1980
2. That the Authorised Officer undertakes a review of the position of Market Stalls as set out in Paragraph 2.23 and ensures that Hughmark operates in accordance with the outcome of the review
3. That the Chief Executive writes to Hughmark instructing them not to collect pitch fees as set out in Paragraph 2.24
4. That Council Officers monitor the High Street as set out in Paragraph 2.25

1.0 BACKGROUND

1.1 A number of disputes have arisen with regard to the placing of goods outside shops, and the placement of tables and chairs under Licence from the Council on the High Street on market days.

1.2 The Town Centre Study Members Panel met on 14 August to consider this matter and have made the above recommendations to the Board.

2.0 REPORT

2.1. In 2001 the Council entered into a 10 year agreement with Hughmark to operate the Tuesday and Saturday Market. Since then the Council, as agent for Hampshire County Council, has granted licences to Cafes and Public

Houses, in the High Street, to place tables and chairs outside their premises. At present it is the Council's policy for the licences to give priority to the Market on Tuesday and Saturday.

2.2 The market operator, Hughmark, has apparently demanded payment for a market pitch from some shop-keepers displaying their goods, and also from some cafes placing their tables and chairs. In some cases Hughmark have also let pitches to stall holders directly on the areas outside the shops in question, so blocking access to the area for the shop-keepers.

2.3. It appears that if shop-keepers refuse to pay for a pitch, then Hughmark will ensure that other pitches are placed there. The shop-keepers in question are of the opinion that they should not be asked to pay.

2.4. It is necessary to look at the provisions of the Agreement with Hughmark, the Licences granted for placement of tables and chairs, and the law relating to Street Trading and highways. Counsel's advice has been sought on these latter 2 points and is summarised below.

The Market Agreement.

2.5 This was completed on 17 December 2001, and is for a period of 10 years from 5 January 2002. The contracting party (the market operator) is Rondeau (General Merchants) Limited, trading as Hughmark International ("Hughmark").

2.6 The purpose of the Agreement is for Hughmark to operate an open air market on Tuesdays between 8.00am and 3.00pm, on Saturdays between 8.00am and 4.00pm and on other dates and times as agreed with the Council.

2.7 Hughmark act on the Council's behalf in issuing the relevant Street Trading Consents (the form of which the Council set, providing Hughmark with books of such consents which Hughmark will then utilise) and collection of the Consent fees from stall holders, they also collect a small fee which they keep.

2.8 Stalls must be placed "in position as agreed from time to time with the Council the decision of the Council's Authorised Officer being final thereon". The Agreement then provides that Hughmark "will not erect stalls in areas of the High Street designated as seating areas for retailers, pub or café without the approval of the Borough Council".

2.9 The Council's Authorised Officer is defined in the Agreement as 'authorised officer of the Council for that purpose'. It is recommended that an officer is duly authorised to be the Authorised Officer for all purposes under the 2001 Agreement.

2.10 The extent of the area of the High Street covered under the Agreement is shown on the plan annexed. It can be seen that at the top of the High Street the Market area does not extend to the full width of the High Street, whereas at the ferry end it does.

Tables and Chairs Licences

2.11 The Council has granted 9 Licences to High Street cafes, public houses and shop-owners to place tables and chairs on the High Street. The Licences are granted under the Highways Act 1980 and the Council may not unreasonably withhold consent to the placing of tables and chairs on the highway.

2.12 Permission is given “during opening hours only of the premises but no later than 8.00pm.....except that this consent does not relate to times during which the Open Air Market shall be operating....other than at times when the Land [on which the tables and chairs will be placed] has not been taken up by a market stall by 8.00am”.

2.13 In addition, if the High Street is required for the purpose of, among other things, the holding of a market, the tables and chairs Licence can be suspended by the service of notice from the Council either generally or for a specific case, in which case the tables and chairs cannot be placed.

2.14 In order to ensure consistency it is recommended that the Authorised Officer under the Market Agreement is also appointed as the Appropriate Officer under the Tables and Chairs Licences.

Street Trading Law

2.15 The High Street is a “consent street” and so is a street where street trading is prohibited unless the Council gives its consent.

2.16 The shop-owners displaying their goods on the High Street are, however, not trading – their activities come within an exception to street trading as carried on adjacent to a shop and used as part of the business of such shop. There is an argument that if money was accepted on the street, rather than within the shop this exception would probably not apply as the trading on the street is independent of the business of the shop in question. However it would be a matter of the circumstances in each case, and ultimately a matter for the Courts.

Highways Law

2.17 Whilst there is express statutory power to licence tables and chairs on the highway there is no provision to licence the display of goods or ‘A’ boards. Either of the latter could amount to a criminal offence under the obstruction or unlawful deposit provisions of the Highways Act 1980 or could be seen to be a nuisance on the highway. However if the Council wishes to take action they would have to prove that the highway was being obstructed, or that the displays in question were a nuisance to users of the High Street.

2.18 The Law on this matter deals with “reasonableness” – is the placing of an object unreasonably restricting access over the street? Again, this will be a

matter for the Courts to declare and they are more tolerant today than they were, say, ten years ago. In view of this increased tolerance Counsel has advised that in his view that due to the width of the High Street and the fact that it is pedestrianised, to prove unreasonable obstruction may be difficult. In addition, evidence would be necessary as to the alleged obstruction or interference from users of the High Street, and he is unaware of any such complaints having been received. The exact position of the goods displayed would also have to be looked at – are they in line with the Market Operator’s stalls or in front or behind them? If the former, obstruction would be even more difficult to prove, but if the latter, obstruction may be more provable. It will always be a matter of fact.

2.19 If the Council does want to seek to stop displays of goods, it would need to seek an injunction against the shop-keeper(s) in question.

2.20 Counsel is of the view that the agreement with the Market Operator cannot be used to stop the rights that shop-keepers have to display their goods outside their shops. The Market Operator will have to consider their own position based upon their own legal advice.

The Way Forward

2.21 Whilst the Market Agreement and the tables and chairs Licences would seem to be in conflict at the moment, as the Agreement provides that Hughmark will not place stalls where tables and chairs are placed, but the tables and chairs Licences can be “suspended” for market days by service of notice the Council is able to determine where stalls are to be positioned. Under Clause 2.6 of the Agreement the decision of the Council’s Authorised Officer is final. As that clause makes specific reference to areas designated as seating areas for retailers, pub or café then it would seem that at the time the agreement was entered into it was recognised by both parties that there were areas relating to pub and café use where the positioning of market stalls would need the consent of the Council. Indeed the earlier 1999 agreement only referred to not erecting stalls in areas of the High Street designated as seating areas for retailers without the approval of the Council.

2.22 It is now 6 years since the Agreement came into effect and it is open to the Council to review the operation of the Market in the context of the health of the High Street, its own proposals for improvements to the High Street and the effect that the new smoking legislation has had on a number of the pub’s and café businesses. It appears that they have come to rely on the open seated areas licensed under the 1980 Act as a way of maintaining customers. Other factors which the Council may wish to consider is the annoyance caused to a number of shop-keepers and the fact that the full extent of the market site is not required for the running of a successful market.

2.23 It is recommended that the Council’s Authorised Officer undertakes a review of the position of stalls under Clause 2.6 of the Market Agreement to ensure:

- That stalls are not positioned on areas already Licensed i.e. designated for tables and chairs, and to this end full details of all such sites, including plans, will be given to Hughmark.
- That stalls are not positioned so as to obstruct access to premises on the High Street

2.24 Hughmark should also be instructed not to collect any pitch fees on Market days from any property that has been granted tables and chairs licence for the High Street.

2.25 The High Street is monitored by Council Officers on market days, to ensure compliance by Hughmark, but also to ensure that there is no obstruction or public nuisance caused to the High Street.

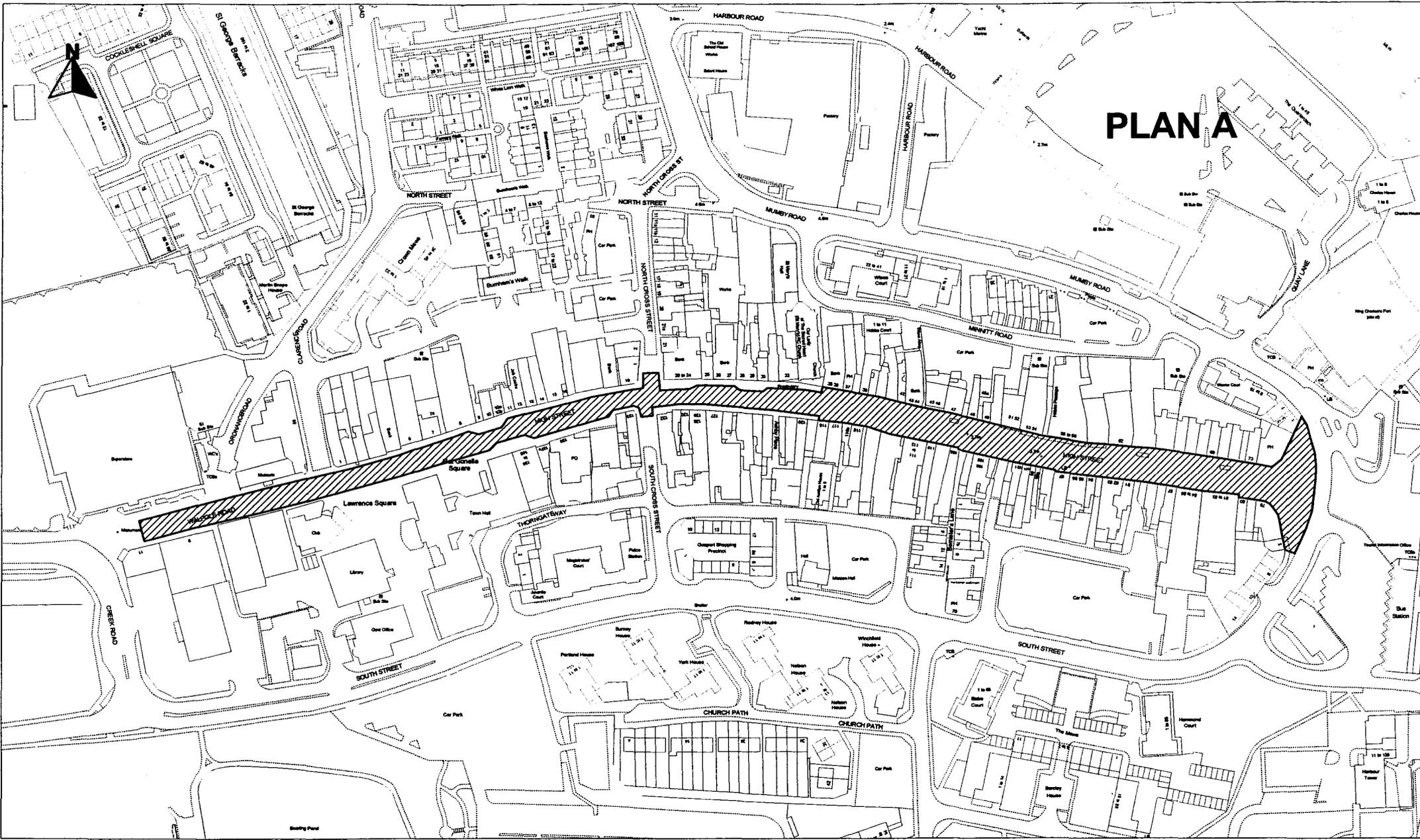
3.0 Risk Assessment

3.1 There is a risk that the proposed new arrangements for the position of stalls results in the number of stalls comprising the market reduces with a consequent loss of income to the Council.

3.2 There is also a risk that Hughmark will allege that the Council are in breach of contract and bring an action for damages.

3.3 If the current position continues there is a risk that the shopkeepers may bring an action against the Council on the basis that they do not need street trading consents and therefore they do not have to pay for the consent.

Financial implications:	There may well be some loss of income to the Council from Consent fees
Legal implications:	Set out in the report
Service Improvement Plan implications:	
Corporate Plan	
Risk Assessment	As contained in section 6 of the report
Background papers:	Report to Council 20/06/01
Appendices/Enclosures:	Plan A- Area for the Market Plan B- Area's subject to Tables and Chairs licences
Report Author / Lead Officer	Ian lycett



PLAN A

HIGH STREET, GOSPORT - PLAN A

TRAFFIC MANAGEMENT
TOWN HALL, HIGH STREET,
GOSPORT, HANTS
 PO12 1EB
 Tel: 023 9258 4242 - Fax: 023 9254 5588

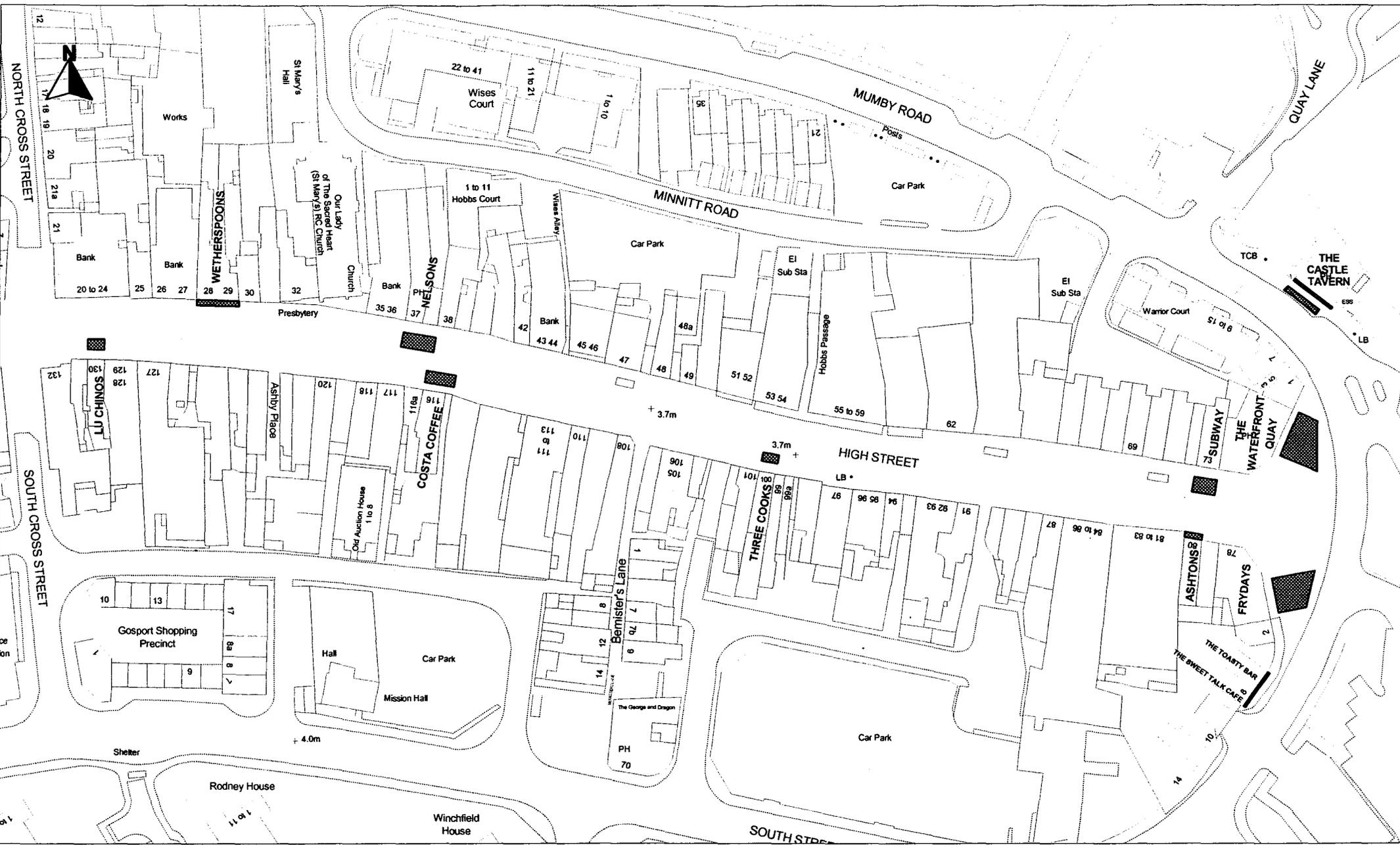


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HIGH STREET, GOSPORT - TABLES & CHAIRS

TRAFFIC MANAGEMENT
 TOWN HALL, HIGH STREET,
 GOSPORT, HANTS
 PO12 1EB
 Tel: 023 9258 4242 - Fax: 023 9254 5588



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AGENDA ITEM NO. 9

Board/Committee:	COMMUNITY & ENVIRONMENT BOARD
Date of meeting:	MONDAY 8 SEPTEMBER 2008
Title:	GOVERNMENT PROPOSED FREE SWIMMING SCHEME
Author:	LEISURE & CULTURAL SERVICES MANAGER
Status:	FOR DECISION

Purpose

To bring to Members attention a proposal from HM Government's Department for Culture, Media and Sport (DCMS) to introduce a Free Swim Programme for people aged 60 or over and 16 or under, initially for the financial years 2009/10 and 2010/11.

Recommendation

That:

- a) subject to the Arena Group Limited being willing to accept the grants available in return for allowing free swimming for the two age categories specified and
- b) the Arena Group being willing to participate in the scheme on the understanding that they will not receive any additional funding from the Council

the Council confirms its participation in the 60 or over scheme and submits an expression of interest in the 16 or under scheme for 2009/10 and 2010/11.

1. Background

- 1.1 The DCMS has allocated a budget of £15,000,000 to provide grants to 354 local authorities in return for the provision of free swimming for individuals aged 60 or over during the financial years 2009/10 and 2010/11. Allocation of grants is based upon the size of each areas' 60 or over population; Gosport's allocated grant is £24,344 per annum.
- 1.2 Authorities who wish to participate in the free swimming offer for those aged 60 or over must provide confirmation by 15 September 2008.

- 1.3 The DCMS has also allocated a budget of £25,000,000 to provide grants to 354 local authorities in return for the provision of free swimming for individuals aged 16 or under during the financial years 2009/10 and 2010/11. Allocations will be determined subject to expressions of interest.
- 1.4 Authorities who wish to participate in the free swimming offer for those aged 16 or under must submit an expression of interest by 15 September 2008. Government will then aim to provide details of their prospective allocation by 30 September 2008. Authorities will then be invited to confirm, by 15 October 2008, that they wish to participate in this element of the offer.
- 1.5 Further funding to local authorities to deliver the free swimming programme in financial year 2011/12 and subsequent years will be subject to the outcome of the next Spending Review. Evidence gathered from the financial years 2009/10 and 2010/11 will be used to inform future funding and delivery arrangements.

2. REPORT

- 2.1 The proposed Free Swimming Programme has been devised by the DCMS with the aim of increasing swimming participation by individuals in the 60 or over and 16 or under age groups with a view to achieving the successful delivery of National Indicator Targets:
 - a) increasing adult participation in sport and active recreation
 - b) reducing obesity in Primary School age children in Reception
 - c) reducing obesity in Primary School age children in year 6
 - d) increasing young peoples participation in positive activities
 - e) increasing healthy life expectancy at age 65
- 2.2 The Arena Group Ltd. (operators of Holbrook Recreation Centre) has been approached to seek confirmation that they are willing to participate in one or both of the schemes that make up the Programme.
- 2.3 It is possible that the loss of income added to the potential / expected increased operational costs may result in an overall "loss" to the operator, even allowing for an expected increase in secondary spend by customers. The Arena Group Ltd. will need to decide whether they are willing to enter into the scheme on the basis that they will absorb any financial loss that may possibly result from the initiative.
- 2.4 Local authorities / operators can :
 - a) decline to enter into either scheme
 - b) enter into both the 60 or over and 16 or under schemes
 - c) or enter into the 60 or over element of the scheme only
- 2.5 It is not an option to participate in the 16 or under scheme only.

- 2.6 It is possible to participate in the scheme and to restrict free access to residents of the Borough.
- 2.7 Fareham Borough Council and their operator S.L.M. are looking to confirm their involvement in the 60 or over scheme and register an expression of interest in the 16 or under scheme. The operator has indicated they would be willing to take the financial risk in respect of the 60 or over scheme in the knowledge of the grant allocated.
- 2.8 S.L.M. would wish to consider the grant proposed in respect of the 16 or under scheme before making a decision on whether to confirm participation in this element of the scheme.
- 2.9 At this stage the indication is that Fareham BC / S.L.M. would restrict free swimming to residents of Fareham Borough.

3. RISK ASSESSMENT

- 3.1 The proposal is that the Arena Group Ltd. assumes any financial risk associated with participation in the Free Swim Programme.

4. CONCLUSION

- 4.1 The proposed Free Swim Programme would provide an opportunity for individuals aged 60 or over and 16 or under to swim for free at Holbrook Recreation Centre.
- 4.2 If implemented, the scheme would be expected to increase the number of people swimming at the Centre and the total number of swims, resulting in health benefits for the individuals involved.
- 4.3 If the Arena Group Ltd. is willing to allow free swimming for the groups specified in return for the grant on offer from the DCMS, then there is no financial risk to the Council.
- 4.4 It is expected that participation in such a scheme would be viewed in a positive light by both residents of the Borough and the local media.

Financial Services comments:	Scheme participation at no additional cost to the Council will not be detrimental to the achievement of an affordable budget for 2009/10 or 2010/11.
Legal Services comments:	None for the purpose of the report.
Service Improvement Plan implications:	There are no implications for the Service Improvement Plan.
Corporate Plan:	The proposed scheme meets the Strategic Priority Outcomes of increased usage of leisure facilities, and improved social inclusion.
Risk Assessment:	Contained in section 3 of the report.
Background papers:	Circular from DCMS.
Appendices / Enclosures:	Nil.
Report Author / Lead Officer:	Glen Wilkinson