



# CABINET

<b>7.30 pm</b>	<b>Wednesday 13 May 2015</b>	<b>Council Chamber - Town Hall</b>
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Members 7: Quorum 4

Councillor Roger Ramsey (Leader of the Council), Chairman

**Cabinet Member responsibility:**

Councillor Damian White

Housing

Councillor Robert Benham

Environment

Councillor Wendy Brice-Thompson

Adult Social Services and Health

Councillor Meg Davis

Children and Learning

Councillor Osman Dervish

Regulatory Services and Community Safety

Councillor Melvin Wallace

Culture and Community Engagement

Councillor Clarence Barrett

Financial Management

Councillor Ron Ower

Housing Company Development and  
OneSource Management

**Andrew Beesley  
Committee Administration Manager**

**For information about the meeting please contact:  
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**Webcast**

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Reporting means:-

- filming, photographing or making an audio recording of the proceedings of the meeting;
- using any other means for enabling persons not present to see or hear proceedings at a meeting as it takes place or later; or
- reporting or providing commentary on proceedings at a meeting, orally or in writing, so that the report or commentary is available as the meeting takes place or later if the person is not present.

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## **AGENDA**

### **1 ANNOUNCEMENTS**

On behalf of the Chairman, there will be an announcement about the arrangements in case of fire or other events that might require the meeting room or building's evacuation.

### **2 APOLOGIES FOR ABSENCE**

(if any) - receive

### **3 DISCLOSURES OF PECUNIARY INTEREST**

Members are invited to disclose any pecuniary interests in any of the items on the agenda at this point of the meeting. Members may still disclose a pecuniary interest in an item at any time prior to the consideration of the matter.

### **4 MINUTES (Pages 1 - 6)**

To approve as a correct record the minutes of the meeting held on 18 March 2015, and to authorise the Chairman to sign them.

### **5 ADOPTION OF ARTICLE 4 DIRECTION ON HMOS (Pages 7 - 18)**

### **6 PRIVATE RENTED SECTOR IN HAVERING (Pages 19 - 36)**

### **7 FUTURE JOINT LOBBYING ARRANGEMENTS (Pages 37 - 74)**

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**MINUTES OF A CABINET MEETING**  
**Council Chamber - Town Hall**  
**Wednesday, 18 March 2015**  
**(7.30 - 8.35 pm)**

**Present:**

Councillor Roger Ramsey (Leader of the Council), Chairman

	<b>Cabinet Member responsibility:</b>
Councillor Damian White	Housing
Councillor Robert Benham	Environment
Councillor Wendy Brice-Thompson	Adult Social Services and Health
Councillor Osman Dervish	Regulatory Services and Community Safety
Councillor Melvin Wallace	Culture and Community Engagement
Councillor Clarence Barrett	Financial Management
Councillor Ron Ower	Housing Company Development and OneSource Management

Apologies were received for the absence of Councillor Meg Davis.

Councillors Ray Morgon, David Durant, Keith Darvill, Linda Hawthorn and Ray Best also attended.

There were two members of the public and a representative of the press present.

There were no disclosures of pecuniary interest.

Unless otherwise indicated, all decisions were agreed unanimously with no Member voting against.

**39 MINUTES**

The minutes of the meetings held on 4 and 11 February 2015 were agreed as correct records and were signed by the Chairman.

40 **COMMISSIONING PLAN FOR EDUCATION PROVISION 2015/16 - 2019/20**

*In the absence of Councillor Meg Davis, Cabinet Member for Children and Learning, the report was introduced by the Group Director Children, Adults and Housing and the Head of Learning and Achievement*

Cabinet was informed that In Havering, there had been an increase of over 33% in the number of births between the calendar years 2002 and 2013. The ONS live birth data for 2013 showed that all London boroughs had experienced a drop in their birth rate from 2012 to 2013 apart from Havering which saw a 4% increase. While many London boroughs had already experienced the increase in birth rate which was now starting to plateau, for Havering it was still at the early stages of the increase in the birth rate and there was a need to implement the necessary capacity to accommodate the children of Havering requiring a school place for years to come.

In 2013-14 10 permanent forms of entry (FE) in Primary schools were created together with 525 temporary places to cover short-term pressures for Primary age pupils.

- The number of Primary age pupils was expected to continue rising significantly from 19,834 in 2013-14, to 23,333 in 2018-19, which would be more than 3,000 extra pupils over the next five years and the number of pupils was projected to continue to rise further. There would be a need to continue to make new provision available in some planning areas on both a permanent and temporary basis.
- The number of Secondary age pupils (Years 7-11) in Havering schools was expected to rise significantly from 15,038 in 2014-15 to 18,051 in 2023-24. Beyond this point the longer term strategic forecasts indicate a further increase in pupil numbers, although this estimate is heavily influenced by projections of new housing development beyond 2026.

This plan set out the Council's strategy to address this expected growth in pupil numbers. In addition, while the Council retained statutory responsibility for ensuring there were sufficient school places to meet the needs of the population in the area, there was now an expectation that local authorities would introduce Free Schools and Academies as new providers in areas of demographic growth, and that the Council would therefore become a commissioner of additional places.

Members were reminded that the plan was intended to update Cabinet on the latest school places data and set out the proposed approach to meet that growing demand for the next five years in the context of new national expectations about this changing role. The plan was also intended to:

- help the school community understand the longer term population trends and the implications for their schools;

- let parents and the wider community of Havering know what changes were planned and how their views and preferences had contributed to key planning decisions;
- provide an outline to potential sponsors of new schools, such as Academies and Free schools, contextual information about Havering's changing school population.

Members were also informed that there was, at present, no funding for either Special Schools or SEN provision. This was not peculiar to Havering but appeared to be a national issue, but the Council was actively pursuing this.

### **Reasons for the Decision**

This decision was necessary to progress the strategy for ensuring there were sufficient school places in Havering to meet the rising pupil population.

### **Alternative options considered:**

It was considered that the Council could proceed with the expansion programme without an agreed CPEP in place. However as the Council was in the leadership role for this major and long-term expansion programme it should be consulting with stake-holders on its proposed strategy for meeting the challenge of the rising school population and in so doing reduce the risk of these plans being unsuccessful.

### **Cabinet:**

1. **Approved** the draft Commissioning Plan for Education Provision (CPEP) in Havering 2015/16-2019/20;
2. **Approved** the circulation of the draft CPEP for consultation to all stake holders in school place planning;
3. **Delegated** the determination of the final CPEP, to the Cabinet Member for Children & Learning and the Group Director Children, Adults & Housing;
4. **Noted** that a further report would be provided to Cabinet in September 2015 which would set out the details of each expansion scheme, the consultation process and indicative costs and funding for each scheme.

## 41 **CORPORATE PERFORMANCE REPORT - QUARTER 3 (2014/15)**

*Councillor Clarence Barrett, Cabinet Member for Financial Management, introduced the report*

Cabinet was informed that the report set out performance against the Council's Corporate Performance Indicators for Quarter 3 (October to December 2014) 2014/15 and against the five Living Ambition Goals of the

Corporate Plan (Environment, Learning, Towns & Communities, Individuals and Value).

The report identified where the Council was performing well (**Green**) and not so well (**Amber** and **Red**). The RAG ratings for 2014/15 were as follows:

- **Red** = more than **10%** off the quarterly target and where performance had *not improved* compared to the same quarter in the previous year
- **Amber** = more than **10%** off the quarterly target and where performance had *improved or been maintained* compared to the same quarter in the previous year
- **Green** = on or within **10%** of the quarterly target

Where the RAG rating was 'Red', a 'Corrective Action' box had been included in the report. This highlighted what action the Council was taking to address poor performance, where appropriate.

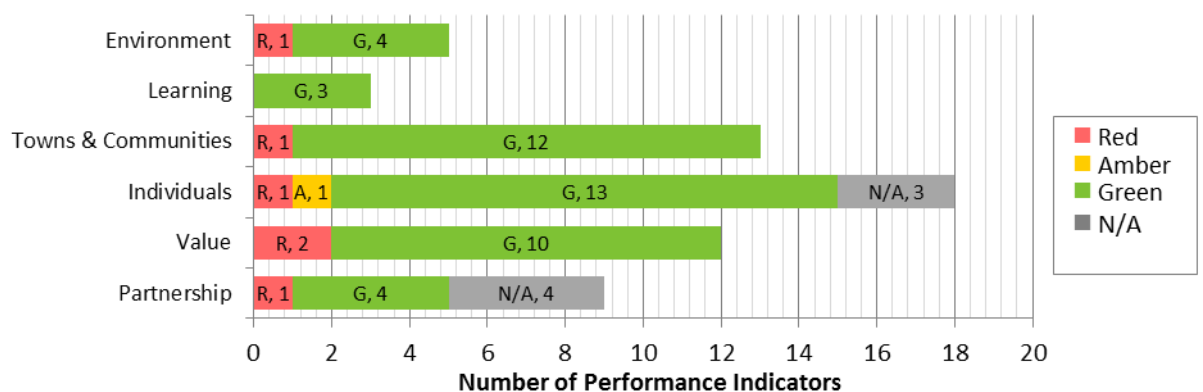
Also included in the report was a Direction of Travel (DoT) column to compare:

- Short term performance (Quarter 3 2014/15 with Quarter 2 2014/15)
- Long term performance (Quarter 3 2014/15 with Quarter 3 2013/14)

An upward green arrow (↑) meant performance was better than the same time in the previous quarter / year and a downward red arrow (↓) meant performance was worse. A horizontal amber arrow (→) meant that performance had remained the same.

Where the quarterly target remained consistent throughout the year, a short term DoT could be provided to allow for meaningful comparison. Where this was not the case, the previous outturn had been provided - where available - for information purposes only.

### **Quarter 3 2014/15 - Performance Summary**



60 Corporate Performance Indicators were measured quarterly and 53 of these had been given a RAG status. In summary:

- **46 (87%)** had a RAG status of **Green**; compared to 81% in Q3 2013/14.



- **7 (13%)** had a RAG status of **Red** or **Amber**; compared to 19% in Q3 2013/14.

**Reasons for the decision:**

To provide Cabinet Members with a quarterly update on the Council's performance against the Corporate Performance Indicators, in line with best practice.

**Alternative options considered**

Not applicable in this instance

Cabinet **reviewed** the report and **noted** its content

42 **CORPORATE PLAN 2015/16**

*Councillor Clarence Barrett, Cabinet Member for Financial Management, introduced the report*

Cabinet was informed that the Corporate Plan set out the Council's new mission statement **Clean | Safe | Proud** and the activities that the Council would undertake to 'support [its] community', 'use [its] influence and 'lead by example'. The Corporate Plan pledged that:

- Havering would be **clean** and would care for the environment.
- People would be **safe**, in their homes and in the community.
- Its residents would be **proud** to live in Havering.

In addition, the Council's new approach would be to "get there, together" by:

- **Supporting its community** by spending money on the things that mattered most to residents - like clean, safe streets and protecting people in need. The Council would support local firms to grow and create jobs and it would energise its towns to improve the quality of life in Havering.
- **Using its influence** to bring more jobs, homes, schools and transport to Havering. The Council would use its planning powers to balance the growth of business centres with the protection of 'green Havering' and its quieter communities. It would encourage local people to do the right things - keep Havering tidy, be good neighbours and lead healthier lives.
- **Leading by example** by running a low-cost Council that respected residents by using their money wisely. It would work with others to reduce costs; help people to do business with it at any time of the day or night and we would hold itself to the high standards residents expect from it.

**Reasons for the decision:**

To provide the Council with a Corporate Plan for the forthcoming year based on the new mission statement - **Clean | Safe | Proud**.

**Alternative options considered:**

None applicable in this instance

Cabinet **approved** the Corporate Plan 2015/16

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**Chairman**

**Cabinet**

13 May 2015

**Subject Heading:**

**Adoption of Article 4 Direction on HMOs (Houses in Multiple Occupation)**

**Cabinet Member:**

**Councillor Osman Dervish**, Cabinet Member for Regulatory Services and Community Safety

**CMT Lead:**

**Andrew Blake-Herbert**, Group Director Communities and Resources

**Report Author and contact details:**

Patrick Keyes, Head of Regulatory Services Ext 2721  
patrick.keyes@havering.gov.uk

**Policy context:**

Havering Local Development Framework

**Financial summary:**

Introduction of Article 4 Directions may result in an increase in workload, for which no income will be generated. The proposal for Non-Immediate Article 4s would minimise the risk of compensation claims against the Council.

**Is this a Key Decision?**

Yes - Significant effect on two or more Wards

**When should this matter be reviewed?**

One year

**Reviewing OSC:**

Towns and Communities OSC

**The subject matter of this report deals with the following Council Objectives**

- Havering will be clean and its environment will be cared for ✓
- People will be safe, in their homes and in the community ✓
- Residents will be proud to live in Havering ✓

**SUMMARY**

This report follows a 25 March Council Motion about the introduction of an Article 4 Direction on HMOs (Houses in Multiple Occupation). Introducing an Article 4 Direction would mean that those new HMOs falling within a category of change of

use which currently do not need planning permission would need approval through a planning application once an Article 4 is in effect. An exercise of collating and mapping data about known and suspected HMOs is underway. When complete this will create an evidence base from which to make informed decisions about the extent of HMOs and their impacts, both to progress detailed Article 4 work and also to support other initiatives for improving the monitoring, control and enforcement of HMOs through areas such as licensing.

This report explains that two Article 4s are anticipated, one geographically specific and the other to address possible displacement of HMOs into other parts of the Borough. The aim is to strike an appropriate balance recognising the continuing contribution that HMOs make as part of the borough's housing mix but sufficiently controlled so that their day to day operation has no materially harmful impact on the community including the living conditions of neighbouring occupiers.

Delegated powers exist for the Head of Regulatory Services to make Article 4 Directions. The Head of Service will consult with the Leader and Lead Member for Regulatory Services and Community Safety when deciding to which wards the two respective Article 4 Directions should apply on the basis of evidence produced from a data profiling exercise currently taking place.

## **RECOMMENDATIONS**

That Cabinet Note that:

1. The Head of Regulatory Services will make a non-immediate Article 4 Direction to restrict permitted development rights to change the use, within geographically specific Havering wards, of any detached, semi-detached or terraced dwellings to HMOs under Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 .That the Head of Regulatory services will decide the geographical basis for this Article 4 based on a data gathering exercise and in consultation with Leader of the Council and the Cabinet Member for Regulatory Services and Community Safety

That the Article 4 Direction would come into effect 12 months after the notice of direction.

That any representations made in regard to the Direction will be considered in deciding whether to proceed with Direction coming into effect.

2. The Head of Regulatory Services will make a non-immediate Article 4 Direction to restrict permitted development rights to change the use within Havering wards, except for the geographically specific wards identified in accordance with recommendation 1 above, of any semi-detached or terraced dwellings to HMOs under Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order

2015. That the Head of Regulatory Services will decide the geographical basis for this Article 4 based on a data gathering exercise and in consultation with Leader of the Council and the Cabinet Member for Regulatory Services and Community Safety

That the Article 4 Direction would come into effect 12 months after notice of direction.

That any representations made in regard to the Direction will be considered in deciding whether to proceed with Direction coming into effect.

3. A further report will be brought to Cabinet setting out proposed measures for improving the monitoring, control licensing and enforcement of HMOs, including the resources necessary to support this.

**REPORT DETAIL**

1. **Background**

1.1 ***What is an HMO (House in Multiple Occupation)?***

An HMO is defined by Section 254 of the Housing Act 2004, except that it does not include self-contained flats. A building is defined as an HMO if:

- (a) It consists of one or more units of living accommodation not consisting of a self-contained flat or flats (i.e. the units of living accommodation do not have all basic amenities (toilet, personal washing facilities, cooking facilities) for exclusive use of the occupants);
- (b) The living accommodation is occupied by persons who do not form a single household;
- (c) The living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;
- (d) Their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) Rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

The Town and Country Planning (Use Classes) Order 1987 identifies different categories of use (called Use Classes) within which it defines as *Class C4*, an HMO as above where there are not more than six residents. Where there are more than six residents, the use would not fall within any defined Use Class and so would need planning permission. Any HMO with in excess of 6 residents falls outside Use Class C4 and constitutes a sui generis use for which planning permission is required in any event if seeking to change use from a dwelling house under Class C3 of the Town and

Country (Use Classes) Order 1987 (as amended) to an HMO with 7 or more occupants.

An HMO is different in planning terms from a shared house because the latter involves formal interaction and sharing of facilities between the occupiers living as a single household even though they are not necessarily related to each other. A shared house falls within the same use class as a single family house (Class C3).

**1.2 *What are the types and numbers of HMOs in Havering?***

An exercise is underway to collate information from across Council services to create a mapped and profiled evidence base of known and suspected HMOs. Members were invited to supply information based on local ward knowledge.

When complete this will create a platform from which to make informed decisions about the extent of HMOs and their impacts, both to progress detailed Article 4 work and also to support other initiatives for improving the monitoring, control and enforcement of HMOs through areas such as licensing.

**1.3 *What controls exist presently over the formation and operation of HMOs?***

***Planning***

Under the Town and Country Planning (General Permitted Development) (England) Order 2015 - known as the GPDO -, the change of use from a dwelling house (Class C3) to an HMO (Class C4) is permitted development and does not need planning permission (GPDO Schedule 2, Part 3, Class L).

“Permitted development” means that planning law automatically allows the change to happen without the need for the person to obtain planning permission through a planning application. So the Local Authority has no planning decision making power to dictate whether that development should or shouldn’t happen. Permitted development underpins the practical operation of the planning system. It is the same provision that, for example, allows certain extensions to houses and changes between different types of commercial uses. Permitted development for HMOs was a change introduced in October 2010. Previously planning permission was required to change from Class C3 to C4.

***Building Regulations***

Building Regulations consent is also required for certain physical works involved in converting houses to HMOs for example extensions, or internal works like new sanitary ware installations such as bathrooms. Building Regulations consent can be obtained either from this Havering’s Building Control service or through private sector Approved Inspectors. The choice is

up to the person doing the works. Typically recent HMO conversions in Havering have involved Building Regulations submissions made through an Approved Inspector, not through the Council's Building Control service. The Approved Inspector would ensure that the works meet the Building Regulations. The Council cannot get involved in any aspect of the Building Regulations where an Approved Inspector has been appointed unless the works are specifically identified as dangerous. Matters such as drainage works would be overseen by the Approved Inspector with any connection to a common drain being the responsibility of Thames Water.

### ***Licensing***

Havering undertakes mandatory licensing of large HMOs which have three storeys and are occupied by 5 or more people.

#### **1.4 *What issues do HMOs present?***

In 2008 the DCLG report "Evidence Gathering – Houses in Multiple Occupation and possible planning responses" identified a number of problems associated with HMOs including:

- anti-social behaviour, noise and nuisance
- imbalanced and unsustainable communities
- negative impacts on the physical environment and streetscape
- pressures upon parking provision
- increased crime
- growth in private rented sector at the expenses of owner-occupation
- pressure upon local community facilities and
- restructuring of retail, commercial services and recreational facilities to suit the lifestyles of the predominant population

Although the report is a little dated, it is considered that these problems can still exist and in particular can be more severe if HMOs are formed in smaller dwellings as appears to be the recent trend in Havering.

#### **2. Why is a different approach to HMOs required?**

It is recognised that HMOs make an important contribution to the private rented sector by catering for the housing needs of specific groups/households and by making a contribution to the overall provision of affordable or private rented stock. However, this needs to be balanced with the potential harm identified above. The best way of balancing the need against possible harm would be through the Council's being able to determine a planning application. In this case, planning control can only be exercised through what is commonly titled an *Article 4 direction*. This is explained further below.

At Council on 25<sup>th</sup> March 2015, a motion was carried to consider an Article 4 Direction under the Town & Country Planning Act dealing with the change of use of a building from a dwelling house to a house of multiple occupation in respect of all or defined parts of the borough.

The motion was proposed due to concerns being expressed about recent HMOs being created in parts of the Borough. Recently there has been an increase in the number of reports received by Planning Enforcement regarding HMOs. In the main, upon investigation, most recent reports of HMO involve smaller semi-detached or terraced houses. A number of these appear to involve change of use of a dwelling into an HMO of the category that does not need planning permission. There is a concern that such properties, being in such close proximity to existing single household dwellings and given their likely intensity of occupation would cause significant noise and other disturbance to adjoin and nearby residents. There is further concern that, uncontrolled, there could be a concentration of HMOs in certain areas resulting in social issues.

3. **Proposed measures**

3.1 ***Planning***

A direction under Article 4 of the General Permitted Development Order enables the local planning authority to withdraw specified permitted development rights across a defined area. An Article 4 Direction only means that a particular development cannot be carried out under permitted development and therefore needs a planning application. This gives a local planning authority the opportunity to consider a proposal in more detail. Article 4 Directions do not have retrospective effect, so cannot prevent development which has been commenced, or which has already been carried out. Nor do they mean that proposals should automatically be refused. As with any planning applications an HMO proposal would need to be considered on its individual merits having regard to the development plan and any other material planning considerations.

There are two types of Article 4 Direction – Immediate and Non-Immediate Directions. An immediate direction comes into effect immediately on service, but must be confirmed by the local planning authority within 6 months of service. A non-immediate notice comes into effect between 28 days and 2 years of the direction being made, and should be advertised, inviting representations. Where directions are made with immediate effect or less than 12 months' notice, compensation will be payable in relation to planning applications which are submitted within 12 months of the effective date of the direction and which are subsequently refused or where permission is granted subject to conditions. Where 12 months notice is given in advance of a direction taking effect there should be greatly reduced likelihood of paying compensation.

3.1.1 **National Planning Policy on HMOs and Article 4 Directions**

The National Policy Practice Framework (NPPF) states that the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area. National Planning Practice Guidance (NPPG) states that there should be a particularly strong justification for the



withdrawal of permitted development rights relating to the entire area of a local planning authority.

A local planning authority must, as soon as practicable after confirming an Article 4 Direction, inform the Secretary of State. The Secretary of State has the power to modify or cancel Article 4 Directions at any time before or after they are made.

The Communities and Local Government Committee conducted an inquiry into the private rented housing sector in 2013. Its report was published on 18 July 2013. In respect of HMOs, the committee acknowledged that concentrations of HMOs could lead to concerns about their social and environmental impact. The Committee considered that local authorities should be able to respond to these concerns by using Article 4 Directions to remove permitted development rights and so limit the concentration of HMOs.

The Committee recommended that where there are community concerns about high concentrations of houses in multiple occupation, councils should have the ability to control the spread of HMOs. Such issues should be a matter for local determination.

The Committee considered it appropriate that councils continue to have the option to use Article 4 Directions to remove permitted development rights allowing change of use to HMO. The Government's response to the select committee, in October 2013, was:

"The Government agrees with the Committee's recommendation. Councils will continue to have the option to use Article 4 directions where there are concerns from the local community about high concentrations of houses of multiple occupation. An Article 4 Direction is made by a Local Planning Authority, and confirmed by the Government. It serves to restrict permitted development rights in certain areas."

### **3.1.2 London Plan and Havering Planning Policy on HMOs**

Policy 3.8 of the London Plan 2015 (Housing Choice) seeks to ensure that new developments offer a range of housing choices. In the justification for the Policy, the Plan states that HMOs are a strategically important part of London's housing offer meeting distinct needs and reducing pressure on other elements of the housing stock, though its quality can give rise to concern. The Plan states that in considering proposals which might constrain this provision, including Article 4 Directions affecting changes between Use Classes C3 and C4, boroughs should take into account the strategic as well as local importance of houses in multiple occupation.

Policy DC4 of the Havering Local Development Framework (2008) states that planning permission would be granted for residential conversions provided the following criteria are satisfied:

- Residents/visitors are able to park without detriment to highway safety taking into account the availability of on and off street parking with regard

to the standards set out in DC33 (for HMOs, one space per 2 habitable rooms)

- There is no conflict with surrounding uses
- The proposal should not result in an unacceptable loss of privacy enjoyed by the occupants of adjoining properties by reason of overlooking and, should by its layout, provide a suitable degree of privacy and private sitting out/amenity space
- The living rooms of new units do not abut the bedrooms of adjoining dwellings.

Specifically in relation to HMOs, Policy DC4 states that planning permission would be granted provided that:

- The original property is detached and well separated from neighbouring dwellings
- The nature of the new use does not have an adverse impact on the surrounding area and will not be likely to give rise to significantly greater levels of noise and disturbance to occupiers of nearby residential properties than would an ordinary single family dwelling

The justification for the policy states that it is considered necessary to ensure that buildings are suitable for the intensity of use proposed and that adequate parking and amenity space are provided.

### **3.1.3 Justification for Article 4**

Since 2010, there has been no need to apply for planning permission to change from a dwelling to a HMO for up to six residents. Before 2010, planning permission would have been required and Local Development Framework policy would have enabled the impact, particularly on neighbours, to be assessed in deciding whether to grant planning permission or not.

It is recognised that HMOs make an important contribution to the private rented sector by catering for the housing needs of specific groups/households and by making a contribution to the overall provision of affordable or private rented stock. However, this needs to be balanced with the potential harm identified above. The best way of balancing the need against possible harm would be through determining a planning application. In this case, control can only be exercised through an Article 4 Direction.

Consideration has been given as to the scope of any Article 4 Direction, in terms of scope and areas covered. Current LDF policy is generally supportive of HMOs in detached dwellings, where direct impacts on neighbours are generally better contained. There is now evidence, based on initial data, of a trend towards conversion of smaller dwellings to form HMOs including semi-detached and terraced houses within certain parts of the Borough. The detailed patterns and impacts are being mapped so the evidence base is not yet complete. It is recommended that for those wards where a significant, geographically specific issue can be evidenced either by reason of the formation of HMOs in unsuitable properties or where the

accumulation of HMOs is causing or risks causing significant impacts within the community, an Article 4 Direction be introduced to require planning permission for the formation of an HMO from any existing residential property type encompassing detached, semi-detached and terrace houses anywhere within those wards.

However the recent reports received by Planning Enforcement regarding HMOs cover several different areas in the Borough where there are also smaller terraced and semi-detached properties. There is wide distribution of these types of property across the Borough, except for the more rural areas. A further consideration would be that to restrict any particular area or areas of the Borough geographically may result in issues arising in areas not covered by that Article 4 Direction. It is therefore recommended that a second Article 4 Direction be introduced to cover the remaining extent of the Borough beyond the wards of primary geographic attention.

The second Article 4 Direction should introduce the requirement for planning permission to be obtained for the formation of an HMO from any existing semi-detached or terraced house anywhere within those other parts of the Borough.

Consideration has been given as to whether these should be immediate or non-immediate Article 4 Directions. Immediate directions would have the effect that all proposed HMOs would require planning permission from the date the Direction comes into effect. However, under Section 108 of the Town and Country Planning Act 1990 and the Town and Country Planning (Compensation) (England) Regulations 2015 an immediate direction would leave the Council open to compensation claims payable in relation to planning applications which are submitted within 12 months the date the Direction takes effect and which are subsequently refused or where permission is granted subject to conditions. Compensation may be claimed for abortive expenditure or for other loss or damage directly attributable to the withdrawal of the permitted development rights. For example the Council could be liable for the loss of income a property owner suffers by not being able to convert their property to a HMO where this is due to the Article 4 Direction. This could leave the Council with a very significant liability. For this reason officers recommend that non-immediate directions are the most appropriate course of action, accepting that this may lead to a number of HMOs being formed in the 12 month period.

#### **3.1.4 Procedure for Article 4 Direction**

The procedure for making a non-immediate direction is as follows:

- Delegated powers exist for Head of Regulatory Services to make Article 4 Directions.
- Prepare Direction Notice
- Give 12 months' notice of direction and send copy to Secretary of State
- Seek representations

- Obtain Cabinet approval to confirm Article 4 Direction, outlining any representations received
- After 12 months, advertise Direction coming into effect and notify Secretary of State

Any representations made in regard to these Directions would be taken into account in deciding whether to proceed with the Directions coming into effect.

It is anticipated that the data exercise should complete within the next four weeks sufficient for informed decisions to be made about the best geographic extent of the two respective Article 4 Directions. In deciding the extent of the Directions the data outcomes will be taken into account and the Head of Regulatory Services will consult with the Leader and the Cabinet Member for Regulatory Services and Community Safety.

### **3.2 *Licensing***

#### **3.2.1 Towns and Communities Overview and Scrutiny Committee**

The Towns & Communities Overview and Scrutiny Sub Committee have established a Private Rented Sector Landlords Licensing Topic Group which has considered options for introducing methods to monitor and control the activity of private rented sector landlords in the borough

The Topic Group aims were to understand any Landlord Licensing process in Havering, identify what scheme(s) were running in other boroughs and consider which of these could potentially be implemented in Havering.

The T&C O&S Sub Committee considered the work of the Topic group at its meeting on 22 April and Cabinet will be updated on the outcomes.

## **REASONS AND OPTIONS**

### **Reasons for the decision:**

The decision responds to a Council's Motion and seeks to introduce measures to bring the formation of HMOs within the Council's planning controls so that the suitability of premises and their impacts may be fully considered in the interest of amenity.

### **Other options considered:**

Failure to make an Article 4 Direction(s) would leave the Council unable to exercise planning control over the impact of HMOs. Given the trend identified of converting smaller dwellings and the likely problems identified, this option is not recommended in the interests of the amenity and wellbeing of the Borough.

**IMPLICATIONS AND RISKS**

**Financial implications and risks:**

**Resource implications**

The data exercise and building of an evidence base is yet to complete; therefore, it is too soon to specify the type and extent of resources necessary to support measures for improved monitoring, control and enforcement of HMOs. Introduction of Article 4 Directions may result in increased planning applications for HMOs for which no fee is required (because these changes would otherwise be achievable under permitted development); therefore, a modest increase in the workload of the service is likely. The proposal for Non-Immediate Article 4s would minimise the risk of compensation claims against the Council. The extent of any further measures required, beyond the Article 4 Directions, plus the full resource considerations will be reported to a future Cabinet.

**Legal implications and risks:**

The proposal for Non-Immediate Article 4 Directions would significantly reduce the risk of compensation claims against the Council.

**Human Resources implications and risks:**

Resource implications including any additional staffing needs will depend on the outcome of continuing data analysis and mapping and will be subject of a further report to Cabinet.

**Equalities implications and risks:**

The introduction of Article 4 Directions will enable the Council's to consider planning applications for HMOs. This will allow the Council to have a greater understanding and more strategic control over HMOs and could lead to a number of benefits for local communities, such as a reduction in anti-social behaviour and crime.

While there may be some negative implications for younger adults, as they are more likely to live in HMOs, better information relating to the sector will lead to improvements in planning for future housing provision in the borough.

**BACKGROUND PAPERS**

Havering Local Development Framework  
The London Plan  
National Planning Policy framework

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**Cabinet**

13 May 2015

**Subject Heading:**

**Establishment of Council Owned Housing Company to deliver Market Rent and Market Sale Homes**

**Cabinet Member:**

**Cllr Ron Ower**  
Cabinet Member for Housing Company Development and OneSource Management

**CMT Lead:**

**Andrew Blake-Herbert**  
Group Director for Communities & Resources

**Report Author and contact details:**

Tom Dobrashian, Head of Economic Development  
[tom.dobrashian@havering.gov.uk](mailto:tom.dobrashian@havering.gov.uk)

**Policy context:**

**Financial summary:**

To follow in Part B report

**Is this a Key Decision?**

Yes

**When should this matter be reviewed?**

Spring 2016

**Reviewing OSC:**

**Towns and Communities**

**The subject matter of this report deals with the following Council Objectives**

- Havering will be clean and its environment will be cared for
- People will be safe, in their homes and in the community
- Residents will be proud to live in Havering

**SUMMARY**

This report seeks the Cabinet’s approval to the establishment of a wholly owned arm’s length company of the Council, the purpose for which is to develop a portfolio of homes for market rent (its prime focus) and sale. It is proposed that the Council will dispose of assets (land/buildings) to the Company at market value for this purpose, for which it will

receive a market payment. It is proposed that the Company receives state aid compliant loans and funding from the Council. This will provide a long term revenue stream for the Council in the form of interest payments from the Company to the Council. The Company will operate in the same way as any other private sector company, driven by the requirement to produce profits and to operate in a commercial manner. The Council's rights as a shareholder in the Company will be set out in the Company's Articles of Association and the proposed Shareholder's Agreement.

## **RECOMMENDATIONS**

That Cabinet:

1. Agree to the incorporation of a company limited by shares that will be wholly owned by the Council and delegate to the Director of Legal and Governance authority to take all necessary steps to establish the company.
2. Delegate to the Leader of the Council and Cabinet Member for Housing Company Development & One Source Management, approval of the business case for and the Housing Company's (HC) first business plan. In addition, the Group Director for Communities & Resources, following consultation with the Director of Legal and Governance, be authorised to approve the business case as being compliant with legislation, due diligence and being commercially sustainable.
3. Agree in principle to the disposal of assets (land/buildings) to the Company at market rates, and delegate to the Group Director for Communities & Resources, following consultation with the Head of Property and the Director of Legal and Governance, authority to determine the principles and processes by which the said assets shall be disposed of and the terms of disposal.
4. Agree in principle to provide to the company funding through state aid compliant loans, subject to such funding being in line with the Council's financial strategy. Further agree that the Leader of the Council and Cabinet Member for Housing Company & One Source Management following consultation with the Director of Legal and Governance would agree the Heads of Terms of loan agreements. The negotiation and finalisation of the loan agreements, provided they are broadly consistent with the Heads of Terms, and the decision to release funding subject to satisfactory financial due diligence, to be delegated to the Group Director for Communities & Resources.
5. Delegate to the Leader of the Council and Cabinet Member for Housing Company Development & One Source Management, supported by a Senior Council Officer other than Group Director of Communities & Resources, to release funds through such loans needed to meet the requirements of the agreed business case.
6. Delegate to the Leader of the Council and Cabinet Member for Housing Company Development & One Source Management, supported by a Senior Council Officer other than Group Director of Communities & Resources, the exercising of the Council's rights as shareholder.
7. Delegate to the Leader of the Council and Cabinet Member for Housing Company Development & One Source Management to agree to the Heads of Terms of the



Shareholder Agreement and authorise the Group Director for Communities & Resources, in conjunction with the Director of Legal and Governance, the authority to negotiate and finalise the Shareholder agreement.

8. Delegate to the Group Director for Communities & Resources authority to approve the Articles of Association following consultation with the Director of Legal and Governance.
9. Agree to the establishment of the Company's board consisting of the following Council officers, as well as an external, unconnected individual (to be recruited) who has relevant experience in the house building sector:
  - a. Group Director for Communities & Resources
  - b. Head of Economic Development
  - c. Head of Property Services, One Source.
  - d. Assistant Director Business Services, oneSource
10. Subject to the final sign off of the Business Case as specified in recommendation 2 and the Council and the company entering into the ancillary agreements referred to above, to agree that the Company may thereafter commence trading.

<b>REPORT DETAIL</b>
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## **1. BACKGROUND**

### **Introduction**

- 1.1 Since the summer of 2014 officers, supported by external advisors have been assessing the potential of the Council participating in the development of market rent and sale homes in the borough.
- 1.2 The Council's main objectives for entering into this market are:
  - To generate a financial return to the Council by operating a business;
  - To contribute to dealing with the housing supply issue in the borough which threatens the economic and social well-being of residents and is also a threat to the local economy. It will seek to avoid large tracts of buy-to-let housing characterised by fragmented ownership, poor management of families from outside the borough, who may place unsustainable pressures on local services;
  - To ensure a mix of housing, in terms of type, size and tenure, best matched to the needs of Havering; and
  - To support the Council's regeneration and growth aims, bringing forward high quality development on regeneration sites in key parts of the borough, notably though not limited to, Rainham along the A1306, and Romford Town Centre.
- 1.3 The Council's MTFs has a net income target of £600k per annum from such a development proposition by 2017/18.

### **Strategic Context**

- 1.4 One of the most significant housing changes in the UK housing market in the past decade or more has been the rise in the private rented sector and the decline in owner occupation.
- 1.5 According to a Government review, 'this trend seems likely to continue due to a combination of declining affordability, a requirement for more equity from purchasers, changes to how home purchase is financed and a relatively low new housing supply. Further, the private sector rental market sector continues to meet housing need and this seems likely to continue'.
- 1.6 London's population is forecast to grow from 8.3 million in 2012 to 9.5 million in 2020. Of this increase, one of the largest groups will be those in the 20 to mid-30s age bracket. This group is the key rental demographic whose aspiration for home ownership may not be satisfied until much later in life. There is now a growing demand from private sector tenants for quality, professionally managed accommodation and this demand is likely to continue to grow.
- 1.7 It is widely viewed that the relative immaturity of the Private Rented Sector (PRS) offers institutions and larger organisations such as local authorities an opportunity to shape the sector, and the Government is encouraging this activity.
- 1.8 Several local authorities are venturing into this market. These include Kings Lynn & West Norfolk; Ealing, Waltham Forest, Enfield and Newham through its Red Door Ventures. Other institutions, such as Registered Providers, are also seizing on opportunities primarily focused on London and the South East.
- 1.9 Increased competition has seen fierce competitive bidding for portfolios to the point where net yields in London's Zones 1-3 are no longer attractive. As such, investors are now focussing on the outer London boroughs, where investors feel capital growth prospects are more favourable, coupled with acceptable rental yields which cover funding costs. Havering fits these criteria.
- 1.10 It is becoming increasingly difficult for Havering residents to afford homes. A quality rented sector targeting Havering residents would meet their criteria Likewise, affordability, coupled with improved connectivity through Crossrail, will undoubtedly make towns such as Romford more attractive for tenants who are being priced out of more central London boroughs and increasingly some mid zone locations.
- 1.11 There is a real opportunity for Havering to take advantage of this anticipated tenant growth and deliver quality, well located and managed PRS development which will deliver a financial return to the Borough, as well as meet its regeneration objectives.
- 1.12 LB Havering as a provider of PRS homes would be housing a new generation of tenants who fall outside the traditional categorisation of those in need, who want to live knowing their landlord is holding the property for the long term, giving them peace of mind and security of tenure, but also providing a quality level of service.
- 1.13 Havering is making significant reductions in its spending due to reductions in its government grant and demographic growth factors. The Council is therefore seeking to make a broader use of its asset base to generate long term revenue streams for the Council. Traditionally, the Council has successfully sold land to housing providers and developers in order to obtain capital receipts, to provide market and affordable housing and to meet borough wide housing targets. Whilst

this activity will still remain important in part, establishing a Havering Housing Company will allow the Council to generate a substantial income streams on suitable development sites to invest in protecting and supporting other services.

## **2 BUSINESS CASE FOR ESTABLISHMENT OF THE HOUSING COMPANY**

### **Options for Achieving the Council's objectives**

2.1 The proposal to establish the Housing Company (HC) is based on a high level options appraisal, conducted to determine the most appropriate means by which the Council's objectives, as set out in paragraphs 1.1.2, could be met.

2.2 The alternatives which were explored included not participating in the market (i.e. do minimum option); to pursue directly through the Council's general fund; pursue through the Council's Housing Revenue Account, and establishing a partnership with a private sector partner. In summary, the limitations of these options and reasons for rejecting them include:

- relying solely on the private sector to deliver quality housing perpetuates the current unsatisfactory position (do minimum);
- other options do not generate revenue income for the general fund (do minimum/HRA);
- the Council does not have powers to directly undertake commercial activity in the General Fund (GF) but only through a company;
- a HRA led initiative would be limited by the HRA borrowing cap (HRA) and the housing tenure targeted is not affordable housing through this initiative; and
- establishing a private sector partnership would place limits Council's shareholder control, takes significant time to establish and would lead to the sharing of revenue (profit).

2.3 The following summarises the rationale for establishing the wholly owned Council Company:

- the Council has the power to on-lend funds to a company at commercial rates. This is an attractive option, as the Council would make a margin on its own borrowing from the Public Works Loan Board (PWL), where interest rates are lower, pension investment funds or Council cash reserves. The cost and returns for a proposed scheme are presented in Part B of this report, which will follow when finalised. This does not preclude the Council refinancing completed projects through commercial loans or having a mixed loan portfolio as the project matures;
- in addition to generating a revenue stream for the General fund through interest from loans, revenue income will also be forthcoming from ground rent and dividend payments from the Company. The Council would also benefit from any increase in value of the company's assets;
- dwellings owned by the company are not HRA properties and thus will not impact on the HRA borrowing cap;
- dwellings owned by the company will be let on Assured Tenancies and as market rented homes will not be subject to the allocations provisions of Part VI of the Housing Act 1996 (which may have particular significance in relation, for example, to any prospective development for market rent);
- establishing a Company isolates elements of financial risk as the HC would be a limited entity;

- establishing a Company provides a flexible operating model to participate in the commercial market place; and
- a Company vehicle can potentially extend its operations to wider trading functions related to housing development (and subject to Shareholder approval).

### **Delivery Options for the Housing Company**

- 2.4 A more detailed options analysis was conducted with the help of external property consultants, Savills, to look at the delivery options for the HC. These are set out in the Part B of this report, which will follow when finalised.

### **Site Assessments**

- 2.5 Savills were asked to assess the development potential of a range of development propositions across the borough for private rented sector housing. This included the preparation of site assessments, providing recommendations on potential development options and undertaking initial financial appraisal work to examine development viability. This helped provide an understanding of the potential financial implications that will form the underlying assumptions for the HC's business plan.
- 2.6 Key issues identified through the review focussed around understanding potential barriers to delivery. For sites in third party ownership, consideration of the potential time and cost implications of bringing these within the fold of a HC had to be made. Likewise the assessment allowed Savills to identify those sites that had potential to proceed in the shorter term and produce income in earlier years in line with the expectations of the HC to begin to generate income within the next 3 to 4 years.

### **Property Market Assessment**

- 2.7 Alongside the information review, Savills was asked to review the local sales and rental markets in both Romford and Rainham. This involved compiling market evidence (including on market pricing and agreed prices) from nearby new build developments and second hand stock, informed through discussions with local agents to understand the key factors to delivery, including demand, attrition and take up rates, target market, and their opinion on the local market as a whole. This is particularly important when considering the rate of delivery of new stock into local property markets, bearing in mind the risks associated with an oversupply of new units depressing value.
- 2.8 Savills undertook detailed market assessments reflecting each of the sites identified. Their recommendations focussed on the strong performance of the property market for both sale and rental properties, particularly in Romford, driven largely by demand from London commuters who recognise the relative affordability of the area and supported by the imminent introduction of Crossrail in 2018.
- 2.9 The sales market is considered to be very competitive and popular at present across both Romford and Rainham. There is high demand for good quality 1 and 2-bed new build flats within Romford Town Centre. Demand is highest amongst the first time buyer market, with buyers originating from both the local area and London (young professionals and buy-to-let investors, all of whom are conscious of affordability and good returns on investment).

- 2.10 Rainham experiences a wide range of achievable values, depending on the distance from transport hubs and the town centre. The area is considered to be very affordable, particularly for family sized housing, which are in high demand here. The market for flats is relatively new to the area, with a limited supply of stock coming onto the market for sale. This is driven by the shortage of new build flatted developments in the development pipeline. Away from the town centre, towards Beam Park, new flatted developments are rare, with demand considered to be very low as a consequence of poor accessibility to public transport and low sales values impacting viability. Clearly proposals around the introduction of a new station will go a significant way to increasing demand in the area.
- 2.11 The rental market in Romford and Rainham broadly follows the same pattern as the sales market, both in terms of demand from prospective tenants and type of units, target market and need. Flats for rent are considered to be in very high demand in Romford in particular, primarily because of its access to good rail links into Central London, as well as the affordability of flats in the town compared to other commuter towns that are a similar distance from central London.
- 2.12 Similarly in Rainham, there is demand for houses for rent, particularly amongst families moving into the area prior to purchase. However, rental values aren't as strong in the town and immediate surrounding areas as they are in Romford due to the superior offering in terms of local amenities compared to Rainham. Agents have commented that Romford is a growing rental market, and they expect demand to continue to increase in future years with improved transport connectivity coupled with relative affordability.

### **Financial Analysis**

- 2.13 In order to benchmark the financial performance of PRS development, Savills appraised development options. The results of the financial analysis helped inform the identification of priority sites for the HC.
- 2.14 This work established an outline business case for proceeding based on options outlined in Part B of this report, which will follow.

## **3 OPERATION OF THE HOUSING COMPANY**

- 3.1 The HC will primarily develop a portfolio of homes for market rent and sale. As discussed, these will not be affordable homes and will not be targeted at households towards whom the Council owes a housing duty.
- 3.2 The Company, on behalf of the Council, will own the market rent units, and will market and manage the rental of those homes.
- 3.3 Dwellings owned by the Company will be let on Assured Tenancies and will not be subject to Right to Buy, or to the allocations provisions of Part VI of the Housing Act 1996.
- 3.4 The Company would prepare a specification for the marketing and management of these units and outsource this activity. The outsourcing of its housing management and maintenance services is likely to be the most efficient option at the commencement of its business. LBH Housing Services would be able to respond to the outsource tender.

- 3.5 The Company will create a name and a brand that will place it firmly in the commercial sector, and one that will appeal to market renting and sale target buyers.
- 3.6 In terms of housing development for larger sites, the Company would seek a development partner in order to share the benefits of capability and share risk, as described in the options appraisal in the part B report which will follow when finalised.
- 3.7 For sites that it is felt appropriate to develop on its own, the Company would secure appropriate development expertise and appropriately tender the construction and delivery of units.
- 3.8 The Company will draw on the Council's resources for its support service's needs. The Council would aim to, as necessary, second to the Company Council officers to support its' operation and the Council would be reimbursed by the Company at an appropriate commercial hourly rate.
- 3.9 It is envisaged that the following human resources would be required both in terms of initial set up and on-going management of the business:
- A commercially focussed development manager, with significant development appraisal experience, to assess potential development opportunities.
  - A project manager to act as client in managing the delivery of schemes.
  - A One Source Finance resource, which would maintain and update the financial model for the Company.
  - Other support services from oneSource as necessary and which is likely to include HR, Legal, Asset Management, IT, Finance and Transactional services.
  - The Company will procure the services of relevant professionals, such as chartered surveyors to advise on values and experienced cost consultant/life cycle consultant with capability to ensure value for money in terms of product and supply chain.
- 3.10 A business plan for the Company will be prepared annually and presented to the Cabinet for approval, this would describe the proposed operation, performance targets and resources. As stated in recommendation 2 of this report, it is proposed that the approval of the HC's first business plan to be delegated to the Leader of the Council and Cabinet Member for Housing Company & One Source Management.

## **4 GOVERNANCE**

### **Shareholder Role**

- 4.1 The Council's Cabinet will be the prime body acting as the shareholder agreeing the HC's business plan on an annual basis.
- 4.2 The Leader of the Council, Cabinet Member for Housing Company Development & One Source Management, in conjunction with a Senior Finance Manager from One

Source (who can fulfil S151 officer role) to exercise the Council's rights as shareholder; whose main role is to protect the council's interests as owner of the company ('Shareholder review group')

- 4.3 The above group to meet regularly to review the HC's performance with the HC's 'Managing Director'. These meetings to be attended by the HC's Directors.
- 4.4 The above group to be provided with financial/technical assistance from the Council to assess the Housing Company's performance against its business plan as well as its general commercial operations.
- 4.5 Draft Heads of Terms for the Shareholders Agreement have been prepared and once approved by the Shareholder Review Group, the Group will be asked to delegate to the Group Director for Communities & Resources, in conjunction with the Director of Legal and Governance, the authority to negotiate and finalise the agreement providing that it is broadly consistent with the draft heads of terms.

#### **Directors Role**

- 4.6 Group Director for Communities & Resources to have authority to approve the Articles of Association following consultation with the Director of Legal and Governance.
- 4.7 HC's board to consist of the following Council officers, as well as an external, unconnected individual (to be recruited) who has relevant experience in the house building sector:
  - Group Director for Communities & Resources
  - Head of Economic Development
  - Head of Property Services, One Source
  - Assistant Director Business Services, oneSource
- 4.8 The Council would retain the right (under the Companies Articles and any Shareholder Agreement) to dismiss and appoint all of HC's Directors.
- 4.9 The Directors have ultimate responsibility for directing the activities of the company, ensuring that it is well run and delivering the outcomes for which it has been established. Its role includes:
  - Setting and approving the HC's annual business plan for presentation to the Council's Cabinet.
  - Setting budgets, policies and plans and monitoring performance of the HC, and setting a framework for internal controls.
  - Ensuring compliance with the HC's objects, purposes and values. Ensuring the financial strength, solvency and good performance of the HC.
  - Ensuring the HC complies with all relevant regulation, laws as well as the requirements of the Council
  - Dealing with the appointment and appraisal of staff.
  - Procuring services necessary for the execution of the HC's objectives.

### **Funder Role**

- 4.10 To provide resilience and deal with potential conflict it is recommended that the Section 151 Officer (Group Director of Communities & Resources) nominates a senior finance officer to discharge the Funder role, together with other nominated senior finance colleagues. In effect the Funder Role will act as a bank credit committee.
- 4.11 The Funder Role's primary task will be to assess the HC's viability (as an entity) and the viability of each project which loan funding will be used for and, using this analysis, to determine whether to release loan funding to the HC.
- 4.12 Regularly monitors and analyses financial information generated by the HC during the lifetime of each loan to ensure that the HC is not in breach of key financial requirements (which will be stipulated as funding conditions in each loan).
- 4.13 The key areas which the Funder Role will want satisfied prior to providing funding for a development are:
- that the financial metrics demonstrate that the loan will be repaid;
  - there is confidence that the projected rental stream can be maintained;
  - that base level sensitivities (which will trigger warning signals) for the HC's general performance and each proposed development are properly set and that a sufficient margin is added to the base level to provide reassurance to the Funder Role. (This will form part of the HC's obligations under each loan); and
  - that evidence is provided (by either the HC and/or the Funder Role) that the terms of each loan is State Aid compliant.

### **Procurement**

- 4.14 As a pure commercial entity, not created to further public policy, the HC will not need to follow public procurement rules. However, the company board, acting like any other commercial entity, will determine its own policy in accordance with best practice, the law and bearing in mind their duties as directors. The Council within the shareholder agreement will be insisting on a clear best value process to be followed.

## **REASONS AND OPTIONS**

### **Reasons for the decision:**

The proposition meets the objectives stated in 1.1.2 and the outline business case (to follow in the Part B report when finalised) meets the financial objectives of the Council within the MTFs.



**Other options considered:**

A review of the alternative options of do nothing, seeking to undertake the proposition in the General Fund or through the HRA, or establishing a formal joint venture either were not feasible or did not fulfil the objectives to the extent of the preferred option as discussed in this report.

**IMPLICATIONS AND RISKS**

**Financial implications and risks:**

The proposal will involve the setting up of a company (100% Council owned), with the Council lending to that company. Due to state aid controls, the loans would be at market rates, and would enable the Council to make a surplus on this borrowing, contributing to MTFS targets. The Council will also draw a small dividend on any profits. The approval of any loans – which are effectively capital expenditure – would need to be confirmed by Cabinet and Council.

Each possible scheme should be subject to individual option appraisal.

Risks include the following:-

Changes in the market conditions of developing, selling and renting of homes could lead to a continuous reduction in property rental levels and sale prices. The impact would result in not being able to rent or sell homes for prices indicated, and may result in high working capital and insufficient asset cover for loans. This would be mitigated by the ability to reduce rental rates if need be, change tenure mixes and robust assessment of demand and supply before initiating phases of schemes.

An Increase in development build costs, resulting in development schemes becoming more expensive and less viable leading to a reduction in viability of the portfolio. The impact on potential new developments would be tested as part of the viability assessment and may not be approved.

The portfolio size fails to meet economies of scale, with the result the Company is not able to carry level of overheads and therefore would be less viable. The pipeline of development in early years is being carefully identified and closely monitored by the Council and the future Company Board. Ongoing committed costs should be minimalised.

The Company being unable to compete equally in the private market for land purchases, resulting in the Company unable to deliver programme and returns. This is mitigated through the identification of land held by the Council which would be appropriate for the Company to develop.

An increase in void turn round times/relet times greater than model assumptions, resulting in Income from rent is reduced and company's cash flow to service debt is compromised. This would be mitigated through a rigorous maintenance and management agreement, seeking to shift and mitigate this risk to a third party.

An increase in the market cost of funding, not offset by increase in rent inflation, the Council though, has tested the proposals with external advisors.

The impact of the above risks can be mitigated by robust testing as part of the viability assessments of potential development schemes and on some schemes adopting a risk sharing strategy through partnering arrangements with other private sector organisations with significant developer experience.

There is political risk of changes to legislation. The proposed Company is focussing on the private sector market and is not targeting the affordable market tenure. It would not be threatened, at present by recent announcements on affordable housing disposals or limitations on establishing companies by Councils to deliver housing.

### **Legal implications and risks:**

#### **General**

Members are asked to agree to establish a wholly owned local authority company limited by shares (HC). The company's business will be the provision of homes for market rent and if required through compliance with planning obligations the construction of affordable homes. Agreement is also sought to provide funding to the HC in the form of loans, and other support and to dispose of council land to it. Delegations to officers are sought to finalise the various agreements that will be required to facilitate the above.

Section 1 of the Localism Act 2011 provides local authorities with the power to do anything an individual may do subject to a number of limitations (this is referred to as the General Power). A local authority may exercise the General Power for its own purpose, for a commercial purpose and/or for the benefit of others.

The operation of a business to let homes at market rent with the intention of making profits is a commercial purpose. Section 4 of the Localism Act 2011 requires that where a local authority exercises/uses the general power for a commercial purpose it must do this through a company.

Further Section 4 of the Localism Act 2011 prohibits the Council doing things for a commercial purpose in relation to a person if legislation requires the Authority to do those things in relation to that same person. This issue is unlikely to arise for HC as it intends to lease or sell to a Registered Provider any affordable homes it may be required by planning to build.

Under Part V of the Local Government and Housing Act 1989, the council also has a power to establish companies which can be wholly controlled or influenced by the authority. HC will be wholly owned by the Council and under Part V will be subject to the Local Authorities (Companies) Order 1995.

Section 2 of the Localism Act 2011 limits the exercise of the new general power where it 'overlaps' with a power which predates it, such as Section 95 of the Local Government Act 2003. Whether the Council relies on the General Power and/or Section 95 it is prudent for it to comply with the requirements and limitations to which section 95 is subject. These are set out in Regulation 2 of the Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009 (the **Order**) which requires a business case to be prepared and approved by the council before a company starts trading.

Regulation 2(4) of the Order defines “business case” “as a comprehensive statement of:-

- the objectives of the business;
- the investment and other resources required to achieve those objectives;
- any risks the business might face and how significant these risks are; and
- the expected financial result of the business, together with any other relevant outcomes that the business is expected to achieve

Before approving the business case Members should satisfy themselves that the document and its appendices) contain the relevant information required by the Order (see paragraph 5.6 above). The Leader of the Council and the Cabinet Member for Company Development and oneSource management to whom finalisation of the business case has been delegated should also ensure that they ensure their due diligence includes compliance with the requirements of the Order

Section 95 of the Local Government Act 2003 (the 2003 Act) act also permits the council as a best value authority to establish a vehicle to carry out trading in any of its ordinary functions.

## **Finance**

Section 24 LGA 88 provides the Council with the power to provide a wide range of financial assistance to HC including making a grant or loan to it and as HC is a body corporate the Council may under Section 24 (2)(d) acquire share or loan capital in it.

Section 111 of the Local Government Act 1972, provides councils with the power to do anything whether or not involving the expenditure, borrowing or lending of money or the acquisition of property rights which is incidental, conducive or calculated to facilitate the exercise of any of their functions. This would include the exercise of functions under section 1 of the Localism act and s.95 of the 2003 Act referred to above. The council could rely on this power to provide the company with loans and other support such as providing staff and the use of premises. Any support provided must be state aid compliant (see below) and will be the subject of agreements between the council and the HC.

In accordance with the council’s constitution, any capital funding requirements for the HC project in 2015-16 will need to be allowed for in the council’s budget strategy which needs to be approved by full council. This will need to be reviewed and updated in subsequent years.

However the Group Director of Communities & Resources should ensure that if required by the Council’s constitution and its Financial Regulations all sums in this proposal which are to be released to HC to be included in the Budget Framework for approval by Council prior to the release of those funds to HC.

If the Council intends to borrow to lend to HC regulation 25 of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 (SI 2003/3146) treats the giving of a loan by a local authority to a third party (such as HC) towards expenditure (e.g. works on a

new buildings) as capital expenditure providing that if the local authority itself incurred that expenditure (it borrowed to undertake the works itself) it would treat that expenditure (under proper accounting practices) as capital expenditure. It should be noted that the Council borrowing to lend to HC in connection with revenue funding is not permitted.

### **Land disposal and financial assistance**

Section 32 of the Housing Act 1985 requires the Council to obtain the Secretary of State's consent for the disposal of land held under the Council's HRA. The Secretary of State has issued the General Housing Consents 2013 (the General Housing Consents) which set out circumstances in which he pre-approves/pre-consents to a local authority disposing of HRA land and property. Consent A 3.2 of the General Housing Consents permits the Council to dispose of vacant land. Members should note that vacant land means land where there are no dwellings and/or where any dwellings are no longer capable of human habitation and are due to be demolished.

The Council is entitled to dispose of land held by its General Fund (including buildings) to a third party provided it complies with Section 123 of the Local Government Act 1972. This requires it to obtain a consideration which is not less than the best it could reasonably obtain. If it disposes of a property at an "under-value" it does require the consent of the Secretary of State (except for limited circumstances such as short term leases).

If the Council was able to sell at an under-value (and remain State Aid compliant) the Council may be able to rely on Circular 06/03 (the Local Government Act 1972 – disposal of land for less than best consideration) which sets out circumstances in which the Secretary of State pre-approves/pre-consent to the disposal of General Fund land at an under-value. If this consent is to apply then the "under-value" (in relation to a disposal) must not exceed £2m and the Council's purpose in making such a disposal must be to contribute to the economic social or environmental well-being of the authority's area and/or its residents.

The finance which Members are requested to approve (whether on commercial terms or otherwise) constitutes 'financial assistance' under the terms of Section 24 of the Local Government Act 1988 (the LGA 88) which permits the Council to provide financial assistance to any other person for the provision of "privately let accommodation". If the Council exercises its powers under this section then under Section 25 of the LGA 88 it must obtain the consent of the Secretary of State to do so. The Secretary of State has set out pre-approved consents in the "General Consents 2010" (July 2011 updated in 2014). If the circumstances of financial assistance meet one of the criteria in the General Consents then the Secretary of State's consent is given.

Section 24 LGA 88 provides the Council with the power to provide a wide range of financial assistance to HC including making a grant or loan to it and as HC is a body corporate the Council may under Section 24 (2)(d) acquire share or loan capital in it.

The current version of the General Consents 2011 contains Consent C. Under this consent the Council could provide financial assistance to any person.

When exercising its powers, the Council must, as with any other power, have regard to its own procedural rules, the Wednesbury principles of reasonableness and its fiduciary duties. It must also ensure that its powers are used for the proper purpose.

### **Fiduciary Duties**

The Council's fiduciary duties could be briefly summarised as it acting as a trustee of tax and public sector income on behalf of its rate and tax payers. The Council in effect holds money but does not own it; it spends money on behalf of its business rate and council tax payers.

Members in making the decisions concerning the formation of HC, investment and loans to that body (and similar activities) should give proper consideration to the risks and rewards of approving the recommendations. In practice Members will want to consider whether the Council will achieve an appropriate return for its risk and that the Council has minimised the risk and potential cost to it if HC became insolvent and/or defaulted on its loan(s).

Consideration should also be given to whether the Council's involvement in this arrangement is proportionate and properly balanced against the anticipated benefit as well as the wider interests of its local business rate and tax payers. On a practical basis this means that Members should consider whether the monies they are requested to approve for investment/lending to HC could be better used by the Council for the wider interests of its local tax payers. This should include considering the impact on the Council (and therefore its local tax payers) if HC became insolvent or otherwise defaulted on loans it had taken from the Council.

### **HC as a company**

The report proposes that HC be created as a company (one limited by shares). There are other company structures but this is considered to be the most suitable vehicle for the council under the current legislative framework. The Articles of Association need to be drafted. The council is the only shareholder and the company's memorandum and articles will need to reflect this. If Officers are appointed to HC's board of Directors they will in that role owe their principal duty to HC.

### **State Aid**

The council is required to provide funding and ensure it and HC operates in accordance with the state aid requirements. Article 107 (1) of the Treaty on the Functioning of the European Union (**Treaty**) declares that state aid, in whatever form, which could distort competition and affect trade by favouring certain undertakings or production of certain goods, is incompatible with the common market, unless the Treaty and in practice the European Commission (through regulations and decisions) allows otherwise.

It is important that any loans/credit or other support provided to the HC are state aid compliant. Loans/credit which the Council generally makes available to HC must be made

on commercial terms and at a commercial interest rate. If the Council subsequently chooses to make an equity investment into HC it must ensure this is done on commercial terms. It will be necessary for the Council to obtain independent confirmation that such arrangements have been made on commercial terms prior to them being entered into.

If the Council subsequently choose to provide funding or support to HC in connection with any affordable homes it may be able to do so on non-commercial terms even providing grants or subsidised loans. However, it will be necessary for the Council to comply with State Aid law/conditions which apply where public support is given to what is termed under State Aid law *Services of General Economic Interest* (SGEI).

In these circumstances it would be necessary for the Council and HC to enter into as what is termed an 'Entrustment Agreement' to ensure compliance with State Aid requirements for SGEIs. This should be done when such funding is made available.

### **Procurement**

It is intended that HC operates as a business and as such it is not intended for it to be a contracting authority or subject to public contract procurement requirements. This has a number of implications.

Other things that will need to be considered when establishing the HC are how Corporation and Value Added Tax will affect trading and how any financial commitments to the company in terms of funding affect the council's borrowing limits.

The Council has considered carrying out an Equalities Impact Assessment and has decided at this stage in the process a full EIA is not required, due to the overall positive impact of the project. Council Officers will however continue to review the impacts of the project as it progresses and will complete a full EIA if required, as noted in section 13 of this paper.

### **Human Resources implications and risks:**

There is no immediate or direct impact on any existing Council employees envisaged at this point.

There will be a requirement for oneSource HR resources to support the initial company set up and recruitment of the Company's employees. Set up support will also be required from various other oneSource services e.g., Asset Management, Finance, Legal, IT and Transactional services.

Consideration needs to be given as to whether the company's employees should be directly employed by the company, or be agency workers/consultants engaged directly by the company or by the Council on behalf of the company or be employed by the Council and 'seconded' to the company either temporarily or on a permanent basis. Each option will be considered in the light of the needs of the company to be able to attract, recruit and retain their employees by paying an appropriate 'private sector' market rate salary and the possible risk to the Council of creating comparators from an equal pay perspective should the Council act as the employer.

In as similar manner the Company will need to establish suitable company infrastructure such as accommodation, ICT.

**Equalities implications and risks:**

An Equality Impact Assessment on the establishment of a private sector focussed Council Owned Housing Company, the results of which lead us to believe it's' operation will have a positive impact on local residents, businesses and staff.

As the Company is being established by the Council, its development must be compliant with the Public Sector Equality Duty and the Equality Act 2010 (EA10).

Once established the Company will to be operating in compliance with the general duty of the EA10 and will be required to carry out Equality Impact Assessments on relevant projects and initiatives so as to ensure that positive equality outcomes are optimised and any potential/likely negative implications are mitigated.

Background Papers

Note of Advice – Powers, Procurement and State Aid for the Proposed Housing Company, Trowers & Hamblins LLP, April 2015.

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## Cabinet

13 May 2015

**Subject Heading:**

**Future joint lobbying arrangements**

**Cabinet Member:**

**Councillor Roger Ramsey**

**CMT Lead:**

**Andrew Blake-Herbert**, Group Director,  
Communities and Resources

**Report Author and contact details:**

Brian Partridge, Interim Corporate Policy  
and Community Manager,  
[brian.partridge@havering.gov.uk](mailto:brian.partridge@havering.gov.uk),  
extension 1004

**Policy context:**

The Corporate Plan 15/16 provides that the  
Council will work in partnership with others to:

- Maximise funding for Havering through lobbying and attracting other external funds
- Deliver vibrant economic growth
- Reduce A&E attendance and unnecessary hospital and care home admissions by providing high quality, integrated community health and social care services (with health partners)
- Work with education partners to equip Havering's young people and adults with the skills needed by local businesses
- Work with partners, including Transport for London and Crossrail, to improve transport links and interchange facilities

**Financial summary:**

The annual joining fee for the North East London Strategic Alliance (NELSA) is set at £10k per annum. This can currently be met from economic development budgets.

**Is this a Key Decision?**

No.

**When should this matter be reviewed?**

A review should be undertaken at the end of the first year of membership, to evaluate outcomes delivered by NELSA.

**Reviewing OSC:**

Overview and Scrutiny Board

**The subject matter of this report deals with the following Council Objectives**

Havering will be clean and its environment will be cared for	[X]
People will be safe, in their homes and in the community	[X]
Residents will be proud to live in Havering	[X]

**SUMMARY**

The report outlines proposals to formally establish NELSA (NELSA's objectives are set out on page 3 of the report) and seeks approval for the Council to join.

This report also outlines discussions taking place about the wider devolution agenda.

**RECOMMENDATION**

That Cabinet **agree** that the Council become a founder member of NELSA and **authorise** the Group Director, Communities and Resources to approve and execute membership documentation following consultation with the Director of Legal and Governance.

**REPORT DETAIL**

1. NELSA is a newly formed, politically-led strategic partnership, at present consisting of Barking and Dagenham, Enfield, Newham, Redbridge, Waltham Forest and Havering (as an observer to date). Its main purpose is to lobby for a fair deal for NE London, particularly in terms of ensuring sufficient infrastructure investment to support NE London and to be a strong voice for the sub region. It has not yet been formally constituted, but discussions on the governing documents are at an advanced stage (the latest draft protocol appears at Appendix 1 – alongside this, a legal funding agreement is proposed) and the above authorities have been invited to sign up to it (letter attached as Appendix 2), at an annual cost of £10k per authority. (No proposals are yet in place as to how this funding might be used, but it would include promotion of the partnership and commissioning of research as agreed by the proposed Leaders' and Mayors' Board).

2. NELSA came into existence after the dissolution of the North London Strategic Alliance, which was established in 1999 as the sub-regional strategic partnership for North London. Membership included Enfield, Hackney, Haringey, Islington, Redbridge and Waltham Forest. In early 2014, Hackney, Haringey and Islington withdrew and the decision was taken to dissolve the partnership.
3. The purpose of the NELSA partnership is to develop a clear vision and voice for North East London, to work together to raise awareness of the challenges faced by the North East London boroughs, to lobby to obtain the necessary infrastructure and investment and to pursue shared opportunities. This new grouping met in July 2014 to discuss options for the way forward. The potential members all agreed that they would like to pursue this as an option for a strategic partnership. Alongside this, East London Solutions had also been considering how to increase strategic collaboration on economic regeneration.
4. The NELSA protocol is drawn up as a non-legally binding protocol which the Council can leave on giving 3 months' notice. The objectives of NELSA are set out as being:
  - To provide a sub-regional voice for north east London via research and by building consensus around the needs and opportunities of the sub-region; raising its profile and making the strategic case for public and private sector investment.
  - To work through existing partnerships and develop new partnerships, as may be required, to implement the agreed vision for NELSA in order to encourage and foster the delivery of new homes, jobs, improved skills, transportation and better public services for the benefit of north east London and London as a whole.
  - To act as ambassadors for the area, influencing key decision-makers, the development of policy in London and co-ordinating relationships between north east London and regional and central Government
5. There are already in place a number of geographical groupings across London, comprised of authorities of differing political complexions, which exist to lobby for improvements in their areas including:
  - The West London Alliance (Barnet, Brent, Ealing, Harrow, Hillingdon and Hounslow) – their vision for growth is to be "a thriving and prosperous part of the premier world city, with successful residents and resilient communities."
  - Central London Forward which was established as a sub-regional strategic organisation in 2007 (Camden, Islington, Lambeth, Southwark, Wandsworth, Kensington & Chelsea, Westminster and the City of London) – their primary objectives are to influence policy on major issues affecting Central London; promote the strategic importance and needs of Central London and to identify and facilitate coordinated working on areas of mutual interest to partners

- The Growth Boroughs (Barking and Dagenham, Greenwich, Hackney, Newham, Tower Hamlets and Waltham Forest) – their vision is that within 20 years the communities which hosted the 2012 Games will have the same social and economic chances as their neighbours across London and have priorities relating to creating wealth and reducing poverty; supporting healthier lifestyles and developing successful neighbourhoods.
6. It can be seen from the above that, apart from the proposal to establish NELSA, there is no organisation bringing all the North East London Boroughs together to lobby for improvements in the sub-regional area. Without NELSA, Havering, along with Redbridge and Enfield, would be at risk of becoming increasingly isolated. In addition participation in this grouping may assist the Council in accessing European Funding and in being in a better position if the devolution discussions progress - for these reasons NELSA is an attractive proposition.
  7. The North East London authorities have positive reasons for working together as they share a number of common attributes:
    - a. Areas of relative deprivation compared to West and Central London
    - b. The need for improved transport infrastructure
    - c. Skills gaps and the need to improve aspirations and educational attainment
    - d. Growing populations and historic underfunding of the health agenda
    - e. Lower funding levels. Havering has one of the lowest grants per head in the capital which does not reflect the external pressures or the demographics of the Borough
  8. Alongside the above issues, the authorities collectively have great prospects for economic growth and job creation, all of which are strong reasons for them to be working together to lobby collectively. NELSA is the right vehicle to achieve this.
  9. From a Havering perspective, the Council faces a number of challenges arising from population growth (including an aging profile which is older than London as a whole and significant increases in the younger population), an increasing demand for services (e.g. people with complex health and social care needs, migration of families from Central London with complex care needs, demand for school places etc.) and from austerity. NELSA provides the Council with opportunities to lobby effectively to maximise funding for the Borough, as set out in our Corporate Plan, and to make the case for the right infrastructure and support for North East London generally and Havering specifically.
  10. NELSA will give Havering a stronger voice operating collectively as part of a strategic grouping when it comes to cross borough matters such as transport and health funding, than it will have operating alone, as a single voice. As mentioned above, the Council can give 3 months' notice to leave the alliance and the only contractual commitment proposed to be entered into relates to the management of the funding. The final draft documentation

will be reviewed by the legal team to ensure that it is acceptable to the Council. NELSA is not about merging with other local Councils or sharing existing services or resources. For all the above reasons it is proposed that the Council formally commit to joining NELSA.

11. Members will be aware that there have been discussions in East and North East London on the devolution agenda leading to the issuing of a Leaders and Mayors discussion document “Local London – Driving growth through devolution.” Devolution is all about seeking additional powers and finance from Government which can then be administered at a local level.
12. Where devolution deals have been granted, these have been within existing regions which have a long history of joint working. For example, Greater Manchester (GM) has secured a devolution deal to deliver economic growth and improved public services and more recently to take control of £6bn of health and social care spending (with a “roadmap” for full devolution of powers and budgets to commission services including acute and specialised services, primary care, community and mental health services, social care and public health). The Sheffield City Region has negotiated a deal that includes greater powers over transport, skills and housing, without the imposition of a directly elected mayor and West Yorkshire has also recently negotiated a deal which includes control of the region’s adult skills budget and a share of the apprenticeship grant for employers.
13. London Councils has been making a case for greater devolution of powers to London as a whole and the delegation of responsibilities in relation to a range of public services. Its core proposition is that London should have significant responsibilities devolved from the national level, to stimulate economic growth and to deliver more effective outcomes. This includes proposals in relation to skills, employment, crime, community safety and criminal justice, housing and health. The Government announced in the recent budget that the Greater London Authority would have new devolved powers to jointly commission the Skills Funding Agency in a similar way to Manchester and Sheffield.
14. Governance in London is proposed through Borough Leaders and the Mayor, building to some degree on existing joint arrangements. London Councils has stated that in implementing any proposals it would seek to pass on leadership of cross borough devolved services to the sub-regional partnerships of its constituent members. It also stated that over time and in negotiation, work could be taken forward to allow those confederations of sovereign boroughs to assume direct legal accountability for devolved programmes. At the Leaders Committee on 24<sup>th</sup> March the recommendation put forward was to explore the potential for streamlined governance in relation to newly devolved responsibilities.
15. Future arrangements for devolution will be shaped by the new Government following the General Election and further reports will be brought to Cabinet on this, as and when proposals develop.

**REASONS AND OPTIONS**

**Reasons for the decision:** The reasons are set out in the report.

**Other options considered:** Not to join NELSA at this stage, which is not recommended for the reasons set out above. To request Observer status at NELSA – this is unlikely to be agreed by the other participating authorities.

**IMPLICATIONS AND RISKS**

**Financial implications and risks:**

Joining NELSA would incur an annual fee of £10k. The benefits of the proposal are explained in the report, particularly in sections 4 & 7.

**Legal implications and risks:**

The Council has power to enter into arrangements of this type under section 1(1) of the Local Authorities (Goods and Services) Act 1970 and section 1 of the Localism Act 2011. The 1970 Act authorises authorities to supply services to other authorities on terms to be agreed. Section 1 of the 2011 Act is the “general power of competence.”

The membership agreement as drafted protects the interests of member authorities and the final draft will be reviewed by Legal Services prior to execution.

**Human Resources implications and risks:** None.

**Equalities implications and risks:** No equalities implications at this stage.

**BACKGROUND PAPERS**

None.

**DATED**

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**PARTNERSHIP PROTOCOL FOR THE NORTH EAST LONDON STRATEGIC ALLIANCE**

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**THIS AGREEMENT** is dated [DATE]

**PARTIES**

- (1) The parties to this **Protocol** are:
- (2) 1. The Mayor and Burgesses of the London Borough of Barking & Dagenham (**Authority One**).
- (3) 2. The Mayor and Burgesses of the London Borough of Enfield (**Authority Two**).
- (4) 3. The Mayor and Burgesses of the London Borough of Havering (**Authority Three**).
- (5) 4. The Mayor and Burgesses of the London Borough of Newham (**Authority Four**)
- (6) 5. The Mayor and Burgesses of the London Borough of Redbridge (**Authority Five**) and
- (7) 6. The Mayor and Burgesses of the London Borough of Waltham Forest (**Authority Six**)

Henceforth collectively known as North East London Strategic Alliance or “NELSA”.

**1. BACKGROUND**

- 1.1 The Authorities that constitute NELSA have agreed to work together on a series of projects and ventures to be decided by the Leaders’ and Mayors’ Board in order to facilitate the achievement of the key objectives for NELSA.
- 1.2 The parties wish to record the basis on which they will collaborate with each other on these projects. This Protocol sets out:
  - (a) the key objectives of NELSA;
  - (b) the principles of collaboration;
  - (c) the governance structures the parties will put in place; and
  - (d) the respective roles and responsibilities the parties will have during the life of NELSA.

**2. KEY OBJECTIVES FOR NELSA**

- 2.1 The parties shall undertake the projects and tasks to achieve the key objectives as set out below:

- 2.2 NELSA is a politically led organisation with a core membership of those local authorities which constitute the north east London area. The parties wish to enter into this agreement for the purposes of realising a shared vision for the north east London area. The key purpose of NELSA is to develop and articulate a clear vision for north east London and to provide the strategic leadership to ensure that the vision is realised.
- 2.3 NELSA's objectives include the following:
- 2.4 To provide a sub-regional voice for north east London via research and by building consensus around the needs and opportunities of the sub-region; raising its profile and making the strategic case for public and private and sector investment.
- 2.5 To work through existing partnerships and develop new partnerships, as may be required, to implement the agreed vision for NELSA in order to encourage and foster the delivery of new homes, jobs, improved skills, transportation and better public services for the benefit of north east London and London as a whole.
- 2.6 To act as ambassadors for the area, influencing key decision-makers, the development of policy in London and co-ordinating relationships between north east London and regional and central Government

**3. PRINCIPLES OF COLLABORATION**

The parties agree to adopt the following principles when carrying out the Project (**Principles**):

- (a) collaborate and co-operate. Establish and adhere to the governance structure set out in this Protocol to ensure that activities are delivered and actions taken as required;
- (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this Protocol;
- (c) be open. Communicate openly about major concerns, issues or opportunities relating to the Project;
- (d) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (e) adopt a positive outlook. Behave in a positive, proactive manner;

- (f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation. [In particular the parties agree to comply with the requirements of the Information Sharing Protocol attached to this Protocol in Annex A];
- (g) act in a timely manner. Recognise the time-critical nature and deadlines of any projects and tasks to be undertaken within the remit of this Protocol and respond accordingly to requests for support;
- (h) manage stakeholders effectively;
- (i) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this Protocol. [In particular the parties agree to make the contributions detailed in Annex D to this Protocol]; and
- (j) act in good faith to support achievement of the Key Objectives and compliance with these Principles.

#### **4. MEMBERSHIP OF NELSA**

- 4.1 The membership of NELSA consists of the Authorities who have signed this Protocol agreement and paid the annual membership fees in accordance with the procedure set out in Annex D.
- 4.2 If any former member of NELSA who has resigned wishes to re-join NELSA it may apply to do so in writing and its application will be considered at the next Leader's and Mayor's Board meeting. If the Leader's and Mayor's Board approves the application in accordance with the voting rights set out in Annex B, then the former member may re-join NELSA by paying the membership fees and signing up to this Protocol again.
- 4.3 If an Authority re-joins NELSA in the same year that it resigned and has already paid the full membership fees for that year then it is not obliged to repay the membership fees again upon re-admittance to NELSA.
- 4.4 The above clause 4.2 will also apply to any new Authority situated in the north east London region who wishes to join NELSA.

#### **5. GOVERNANCE OF NELSA**

##### **5.1 Overview**

The governance structure defined below provides a structure for the development and delivery of the activities of NELSA.

## 5.2 Guiding principles

The following guiding principles are agreed. NELSA's governance carried out under the direction of the Leaders' and Mayors' Board will:

- (a) provide strategic oversight and direction;
- (b) be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;
- (c) align decision-making authority with the criticality of the decisions required;
- (d) be aligned with scope of NELSA's activities (and may therefore require changes over time);
- (e) Use existing organisational, group and user interfaces;
- (f) provide coherent, timely and efficient decision-making; and
- (g) correspond with the key features of NELSA governance arrangements set out in this protocol.

## 5.3 Leaders' and Mayor's board

- (a) The **Leaders' and Mayors' Board** provides overall strategic oversight and direction to NELSA. This group will consist of:

**Authority One:** [The Leader]

**Authority Two:** [The Leader]

**Authority Three:** [The Leader].

**Authority Four:** [The Mayor]

**Authority Five:** [The Leader]

**Authority Six:** [The Leader]

- (b) The remit of the Leaders' and Mayors' Board is to:
  - (i) direct NELSA policy and strategy
  - (ii) provide clear political direction to NELSA
  - (iii) agree the annual budget for NELSA
  - (iv) provide a forum for discussion and debate by key Councillors on matters of strategic significance for north east London
  - (v) act as champions and ambassadors for north east London

- (c) The Leaders' and Mayors' Board shall be managed in accordance with the terms of reference set out in B to this Protocol.
- (d) **Task and Finish Groups** Individual Task and Finish Groups will be set up for each specific task or project, as and when necessary, to be decided by the Leaders' and Mayors' Board. Once the Leaders' and Mayors' Board has decided that a Task and Finish Group has been deemed to have achieved the aims and objectives stated it will then be dissolved and no longer exist for the purposes of that particular task or project.
- (e) Each individual Task and Finish Group will provide strategic management of NELSA's activities for each task and project it has been set up for. It will provide assurance to the Leaders' and Mayors' Board that the Key Objectives are being met and that NELSA is performing within the boundaries set by the Leaders' and Mayors' Board. Included within the Task and Finish Group's duties are:
  - (i) to provide guidance on NELSA policy and strategy;
  - (ii) provide operational input to NELSA;
  - (iii) agree and monitor the delivery of the workplan;
  - (iv) receive progress reports and monitor its own outputs and outcomes to ensure compliance with the purpose of the Task and Finish Group and NELSA's Key Objectives;
  - (v) monitor the budget assigned to the Task and Finish Group to carry out the brief given to it by the Leaders' and Mayors' Board and ensure all work is conducted within budgetary restraints;
  - (vi) make decisions about the immediate goals of the Task and Finish Group;
  - (vii) Agree reports to be sent to the Leaders and Mayors' Board
  - (viii) Provide a forum for discussion and debate by senior officers of member organisations on matters of strategic significance for north London
  - (ix) Act as champions and ambassadors for north east London
- (f) The Task and Finish Groups' will consist of officer representatives from each of the parties. The Task and Finish Groups' shall have responsibility for the creation and execution of the project plan and deliverables, and therefore it can draw technical, commercial, legal and communications resources as appropriate into itself.. As each party to this Agreement is required to adhere to its own Authority's Constitution and internal procedure rules, each representative of every Authority on each Task and Finish Group is obliged to ensure that its own internal approvals and authority requirements are

complied with in order to proceed with implementation of any workplan that has been discussed and agreed upon within its Task and Finish Group and before any proposal is submitted in final format to the Leaders' and Mayors' Board.

- (g) The Task and Finish Groups' shall meet regularly on a basis to be decided by each Group.

#### 5.4 Reporting

Project reporting shall be undertaken at three levels:

- (a) **Task and Finish Groups:** Minutes and actions will be recorded for each Task and Finish Group meeting. Any additional reporting requirement shall be at the discretion of the Task and Finish Group.
- (b) **Leaders' and Mayors' Board:** Reporting shall be quarterly based on the minutes from the relevant Task and Finish Group highlighting: Progress this period; issues being managed; issues requiring help (that is, escalations to the Leaders' and Mayors' Board) and progress planned next period and/or aligned with the frequency of the Leaders' and Mayors' Board meetings.
- (c) **Organisational:** the Task and Finish Group members shall be responsible for drafting reports into their respective sponsoring organisation as required for review by the Task and Finish Group before being issued.

#### 6. ROLES AND RESPONSIBILITIES

- 6.1 The parties shall undertake the following roles and responsibilities to deliver NELSA's Key Objectives:
- 6.2 The responsibility for management of the membership fees and any other financial matters will be decided by the Leaders' and Mayors' Board and this responsibility will be governed by a separate agreement to this Protocol to be agreed upon by all Parties to this Protocol.
- 6.3 The Authority holding the chair at any given time will be responsible for providing secretarial support to the Leaders' and Mayors' Board meetings. This will include arranging dates, room bookings, meeting logistics and minute taking. The Chief Executive of the local authority which holds the Chair of NELSA will provide support and advice to the Chair of NELSA.

## **7. ROLE OF COUNCILLORS**

- 7.1 The first Chair of NELSA will be the Leader of Authority Six and thereafter appointed in accordance with clause 7.3.
- 7.2 The Chair will take executive leadership of NELSA through chairing the Leaders' and Mayors' Board, leading other strategic meetings as required, being the key advocate for north east London through NELSA, and corresponding on behalf of NELSA.
- 7.3 The Chair will rotate between the local authorities alphabetically every 2 years from the date of the Annual General Meeting. The period of office will normally be two years, subject to clause 7.5 upon the Chair no longer being a member of his/her respective Authority and subject to the Chair tendering his/her resignation in accordance with clause 10.1 either event to invoke the appointment of a new Chair who shall be the Leader or Mayor of the next Authority due to take up the Chair under the alphabetical rotation system.
- 7.4 The condition precedent for the role of Chair is that in order to be a Chair the Chair must be either a Leader or a Mayor of his/her respective Authority. If an incumbent Chair loses this position within his/her own Authority then this will invoke an automatic review of the Chair's role and the leadership of NELSA and the incumbent Chair must step down within one day of no longer being a Leader or Mayor of his/her own Authority. A new Chair will be appointed in accordance with clause 7.3 of this Protocol.
- 7.5 Furthermore, any member of the Leaders' and Mayors' Board must be an elected councillor of his/her Authority. If any member loses this position within his/her Authority then he/she will step down from the Leaders' and Mayors' Board within one day of no longer being a member of his/her Authority.
- 7.6 The Annual General Meeting of NELSA will usually take place within two months of July in each year.

## **8. ESCALATION**

- 8.1 If any party receives any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier or requests for information made under the Freedom of Information Act 2000) in relation to NELSA the matter shall be promptly dealt with by the officer of each party affected working with other officers of all the other parties to formulate responses and resolve the matter. No action shall be taken in

response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect NELSA without the prior approval of the Leaders' and Mayors' Board.

**9. INTELLECTUAL PROPERTY**

- 9.1 The parties intend that any intellectual property rights created in the course of the NELSA's activities shall vest in the party whose employee created them (or in the case of any intellectual property rights created jointly by employees of both parties in the party that is lead party for the part of the project that the intellectual property right relates to).
- 9.2 Where any consultant/consultancy firm is employed by any Authority party to this Protocol for the purposes of any activity or the achievement of any of the Key Objectives of NELSA then that Authority agrees that whilst the intellectual property rights produced by that consultant/consultancy firm vest in that Authority it agrees to grant an irrevocable licence to the other parties to this Protocol for the use of those intellectual property rights for the purposes of NELSA activities.
- 9.3 Where any intellectual property right vests in either party in accordance with the intention set out in clause 9.1 above, that party shall grant an irrevocable licence to the other parties to this Protocol to use that intellectual property for the purposes of NELSA's activities.

**10. RESIGNATION**

- 10.1 Any Authority who wishes to resign as a member of NELSA shall give written notice of its resignation to the Leaders' and Mayors' Board and its resignation shall be effective on the date falling three months after the date of receipt by the Leaders' and Mayors' Board of such written notice.
- 10.2 Any such resignation tendered in accordance with clause 10.1 shall have no effect on the continuation of NELSA as an alliance of the remaining Authorities party to this agreement unless and until there is only one member Authority remaining, upon which NELSA will automatically dissolve.
- 10.3 If any member has not paid its annual membership fees within three months that payment is due then it is agreed that that member has impliedly resigned as a member of NELSA and from the date of the third month that the membership fee was due is no longer a member of NELSA and will no longer hold itself out as a member of NELSA.



- 10.4 Once an Authority tenders its resignation of NELSA it agrees that all work it has created for the purposes of NELSA's activities and any intellectual property rights it may hold in accordance with clause 9 will become the property of NELSA and the resigning Authority no longer has any right to such work and/or intellectual property.
- 10.5 Once an Authority has tendered its resignation it shall not be entitled to any refund of its membership fees for the remaining term of that year's membership costs.
- 10.6 The resigning party agrees to pass onto the remaining parties to this Protocol all work initiated or created by the resigning party for the purposes of NELSA's activities and/or achievement of NELSA's Key Objectives.
- 10.7 The resigning party agrees that upon the date its written resignation notice is tendered it does not have share of any the assets accrued by NELSA, but it will have a share of any liabilities accumulated while it was a member of NELSA. The resigning party therefore agrees to contribute towards any liabilities accrued during its time as a NELSA member in equal proportion to the remaining members. The resigning party will not be responsible for any new liabilities incurred on and/or after the date of its written resignation notice.

## **11. TERM AND TERMINATION**

- 11.1 This Protocol shall commence on the date of signature by all parties and shall continue in force for an indefinite period of time or until it is terminated in accordance with clause 11.2.
- 11.2 This Protocol will terminate if it is agreed at Leaders' and Mayors' Board that there is no longer the financial funding available and/or political will for the continuation of NELSA.

## **12. VARIATION**

- 12.1 This Protocol, including the Annexes, may only be varied by written agreement of the Leader's and Mayors' Board.
- 12.2 Any proposal to alter the Protocol must be submitted in writing to the Chair of the Leaders' and Mayors' Board at least 28 days prior to the meeting of the Board at which the proposal will be considered.

12.3 The member authorities will always seek to reach consensus but in the event that consensus cannot be reached any proposal to alter this Protocol may be carried by a resolution by a majority of all of the member authorities.

**13. CHARGES AND LIABILITIES**

13.1 Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in complying with their obligations under this Protocol.

13.2 The parties agree to each contribute an annual membership fee for the funding of NELSA, the details of which are set out in Annex D.

13.3 All parties shall remain liable for any losses or liabilities incurred due to their own or their employee's actions and none of the parties intends that any other party shall be liable for any loss it suffers as a result of this Protocol.

**14. STATUS**

14.1 The parties enter into the Protocol intending to honour all their obligations.

14.2 Nothing in this Protocol is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, nor authorise either of the parties to make or enter into any commitments for or on behalf of the other party.

14.3 This Protocol is not intended to be legally binding but has been created to govern an informal working arrangement between the parties to this Protocol.

Signed for and on behalf of the London  
Borough of Barking and Dagenham

Signature: .....  
Name: .....  
Position: .....  
Date: .....

Signed for and on behalf of the London  
Borough of Enfield

Signature: .....  
Name: .....  
Position: .....  
Date: .....

Signed for and on behalf of the London  
Borough of Havering

Signature: .....  
Name: .....  
Position: .....  
Date: .....

Signed for and on behalf of the London  
Borough of Newham

Signature: .....  
Name: .....  
Position: .....  
Date: .....

Signed for and on behalf of the London  
Borough of Redbridge

Signature: .....  
Name: .....  
Position: .....  
Date: .....  
Date: .....

Signed for and on behalf of the London  
Borough of Waltham Forest

Signature: .....  
Name: .....  
Position: .....  
Date: .....  
Name: .....  
Office address: .....  
Tel No: .....  
E-mail Address: .....

## **Annex A. Information Sharing Protocol and LBWF Data Protection Policy**

1. Whilst it is not envisaged that the Parties to this Protocol will exchange any personal data or sensitive personal data it is acknowledged that the Parties may have to share other information of a confidential nature with each other in order to achieve the Key Objectives of NELSA.

2. The Parties recognise that there are risks associated with the sharing of personal or sensitive information to conduct official Authority business, particularly in relation to each Authority's need to collect, process and protect data in line with legal requirements including the Data Protection Act 1998, Freedom of Information Act 2000, Public Records Act 1958, Copyright and Disability Discrimination legislation. No matter how data and information is shared, if personal data is collected and recorded by each individual Authority, under the Data Protection Act 1998 that Authority remains the data controller even when the information is shared with another Party to this Protocol.

3. The Parties to this Protocol agree that they shall only share information for a specified or recorded purpose and it is lawful to share the information.

4. In respect of any Confidential Information the Parties may receive from another party ("the Discloser") and subject always to the following provisos each Party ("the Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:

- (a) the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Protocol;

5. the provisions of this Clause shall not apply to any Confidential Information which:-

(a) is in or enters the public domain other than by breach of this Protocol or other act or omissions of the Recipient;

(b) is obtained by a third party who is lawfully authorised to disclose such information; or

(c) is authorised for release by the prior written consent of the Discloser; or

(d) the disclosure of which is required to ensure the compliance of the Authority with the Freedom of Information Act 2000 (the "FOIA").

6. The Recipient shall take all necessary precautions to ensure that all Confidential Information obtained from the Disclosing Authority under or in connection with the purposes of NELSA:-

(a) is given only to such staff and professional advisors or consultants engaged to advise it in connection with the Protocol as is strictly necessary for the performance of the Key Objectives and only to the extent necessary for the performance of the Key Objectives;

(b) is treated as confidential and not disclosed (without prior approval from the Disclosing Authority) or used by any staff of the Recipients or such professional advisors or consultants otherwise than for the purpose for which it is shared.

(c) Nothing in this Protocol shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law. However, in the spirit of the joint working arrangements under this Protocol the Recipient shall notify the Disclosing Authority prior to any such disclosure of Confidential Information unless it has specifically been estopped from doing so.

7. Each Party acknowledges that each other Party is or may be subject to the FOIA. Each Party notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions (the "Codes of Practice") and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time (the "EIR"). The Parties will act in accordance with the FOIA, the Codes of Practice and EIR (and any other applicable codes of practice or guidance.)

8. The Parties agree that:

(a) the provisions of this Protocol are subject to the respective obligations and commitments of each Authority under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and EIR;

(b) subject to Clause 8(c), the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Authority who has been requested for the information but the Parties agree to work together in accordance with clause 8.1 of the Protocol ;

(c) where the Authority is managing a request as referred to in Clause 8(b), the other Parties shall co-operate with the Authority making the request and shall

respond within five (5) Working Days of any request by it for assistance in determining how to respond to a request for disclosure.

#### 9. DATA PROTECTION

9. The Parties shall comply with the Data Protection Act 1998 ("the 1998 Act") and any other applicable data protection legislation. In particular the Parties agree to comply with the obligations placed on them by the seventh data protection principle ("the Seventh Principle") set out in the 1998 Act, namely:

(a) to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Parties by the Seventh Principle;

(b) only to process Personal Data for and on behalf of the Authority, in accordance with the instructions of the Authority and for the purpose of performing its obligations under the Contract and to ensure compliance with the 1998 Act;

Title LBWF Data Protection Policy

Contributors

Development of this policy was assisted through information provided by the following organisations:

- Information Commissioner's Office

### 1. Policy Statement

The Waltham Forest Council ("the Council") is required to maintain certain personal data for the purposes of satisfying operational and legal obligations. The Council recognises the importance of correct and lawful treatment of personal data; it maintaining confidence within the organisation and those who deal with it and allows for successful business operations.

### 2. Scope and Policy Status

This policy has been approved by the Senior Management Board and applies to:

- Councillors, the executive, committees and other member bodies
- All departments and services
- Partner agencies, e.g. health and the Police
- Employees and agency or other locum staff.
- Volunteers and those on work experience who have access to personal data.
- Contractors who have access to personal data.
- Agents of the Council who have access to Waltham Forest Council information, information systems or IT equipment.

### 3. Purpose

The Council needs to collect and use certain types of personal data about the people it deals with in order to operate and discharge its statutory functions and achieve its priorities for the borough. The personal data may include information relating to current, past and prospective employees, tenants, customers, residents, councillors, suppliers, electors, clients and others with whom it communicates. The personal data, whether it is held on paper, on a computer or any other media will be subject to the appropriate legal safeguards as specified in the Data Protection Act 1998 (the Act).

The Act requires that the Council puts in place safeguards to ensure that personal data is dealt with lawfully however it is collected, recorded and used – whether on paper, in a computer, or recorded on other material.

The Council will fully adhere to the eight Data Protection principles in the Act, which specify the legal conditions that must be satisfied in relation to all processing of

personal data including obtaining, handling, processing, transportation, storage and disposal of personal data.

The principles require that personal data is:

- I. Processed fairly and lawfully and will not be processed unless certain conditions are satisfied.
- II. Obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
- III. Adequately, relevant and not excessive in relation to the purpose or purposes for which they are processed.
- IV. Accurate and, where necessary, kept up to date.
- V. Not be kept for longer than is necessary for that purpose or those purposes
- VI. Processed in accordance with the rights of data subjects under the Act,
- VII. Kept secure from unauthorised or unlawful processing and protected against accidental loss destruction or damage by using the appropriate technical and organisational measures
- VIII. Not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

#### 4. Compliance with the Principles:

In order to meet the requirements of the principles the Council will:

- Observe fully the conditions regarding the fair collection and use of personal data
- Meet the obligations to specify the purpose for which personal data is used
- Ensure the quality of personal data
- Apply appropriate checks in order to determine the length of period personal data is held and securely dispose of personal data thereafter
- Take appropriate technical and organisational security measures to safeguard personal data
- Collect and process appropriate personal data only to the extent that it is needed to ensure quality of personal data that is used.
- Ensure personal data is not shared with third parties or transferred abroad without proper safeguards



The Data Protection Policy should be read in conjunction with the following policies and procedures made to implement the policies in practice:

- (i) ICT Acceptable Use Policy
- (ii) Information Governance Policy
- (iii) Information Security Policy
- (iv) Records Management Policy

The Council's data protection management framework will:

- Ensure the Council's DPA notification with the ICO is renewed annually before it expires.
- Observe the conditions regarding the fair collection and use of personal data, including the requirements for appropriate privacy notices and obtaining consent of data subjects.
- Meet its legal obligations to specify the purposes for which personal data is used, including the requirements for appropriate privacy notices.
- Collect and process only adequate and relevant personal data, and only to the extent that it is needed to fulfil operational needs or to comply with any legal requirements.
- Take reasonable steps to ensure the quality of the personal data that is collected and used.
- Adopt appropriate information sharing protocols and agreements and ensure all staff are aware when it is appropriate and legal to share personal data with other departments or external organisations.
- Have a clear retention policy for all personal information and apply processes so that it is not kept for longer than necessary.
- Provide clear information to individuals about their rights under the Act and ensure we respond appropriately to any requests from individuals about their personal data e.g. the right to prevent processing in certain circumstances and the right to correct, rectify, block or erase information which is regarded as incorrect.
- Take appropriate technical and organisational security measures to safeguard personal data.
- Ensure that personal data is not transferred abroad without suitable safeguards.
- Have clear procedures for subject access requests and monitor compliance.
- Ensure all employees and other staff are aware of their obligations under the Act from induction onwards.
- Ensure all staff managing and handling personal data is appropriately trained to do so.
- Ensure all staff managing and handling personal data is appropriately supervised.
- Ensure enquiries and complaints from the public about the handling of personal data are promptly and politely dealt with.
- Regularly monitor and review data processing to ensure compliance and best practice.

- Ensure there is an incident management process in place for dealing with breaches of personal data security. Where appropriate report, data breaches to the ICO.

## 5. Definitions

### Personal Data:

means information (including expression of opinion) about a living individual who can be identified from the data alone or any other data that the Council holds or is likely to hold in the future.

Sensitive Personal Data is personal data that relates to an individual's:

- (a) the racial or ethnic origin
- (b) political opinions.
- (c) religious beliefs or philosophical beliefs of a similar nature.
- (d) Membership of a trade union (within the meaning of the Trade Union and Labor Relations (Consolidation) Act 1992).
- (e) physical or mental health or condition.
- (f) sexual life.
- (g) commission or alleged commission of any offence.
- (h) legal proceedings or sentencing for any offence.

The Data Controller: A person or organisation which holds personal data or sensitive personal data and controls how it is used. The Council is a data controller

Data Processor: A person or organisation which processes personal data on behalf of the data controller but does not decide how the data is used. The Council's contractors are data processors

Data Subject: The individual who is the subject of the personal data

Processing: Processing is very broad and includes all activities relating to personal data such as collecting, using, disclosing, storing, altering, erasing, destroying, disseminating, blocking and recording personal data

More detailed information can be found on the Information Commissioner's website:

[http://www.ico.gov.uk/for\\_organisations/data\\_protection/the\\_guide.aspx](http://www.ico.gov.uk/for_organisations/data_protection/the_guide.aspx)

## 6. The Council's Designated Data Controller

The Council's designated data controller is the Senior Information Risk Officer (SIRO) who is responsible for ensuring compliance with the Act and implementation of this policy on behalf of the Chief Executive.

Any questions or concerns pertaining to the operation and interpretation of this policy should be taken up in the first instance with the designated Data Protection Officer who will then consult with the SIRO.

Currently, the SIRO is Paul Golland, Chief Information Officer and the DPO is Ikenna Akpom, Information Governance & Security Officer.

#### 7. Risks of Non-Compliance with the Act

Suspected breaches of the Act must be reported to the Information Governance and Security Officer, who will then determine whether or not a report must be made in accordance with the relevant Council's procedure to the ICO. Breaches of the Act may be a matter that is reportable to the ICO, however, this would be determined by the nature of the breach and the current Council's Procedures.

The Council's Code of Conduct requires employees to comply with the Act and the Council's broader duty of confidentiality. A breach of the Act and / or this policy may therefore may result in disciplinary action. Further, it is important to remember that individual can be held liable for both criminal and civil proceedings by the Information Commissioner or any other individual data subject who suffers damage due to a breach.

#### 8. Management Responsibility

Managers are responsible for ensuring compliance within their service and that staff are aware of their responsibilities as set out in this policy especially where Directorates possess or work with personal information. Directors are responsible for compliance within their directorate.

#### 9. Subject Access

All individuals who are the subject of personal data held by the Council are entitled to:

- Enquire about what information the Council hold on them and why
- Ask how to gain access to it and, subject to certain exceptions and conditions, be provided with a copy of their personal data.
- Be informed on how to keep it up to date
- Be informed what the Council is doing to comply with its obligations under the Act.

See 12 below.

#### 10. Employee Responsibilities

All council employees are responsible for:

- Ensuring that they comply with all data protection policies and procedures in their day to day work
- Attend all relevant training and read and comply with any guidance notes, newflashes and other awareness raising materials
- Checking that personal data that they provide to the Council is accurate and up to date

- Informing the Council of any changes to information which they provided (change of address)
- Checking any personal information that the Council may send out from time to time, providing details of information that is being kept and processed.

#### 11. Data Security

There is an overarching need by the Council to ensure that the appropriate security measures are taken when holding or handling personal data. All staff are responsible for ensuring that:

- Any personal data that is held is kept securely
- Personal information is not disclosed to any unauthorised third party (either in writing or orally).

#### 12. Right to Access Information

All individuals who are the subject of personal data held by the Council have the right to access personal data, however, this right is subject to certain exemptions set out in the Act. Any individual who wishes to make a subject access request should do so centrally to the Council's Complaints Team. The request will be recorded by the Information Officer and an acknowledgement is issued before the Request is then directed to the appropriate service area for processing. The Council is required to comply with the 40 day period to deal with Subject Access Request and the requested fee by the Council must be paid and proof of identity is also required. The Council reserves the right to charge the maximum fee payable for each subject access request. The Council aims to comply with request for access to personal information as quickly as possible and ensure that it is provided within the 40 day of receipt of a completed form.

#### 13. Publication of Council information

Information already within the public domain is exempt from the 1998 Act.

The Council has a specific Publication Scheme in relation to Freedom of Information and also publishes information relation to Council's priorities, policies overview and advice and guidance. Any individual who has a good reason for wishing information within such publications should remain confidential should contact the Council's data protection officer or SIRO.  
<http://www.walthamforest.gov.uk/Pages/Services/foi>

#### 14. Subject Consent

In many instances the Council may only process personal data with the consent of the individual concerned. Where sensitive personal data is concerned, for example, data relating to health, race, gender, criminal convictions express consent to processing the data must be obtained. Any processing without consent must be lawful, i.e. the purpose of processing must be necessary and comply with one or more of the other conditions that the Data Protection Act sets out. For example,

the processing of certain sensitive data is necessary to operate the Council's policies such as health and safety and equal opportunities and may be processed without explicit consent where appropriate.

#### 15. Data Retention, Storage and Destruction:

Effective file keeping and data management are vital to all the Council to carry out its business functions.

In order to comply with the 1998 Act, personal data must be:

- Retained for only as long as necessary. The Council has a records retention schedule, which identifies statutory and corporate retention periods. Where no statutory period is identified, 6 years is regarded as the maximum period for retention, though a shorter period may sometime be appropriate.
- Retrievable and easily traced from storage
- All data and records should be stored securely to avoid misuse or loss.
- Stored appropriately having regards to confidentiality and the sensitivity of the material recorded
- All information of a confidential or sensitive nature must be securely destroyed when no longer required.

The Council has a Records Management Policy that provides further details in respect of procedures surrounding retention, storage and destruction of data.

#### 16. Information Governance

The Council has developed an Information Governance Strategy and Policy that sets out the Council's approach to effective information governance arrangements. The aim of the Strategy will be to ensure legal compliance and to that personal data controlled by the Council is used for the better delivery of Council services for the benefit of residents and the borough.

The objectives of the Information Governance Policy will be:

**Information Security:** To apply security measures that are appropriate to the contents of information

**Legal Compliance:** To achieve a balance between security and openness and comply with the relevant legislation.

**Information Quality:** To support the provision of quality service by the availability of quality information.

**Information & Records Management:** To ensure that the storage, movement, archiving, disposal of information and records is properly managed.

**Information Sharing:** To ensure that information is effectively shared internally and between partner organisations while complying with the law and best practice standards.

**Awareness and Guidance:** To develop supporting arrangements which provide employees with training thereby raising awareness and gaining access to information governance policies and guidance.

The Strategy will provide clear direction to managers and staff and an information governance structure led by an Information Governance Board (IGB) has been set up in order to promote and managed information governance and security within the Council.

#### 17. Role and Responsibilities (see also 8 & 10 above)

Key roles in data protection compliance are set out below:

**Chief Executive:** Overall responsibility and accountability of information governance within the organisation.

**Senior Information Risk Officer**

(SIRO): The Information Governance Lead within the Council and is nominated by the Chief Executive. In addition, the SIRO is the chair of the Information Governance Board.

**Caldicott Guardian:** A Caldicott Guardian is the officer responsible for protecting the confidentiality of social care service user information and enabling appropriate information-sharing. Currently, this is the Head of Assessment and Care Management of the Council.

**Information Asset Owners:** Are senior members of each directorate and is a nominated officer for one or more identified information asset of the Council. The information Asset Owner has to identify and document the scope of the of all information assets the own. In addition, IAO review and prioritise the perceived risks and oversight of actions agreed to mitigate those risks.

**All Managers:** Should ensure that the requirements of the Information Governance policy are built into local procedures and an on-going compliance takes place on a daily basis.

**All Staff** are responsible for ensuring that they comply with the Information Governance policy and security policies and procedures that are relevant to their service.

#### 18. Complaints about Data Protection

Complaints in relation to breaches of data protection will be dealt with under the Council's Corporate Complaints procedure. If dissatisfied with the Council's response, any individual may make a complaint to the Information Commissioner who may carry out an assessment as to whether or not the Council has fully complied with the requirements of the Act. The ICO will normally write to the Council with its decision but in more serious cases may take enforcement action requiring the Council to take steps to comply with the Act and / or in the most serious cases may initiate criminal proceedings for offences under the Act

#### 19. Advice and Training

The Council has appointed its Data Protection Officer, as required, to help meet the aims and requirements of the Act. As far as practicable, the Council will provide training for employees and members to comply with this Policy.

The Council's Organisational Development team has developed e-learning packages in respect of data protection and protecting information. Specialist e-learning courses on matters relating to social care information also exist and Legal Services also provide specialist training.

The Council's Legal Service provides advice in relation to data protection and information law matters, including but not limited to policy matters, individual subject access requests, exemptions, disclosures and ICO complaints.

#### 20. Policy Governance

The following table identifies who within Waltham Forest Council is Accountable, Responsible, Informed or Consulted with regards to this policy. The following definitions apply:

- Responsible – the person(s) responsible for developing and implementing the policy.
- Accountable – the person who has ultimate accountability and authority for the policy.
- Consulted – the person(s) or groups to be consulted prior to final policy implementation or amendment.
- Informed – the person(s) or groups to be informed after policy implementation or amendment.

Responsible	Information Governance and Security Officer
Accountable	Head Of ICT (Senior Information Risk Owner)
Consulted	Information Governance Board
Informed	All Council Employees, All Temporary Staff, All Contractors.

#### 21. Monitoring, Review and Revision

The Information Governance Board will agree monitoring processes of the level of compliance with the Act within the Council. Non-compliance identified in the

monitoring process will be reported to the relevant Director and regular reports will be provided to Management Board. Compliance with the Council's duties in respect of subject access requests form part of the Council's performance management framework.

This policy will be reviewed as it is deemed appropriate, but as a minimum every 12 months and will be undertaken by the Information Governance and Security Officer and submitted to the Information Governance Board.



## **Annex B. For any kind of Leaders' and Mayors' Board terms of reference**

The meetings of the Leaders' and Mayors' Board will be chaired by the Chair of NELSA or her/his Vice Chair.

The first Vice Chair of NELSA shall be the Leader or Mayor of Authority Six and thereafter on rotation in accordance with the principles of clause 7.3.

Membership of the Leaders' and Mayors' Board is limited to members from the 6 key partner organisations. The Leaders' and Mayors' Board may invite persons who are not members of the Leaders' and Mayors' Board to attend meetings in an advisory capacity, but such persons will not have voting rights.

Substitutions at the Leaders' and Mayors' Board will be allowed providing that the substitute is a bone fide representative and an executive member of the body nominating the substitute.

In order for the Board to make decisions of an important nature which affect the management or policy of NELSA then NELSA would require an attendance of at least 4 out of the 6 key partner organisations to be present.

The majority of decisions made by partners are by consensus and dependent on reaching mutual accord. This is an important facet of the work of NELSA as it encourages and nurtures partnership working for the benefit of the sub-region. However, it is accepted that, on occasions, decisions may have to be made by voting. Decisions will be made by a simple majority, with each of the 6 key partner organisations having one vote. Voting should be through Members, however if a Councillor from one of the key partner organisations is not present then a senior officer of that local authority may vote in her/his place. Voting will be by a show of hands. In the event of an equality of votes, the Chair will be entitled to a second or casting vote.

Meetings of the Leaders' and Mayors' Board will be held on a on a quarterly basis.

### **Annex C Task and Finish Groups' Terms of reference**

The meetings will be chaired by either the CEO or the most appropriate officer as decided by the Leaders' and Mayors' Board of the Local Authority which holds the Chair of NELSA, or a substitute nominated by the Chair, or agreed at the meeting, if s/he is unable to attend.

Membership of the Task and Finish Groups' will be drawn from officers of the member authorities. The Task and Finish Groups' may invite persons who are not members of the Task and Finish Groups' to attend meetings in an advisory capacity, but such persons will not have voting rights.

Substitutions at the Task and Finish Groups' will be allowed providing that the substitute is a bone fide representative of the body nominating the substitute.

In order for the Task and Finish Group to make decisions of an important nature which affect the outcome of the Group, its purpose, the Key Objectives, the budget and any other such issues then the Task and Finish Group would require an attendance of at least 4 out of the 6 key partner organisations to be present.

The majority of decisions made by partners are by consensus and dependent on reaching mutual accord. This is an important facet of the work of NELSA as it encourages and nurtures partnership working for the benefit of the sub-region. However, it is accepted that, on occasions, decisions may have to be made by voting. Decisions will be made by a simple majority, with each of the 6 member organisations having one vote. Voting will be by a show of hands. In the event of an equality of votes, the Chair will be entitled to a second or casting vote.

Each member of the Task and Finish Groups' shall be responsible for reporting that Board's deliberations to its respective body or organisation and for implementing any actions agreed by their representative at the Task and Finish Groups'

## **Annex D Contributions**

[INSERT DETAILS OF CONTRIBUTIONS (INCLUDING FINANCIAL, STAFFING, PREMISES, USE OF IT ETC) THAT THE PARTIES ARE WILLING TO COMMIT. THIS SHOULD ALSO INCLUDE ANY ARRANGEMENTS FOR CROSS-CHARGING AND OTHER PROJECT COSTS (FOR EXAMPLE ANY CONSULTANT'S COSTS THAT MAY NEED TO BE PAID)]

Each Authority shall pay the total sum of £10,000 per year as membership fees in accordance with clause 4 of this Protocol Agreement. This funding will provide funding for the events, campaigns and publications and expert advice.

The fees payable shall be paid as a single lump sum at the start of each financial year for the whole term of the Protocol until it is terminated in line with clause 12.2 above.

The full details of the management of the membership contributions shall be set out in a separate, legally binding agreement between the six Parties to this Protocol.





## **LONDON BOROUGH OF WALTHAM FOREST**

LEADER'S OFFICE, WALTHAM FOREST TOWN HALL, FOREST ROAD, WALTHAMSTOW, LONDON E17 4JF  
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Cllr Roger Ramsey  
London Borough of Havering  
Town Hall  
Main Rd  
Romford  
RM1 3BD

17 April 2015

Dear Cllr Ramsey,

### **Formal establishment of NELSA**

Following a number of informal meetings of the Leaders and Mayors of the North East London Strategic Alliance (NELSA) over the past ten months, including the great success of the joint conference with the Growth Boroughs on 13 February, I am now writing to you and the other boroughs to formally invite you to join NELSA.

It is clear to me that we need to continue to work together across council boundaries. Like all boroughs we have similar challenges in providing new homes, creating the right conditions for employment growth and supporting our residents into work. While these are clear London-wide agendas, the Mayor of London has agreed with London Councils to work more closely together with 'groupings of boroughs' as part of any future devolution deal for the capital.

The north east London boroughs in this grouping all contain significant areas of opportunity for housing and economic growth and are all in a position to benefit from the growth of London's economy and the legacy of the 2012 Olympic and Paralympic Games. But I believe that we need to work together to ensure we get the investment in infrastructure and other support needed to deliver on these opportunities.

The attached Partnership Protocol and Inter Authority Agreement were agreed at the Leaders and Mayors meeting on 9 April 2015. It was agreed at this meeting that the work of NELSA would begin on 30 April 2015. While I recognise that authorities may have internal processes to complete before signing the formal documents, I would like to move forward with the work of NELSA from 30 April onwards to enable us to ensure an effective launch in early summer and to commence discussions with the Growth Boroughs around future partnership working.

Best wishes,

**Chris Robbins**  
Leader of Waltham Forest Council

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