

**BRISTOL CITY COUNCIL
AUDIT COMMITTEE****29th June 2012****Report of: Strategic Director (Corporate Services)****Title: Grant Thornton - Review of Redcliffe Wharf Developer selection process****Ward: Citywide****Officer presenting report: Jan Ormondroyd - Chief Executive****Contact telephone number: 0117 92 24888****RECOMMENDATION**

The Audit Committee note Grant Thornton's report as commissioned by the Chief Executive.

Summary

The Council's process for selecting a suitable developer for Redcliffe Wharf was challenged by external parties.

Given the nature of the issues raised and the external parties were not confident that the Council may be able to undertake a sufficiently robust in-house review, the Chief Executive commissioned Grant Thornton to independently review the matters raised.

The significant issues in the Grant Thornton report are:

There is no evidence that the Council acted other than in good faith to secure a suitable developer for the site.

None of the shortlisted developers raised concerns or made complaints about the selection process.

However, there are lessons to be learnt and improvements made in relation to both governance and communication of future processes.

Policy

The Council have commissioned an independent review of the practices and procedure for awarding development opportunities. The Council is committed to improving its governance and communication arrangements for securing preferred developers.

Consultation

Internal: Responsible Officers and relevant elected members.

External: Grant Thornton interviewed stakeholders who had raised concerns.

Background and Introduction

1. Redcliffe Wharf is a development opportunity situated in the Bristol Harbour. Historically there have been a number of attempts to develop this site, but unfortunately economics have affected the interested parties and as such the site remains undeveloped.
2. The most recent developer selection process commenced in 2011. Following the concerns being raised the process was paused until Grant Thornton's conclusions were known and then restarted.
3. During the current developer selection process which involved not only the Council, but other interested parties, issues were raised by external parties that the process was not as transparent and open as they would expect from the Council. In response to the issues raised the Chief Executive thought it prudent to commission an independent review in order to ensure that the process followed had been fair and equitable for all parties. The external auditor, Grant Thornton, was therefore commissioned to carry out the review.
4. Full details of Grant Thornton's review and their findings are provided in the attached report, but a very brief summary of those finding is detailed below.

Findings and Conclusion

1. The external auditor concluded that the Council has acted in good faith in selecting a suitable developer for the Redcliffe Wharf site. However, the external auditor did identify a number of areas where amendments to practices and procedures would ensure greater transparency in the future.
2. The external auditor has made a number of recommendations which the Council have agreed to implement.
3. While the Council had recommended the exclusion of interested parties from the developer selection process, for reasons of potential conflicts of interest, the Council has every intention of including all interested parties in the development of the Redcliffe Wharf site once the preferred developer has been secured.

Other Options Considered

None necessary

Risk Assessment

The Council has a duty to maintain an open and transparent working environment in all of its dealings both internally and externally. Failure to do this is a breach of the Council governance and control framework and poses a strong reputational risk.

Equalities Impact Assessment

None required for this report.

Legal and Resource Implications

Legal - changes required to part 5 of the Constitution - Protocol for Member / Officer Relations and Code of Conduct for Members and Officers - Planning Matters.

Resources - small amount of resource needed to implement the changes needed to the codes as detailed above.

Appendices:

Appendix A - Grant Thornton report - Review of the Redcliffe Wharf developer selection process.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers: See full report for sources of information.

Report for Bristol City Council

Review of the Redcliffe Wharf Developer selection process

Dated 14 May 2012

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DOCUMENTS

- 1 Protocol for Member/Officer relations**
- 2 Code of Conduct for Members and Officers – Planning Matters**

GLOSSARY

<i>"The Council"</i>	Bristol City Council.
<i>"Redcliffe Wharf site"</i>	Open waterfront site that remains to be developed in the Harbour. The site is located in the heart of Bristol City and has an area of 0.68 ha. The site's history dates back to the middle ages. Former industrial uses in the 17 th and 18 th century include glass and pottery works and more recently maritime trade and activity.
<i>"Redcliffe Wharf development"</i>	Regeneration of the site at Redcliffe Wharf based on a viable mixture of commercial and residential uses.
<i>"Officer Working Group"</i>	A group of Council employees from the Corporate Property team and the Planning & Sustainable Development team appointed to provide policy guidance and technical advice to prospective developers in respect of the Redcliffe Wharf site. The group is also tasked with selecting a preferred developer and making a recommendation in that regard to Cabinet for approval.
<i>"Sawdays"</i>	Alastair Sawday Publishing. Pre-let occupier to the igloo scheme for a hotel 'Sawdays Hotel' on the Redcliffe Wharf site.
<i>"Mr Sawday"</i>	Alastair Sawday, owner of Alastair Sawday Publishing.
<i>"Mr Wallace"</i>	James Wallace, employee of Sawdays and project manager for the Sawdays Hotel scheme.
<i>"RFG"</i>	Redcliffe Futures Group. A forum in which community organisations from Redcliffe and the wider city can research, form proposals, and agree by consensus to petition executive bodies on the future of Redcliffe.
<i>"Mr Balfry"</i>	Graham Balfry, Convener and primary contact for the Redcliffe Futures Group.

<i>"BCS"</i>	Bristol Civic Society. An independent voluntary organisation that exists to improve Bristol's built environment and celebrate its heritage.
<i>"Mr Frenkel"</i>	John Frenkel, Convener and primary contact for the Bristol Civic Society.
<i>"BNP Paribas"</i>	BNP Paribas Real Estate provides advice in six business lines covering the whole property cycle: Property Development, Transaction, Consulting, Valuation, Property Management and Investment Management. It is part of the global banking network, BNP Paribas Group, which has three core businesses namely Retail banking, Corporate & Investment Banking and Investment Solutions.
<i>"SPD3"</i>	The Future of Redcliffe Supplementary Planning Document. A document produced collectively by the Council and Redcliffe Futures Group providing guidance to landowners, developers and the community for the Redcliffe neighbourhood.
<i>"Evaluation matrix"</i>	A decision-support tool allowing decision makers to assess options by evaluating, rating, and comparing different alternatives.
<i>"Westmark"</i>	Westmark Developments. Property Development company part of the Lewis Trust Group. It was given preferred developer status in 2006 for the development of Redcliffe Wharf.
<i>"igloo"</i>	igloo Regeneration Limited is a partnership of pension, life and charity funds managed by Aviva Investors, which invests in sustainable urban regeneration across the UK. igloo submitted a bid for the development of Redcliffe Wharf in March 2011. The Sawdays hotel, confirmed as a pre-let, was part of the igloo scheme.
<i>"Mr Brown"</i>	Chris Brown, Chief Executive of igloo.

1 EXECUTIVE SUMMARY

Introduction

- 1.1 Allegations have been raised of "*serious and systematic failings*" of the Council's developer selection process for the Redcliffe Wharf site by Alastair Sawday ('Mr Sawday') whose company Alastair Sawday Publishing ('Sawdays') was a confirmed pre-let occupier of the igloo scheme, a regeneration project funded by Aviva Investors.
- 1.2 Concerns have also been raised by Redcliffe Futures Group ('RFG'), a local community group involved in the developer selection process, about the Council's alleged lack of transparency and communication throughout the developer selection process and a perceived lack of Executive Member oversight.
- 1.3 Our review considers the Council's processes and arrangements to deliver against the Informal Planning Guidance Notes and Marketing Briefs for the Redcliffe Wharf development. A consideration as to whether the two shortlisted developers selected are the best of the four submissions shortlisted at the second stage is outside the scope of this report as it requires the expertise of architects, planners and quantity surveyors.
- 1.4 The Executive Member, RFG and Mr Sawday each consider that the evaluation criteria for Redcliffe Wharf placed insufficient emphasis on sustainability. It is outside of our field of expertise to comment on this particular point.

Conclusions

- 1.5 Based on information reviewed to date, we have seen no evidence that the Council has acted other than in good faith and that the process has been focused on securing a suitable developer for the site in accordance with the Supplementary Informal Planning Guidance Note dated May 2011 ('SIPGN') and the Marketing & Development Brief dated June 2011 ('MDB').
- 1.6 We have identified a number of steps in the developer selection process which could have been communicated more effectively and would have resulted in a more transparent process. We set out our findings in Section 3. Our recommendations are set out in Section 4.
- 1.7 Our key recommendation is that a clear process (to include stages, matrix scoring, decision makers and acceptable lines of communication) should have been communicated with all interested parties. It would be reasonable to include as part of this process the ability to insert additional stages at the Council's discretion but this should be set out clearly at the outset. We

note that the Council has taken a number of steps to improve its protocol for Executive Member involvement for Property Regeneration Projects and Property Disposal Projects. This includes identifying key stages within the process, key activities and decision making responsibilities

- 1.8 For certain interested parties¹ the primary issue in respect of the developer selection process for Redcliffe Wharf is one of a lack of transparency and the resultant negative perception of changes to the process. The suspicion and criticism that has arisen is therefore understandable. However we have not, to date, seen evidence that any of the four shortlisted developers at the third stage of the process have made direct complaints to the Council in respect of the developer selection process.
- 1.9 In our view the SIPGN and MDB did not provide a clear overview of the developer selection process, including reference to key stages within the process, key activities, timetables and decision making responsibilities. The lack of clarity as to the developer selection process appears to have led to uncertainty and misunderstanding amongst certain interested parties² with regards to the decision makers and the number of recommendations submitted to Cabinet for approval.
- 1.10 The MDB sets out the evaluation criteria which would be applied when considering the proposals. However, it does not provide guidance as to the importance and/or weighting of each of the criteria. In our view, the inclusion of the weighting mechanism applicable to each of the evaluation criteria, albeit at a high level, would have provided the developers with an insight into the importance of each of the criteria.
- 1.11 We consider the Council to have acted reasonably in the exclusion of RFG in the developer selection process for Redcliffe Wharf. We make no conclusion as to whether there had been any collusion between RFG and Sawdays. However, the risk of this perception justified the Council's actions in excluding RFG from the process. The Council has informed both RFG and BCS that it intends to re-engage with them during the pre-application stage, ie following the appointment of the preferred developer. Both local community groups have confirmed to us their understanding that they will be re-engaged following the appointment of the preferred developer.

¹ Redcliffe Futures Group and Mr Sawday.

² Redcliffe Futures Group, Mr Sawday and igloo.

- 1.12 The Executive Member holds a different view of what his role should have been in the developer selection process and in the evaluation of the submissions. The Executive Member feels that during the developer selection process the OWG did not listen to his views or properly engage with him. The difference between the Executive Member's expected and desired role, in our view, is likely to have caused confusion and exacerbated the perceived lack of transparency to those parties outside the Council.

The developer selection process

- 1.13 The Council does not have a developer selection policy which specifies the procedures to be followed when disposing of land.
- 1.14 The Council's Corporate Land Policy recommends that the Council should obtain the best consideration when disposing of land. The Corporate Land Policy does not require the Council to market an opportunity but suggests that marketing remains the traditional and most convenient method of seeking to obtain the best consideration. Our understanding from the Executive Member is that Officers confirmed to him that 'best consideration' was not focussed on bid value.
- 1.15 The Informal Planning Guidance Note dated February 2011 (IPGN) states that Redcliffe Parade and the caves fall outside of the developments. Although the MDB states that the Phoenix Wharf site (which includes the Redcliffe Caves), Quaker Garden and the Redcliffe Parade surface car park are not included in the development site, developers were requested to demonstrate "*...how their proposals ensure that the potential at Phoenix Wharf can be encouraged for development at a later stage*" and their "*...proposal must enhance and protect the garden.*"
- 1.16 The Marketing Brochure dated February 2011 and IPGN were changed for the second stage of the process following collective discussions between the Officer Working Group ('OWG'), RFG and Bristol Civic Society ('BCS'). The changes, together with reasons for the changes, are stated in the MDB. The SIPGN was also prepared.
- 1.17 Our review identifies that the Council envisaged the developer selection process to be a two stage process. Following the evaluation of submissions at the second stage, ie 15 August 2011, the OWG, RFG and BCS collectively agreed to introduce a third stage as:
- none of the submissions complied with the MDB or the SIPGN;
 - each bid had its own strengths and weaknesses and collectively could not be differentiated;

- the submissions were unlikely to secure planning permission without significant modification; and
- the developers needed to demonstrate the financial viability of their schemes.

- 1.18 Both RFG and BCS submitted commentaries on the strengths and weaknesses identified in each of the four schemes. RFG's commentary, submitted on 24 August 2011, went a step further and made a recommendation that the igloo scheme be granted preferred developer status. The recommendation went against what had been previously agreed at the meeting on 15 August 2011 and was based on RFG's own scoring template and not that supplied by the Council. BCS raised its concern about the authorship of RFG's commentary as the properties section contained references to Sawdays and James Wallace ('Mr Wallace'), the project manager for Sawdays.
- 1.19 RFG subsequently provided an explanation of the document history and the Council accepted its explanation. RFG also resubmitted its evaluation submission adopting the agreed assessment matrix. However it retained its preference for the igloo scheme.
- 1.20 The OWG sought advice from Internal Audit and Corporate Services (Legal Division) before making a recommendation to the Executive Member that RFG be asked to withdraw from the process. This was on the basis that concerns had been raised over the provenance of RFG's document and a preference had been stated by them for a particular scheme, notwithstanding the agreement between the Council, RFG and BCS, at the 15 August 2011 meeting, that no one scheme was a clear winner at this stage. At an informal briefing on 31 August 2011 the Executive Member requested that RFG be asked to withdraw its recommendation of a preferred developer and complete its evaluation submission as agreed at the meeting on 15 August 2011. RFG was formally asked to withdraw from the developer selection process on 1 September 2011 in order to maintain the integrity of the process. BCS voluntarily resigned from the process on 2 September 2011 as they acknowledged the seriousness and likelihood of reputational damage to all concerned and the project. BCS' withdrawal from the process signified the end of the local community group involvement in the developer selection process.
- 1.21 At the informal briefing held on 31 August 2011 the Executive Member agreed to continue with the process (ie the introduction of a third stage) as agreed at the meeting between BCS, RFG and the OWG on 15 August 2011.

- 1.22 The Principal Projects Officer emailed the four shortlisted developers on 2 September 2011 informing them that a third stage was to be introduced as there was difficulty in separating the proposals to recommend a preferred developers. On 23 September 2011 the four shortlisted developers were updated with the arrangements for the next stage, including a timetable for submitting proposals (25 October 2011) and presentations (27 and 28 October 2011).
- 1.23 On 27 September 2011 the four shortlisted developers received general and specific comments on their proposals as discussed at the evaluation meeting on 15 August 2011. Accordingly, the developers were asked to resubmit their proposals in line with weaknesses identified during the second stage evaluation process and also asked to revise their financial offerings. The deadline for submissions was noted as 25 October 2011. The submission date was later extended to 28 October 2011 and all developers were informed of the extension on 4 October 2011, with interview dates pushed back to 1 and 2 November 2011.
- 1.24 During October 2011 each of the four shortlisted developers took the opportunity to meet with the OWG to discuss their proposals. Following receipt of their proposals on 28 October 2011, interviews were held with each of the four shortlisted developers on 1 and 2 November 2011. All were given a few days after their interviews to respond to questions raised during their interviews.
- 1.25 On 7 November 2011 the OWG and BNP Paribas independently evaluated the four proposals. BNP Paribas concluded that developers B and C were the most compliant with the Council's requirements. The OWG applied the evaluation matrix to the proposals and shortlisted developers B and C as they had the highest overall scores.
- 1.26 The Head of Corporate Property Services and the Corporate Property Manager were both updated of the preference for the B and C schemes on 7 November 2011. At the Executive Briefing on 9 November 2011 the OWG recommended that a fourth stage be introduced to enable developers B and C to finalise their schemes and make their best financial offers by mid-December 2011. The Executive Member noted the update and the further work to be undertaken. Although the Executive Member was not involved in the evaluation of the four proposals, he considered that the two best submissions had been recommended based on the 'sketch-up' presentations that had been presented to him.
- 1.27 Developers B and C were informed on 15 November 2011 that they had been successful and shortlisted to the next stage which would focus on the financial aspects associated with their proposals. On the same day, developers A and D were informed that they had been unsuccessful with their submissions.

2 INTRODUCTION

Introduction

- 2.1 During the last quarter of 2011, the Council received correspondence from Graham Balfry ('Mr Balfry') of RFG in respect of RFG's "expulsion" from the developer selection process in September 2011 and RFG's concern about a perceived lack of Executive Member oversight of the process. The Council also received correspondence from Mr Sawday, a confirmed pre-let of the igloo scheme, during November and December 2011, alleging "serious and systematic failings" in the Council's operations and handling of the developer selection process for the Redcliffe Wharf site.
- 2.2 The Council has subsequently instructed Grant Thornton UK LLP ('Grant Thornton'/'we'/'our'), in its capacity as external auditor to the Council, to review:
- the allegations made by Mr Sawday in his letter of 22 November and email of 13 December 2011; and
 - the concerns raised by Mr Balfry in his correspondence of 6 October and 14 December 2011.
- 2.3 We are not architects or planners and consequently a consideration of the reasons for the design selection are not within the scope of this review. For the avoidance of doubt, we have not been instructed to comment on the level of the financial offers made by the developers or the ability of the developers to fund the schemes.
- 2.4 It is not practical, in the scope of this review, to consider all relevant documentation or to interview all the key individuals. Our review has focused on reviewing information provided to us by the OWG and key individuals involved in the developer selection process. We have also relied on information provided to us, either voluntary or pursuant to our requests, at, during and after meetings with certain key individuals. We have, at this stage, not sought to speak directly with the four shortlisted developers selected for the second stage of the process.
- 2.5 For the purpose of this review we have relied on documents provided to us as being accurate and genuine. This work does not constitute an audit performed in accordance with Auditing Standards.
- 2.6 Our sources of information for this report are set out at Appendix 1 and a chronology of events at Appendix 2.

Scope of work

- 2.7 We have been instructed to establish whether the Council followed a robust and appropriate process to deliver against the IPGN, the SIPGN and the MDB for the Redcliffe Wharf development.
- 2.8 In so doing, we have given full consideration to the concerns/allegations made by Messrs Sawday and Balfry in their correspondence to the Council.

Methodology

- 2.9 Our review has been completed through meetings with key individuals and a review of documentation provided to us.
- 2.10 We have met with the following members of the Council's staff:
- Executive Member for Housing & Regeneration and Planning ('Executive Member');
 - Principal Projects Officer;
 - Portfolio Management Officer;
 - Manager for Planning Enforcement Team; and
 - Urban Design and Conservation Team Manager.
- 2.11 We have also met with relevant key individuals from the following organisations:
- Sawdays;
 - RFG;
 - Bristol Civic Society ('BCS'); and
 - BNP Paribas.
- 2.12 As part of our review we have had access to documents, including the following:

- an extract from the Council's Corporate Land Policy;
- Informal Planning Guidance Note dated February 2011;
- Marketing brochure dated February 2011;
- Supplemental Informal Planning Guidance Note dated May 2011;

- Marketing & Development Brief dated June 2011;
- the Council's evaluation matrices dated July 2011 and October 2011 respectively;
- written commentary from RFG and BCS on the evaluation of the four submissions in August 2011;
- minutes of meetings of the Executive Member, briefing papers and e-mails;
- the Council's Code of Conduct for Members and Officers for planning matters dated January 2009 and the Protocol for Member/Officer relations dated May 2002; and
- Redcliffe Wharf evaluation bid summary dated November 2011.

2.13 If further information is brought to our attention after this report is issued we reserve the right to amend our view, as appropriate.

Restriction on circulation

2.14 This report is one element of our external audit service. It is not, therefore, intended to cover every matter which comes to our attention. Our procedures are designed to support our audit view, and discharge our responsibilities, and they cannot be expected to identify all weaknesses or inefficiencies in the Council's systems and work practices.

2.15 This information has been prepared by Grant Thornton in connection with the services provided to the Council and is therefore prepared specifically for the purposes of those services and solely for the benefit of the Council. Grant Thornton neither owes nor accepts any duty of care to any third party and shall not be liable for any loss, damage and/or expense which is caused by any reliance that any other party may place on this information.

Freedom of Information Act 2000

- 2.16 Where a request is made to the Council under the Freedom of Information Act 2000 ('the Act ') or other legislation (including but not limited to the Environmental Information Regulations 2004) ('the Regulations') which requires the disclosure of any information contained in this report ('the Report'), it is agreed that the Council will promptly notify Grant Thornton, in writing, of the request and consult with Grant Thornton prior to disclosing such information. The Council also agree to pay due regard to any representations made by Grant Thornton and any relevant exemptions which may exist under the Act or Regulations applicable to the information. If, subsequent to the above, the information is disclosed in whole or in part the Council agrees that it will ensure that any disclaimer which Grant Thornton has included, or may subsequently wish to include, in the information disclosed is reproduced in full and in all copies produced.

3 OUR FINDINGS

Background

- 3.1 The Redcliffe Wharf site was unsuccessfully marketed in the 1980s and 1990s. It was formally remarketed in 2006 upon completion of the Future of Redcliffe Supplementary Planning Document ('SPD3') and on the back of a strong property market. RFG assisted the Council with the evaluation of the submissions in 2006. The Council offered Westmark Developments ('Westmark') preferred developer status at the end of the first stage although the selection process was to be a two stage process. RFG had some input into the evaluation of submissions but preferred other schemes which were presented.
- 3.2 Westmark subsequently came up with a scheme and submitted a formal planning application in December 2007. Although the scheme delivered in terms of policy, the Council considered one physical aspect of the design unacceptable, namely the height and scale of the proposed building up against the retaining wall. The Council's consultation on the application resulted in significant objection to this aspect of the scheme from English Heritage and from the Council's own Heritage Conservation Team as well as letters of objection from the community.
- 3.3 Westmark were reluctant to change this aspect of the planning application which led to an impasse. There was also a significant downturn in the economic environment, together these factors meant little progress was made in 2008. In early 2009 Westmark advised the Council that they were in discussions with Tridos Bank ('Tridos') and Sawdays as potential pre-lets in terms of a bank HQ and a Hotel. In or around April 2009 Westmark approached the Council informing them that discussions on these potential pre-lets were at an advanced stage. At the same time a potential scheme was tabled but this was not endorsed by the Council.
- 3.4 The Council communicated with Westmark throughout as they were the sole party to the potential Development Agreement. In early 2010 Tridos withdrew from the Westmark scheme due to commercial reasons. This left the scheme without their backing. When Tridos fell away the Council continued to work with Westmark and Sawdays (on the basis that they were a potential pre-let) to consider options for redevelopment. Sawdays were encouraged to take on half the site thereby enlarging their plans to a 50-60 bedroom hotel including restaurant, shops and events space.

- 3.5 The Council's Development Services Department produced a draft Planning Performance Agreement ('PPA'). The PPA between the Council, Westmark and Sawdays (as a potential pre-let) was drawn up and ready for signature when unfortunately, in the autumn of 2010, the Managing Director of Westmark, Euan Cresswell, passed away.
- 3.6 Following Euan Cresswell's untimely death, Westmark's parent company (UK and European Investments) took on responsibility for the planning application process. The Council pressed UK and European Investments for a decision on its intentions: it responded by advising that it wanted to change the planning application from a mixed use development to a residential only development. The Council refused given the basis upon which Westmark had been awarded preferred development status, ie based on the document SPD3 which was prepared in conjunction with the local community (specifically RFG).
- 3.7 In the period October to December 2010 Sawdays met with representatives of the holding company to progress matters in respect of the scheme. Sawdays found they could not work with UK and European Investments as the company was not a developer, but a commercial asset manager. In or around December 2010 Sawdays pulled out of working with Westmark as they could not work with the holding company.
- 3.8 In early January 2011 there was uncertainty as to whether Westmark would continue with the development of Redcliffe Wharf. Shortly before Westmark confirmed its withdrawal as preferred developer, Sawdays put forward a proposal to senior Council staff on 27 January 2011 that, should Westmark withdraw, Sawdays would remain as preferred tenant and work together with the Council and the community to select a new developer to take on the existing Westmark and Sawdays scheme. Their proposal document was entitled 'Redcliffe Wharf Regeneration' and, we understand from James Wallace ('Mr Wallace'), was endorsed by numerous developers and community stakeholders. The Council did not respond to this proposal nor did it provide an explanation to Sawdays for not taking the agreed design forward and working together to find a new developer.

Although the Council was not required to respond to the Sawdays proposal, in our view it would have been helpful so to do. A response would have reduced the risk of distrust and speculation by Sawdays that the Council's main motive for disposing of the site was to obtain the maximum short-term financial receipt.

3.9 In or around the end of January/beginning of February 2011 Westmark's parent company informed the Council that it did not wish to proceed with the Redcliffe Wharf scheme. Consequently the Council re-advertised the Redcliffe Wharf development opportunity in late February 2011. Our review identifies that the Council took the decision to re-advertise the site as:

- it had previously advertised the site in 2006;
- the Council anticipated that inviting expressions of interest would potentially introduce "fresh ideas" for the site; and
- it would provide unsuccessful developers in the 2006 selection process another opportunity to bid.

3.10 The Council does not have a developer selection policy which specifies protocols to be followed when disposing of land. The Council has a Corporate Land Policy for land disposal which states "*On disposal the Council will normally wish to achieve the best consideration reasonably obtainable...*". The Corporate Land Policy does not require the Council to market an opportunity but suggests that marketing remains the traditional and most convenient method of seeking to obtain the best consideration. The Council's Financial Regulations December 2011 do not include any additional guidance in respect of developer selection policy when it disposes of land.

We recommend that the Council adopt a developer selection policy for property disposal projects to include protocols for the various stages, key activities within the process and decision making responsibility at each stage of the process.

3.11 The Council advertised the development opportunity on Redcliffe Wharf in the Estates Gazette on 26 February 2011. Expressions of interest were invited from potential developers for mixed use commercial development on the site. An Informal Planning Guidance Note dated February 2011 ('IPGN') and Marketing Brochure were provided to interested parties. The closing date for registering an interest was 25 March 2011.

From our review of the IPGN and the Marketing Brochure it is our view that the Council wanted the site to be developed sensitively in order to respect the site's archaeological importance and to encourage the restoration of derelict buildings. Evaluation criteria included planning, design and financial viability.

The developer selection process

- 3.12 Our understanding from the Principal Projects Officer and documentation reviewed is that the Council intended the developer selection process to be a two stage process, with Officers presenting their final recommendation to the Executive Member to agree appointment of a preferred developer by the middle of July 2011.
- 3.13 Following expressions of interest from 12 parties by 25 March 2011, six developers were shortlisted for interview. The Council's Financial Department undertook financial credit rating checks on each of the six shortlisted developers in early April 2011 in the form of Dunn & Bradstreet ('D&B') reports. We have been provided with email correspondence in April 2011 between the Council's Senior Accountant, the Principal Projects Officer and the Portfolio Management Officer in respect of the D&B credit checks undertaken. The following scores are noted (1 being good and 4 being poor):
- Developer A's rating was undetermined;
 - Developers B, C and D each had a rating of 2;
 - Developer E had a risk rating of 1;
 - Developer F and G (a partnership) had risk ratings of 1 and 3 respectively.

D&B is a recognised source of business information. In our view it is a credible source for undertaking credit checks on companies.

- 3.14 On 6 April 2011 the now Executive Member for Housing and Regeneration ('Executive Member'), the Deputy Leader of the Council and the Former Executive Member for Property Services ('Former Executive Member') were updated on progress of the developer selection process at an informal briefing.
- 3.15 After interviews with each of the six shortlisted developers in April/May 2011 the OWG shortlisted four developers to move to the second stage, namely:
- Stoford;
 - Complex Developments;
 - igloo; and
 - Cubex Land.

- 3.16 The Executive Member expressed his desire to involve local community groups in the developer selection process as was the case with a number of other Council schemes. The OWG invited three community groups, namely RFG, BCS and the Redcliffe Community Forum to take part in the developer selection process. Of the three, RFG and BCS agreed to take part in the entire process. A site visit at Redcliffe Wharf was arranged for 26 April 2011 which RFG, BCS and the OWG attended.
- 3.17 Between 27 April and 12 May 2011 RFG and BCS assisted the OWG with the drafting of the Supplemental Informal Planning Guidance Note dated May 2011 ('SIPGN') and the Marketing & Development Brief dated June 2011 ('MDB'). These documents were subsequently sent to the four shortlisted developers on 1 June 2011 together with the invitation to submit proposals to which included designs, layouts and financial offers supported by a development appraisal. The closing date for submissions was 21 July 2011.
- 3.18 Our review of correspondence between the OWG, RFG and BCS confirms that the changes made to the development requirements in the SIPGN and the MDB, specifically the relocation of Bristol Classic Boat Company and the removal of the requirement for covered public event space, were a consequence of collective discussions between the three parties. The reasons for the changes are set out in the MDB.
- 3.19 The MDB sets out the evaluation criteria which would be applied when considering the proposals. However, it does not provide guidance as to the importance and/or weighting of each of the criteria.

In our view, the inclusion of the weighting mechanisms applicable to each of the evaluation criteria, albeit at a high level, would have provided the developers with an insight into the importance of each of the evaluation criteria.

We recommend that future marketing and development briefs include reference to the weighting of each of the evaluation criteria to enable developers to consider the importance of each of the criteria.

- 3.20 The IPGN and SIPGN both place a restriction on developers approaching the Council's Planning and Sustainability Division prior to lodging their submissions. Queries would be dealt with during pre-arranged sessions with a range of Council officers. Consequently all approaches were to be made to Property Services Officers. It appears that some of the developers interpreted this restriction as preventing them from obtaining guidance from the Council's planning department on their designs. The Principal Projects Officer informed us that the restriction on contacting the Planning and Sustainability Division was put in place to prevent developers canvassing Officers and Members during the marketing and evaluation process. Consequently all communication from the developers was to be channelled through the Principal Projects Officer to ensure consistency. Our review has not identified any correspondence between the Principal Projects Officer and the developers clarifying that they were able to obtain planning advice as long as it was directed through him.

In our view, the lack of communication between the Council and developers appears to have contributed to the unease expressed by Sawdays and RFG over the Council's process.

We recommend that future marketing briefs clearly set out the channels of communication and reasons for restricting access to appropriate Council departments and staff.

- 3.21 The two local community groups were asked to treat the developer selection process as confidential and ensure that anyone in their organisation having close links with any of the four shortlisted parties or their advisors decline to participate in the process. Concerns have been raised by Mr Sawday that this restriction prevented local community groups from communicating with developers. Our review of documentation highlights some ambiguity of the restrictions placed on local community groups and their ability to interact with developers during the process. The Council emphasised that members of the local community groups who had connections with the developers and/or their advisors should not be involved in the evaluation process. However, it was not made clear that members of the local community groups not involved with the evaluation process were able to have an open dialogue with developers. We have not, to date, found communication from the developers asking for clarification as to whether they were able to consult with the wider community.

In our view the lack of communication by the Council in respect of available communication channels appears to have contributed to the perception that the Council prevented developers from engaging with the local community.

We recommend that future marketing briefs and Informal Planning Guidance Notes clearly set out the channels of communication and reasons for restricting access to appropriate Council departments and staff.

- 3.22 The Executive Member, Former Executive Member and Deputy Leader of the Council were all updated on 3 June 2011 with the progress of the developer selection process for Redcliffe Wharf. The update by the Principal Projects Officer re-iterated:
- that the marketing exercise was to be a two stage process;
 - four parties had been shortlisted for the second stage and proposals were due back on 21 July 2011; and
 - local community groups had been closely involved with preparing the MDB and the SIPGN.
- 3.23 The Council's dialogue with RFG and BCS continued whilst the four shortlisted developers were preparing their second stage proposals. The Redcliffe Community Forum had, at that time, requested to *"take a back seat"*. A meeting between RFG, BCS and the OWG was held on 12 July 2011 to discuss the evaluation process and in particular the evaluation criteria and draft matrix for use in the evaluation of the submissions. The primary remit given to the local community groups was to assist the Council with the evaluation of scheme layout and design. Their involvement did not include the consideration of the financial or legal aspect of the schemes. From our discussions with the local community groups we understand that this remit was understood and accepted by them. They considered the brief given to them to have been reasonable as their respective members involved with the evaluation process were experienced as planners, not financiers.
- 3.24 Following receipt of the submissions from the four shortlisted developers on 21 July 2011, the Principal Projects Officer updated the Executive Member and Deputy Leader of the Council on 22 July 2011 that all submissions had been received and all developers had *"responded in positive fashion."* He reiterated that the evaluation process was underway and that BCS and RFG would be involved. It was envisaged that initial considerations would be reported by middle of August 2011 together with options for moving forward.

3.25 The Principal Projects Officer distributed the four submissions to RFG and BCS on or around 25 or 26 July 2011 for initial review. The company accounts included with each of the submissions were sent to the Council's Senior Accountant for review. No accounts were received from developer D. Further D&B credit rating reports were obtained by the Council's Senior Accountant on 3 August 2011. The following scores are noted (1 being good and 4 being poor):

- Developer A's rating was unavailable as accounts had not been filed with Companies House;
- Developer B's risk rating had reduced to 3;
- Developer C's risk rating had increased to 1; and
- Developer D was not included in the D&B checks.

The Council, having been presented with updated financial information, initiated further credit checks on the four shortlisted developers using D&B reports as part of its financial due diligence procedures.

3.26 The four submissions were subsequently considered at a meeting on 15 August 2011 attended by the OWG, RFG and BCS. An email from the Principal Projects Officer to RFG and BCS on 16 August 2011, summarising the meeting held on 15 August 2011, states that the three parties agreed to introduce a third stage into the developer selection process as:

- the strengths and weaknesses of each scheme varied significantly making it difficult to compare schemes;
- the schemes were unlikely to secure planning consent without significant modification; and
- the Council's view was that some of the schemes had issues with their financial viability.

3.27 The Principal Projects Officer informed us that he and the Portfolio Management Officer reviewed the assumptions in the financial appraisals such as building costs, rent and rent incentives and yields. Their review included input from BNP Paribas who identified concerns with the financial offers for all of the schemes, and in particular the financial assumptions used in the schemes of developers A and C.

3.28 RFG and BCS were requested to set out their observations in writing to include their respective comments on each scheme to include strong points, areas of concerns, and modifications required for each scheme and submit their commentary to the OWG. Our review of correspondence sent by the Principal Projects Officer to RFG and BCS summarising the points

discussed at the meeting confirms the actions agreed. We have, to date, not found any evidence of objections raised in respect of the meeting summary.

- 3.29 During our discussions with RFG and BCS, each respectively informed us that at the evaluation meeting on 15 August 2011 the group established that there were three leading schemes (A, B and C) and one weaker scheme (D) in the context of design. The Principal Projects Officer alluded to the financial viability of all four schemes saying there was no clear preference and they all required more work. The three leading schemes had strengths but also weaknesses which would prevent them successfully obtaining planning permission as they stood.
- 3.30 We understand from John Frenkel ('Mr Frenkel') that if a clear winner had been identified at the meeting a recommendation would have been put forward for a preferred developer. However, as there was no clear winning bid the Principal Projects Officer suggested keeping all four developers in the process so as to keep the 'competition' open. It was thought that retaining four developers would encourage all developers to come up with improved designs which would not require significant revisions once preferred developer status had been granted.
- 3.31 BCS submitted its written report to the OWG and to RFG on 17 August 2011 in accordance with the actions agreed at the meeting on 15 August 2011.
- 3.32 On 18 August 2011 Mr Balfry confirmed to the Principal Projects Officer, via email, that RFG was in the process of preparing its comments and that RFG would be *"...happy to reassess the proposals after the design teams have responded to our comments."* This email suggests that as at 18 August 2011 RFG was expecting and happy with the third stage of the process introduced at the meeting on 15 August 2011.
- 3.33 RFG submitted its written comments on 24 August 2011. Although its commentary appears to be in accordance with the actions agreed at the meeting on 15 August 2011, it went a step further and included:
- a preference for the igloo scheme³ to be awarded preferred development status⁴; and
 - a scoring matrix not approved by or discussed with the Council⁵.

³ The igloo proposal includes the Alistair Sawday Hotel scheme.

⁴ This recommendation went against the agreement on 15 August 2011 that there was no clear winner.

⁵ When reviewing the submissions RFG attempted to use the matrix provided by the Council. In their opinion, the matrix was not fit for purpose and consequently they prepared and adopted their own matrix.

- 3.34 We note that both the Council's planners and BCS raised concerns about the buildings and density of the igloo scheme during their assessment of the submissions. RFG's commentary, on the other hand, does not comment on igloo's buildings or density and indeed allocates a score of 5 out of 5 for 'heights and massing' to the igloo scheme in their scoring matrix. This appears at odds with their considerations of the other three schemes which all include commentary in respect of building height, design and/or materials.
- 3.35 Following receipt of RFG's commentary, concerns were raised about its provenance. Mr Frenkel informed us that he thought that the RFG document was "*of a professional standard*". He subsequently looked at the properties section⁶ of the electronic RFG document and discovered reference to Sawdays and Mr Wallace. Mr Frenkel contacted the Principal Projects Officer and informed him of his concerns about the provenance of RFG's document. The Principal Projects Officer immediately contacted Mr Balfry and asked him to explain the origin of RFG's report.
- 3.36 At a meeting on 1 September 2011, Mr Balfry explained that he had used a document received from Sawdays prior to January 2011 as a template for its written commentary on 24 August 2011. Mr Balfry prepared evidence to back this up. The Council did not want to receive a copy of the evidence but subsequently accepted Mr Balfry's explanation of the provenance.
- 3.37 RFG's preference for the igloo scheme, together with the questions over the document's provenance, raised concerns that there had been some form of contact or collusion between RFG and Sawdays and/or igloo during the preparation RFG's written report. The Council requested a review of the RFG document from a technical and legal perspective.

The Principal Projects Officer, having been presented with the *prima facie* evidence of the properties section of RFG's electronic document sought advice from Technical and Legal Officers to understand the implications thereof and the impact on the developer selection process. We consider his actions to be sensible.

- 3.38 Following advice from Corporate Services (Legal Division) and the Corporate Property Information Team the OWG made a recommendation to the Executive Member at an informal briefing on 31 August 2011 that RFG should take no further role in the developer selection process due to risk of potential compromise to that process. We have seen correspondence:

⁶ A Microsoft Word document will contain information specific to the document itself as well as the textual information typed into the main body of the document. The information about the document is called metadata and can be viewed using the menu option 'File – Properties'.

- from the Council's Principal Conveyancing Officer which recommends that RFG not be granted access to the next stage of submissions and consequently have no further role in the tendering process; and
- seen the advice from the Corporate Property Information Team which concludes that they are unable to advise whether Sawdays definitely had an active role in preparing RFG's comments but that the metadata confirms that Sawdays did have an association with the document at some stage of its life⁷.

3.39 The Executive Member informed us that he understood the informal briefing on 31 August 2011 would be an update on the progress made with the evaluation of the four submissions. Instead, the Principal Projects Officer informed him about the problem with the RFG report and the advice received from the Heads of Audit and Legal Services. The Executive Member had advocated for local community groups such as RFG and BCS to be engaged in the process from the outset but felt RFG had diverged from the process which had been agreed. We understand from the Executive Member that, in his view, the Mr Wallace/Sawdays reference in the RFG document was an innocent mistake. However, he accepted that action needed to be taken at that stage to preserve the perception of the integrity of the process. Accordingly, having been presented with the information (see point 3.38 above), he felt that both RFG and BCS should not take part in the process until such time that a preferred developer was selected.

3.40 Discussions focussed as to how the marketing process could maintain integrity and move forward in light of events. The Executive Member felt that the process had been compromised and careful consideration was required on how to proceed as there was likely to be *'trouble ahead'* whether the process continued or restarted. He also thought that this was so potentially damaging that he had to seriously reconsider his position. The Principal Projects Officer did not see it as that serious. The minutes of the informal briefing held on 31 August 2011 note that it was agreed that RFG should not play any role in further evaluations and a further recommendation was made that the evaluation process continue as agreed at the meeting on 15 August 2011. At the meeting, the Executive Member clarified that he would not be involved further in the evaluation process as he had previously been lobbied by Mr Sawday.

⁷ We have seen a report prepared by Internal Audit dated 23 September 2011 following a request by the Property Information Team Leader for an audit of the metadata contained in RFG's comments. Internal Audit's opinion is that the findings of the Corporate Property Information Team provide a fair account of the metadata in the file.

In our view the Executive Member was updated as soon as practicably possible on the issue identified with the RFG document, given the timing of the August bank holidays. In our view a collective decision was made between the OWG and the Executive Member to continue with the process without the involvement of the local community groups in order that the Council maintain the integrity of the marketing process. We consider it to be a reasonable decision in all the circumstances.

- 3.41 The OWG requested RFG to withdraw from its consultative role on 1 September 2011. BCS announced on 2 September 2011 that it would no longer continue in the process, resulting in the end of the local community groups' involvement. At our meetings with RFG and BCS they each confirmed that the Council had communicated its intention to re-engage with them following the appointment of the preferred developer.
- 3.42 On 1 September 2011 an architect representing one of the four shortlisted developers emailed the Executive Member promoting its scheme as it had managed to secure pre-lets for the offices and hotel. The Executive Member did not respond and forwarded the email to the Principal Projects Officer *"in the interests of complete transparency."* The architect emailed the Principal Projects Officer later that day stating he had meant to copy him into the email sent to the Executive Member. The Principal Projects Officer replied stating it would be inappropriate to make any comment and directed him to the anti-canvassing provisions in the marketing material.
- 3.43 On 2 September 2011 the Principal Projects Officer emailed the Executive Member, the Legal Services Director, the City Design Group Manager and Head of Corporate Property Services with recommendations to move the marketing process forward.
- 3.44 Each of the four shortlisted developers were emailed on 2 September 2011 by the Principal Projects Officer informing them of the introduction of a third stage and the reasons for introducing it. The communication included reference to the fact that a *"comments note"* on issues would be sent to each developer for consideration. There then followed a two week pause for holidays.
- 3.45 Mr Sawday expressed a concern that a third stage was introduced to give other developers more time to produce compliant submissions. Our understanding from the OWG is that none of the submissions were compliant at the second stage. This is confirmed by the specific comments sent to each of the developers at the third stage.

On the basis of the comments made and actions agreed by RFG, BCS and the OWG at the meeting on 15 August 2011, introducing a third stage appears reasonable. We understand this additional stage was necessary to achieve the best scheme/developer. However, as a departure from the understood process, this gave rise to a perception of bias by Mr Sawday against the igloo scheme. We have seen no evidence of such bias, however we can understand the genesis of this perception.

We recommend that the developer selection process be clearly set out and communicated at the outset and adhered to. We accept that it is entirely reasonable to explicitly include within such a process the ability to insert additional stages at the Council's discretion.

- 3.46 Mr Balfry wrote a letter to the Executive Member on 6 September 2011 including its reformatted comment on the developers proposals using the Council's evaluation matrix and its investigation report to support the authenticity of its original document. The reformatted report still included the preference of igloo as preferred developers. Mr Balfry's letter urged the Executive Member to reinstate RFG and BCS in the developer selection process as withdrawal of community support was certain to raise enquiries from developers concerned. RFG threatened to make the reasons available to all parties.
- 3.47 The Former Executive Member wrote to the Principal Projects Officer on 13 September 2011 asking for clarification of the remaining stages of the process which were not going to involve the local community groups. The Principal Projects Officer replied to him on 22 September 2011 (copying in the Head of Corporate Property) that although the local community groups would play no further part in the selection of the preferred developer, their comments in relation to the evaluation of the four submissions would be included in the advice provided to developers. Once a preferred developer was appointed public consultation and local stakeholder engagement would recommence. The Head of Corporate Property replied to the Principal Projects Officer on 27 September 2011 stating that it should be emphasised that having fully consulted, the final part of the process was down to the Officers, the Executive Member and Cabinet.
- 3.48 The Principal Projects Officer updated the Executive Member via email on 21 September 2011 on the anticipated timetable for the third stage, the closing date for submissions being 24 October 2011.

- 3.49 On 23 September 2011 the Executive Member was contacted via email by Mr Balfry threatening to update the wider community that they had been asked to step aside from the developer selection process. The Executive Member replied the same day re-iterating that the Council valued the input of RFG but that RFG's actions had compromised the process. He explained that if they were not excluded from the final stages, the whole process would be compromised and may have to be re-started. The Executive Member agreed to meet with RFG members on 26 September 2011 to talk about the facts behind RFG's departure from the developer selection process. On the same day, the Principal Projects Officer updated the Executive Member on the consultation process and attached a copy of the note sent to the Former Executive Member on 22 September 2011.
- 3.50 The four shortlisted developers were emailed on 23 September 2011 by the Principal Projects Officer setting out the timetable for the submission of revised submissions including the closing date for submissions, being 25 October 2011. All developer interviews were scheduled for 27 and 28 October 2011.
- 3.51 The Executive Member met with five RFG members on 26 September 2011. We understand from the Executive Member that at the meeting he made it clear that RFG had overstepped the boundary of what they were requested to do. Consequently the process would be compromised if they were to continue in the final decision stage. The Executive Member reiterated that RFG were not out of the process for good; only for the selection process. They would be welcomed back after the preferred developer had been appointed. A letter was subsequently sent by the Executive Member to Mr Balfry on 3 October 2011 confirming matters discussed in the meeting but also stating that their input to date had been fed back to the four shortlisted developers. The Executive Member requested that the Principal Projects Officer review and comment on the letter prior to it being sent to Mr Balfry.

It seems an admirable attempt by the Executive Member to try to reach a conclusion with RFG in an open and transparent way. He liaised with the Principal Projects Officer prior to responding in writing to RFG. We consider his actions to have been reasonable in the circumstances.

- 3.52 On 27 September 2011 the Principal Projects Officer wrote to the four shortlisted developers enclosing comments on each of their proposals. The emails to the developers state that RFG and BCS assisted with the evaluation process and that BNP Parabis provided advice on development and viability issues. None of the submissions were considered to be fully compliant at this stage. Accordingly, the developers were asked to resubmit their proposals in line with weaknesses identified during the second stage evaluation process and also asked to revise their financial offerings. The comments were broken down into two parts, namely general points relating to all four submissions and specific points. The correspondence also highlighted the requirement to change the annual rental income calculations from 5% of open market rack rental value. We understand this change came about following feedback from the developers, specifically igloo, about the non-viability of the hotel turnover method.

Following our review of the commentary sent to the four shortlisted developers we consider that it included the input from the local community groups in respect of weaknesses identified in their evaluation of the submissions. In our view the Council did not provide reasons for the exclusion of the local community groups in the final stage of the preferred developer selection process primarily to preserve the integrity of the marketing process and the reputation of RFG. We consider this to be a reasonable approach.

- 3.53 On 28 September 2011, the Principal Projects Officer updated the Executive Member on the progress made with the process, ie the four developers had been sent commentary on their submissions. On the same day, Mr Sawday contacted the Principal Projects Officer to clarify whether local community groups would participate in the final selection process to which the Principal Projects Officer replied that the Council would finalise the process leading to the selection of the preferred developer.
- 3.54 The Executive Member wrote to Mr Balfry on 3 October 2011 summarising the meeting with RFG on 26 September 2011. In his letter, the Executive Member re-iterated that the final decision, focussing mainly on legal and financial aspects, would be taken by Officers with his involvement. RFG would be invited to resume their involvement once the final decision had been made.
- 3.55 On 4 October 2011 all four shortlisted parties were informed by the Principal Projects Officer that requests had been made that the interview dates be pushed back from the end of October into the first week in November 2011. Consequently the submission date was pushed back to 28 October 2011 with interviews taking place on 1 and 2 November 2011. Dates for informal meetings to discuss proposals were also provided, namely 12 and 13 October 2011.

- 3.56 We understand from Mr Wallace that the extension given on the submission dates suggests that other developers were given more time to comply with the brief, which he considers proof that the Council were bending the rules to allow other developers to catch up with what he considered to be a fully compliant igloo bid.

We understand from our discussions with the OWG, RFG and BCS that none of the schemes/designs complied with the brief at the second stage, including the igloo scheme. This is demonstrated by the specific points raised in the feedback provided to developers with regards to building height, density and materials used. In our view, the three day extension would not have given undue advantage to any of the four short listed developers.

- 3.57 On 5 October 2011 Chris Brown ('Mr Brown'), the Chief Executive of igloo, emailed the Principal Projects Officer disagreeing with the introduction of the third stage and declined to make further modifications to their scheme until such time as they were appointed preferred developer. The Principal Projects Officer shared this correspondence with the Head of Corporate Property Services who suggested he respond that all parties were given the opportunity to refine their submissions and if they (igloo) choose not to make any further modifications the Council would be happy to evaluate their bid on that basis. The Principal Projects Officer replied to Chris Brown on 6 October 2011 via email on that basis.
- 3.58 On 6 October 2011 Mr Balfry wrote to the Executive Member in response to his letter of 3 October 2011. Mr Balfry expressed concern that the letter gave no assurance to RFG that the consultation process had been conducted in a fair, open and honest way. Consequently RFG resolved to resign with immediate effect from any further involvement in the consultation process for Redcliffe Wharf. The Executive Member shared the contents of the letter with the Principal Projects Officer asking for advice on how to politely reply without advising that their 'expulsion' was effectively of their own doing and that BCS had seen the danger of RFG's unfortunate actions. The Principal Projects Officer suggested that a short letter be sent to RFG reminding them that *"it is essential that the Council maintain the integrity of the marketing process and ensure that it is not compromised. In this respect and in the interest of all parties moving forward it is considered best if RFG do not play any role in the final evaluations to shortlist the preferred developer."* The Executive Member subsequently met with RFG representatives on 20 October 2011 to discuss the consultation process (see paragraph 3.64).

- 3.59 During October 2011 each of the four shortlisted developers took the opportunity to meet the OWG to discuss their proposals. Mr Brown met the Principal Projects Officer and the Portfolio Management Officer on 10 October 2011 to discuss igloo's proposals. The day after the interview, 11 October 2011, Mr Brown emailed the Principal Projects Officer stating he was disappointed that a representative from BNP Paribas did not attend the meeting to ensure that everyone was clear on the basis of the appraisal assumptions. He summarised three compliance issues discussed at the meeting which required amendment to their scheme, namely:
- the requirement not to build over the water main;
 - the lift from the hotel to the Redcliffe Parade Car Park; and
 - their offer of ground rent being paid on a received rather than receivable basis.
- 3.60 Mr Brown, in his email of 11 October 2011, noted that he did not consider the issues raised to be substantial requiring further meetings and presentations. We understand from the Principal Projects Officer that the meeting on 10 October 2011 was to address property issues only, not planning issues. This is confirmed in an email by the Principal Projects Officer to Mr Brown on 14 October 2011 which states that Robert Knight ('Mr Knight') of igloo had separately discussed issues on massing, design and layouts with the Council's planners.
- 3.61 On 13 October 2011 the Council's Senior Accountant conducted a review of the accounts of company H, potential funders to developer B. She expressed concern about the losses made in the last two years and the low level of reserves. She obtained D&B credit rating reports for companies I and J, pre-lets identified by developers B and C respectively on 14 October 2011. Both had a risk rating of 2 which indicated a *"lower than average risk of business failure."*
- 3.62 The Principal Projects Officer updated the Executive Member on 14 October 2011 that meetings had been held with all four parties to discuss their proposals and that submissions were due to be returned on 28 October 2011 followed by interviews on 1 and 2 November 2011.
- 3.63 The Portfolio Management Officer formally instructed Peter White ('Mr White') of BNP Paribas Real Estate on 18 October 2011 to provide the Council with *"...an independent formal assessment of each of the proposals made by the four short-listed developers..."*. The Council's five evaluation criteria (as set out in the MDB) were listed in the instruction letter. Mr White's opinion in relation to the financial assumptions (realism and viability in terms of yields, rents, concessions etc) and ability of funding to deliver the scheme within a reasonable time period was sought.

BNP Paribas Real Estate is part of the BNP Paribas Group, a global name in banking and financial services. In our view it is a credible company to provide advice/opinion to aid decision making in respect of real estate matters.

- 3.64 Following constant communications from RFG during October 2011, the Executive Member met seven representatives from RFG on 20 October 2011 to discuss the consultation process and the Council's request of RFG to withdraw from it. Following the meeting Mr Balfry wrote to the Executive Member on 27 October 2011 accepting the Council's position to appoint the preferred developer without further involvement of RFG, however requesting sight of the comments sent to the four shortlisted developers to ensure their contributions had been recognised.

It seems an admirable attempt by the Executive Member to try to reach a conclusion with RFG in an open and transparent way. We consider his actions to have been reasonable in the circumstances.

- 3.65 The developer selection evaluation criteria and matrix were circulated for comment on 19 October 2011 by the Principal Projects Officer. The Planning and Enforcement Team Manager suggested some amendments on 20 October 2011. The Principal Projects Officer also sought comment from the Head of Internal Audit who, on 24 October 2011 responded "*...matrix looks fine to me*". The evaluation matrix had a total of 100 points, with each of the criteria allocated equal importance (ie a total of 20 points each).
- 3.66 Concerns have been raised by RFG about the origin, date and approval of the evaluation matrix. Our review identified a draft evaluation matrix which was circulated to RFG and BCS in July 2011 for comment. The draft matrix addressed the three evaluation criteria associated with planning and design of the schemes as set out in the MDB (allocating a total of 15 points to each criteria ie a total of 45 points) and also included an evaluation of the overall assessment of the bid and its content (25 points). The draft matrix did not include an evaluation of the financial viability of the submissions. During our review we have not found evidence that the draft evaluation matrix was rejected or commented upon by the local community groups. However, RFG applied its own matrix in its document dated 24 August 2011.

In our view, consultation on a matrix which did not include mark allocations for the financial viability of the schemes is not unreasonable given that the local community groups were not required to comment on the viability and level of the financial offer nor the availability of development funding. However, the transparency of the process and the method by which submissions were to be evaluated would have been enhanced by such open disclosure at the outset of the process.

We recommend that future marketing and development briefs include reference to the weighting to each of the evaluation criteria to enable developers to consider the importance of each of the criteria.

- 3.67 The Principal Projects Officer updated the Executive Member on 26 October 2011 on the process of the selection process. Submissions were scheduled to be returned on 28 October 2011 with interviews on 1 and 2 November 2011. It was anticipated that the OWG would be able to report on the outcome of initial evaluations within the following week and set out options as to the short listing of one party as preferred developer. The Corporate Property Manager was copied in on the email and responded to the Principal Projects Officer on 28 October 2011 that it was to be kept in mind that the final decision on the preferred developer rested with the Executive Member and Cabinet, not the Officers. We understand from the Executive Member that he sought direction from the Legal Services Director and it was made clear to him that the final decision to accept/reject the recommendation(s) made by the Officers did not lie with him, rather the Cabinet.
- 3.68 On 27 October 2011 the Principal Projects Officer provided the Executive Member with the following documentation:
- the MDB, IPGN and SIPGN;
 - comments from RFG and BCS on initial submissions;
 - advice to all four shortlisted developers re amendments to be made to their proposals;
 - guidance provided to all four parties on 14 October 2011 including details of S106 contributions;
 - further guidance issued to all four parties on 17 October 2011; and
 - the evaluation matrix.

- 3.69 Our discussions with the Executive Member identified that he was unhappy with the evaluation criteria as not enough points were allocated to sustainability criteria. He indicated that he wanted to have the opportunity to question/ratify the criteria for the evaluation matrix. We understand from the Executive Member that when he reviewed the evaluation matrix he once again pressed for sustainability to have a higher score but was told that it formed part of the SPD3 criteria so was covered.
- 3.70 On 27 October 2011 Mr Brown wrote to the Principal Projects Officer expressing disappointment that other bidders *"are being given a second opportunity to submit a compliant bid"* as he considered confirmation had been given at meetings that the igloo bid was compliant with the MDB and informal planning guidance notes. igloo's responses to the Council's post-bid queries and updated funding arrangements were included with the letter. We note that igloo made some modifications to its scheme and its financial offer, however concerns raised during the second stage evaluation process in respect of the scale of its scheme were not addressed. igloo, in its letter, considered its designs to be compliant with the brief and would only make changes to its design once selected as preferred developer.
- 3.71 The four shortlisted developers were invited for interviews on 1 and 2 November 2011. The OWG considered each bid against the evaluation criteria in the marketing brief. All four developers were given a few days after their interviews to respond to questions raised by the OWG during the interviews. The Executive Member and the Head of Corporate Property Services were updated by the Principal Projects Officer on 3 November 2011 in this regard.
- 3.72 On 7 November 2011 Mr White emailed a summary of his consideration of the four schemes to the Principal Projects Officer. In analysing the bids consideration was given to:
- the financial ability to deliver the scheme;
 - the quality and deliverability of the scheme;
 - compliance with the planning guidance notes;
 - the realism of the pre-lets; and
 - the financial offer.

Mr White concluded that schemes submitted by developers B and C were most compliant with the Council's requirements.

- 3.73 Prior to receiving Mr White's summary, the OWG met on 7 November 2011 to consider each of the submissions against the evaluation criteria and the evaluation matrix agreed on 20 October 2011. After applying the evaluation matrix the OWG scored the four schemes as follows:

Criteria	Developer			
	C	B	D	A
Total points	83.0	82.5	75.5	75.0

- 3.74 We understand from both the OWG and BNP Paribas that during the third stage, three of developers took the opportunity to make significant changes to their designs whilst one chose not to make changes to its scheme to address density and building height issues. There was little to separate the schemes submitted by developers B and C. The OWG therefore considered it sensible to recommend the introduction of a fourth stage to allow developers B and C the opportunity to finalise their schemes prior to a preferred developer being recommended to Cabinet for approval in February 2012.

We understand this additional stage was introduced to allow for the two shortlisted developers to finalise their financial offers. Although this additional step would appear reasonable to enable the Council to select the best developer/scheme, a departure from the understood process may have given rise to a perception of the Council not having a robust developer selection process.

We recommend that the developer selection process be clearly set out and communicated at the outset and adhered to. We accept that it is entirely reasonable to explicitly include within such a process the ability to insert additional stages at the Council's discretion.

- 3.75 Following the evaluation of the four submissions on 7 November 2011, the Principal Projects Officer emailed a briefing note to the Head of Corporate Property Services and the Corporate Property Manager setting out the recommendation that developers B and C be given a month to focus on financial considerations. Documentation provided as part of the email included: the detailed assessment report supporting the recommendations made; comments from the planning department and property departments; the assessment from Mr White and the evaluation scoring matrix.

- 3.76 The Principal Projects Officer emailed the Executive Member on 8 November 2011 with an update of the developer selection process prior to the Executive Briefing the following day. The email included the recommendation that developers B and C be given a month to finalise their schemes and make their best offers for consideration by mid-December 2011. At the Executive Briefing on 9 November 2011 the Executive Member noted the update and the further work to be undertaken by the two shortlisted developers and indicated that once a preferred developer had been selected that arrangements should be made for a presentation to Cabinet. We understand from our meeting with the Executive Member that he considered the two best submissions had been put through to the next stage based on the 'sketch-up' presentations that had been presented to him.
- 3.77 The Principal Projects Officer contacted developers B and C on 15 November 2011, via email, to inform them they had both been successful and shortlisted to the next stage which would focus on the financial aspects associated with the proposals. It was also noted that the fourth stage would include the Council and BNP Paribas meeting with each of the developers' pre-lets and funding partners.
- 3.78 Developers A and D were informed via email on 15 November 2011 that they had been unsuccessful with their submissions. The email states that developers B and C "... have submitted proposals that the Officer Working Group unanimously considered meet the Council's objectives. This has been agreed by the Executive Member and Senior Officers". The Executive Member took umbrage to the wording as it implied he had been part of the selection process. He was furious as this was not true and appeared to seal a situation one way publicly when he had within Council sessions made clear his frustration at separation from effective involvement and decision making.

The Executive Member holds a different view of what his role should have been in the developer selection process and in the evaluation of the submissions. He feels that during the developer selection process the OWG did not listen to his views or properly engage with him.

The Code of Conduct for Members and Officers (Planning Matters)⁸ states that "*Members must also recognise and respect that officers in the processing and determining of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct. Members should therefore appreciate that officers' views, opinions and recommendations will be based on their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions and decisions of a committee or its members.*" Further, "*Members must never put pressure on officers to put*

⁸ Document 2, Section 10.

forward a particular recommendation. This does not prevent members from asking questions or submitting views...and such views may be incorporated into any committee report."

There is a difference between the Executive Member's desired role and that set out above. In our view this difference is likely to have caused confusion and exacerbated the perceived lack of transparency to those parties outside the Council.

The wording "*This has been agreed by the Executive Member...*" used in the communication to unsuccessful developers was, in our view, inappropriate as it suggests that the Executive Member was part of the decision making process when he was not, notwithstanding the fact he accepted the recommendations made by the OWG in respect of shortlisting developers B and C.

We recommend that Executive Members and Officers are reminded of their roles and respective responsibilities and that communications clearly reflect the substance of those roles and responsibilities.

- 3.79 Mr Sawday alleges that assurances were provided at interview that all four proposals would be presented to Cabinet. We have not been presented with evidence to support this understanding. His understanding appears to be based on an email from igloo to the Principal Projects Officer following its interview which states "*...and hope that this will result in your recommendation to the Cabinet to proceed with the igloo/Sawdays bid*".

It is our view that the email does not provide evidence that direct assurances were given that all four proposals would be put to Cabinet. It does however highlight that in the absence of the Council providing a clear overview of its developer selection process, including reference to key stages within the process, key activities and decision making responsibilities, there may have been a misunderstanding about the process for selecting the preferred developer during the interview.

- 3.80 We have been provided with an email from the Former Executive Member to Mr Sawday, dated 16 January 2012, in which he expresses his surprise that the evaluation matrix had been applied and a second 'cut' imposed before the final Cabinet paper.

The Former Executive Member has an interest in the process as he is the ward Councillor. However, we consider his comment to be inappropriate and ill-advised as he was not part of the evaluation team. His lack of understanding reflects the lack of a clearly stated process.

We recommend that it be made clear to Members and Senior Officers that responses to external parties whilst there is an on-going competitive bidding process should be routed via the nominated case officer.

- 3.82 On 22 November 2011, Mr Sawday wrote to the Leader of the Council alleging "*serious and systemic failings*" in the Council's operations and handling of the developer selection for Redcliffe Wharf. He wrote a further email on 13 December 2011 to a number of elected members, copied to the Chief Executive, expressing his frustration at the developer selection process.
- 3.83 A Briefing Note was prepared for the Chief Executive by the Head of Internal Audit on 30 November 2011 setting out the background to the developer selection process and addressing the issues and concerns raised by Mr Sawday in his letter of 22 November 2011.
- 3.84 The Executive Member telephoned Mr Balfry on 1 December 2011 to update him on the process. We have been provided with contemporaneous notes made by Mr Balfry during the telephone conversation. The Executive Member confirmed that RFG would have access to the comments sent to the four shortlisted developers, however this would only be after the final developer selection by Cabinet (at that time estimated to be 20 January 2012). Mr Balfry informed us that the Executive Member told him that he was unhappy that the letters sent to the unsuccessful developers suggested that he had had oversight of the selection process as he had not. He further apologised for the way in which the process had been handled. Mr Balfry informed us that assurances had been given to RFG that the Executive Member would have involvement in the selection process. The Executive Member's statement that he had not been involved concerned him.

The Executive Member was not in a position to evaluate the submissions as he had declared himself out of the evaluation process at the Executive Briefing on 31 August 2011 in light of the fact that he had been previously lobbied by Mr Sawday. In any event, the recommendations made by the OWG to the Executive Member were accepted by him.

We recommend that Executive Members be reminded of their roles and respective responsibilities.

- 3.85 On 6 December 2011, Mr Balfry wrote to each of the four developers shortlisted at the second stage requesting sight of the formal comments on the July 2011 submissions. The letters were copied to the Leader of the Council and the Chief Executive. We understand that the information was not forthcoming from the developers.

- 3.86 The marketing process was discussed at a Cabinet Briefing on 12 December 2011. At the meeting an update was given on the background of the process, the reasons for the withdrawal of the local community groups and an explanation for the introduction of the additional stages. It was noted that the two shortlisted developers were required to submit their proposals by 15 December 2011, following which the OWG would evaluate them and recommend a preferred developer to Cabinet in the new year.
- 3.87 On 14 December 2011 Mr Balfry wrote to the Executive Member setting out additional concerns in relation to the involvement of the Executive Member in the developer selection process. The Chief Executive responded to Mr Balfry on 14 December 2011 noting the concerns he raised about the developer selection process and informed him that she had instructed the Council's external auditors to review the selection process as a matter of urgency.

Conclusions

- 3.88 From our review of documentation and discussions with key individuals in the developer selection process it is apparent that all parties have the best intentions for the Redcliffe Wharf site.
- 3.89 We have seen no evidence that the Council has acted other than in good faith and that the process has been focused on securing a suitable developer for the site in accordance with the SIPGN and MDB.
- 3.90 There is a perception by Sawdays and RFG that the developer selection process has been one marked by *"delay", "distrust", "alienation", "absence of reasonable justification", "loss of trust and confidence", "exclusion" and "failure"*. Some of these perceptions appear to date back to the Councils' first developer selection process in 2006 when Westmark was offered preferred developer status prior to the second stage bid process being completed.
- 3.91 The Council did not provide developers with a clear overview of its developer selection process, including reference to key stages within the process, key activities, timetables and decision making responsibilities in any of the marketing briefs. The lack of clarity as to the preferred developer selection process appears to have led to uncertainty and misunderstanding amongst certain interested parties with regards the decision makers and the number of recommendations submitted to Cabinet for approval.

- 3.92 The MDB sets out the evaluation criteria which would be applied when considering the proposals. It does not, however, provide guidance as to the importance and/or weighting of each of the criteria. In our view, the inclusion of the weighting mechanism applicable to each of the evaluation criteria, albeit at a high level, would have provided the developers with an insight into the importance of each of the criteria.
- 3.93 For certain interested parties⁹ the primary issue in respect of the developer selection process for Redcliffe Wharf is one of a lack of transparency and the resultant negative perception of changes to the process. The suspicion and criticism that has arisen is therefore understandable, however we have not, to date, seen evidence that any of the four shortlisted developers at the third stage of the process have made direct complaints to the Council in respect of the developer selection process.
- 3.94 We consider the Council to have acted reasonably in the exclusion of RFG in the developer selection process for Redcliffe Wharf. We make no finding as to whether there had been any collusion between RFG and Sawdays. However, the risk of this perception justified the Council's actions in excluding RFG from the process.
- 3.95 The Council intends to re-engage with the local community groups during the pre-application stage, ie following the appointment of the preferred developer. Both RFG and BCS have confirmed that the Council has communicated its intention to re-engage with them following the appointment of the preferred developer.
- 3.96 There is evidence of the Executive Member acting as a 'mediator' between RFG and the Principal Projects Officer when trying to allay fears of alienation and distrust following their 'expulsion' from the developer selection process. The Executive Member's actions are, in our view, an admirable attempt to demonstrate the Council's willingness to be open and transparent with the local community groups.
- 3.97 The Executive Member holds a different view of what his role should have been in the developer selection process and in the evaluation of the submissions. The Executive Member feels that during the developer selection process the OWG did not listen to his views or properly engage with him. There appears to be a difference between the Executive Member's actual and desired role and in our view is likely to have caused confusion and exacerbated the perceived lack of transparency to those parties outside the Council.

⁹ Redcliffe Futures Group and Mr Sawday.

- 3.98 We have seen evidence of Council Members not involved with the developer selection process expressing opinions about the way in which the process was handled. These actions appear to have further caused concern that the Council did not follow a robust process.
- 3.99 Our key recommendation is that a clear process (to include stages, matrix scoring, decision makers and acceptable lines of communication) should have been communicated with all interested parties at the outset. However, it would be reasonable to include as part of this process the ability to insert additional stages at the Council's discretion but this should be set out clearly up front.

4 RECOMMENDATIONS

Recommendations	Paragraph reference	Management Response	Officer Responsible	Date
Developer selection policy				
We recommend that the Council adopt a developer selection policy for property disposal projects to include protocols for the various stages, key activities and decision making responsibility at each stage of the process.	3.10	Agreed. New policy in preparation. Developer selection process (see below) likely to be incorporated into the policy. Once agreed it will be published on our website and all potential developers will, in future, be advised.	Strategic Director, Corporate Services/Head of Valuation Practice	Expected June 2012
Developer selection process				
Future developer selection processes should be clearly set out and communicated at the outset to include, <i>inter alia</i> : <ul style="list-style-type: none"> • the number of stages • evaluation criteria • matrix scoring • decision makers <p>The process should be adhered to. We accept that it is entirely reasonable to explicitly include the ability to insert additional stages at the Council's discretion.</p>	3.45 & 3.74	Agreed. Developer selection process will be set out in the selection policy (see above). At the commencement of each developer selection process, the bidding organisations will be advised of the policy and the selection process to be used.	Strategic Director, Corporate Services/Head of Valuation Practice	Policy and selection framework expected June 2012

Recommendations	Paragraph reference	Management Response	Officer Responsible	Date
Channels of communication				
Future marketing briefs and Informal Planning Guidance Notes should clearly set out the communication channels and reasons for restricting access to appropriate Council departments and staff.	3.20 & 3.21	Agreed. As future briefs are developed, communications channels will be made clear including relevant restrictions.	Head of Valuation Practice	Ongoing
Executive Members and Officers should be reminded of their roles and responsibilities in respect of one another.	3.78 & 3.84	Agreed. Protocol for Executive Member/Cabinet involvement drafted.	Strategic Director, Corporate Services	End May
It should be made clear to Members and Senior Officers that communications with external parties during an on-going competitive bidding process should be channelled through the nominated case officer to avoid inappropriate comments.	3.80	Agreed. This will be made clear through developer and marketing briefs and explicitly through briefings with Members and Officers.	Relevant lead officers	Ongoing
Evaluation matrix				
Future marketing and development briefs should include reference to the weighting to each of the evaluation criteria to enable developers to consider the importance of each of the criteria	3.19 & 3.66	Agreed. This will be included and made explicit in all future marketing and development briefs.	Relevant lead officers	Ongoing

Grant Thornton UK LLP

Grant Thornton UK LLP
Bristol

14 May 2012

SOURCES OF INFORMATION

1.1 Meetings with the following members of the Council's staff:

- Executive Member for Housing & Regeneration and Planning;
- Principal Projects Officer;
- Portfolio Management Officer;
- Manager for Planning Enforcement Team; and
- Urban Design and Conservation Team Manger

1.2 Meetings with key individuals from the following organisations:

- Alastair Sawday Publishing;
- Redcliffe Futures Group;
- Bristol Civic Society; and
- BNP Paribas.

1.3 Minutes for the majority of meeting forums:

- Executive Members informal briefings and meetings; and
- Officer Working Group and local community group meetings.

1.4 Review of documents inter alia:

- an extract from the Council's Corporate Land Policy;
- Informal Planning Guidance Note dated February 2011;
- Marketing brochure dated February 2011;
- Supplemental Informal Planning Guidance Note dated May 2011;
- Marketing & Development Brief dated June 2011;
- the Council's evaluation matrices dated July 2011 and October 2011 respectively;

- written commentary from RFG and BCS on the evaluation of the four submissions in August 2011;
- minutes of meetings of the Executive Member, briefing papers and e-mails;
- the Council's Code of Conduct for Members and Officers for planning matters dated January 2009 and the Protocol for Member/Officer relations dated May 2002; and
- Redcliffe Wharf evaluation bid summary dated November 2011.

CHRONOLOGY

		2011											
Item no	Description	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	Sawdays proposal to the Council that it remains preferred tenant should Westmark withdraw Westmark inform the Council it is no longer interested in developing the Redcliffe Wharf Site	■											
2	Advertisement placed in Estates Gazette 26 February 2011 IPGN and Marketing brochure issued - Deadline for expressions of interest 25 March 2011		■	■									
3	12 expressions of interest received. Officer Working Group evaluates bids and select 6 prospective developers			■									
4	D&B credit rating reports obtained for 6 prospective developers by Senior Accountant between 1 and 6 April 2011 Executive Member briefing on 6 April 2011: - update that OWG selected 6 prospective developers - Meetings to take place with each prospective developer and aim is to reduce developers to 3 or 4 - RFG, BSC and Redcliffe Community Forum to be invited to join second stage selection process - RFG to be approached to discuss potential for boat building activity - Events space not that critical - Selection of preferred bidder anticipated to be made in July 2011				■	■	■	■	■	■	■	■	■
5	PPO emails Mr Balfry of RFG on 15 April 2011: - Background to development - inviting involvement of local community groups to participate in second stage marketing process (BCS, Redcliffe Community Forum also invited) - Local community participation will not include involvement in financial aspects - Requests anyone involved in the consultation process or has links with any of the shortlisted parties to be identified				■	■	■	■	■	■	■	■	■
6	RFG, OWG and BCS: - Visit the Redcliffe Wharf site on 26 April 2011 - Initial meeting to discuss consultation process and provisional contents of SIPGN and MDB on 27 April 2011 - Meet to agree content of MDB and SIPGN on 12 May 2011				■	■	■	■	■	■	■	■	■
7	PPO emails 4 prospective developers on 17 May 2011: - Mentions having met with 6 potential developers - Informs them of their success of being selected - Will forward the updated development brief in next 10 days					■	■	■	■	■	■	■	■

4 weeks to submit proposals

		2011											
Item no	Description	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
8	PPO emails 4 prospective developers on 1 June 2011: - Includes the MDB and SIPGN - Inviting interviews and Q&A sessions on 28 or 30 June or 1 July 2011 - Highlighting changes to the original development brief, namely: building heights, public area, boat building/repair activity - Deadline for proposals 21 July 2011						█	█	█				
9	PPO updates the Executive Member, Former Executive Member and the Deputy Leader of the Council on 3 June 2011 on progress with the developer selection process						█						
10	RFG, OWG and BCS meet on 12 July 2011 to discuss the bid evaluation process including the criteria and evaluation matrix							█					
11	Bids received from developers on 21 July 2011. PPO updates the Executive Member and the Deputy Leader of the Council on 22 July 2011 that all four bids have been received and the evaluation process is underway. Anticipated that but mid-August will be in a position to report with initial considerations and options for moving forward Bids distributed to OWG, RFG and BCS for initial review on 25/26 July 2011 Further D&B credit checks undertaken by Senior Accountant on 3 August 2011 RFG, OWG and BCS meet on 15 August 2011 to evaluate the bids: - All three parties agree no bid is outright winner and therefore all prospective developers to resubmit their proposals following the identification of weaknesses in their designs - BCS submit its comments on the proposals on 17 August 2011 - RFG submit its comments on the proposals on 24 August 2011, recommending igloo as the preferred developer						█	█	█				
12	On 24 August 2011 Mr Frenkel of BCS informs PPO that there may be provenance issues with the RFG document PPO seeks advice from Head of Legal, Corporate Property Information Team and Head of Internal Audit on 24/25 August 2011 PPO contacts Mr Balfry on 24 August 2011 to explain reasons for properties section of the RFG document making reference to Mr Wallace and Sawdays Meeting arranged with BCS, OWG and RFG on 26 August 2011 for RFG to provide explanation Meeting of Informal Executive on 31 August 2011: - Agreed that there will be no Executive Member involvement in interviewing prospective developers as previously lobbied by Mr Sawday - Requesting RFG to withdraw its recommendation of igloo - Proceed with the evaluation process agreed for the 4 shortlisted bids Meeting between RFG, BCS and OWG on 1 September 2011 informing RFG that it would not play any future role in the evaluation of the prospective developers. BCS advised it intended to take no further role in the process on 2 September 2011								█	█	█	█	

7 weeks to submit proposals

		2011											
Item no	Description	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
13	PPO emails Officers and Members setting out recommendations to move the marketing process forward PPO emails the 4 prospective developers on 2 September 2011: - RFG and BCS have assisted in the evaluation of the proposals - Difficulty in recommending a preferred developer - Inviting 4 prospective developers to revise weaknesses in proposals and present revised proposals to officers followed by Q&A session Two weeks holiday period												
14	Executive Member updated by PPO on 21 September 2011 of timetable for submission of bids, being late October 2011 PPO replies to Previous Executive Member on 22 September in response to his email dated 13 September 2011 re options for stakeholder consultations. Head of Corporate Property copied into the email PPO emails the 4 prospective developers on 23 September 2011: - Setting out dates for presentation of revised proposals on 27 and 28 October 2011 - Revised details for next stage to be sent early following week - Deadline for revised proposals 25 October 2011 PPO updates the Executive Member on 23 September 2011 on community consultations and issues with RFG Internal Audit prepares a report on the metadata in the RFG report on 23 September 2011 Executive Member meets with RFG on 26 September 2011 to discuss the facts about RFG's 'expulsion' from the process Head of Corporate Property confirms to PPO on 27 September 2011 that following consultation the final part of the process is down to Officers, the Executive Member and Cabinet.												
15	PPO emails the 4 prospective developers on 27 September 2011: - Comments on proposals attached to email - RFG and BCS have assisted in the evaluation of the proposals to date - RFG and BCS not anticipated to participate in the final stage of the evaluation process to appoint the preferred developer - BNP Parabis have provided advice on development and viability issues. They are likely to provide advice to the Council at the next stage - Deadline for revised proposals 25 October 2011												

4 weeks to submit proposals



		2011											
Item no	Description	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
16	Mr Sawday contacts PPO on 28 September 2011 to ask if community organisations will be involved in the final selection process. PPO re-iterated that no community involvement in selection of preferred bidder.												
	Executive Member writes to Mr Balfry on 3 October 2011 summarising meeting of 26 September 2011												
	Mr Brown (igloo) writes to PPO on 5 October 2011 stating it is not appropriate to revise designs and declining to amend their design unless given preferred developer status												
	PPO responds to Mr Brown on 6 October 2011 after seeking advice from Head of Corporate Property												
17	Mr Balfry writes to the Executive Member on 6 October 2011, saying RFG withdrawing from process as following concerns raised: -Absence of reasonable justification for RFG denied continuous involvement in the developer selection process - invalid assumption re RFG motivation for involvement in the consultation process - RFG not being able to opine on decisions made by OWG on selection of preferred developers.												
	Mr Brown (igloo) emails PPO on 11 October 2011 expressing disappointment that no representative from BNP present at the meeting on 10 October. Highlights three compliance issues discussed at the meeting which he considers not to be substantial.												
	PPO responds to Mr Brown on 14 October 2011 saying issues discussed at meeting were to address property compliance issues only, not planning issues as these had been separately been discussed by Mr Knight (igloo) with the Council's planners												
	Updated funding checks undertaken by Senior Accountant on 13&14 October 2011												
	Executive Member updated by PPO on 14 October 2011 that initial meetings with developers had taken place. Closing date for submissions 28 October 2011 with interviews scheduled for 1&2 November 2011												
	PMO instructs BNP on 18 October 2011 to provide independent formal assessment of each of the 4 bids.												
	Executive Member meets with RFG on 20 October 2011 to discuss the consultation process												
	Evaluation matrix finalised and agreed [by OWG and IA] between 19 and 24 October 2011												
	Executive Member updated on progress of developer selection process on 26 October 2011 and receives copies of documentation in respect of the developer selection process, including the evaluation matrix												
	igloo make minor amendments to their scheme on 27 October 2011												

		2011											
Item no	Description	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
18	Interviews with the four shortlisted developers on 1 and 2 November 2011 Executive Member and Head of Corporate Property Services updated on progress on 3 November 2011 BNP Paribas provide commentary on evaluation of the 4 bids on 7 November 2011 and conclude a preference for the schemes submitted by developers C and B OWG prepare their respective comments on the bids on 7 November 2011 to shortlist developers C and B PPO updates the Head of Corporate Property Services Richard Bunce emails Executive Member on 8 November 2011: - Evaluation of the 4 bids has been completed and - Recommendation that developer B and C be considered as potential developers. - Further work is required therefore recommended that they both be given a month to complete certain aspects of their bids for consideration by mid-December 2011 Informal briefing of Executive Member on 9 November 2011 Richard Bunce emails developers A and D on 15 November 2011 informing them they have been unsuccessful with their bids. On the same day, developers C and B are informed they have been successful												
19	Mr Sawday sends a letter dated 22 November 2011 to the Leader of the Council raising concerns about the developer selection process The Head of Internal Audit prepares and briefing note for the Chief Executive on 30 November 2011												
20	The Executive Member phones Mr Balfry on 1 December 2012 to discuss the progress of the selection process Correspondence between BCC and Alastair Sawday and Graham Balfry: - Alastair Sawday email dated 13 December 2011 - Graham Balfry letter dated 14 December 2011												

DOCUMENT 1

PART 5

PROTOCOL FOR MEMBER / OFFICER RELATIONS

**This Code of Conduct was approved by Bristol City Council on 14
May 2002**

Contact officer:
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issued May 2002

THE PROTOCOL FOR MEMBER/OFFICER RELATIONS

1. Councillors are democratically accountable and have political affiliations. Officers must serve the whole council objectively. Together they must balance a complex range of obligations and competing interests. For this to be effective, councillors and officers must have mutual trust and respect for each other's requirements and duties. There must also be transparent consistency in everyday working relationships.
2. The purpose of the protocol is to guide members and officers in their relations with one another.
3. The protocol does not seek to be exhaustive but rather seeks to assist on some of the issues which commonly arise. The protocol is to a large extent no more than a written statement of current practice and conventions - in some areas it promotes greater clarity and consistency.
4. The protocol reflects the principles underlying the respective codes of conduct which apply to members and to officers. The shared objective of the codes is to maintain and enhance the integrity of local government and they therefore demand very high standards of personal conduct by all members and all officers.
5. The protocol embodies the following three basic principles:

(a) **Members have a right to information and support on a “*need to know*” basis**

The “*need*” is so that they can perform their role as councillor and the “*need*” will vary depending upon the role of the particular councillor. It can be limited by conflict of interest, confidentiality and practicality.

(b) **Officers must serve the whole council objectively**

They must therefore provide “*unified advice*” at all times. This is advice which is objective, consistent and points out all relevant factors. Different points of view between officers should be resolved or presented in a balanced way which helps councillors to choose between them.

(c) Political processes and different roles for councillors are a legitimate part of local democracy

Officer advice and support should be tailored accordingly. A party group is entitled to the confidentiality of officer advice on developing policies and may decide when to publish a proposal. The overall arrangements for officer advice must be transparent.

6. Observance of the general principles, the model code and the protocol is essential to the maintenance of high standards of probity and integrity.

1. OFFICER NEUTRALITY

Convention		Councillors	Officers
1.1	<p>Every officer appointment and every employment decision must be on merit alone.</p> <p>In accordance with the councils recruitment policies and practice.</p>	<p>Councillors appoint all first and second tier officers, and they have a formal role in certain employment appeals. Party political factors cannot be taken into account.</p>	
1.2	<p>Certain posts are politically restricted, including all senior posts.</p>		<p>A politically restricted officer may not:</p> <ul style="list-style-type: none"> - speak or publish written work with the apparent intention of affecting public support for a political party. - canvass on behalf of any candidate for election to a local authority or to the UK or European Parliament <p><i>(Details of which posts are political restricted and details of the restrictions on political restricted officers are set out at appendix 1).</i></p>

1.3	Officers serve the whole council and must be politically neutral at work.	Councillors should respect officer's right to private political opinions. Any questions or concerns about an officer's neutrality should be raised with the relevant chief officer or the monitoring officer.	<p>The council's employment procedures and codes of conduct must be observed. Failure to do so could be disciplinary matter.</p> <p>Policy support to councillors must conform to the "<i>unified advice</i>" principle. It must be for council, and not for party political purposes. Work which could be open to misinterpretation must be transparent and justified where necessary, particularly at sensitive times (such as a pending election). Councillors are entitled to assume that any officer advice will be corporately supported, unless told expressly that it is subject to consultation.</p>
1.4	Close personal relationships between councillors and officers should be declared to the relevant party whip and chief officer, and entered in the members register of interests. The test is whether a member of the public might reasonably consider the relationship likely to influence the councillor or officer in their respective roles.	The councillor concerned should judge when a personal relationship has formed or whether a family relationship or friendship might reasonably be considered as having influence. The party whip should consider how working contact between the councillor and officer should be avoided or managed to dispel perceived bias, taking advice from the monitoring officer if necessary.	<p>The officer concerned should judge when to make a declaration. The chief officer should consider how to avoid or manage working contact to dispel perceived bias, taking advice from the monitoring officer if necessary.</p> <p>Officers should be aware that excessive personal familiarity with councillors might be misconstrued. The relationship must be proper and professional.</p>

1.5	Mutual respect and due courtesy between councillors and officers is essential to good local government.	Unwarranted criticism of officers should be avoided, particularly when they cannot respond on equal terms, such as at council meetings. Bullying by a councillor could expose the council to be claim of constructive dismissal. If a councillor has a concern about an officer then this should be raised with the relevant chief officer.	Officers should avoid unwarranted criticism of councillors and should respect their rights under the protocol. Officers should not only be neutral, they should appear neutral. If there is a problem or perceived problem this should be raised with the relevant chief officer to consider what steps are needed to provide reassurance.
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2. PROVISION OF INFORMATION TO COUNCILLORS

2.1	<p>Every councillor has the right to information, explanation and advice reasonably required to enable them to perform their duties as a member of council (the “<i>need to know</i>”) but not where:</p> <ul style="list-style-type: none"> - the information is primarily needed for a non-council purpose; or - there is a conflict of interest; or - there is an over-riding individual right of confidentiality (for example, in a children’s or employment matter); or - the resources needed to supply the information would be unreasonable. 	Councillors need not state a need to know when requesting information, however it may be necessary to justify the request -mere curiosity alone does not create a need to know. Any relevant interests or non-council capacity should be declared at the time of the request. If dissatisfied with a refusal, the chief officer should be approached. If still dissatisfied the monitoring officer may be asked to determine entitlement.	<p>Officers should not automatically assume that a councillor has a need to know but the burden of showing a need to know is not high. If there is any doubt then the councillor should be asked to explain why they wish to see the document(s) and, in cases of doubt, the monitoring officer may be consulted. An officer should seek clearance from their manager before embarking on a significant amount of work to provide information.</p> <p>Officers should not wait to be asked, but should try to anticipate information needs for councillors.</p>
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2.2	<p>Councillors are normally entitled to be given information on a confidential basis, the exceptions being:</p> <ul style="list-style-type: none"> - an over-riding council interest (for example, protecting its legal and financial position); and - natural justice (for example, giving an individual the chance to respond to allegations). 	<p>Councillors should ensure that the need for confidentiality is made clear to officers.</p> <p>It may be proper for the executive member to be informed of problems or issues.</p> <p>Correspondence between individual members and an officers should not normally be copied (by the officer) to any other member. Where exceptionally it is necessary to copy correspondence to another member, it should be made clear to the original member and permission be sought, except in exceptional circumstances. In other words, a system of “silent copies” will not be employed.</p>	<p>The councillor must be told immediately if an exception applies</p>
2.3	<p>Councillors must respect the confidentiality of confidential council information and must use such information only for the purpose it is given (for example, information supplied in confidence to an executive member or scrutiny chair cannot be used to pursue a special ward interest).</p>		<p>“<i>Managed Access</i>” may be offered when information is particularly sensitive or need interpretation. This involves inspection of the file combined with a briefing. Names and supporting evidence may need to be withheld. The officer must be clear as to whether or not any information is confidential -and where appropriate set that out in writing.</p>

2.4	<p>Councillors with a particular role have a special need to know arising from that role, for example:</p> <ul style="list-style-type: none"> - party leaders; - executive members (or executive assistant): matters relating to their portfolio; - scrutiny chair and party spokespersons: matters relating to their terms of reference and committee business; - ward member: matters with special implications for the ward (ie significantly more than the general implications for the city). 		<p>Whenever a public meeting is organised by the council to consider a local issue, all members representing the ward(s) affected should, as a matter of course, be invited to attend the meeting.</p> <p>Whenever the council undertakes any form of consultation exercise on a local issue, the ward members must be notified at the outset.</p>
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3. ENTITLEMENT TO BRIEFING

3.1	<p>Councillors are entitled to be briefed in accordance with their need to know, taking account of any particular role they have. There are the same restrictions as for information (convention 2.1). Councillors with a particular role should be briefed about relevant matters without having to make a request (convention 3.4 and 3.5).</p>	<p>Councillors should declare any relevant interest when requesting or receiving a briefing. If dissatisfied with a refusal to brief, the chief officer should be approached. If still dissatisfied, the monitoring officer may be asked to determine entitlement.</p>	<p>Officers should be clear about the capacity in which the councillor is being briefed and the implications of any interest. In cases of doubt, the monitoring officer may be consulted. The officer should always make it clear if a briefing is not based on unified advice, (ie is still subject to consultation with other officers). Otherwise the councillor is entitled to assume unified advice is being given.</p>
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3.2	<p>A party group meeting may be briefed by a first or second tier officer, provided:</p> <ul style="list-style-type: none"> - the relevant chief officer knows of and approves the briefing; - all groups are informed and offered the same briefing; - more than one officer attends - if practicable; - officers withdraw after briefing and questions, and before political discussion; - officers should not service political groups eg by writing political reports. 		<p>Officer support in these circumstances must not extend beyond providing information and advice in relation to matters of council business. Officers must not be involved in advising on matters of party business. The observance of this distinction will be assisted if officers are not expected to be present at meetings, or parts of meetings, when matters of party business are to be discussed.</p> <p>Party groups meetings, whilst they form part of the preliminaries to council decision-making, are not empowered to make decisions on behalf of the council. Conclusions reached at such meetings do not rank as council decisions and it is essential that they are not interpreted or acted upon as such.</p>
3.3	<p>The content of briefings is confidential to the councillors concerned. Confidentiality extends to the questions asked by the councillors.</p>		<p>When officers provide information and advice to a party group meeting this cannot be a substitute for providing all necessary information and advice to the relevant executive member, committee or sub-committee when the matter in question is to be considered.</p> <p>Relationships with a particular party group should not be such as to create public suspicion that an officer favours that group above others.</p>

3.4	Executive members, individually and collectively are entitled to regular confidential briefings on matters relevant to their portfolios and in support of the policies they are developing prior to them formulating formal proposals.		<p>Informal briefings cannot be a substitute for providing all necessary advice in the formal decision-making process.</p> <p>Officers must ensure that their objective professional advice is robustly presented in the formal report.</p>
3.5	Commission chairs and party spokespersons are entitled to regular and confidential briefing on matters relating to commission business (as a group, or individually).	The relevant executive member or the cabinet collectively determines whether confidential briefing material may be released to others for consultation or otherwise. When the stage for formal proposals is reached, supporting officer advice becomes publishable in conjunction with the proposals.	A briefing to help a councillor respond to a question may be in the form a suggested reply. It should be confined to factual and professional matters and to explanations of existing policy, leaving the councillor to add any political comment.
3.6	It is expected that there will be an agenda meeting prior to full Commission meetings to which the chair and party spokespersons will be invited. These meetings may be varied with the agreement of the chair and party spokespersons. If there is a disagreement then the final decision as to the conduct of the meeting will be the responsibility of the chair.		

3.7	Councillors must respect any confidential information supplied in briefing and must use it only for the purposes for which they would have been entitled to receive it (for example, information supplied as executive member or scrutiny chair may not be used to pursue a special ward interest, if it would not have been supplied to the ward councillor).		
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4. CABINET AND COMMISSION MEETINGS

<p>4.1</p>	<p>An officer preparing a report for the executive or any committee (which, for the avoidance of doubt, includes commissions) must ensure that:</p> <ul style="list-style-type: none"> - it is made clear what stage in the process has been reached and what is required from councillors; - there is a clear recommendation or options presented in a way which enable councillors to choose between them; - it is clear who is responsible for action and to what timetable (including further reports); - all relevant factors are included and the issues are presented with professional objectivity; - associated briefings and presentation are also professionally objective. 	<p>Executive members may introduce reports at cabinet. Officer advice should be obtained, if possible, before the meeting on any alternative recommendation to be moved to ensure that operational, financial and legal factors are taken into account.</p> <p>Councillors must recognise and accept the role and function of professional officer advice and not seek to inappropriately limit or control its expression.</p>	<p>The principle of unified advice requires that meaningful and timely consultation is completed before finalising a report (particularly on financial and legal implications, on which the consultees should be named). Options and recommendations, may properly take into account political priorities, values and objectives and so reflect political realities, provided that all realistic options are addressed in a way which is professionally objective and sustainable. The professional advice should be robust and clear.</p> <p>It is not always necessary to recommend the course of minimum risk, provided risks and reasons for taking them are made clear.</p> <p>The Article 13 principles of decision making must be embodied in the report.</p>
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4.2	<p>Executive members, individually or collectively, may determine the timetable for developing their policies, including:</p> <ul style="list-style-type: none"> - the point at which confidential ideas become formal proposals for publication; - who to consult and to what deadline; - the timing of executive reports. 	<p>Deferring a report is an executive decision and responsibility (within legal restraints). A scrutiny commission may ask for more time, information or other views before responding to executive consultation, provided:</p> <ul style="list-style-type: none"> - the executive agrees to additional time and consultation (these being matters for the executive); and - the relevant chief officer agrees that further information can be provided at reasonable cost and use of officer time. 	<p>Withdrawing a report is an officer decision and responsibility.</p> <p>The chief financial officer and the monitoring officer each have the power to require a report to be withdrawn.</p>
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<p>4.3</p>	<p>It is for a scrutiny commission to determine its programme for scrutinising the implementation of decision and for recommending policy changes to the executive. It is expected that reports commissioned and evidence requested will:</p> <ul style="list-style-type: none"> - avoid duplicating work which is contemplated or already being undertaken in support of developing executive policies; - involve reasonable costs and use of officer time. 	<p>Where the executive and a scrutiny commission are considering the same service area, the executive, the scrutiny commission chair and party spokespersons and the chief officer(s) should agree a joint programme of work and the order in which reports should be consulted upon and presented.</p>	<p>A scrutiny commission does not have the power to require a department to prepare reports for it, but the chief officer must make all reasonable efforts to support the work of a commission and to comply with all reasonable requests from the commission and scrutiny officers.</p> <p><i>NB: The obligation upon officers is to make all reasonable efforts to support scrutiny therefore a chief officer will only refuse a request in exceptional circumstances.</i></p> <p>If an impasse is reached then the monitoring officer and head of scrutiny and equalities should be consulted as to the best way to resolve the problem.</p>
<p>4.4</p>	<p>Any member / co-optee of a scrutiny commission (or any two councillors who are not members) may place an item on the next available agenda.</p> <p>The right does not apply when the item has been on the agenda within the previous six months.</p>	<p>It is for the scrutiny commission to decide what to do with the item and it may deal with the item.</p> <p>Immediately based upon any report and the discussion at the meeting; or at a future meeting, requesting any appropriate report.</p>	<p>Where a scrutiny commission seeks a report in response to an item raised by a member, then, where this relates to a matter concerning the executive, the chief officer, in consultation with relevant councillors (including the relevant executive member, the chair and the party spokespersons) should decide what, if any, report to present to the meeting.</p>

<p>4.5</p>	<p>Guidance to officers on all matters of scrutiny commission business and procedure shall, subject to full commission decisions as appropriate, be agreed by the chair and party spokespersons normally at an agenda briefing, including:</p> <ul style="list-style-type: none"> - agenda contents; - dates and times of meetings; - evidence to be presented at a future meeting; - interested parties to be invited to attend and participate at future meetings. 	<p>There is a standing offer by and invitation to the relevant executive member and chief officer to attend commission meetings with a view to explaining matters relevant to the agenda.</p> <p>A formal request may be made to an executive member , or first or second tier officer if they are required to attend to explain:</p> <ul style="list-style-type: none"> i) any particular decisions or series of decisions; ii) the extent which the actions taken implement council policy; and iii) the performance of their duties (Overview and Scrutiny Rule 14). <p>It is expected that the relevant executive member would attend a commission when it is considering proposals at the request of the executive.</p>	<p>Scrutiny commissions are supported by:</p> <ul style="list-style-type: none"> - Scrutiny officers attached to each commission who are responsible for undertaking any investigatory and research work required by the commission and for working in collaboration with departments to produce reports as required , and - Councillor support officers who provide procedural advice and guidance at meetings and at other times, as well as administrative support for the committee process.
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4.6	<p>The chair is expected to conduct scrutiny commission meetings so as to ensure:</p> <ul style="list-style-type: none">- the basis of participation by non-members of the commission is made clear at the outset (e.g. question and supplementary, statement, or participation in debate);- the questioning of executive members, officers and others is properly structured, and conducted in a courteous, seemly and constructive manner; and- questions are properly directed to the executive member (for example justifying policy) or the chief officer (for example, progress with implementation) inviting both to attend where necessary.		
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<p>4.7</p>	<p>Notice of , and all reports to formal executive, scrutiny and quasi-judicial meetings must be published , giving 5 clear working days notice.</p> <p>The sole exceptions to this requirement are for:</p> <ul style="list-style-type: none"> - urgent items of business: ie items which were not available at the time of agenda despatch , but which must be determined at the forthcoming meeting for reasons of urgency, or - supplementary information received since a report was despatched, which augments the information which has already been provided in the report. <p>However such information may only be taken if the reporting officer is of the view that , had it been available at the time of the writing of the original report, it would not have caused them to write a materially different report, or tender a different recommendation to that in the published paper.</p>	<p>The chair or executive member (as appropriate) will decide whether or not the business is urgent - details of which must be stated in the record.</p>	<p>In the event of uncertainty, the monitoring officer will adjudicate and his decision will be final.</p> <p>If the reporting officer thinks that the supplementary information would have led to the writing of a report materially different to the one published, then the agenda should be withdrawn and a new report forward to a subsequent meeting.</p>
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5. REGULATORY COMMITTEES

5.1	<p>Development control, licensing and other quasi-judicial matters must be dealt with solely in accordance with the relevant policies and legal requirements, and in particular:</p> <ul style="list-style-type: none"> - the appearance of decisions being based on party political consideration must be avoided; - if officer recommendations are not accepted, care should be taken to ensure that any decisions can be justified. 	<p>A code of conduct for members sitting on development control committees was agreed by Council on 9 April 2002 (a similar code for Licensing Committee members will be developed during 2002/3). Particular care should be taken to declare interests in formal meetings, at site visits and in formal discussion and, if necessary avoid participation. Potential interests should be raised with the monitoring officer before meetings.</p>	
5.2	<p>Councillors will be expected to attend the appropriate training sessions within twelve months of taking up office.</p>	<p>Any untrained councillor asked to participate in a decision should request training, which will be fast-tracked if possible - <i>NB there are some committees (e.g. the Selection Committee) where training is a pre-requisite.</i></p>	
5.3	<p>Reports to regulatory meetings should comply with convention 4.1 except that political considerations are inappropriate.</p>		

6. COUNCILLOR INVOLVEMENT IN CASEWORK

<p>6.1</p>	<p>Officers must implement council policy within agreed procedures. An individual councillor cannot require an officer to vary this and cannot take a decision or instruct an officer to take action. The councillor's role in relation to case work is:</p> <ul style="list-style-type: none"> - to be briefed or consulted where there is a need to know; - to pursue the interests of individuals by seeking information, testing action taken and asking for the appropriateness of decisions to be reconsidered. <p>A councillor's entitlement to be involved is based on the "<i>need to know</i>" and determined in accordance with conventions 2 and 3.</p> <p>Access to files may need to be denied or restricted if one of the exceptional circumstances in convention 2.1 and 2.2 applied. Any access then allowed may need to be "<i>managed access</i>" (as described in convention 2).</p>	<p>Councillors should avoid becoming unduly involved in individual cases and operational detail, except within clear procedures. Involvement in legal proceedings and audit investigations carries special dangers of prejudicing the case, and of personal embarrassment.</p> <p>A councillor lobbied on an issue (especially planning policy) should explain that any views expressed are personal and they cannot commit or anticipate the council's decision.</p>	<p>Officers should take the lead in pointing out where the boundaries lie in particular areas, recognising that:</p> <ul style="list-style-type: none"> - councillors legitimately adopt different approaches; - councillors may legitimately pursue non-ward issues (for example, a city-wide community of interest); - the special local knowledge of particular councillors may be useful to a particular case. <p>Officers should point out to the councillor when a restriction on the need to know may apply, explore entitlement with the councillor and, in cases of doubt, consult the monitoring officer.</p> <p>Chief officers should ensure that their staff know how to obtain appropriate senior management support (particularly out of hours) when the extent of a councillor's involvement is an issue needs to be clarified.</p>
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6.2	A councillor pursuing a ward matter on behalf of a close family member of friend should declare the relationship and consider whether to ask another councillor to pursue the matter.	A close relationship should be judged as in convention 1.4.	
6.3	Councillors should not act as an individual's "friend" or provide a reference in relation to staffing matters within the council (except in exceptional circumstances). They should avoid involvement in staff lobbying outside formal procedures	<p>The main procedures for councillors involvement in staffing matters are:</p> <ul style="list-style-type: none"> - formal machinery for taking individual staffing decisions. - arrangements for staff representatives to submit views when staffing issues are before councillors. 	
6.4	Staff may raise issues with their councillor as citizens. They should not lobby a councillor inappropriately on personal employment or budgetary matters except within the proper management and representative procedures (in the interests of balanced, unified advice to councillors).	Councillors should refuse to respond to inappropriate lobbying and inform the relevant chief officer who should direct the staff towards the appropriate channels. This applies if the approach is superficially to a ward councillor, but in reality amounts to an employment matter.	Chief officers should ensure their staff are aware of these requirements and the proper channels for their views to be put forward.

6.5	<p>A councillor's right of access to council premises and to bring in guests is based on the "need to know" (that is, to perform the councillor's role). In addition to the general restrictions, it is subject to ensuring:</p> <ul style="list-style-type: none"> - operational continuity; - confidentiality; - compliance with health and safety arrangements; - compliance with security requirements. 	<p>When visiting council premises, a councillor should:</p> <ul style="list-style-type: none"> - make prior arrangements whenever possible for visits outside the main council offices; - check in on arrival with reception or the site manager; - observe the site manager's requirements in relation to health and safety and so on; - expect to be denied access or asked to leave in circumstances where compliance with the requirements cannot be guaranteed or the councillor's behaviour might bring the council into disrepute. 	<p>Chief officers should ensure that their staff are aware of these requirements and know how to obtain appropriate senior management support (particularly out of hours).</p>
6.6	<p>Councillors' guests should:</p> <ul style="list-style-type: none"> - be properly checked in and out; - explain the purpose of their visit, if requested; - observe the site manager's requirements; - not be admitted after normal business hours, except for notified evening meetings and by special arrangement for particular purposes. 		<p>Chief officers should ensure their staff are aware of these requirements and how to obtain appropriate senior management support (particularly after hours). They should also ensure staff are aware exactly when guests may be admitted outside normal opening hours.</p>

7. MEDIA RELATIONS AND PUBLISHED MATERIAL

7.1	<p>Publicity touching on issues that are controversial, or on which there are arguments for and against the views or policies of the council is unavoidable, particularly given the need for councils to consult widely whenever material issues arise. Such publicity should be handled with particular care. Issues must be presented clearly, fairly and as simply as possible, although they should not over-simplify facts, issues or arguments. Again, it is unlikely that slogans alone will achieve the necessary degree of balance, or capture the complexities of opposing political arguments.</p>		
7.2	<p>Publicity should not be, or liable to misrepresentation as being, party political. Whilst it may be appropriate to describe an individual councillor's policies and to put forward her/his justification in defence of them, this should not be done in party political terms, using political slogans, expressly advocating policies of those of a particular political party or directly attacking policies and opinions of other parties, groups or individuals.</p>		

8. ELECTION PERIODS

8.1	<p>From the notice of a Parliamentary or local election until election day:</p> <ul style="list-style-type: none">- nothing should be published (including the council's website) on a politically controversial issue, or which identified views or policies with individual councillors or party groups;- in parliamentary elections, nothing should be published which mentions or includes a picture of any prospective candidate;- any publicity should be strictly objective, concentrating on facts or explanations;- during local elections, no council newspaper, corporate or departmental should be published;- councillors and officers should take particular care to keep officers distant from party political matters;- councillors requesting information should make their "need to know" clear and the "need to know" principle should be strictly observed;- prospective parliamentary candidates (including current MP's) should be treated equally;- officers should avoid any appearance of political bias.		<p>Subject to this convention, publicity is permitted of a councillor speaking on behalf of the council about an approved policy.</p> <p>External comments should be on strictly factual or professional matters. Care should be taken to avoid being misquoted or inadvertently associated with a particular candidate or political perspective.</p>
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9. PARTNERSHIPS

9.1	Any partnership in which the council participates must be asked to adopt the general principles of conduct (<i>appendix 2</i>) or to justify any departures.		
9.2	The partnership must be asked to observe the rules in <i>appendix 2</i> and to have an item on all agendas requesting that interests be declared.		

10. RESOLVING PROBLEMS

10.1	Councillors and officers should try to interpret and apply the Conventions consistently. Those concerned should first try to resolve any problems between themselves.	Councillors should raise unresolved problems with the relevant assistant director or chief officer necessary the group whip or monitoring officer should be consulted.	Officers should raise any unresolved problem with their Assistant Director or chief officer who will advise or take the matter up with the relevant councillors. If necessary, the monitoring officer should be consulted. The monitoring officer may involve the relevant group whip.
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POLITICALLY RESTRICTED POSTS

1. The Local Government and Housing Act 1989 introduced a regime aimed at ensuring the key local authority employees are politically impartial. The Act designates certain posts as “*politically restricted*” and those who holds such posts are disqualified from holding office as a Member of Parliament or a local authority.
2. Regulations have been published (The Local Government Officers (Political Restrictions) Regulations 1990 which specify what politically restricted officers cannot do.

Which posts are politically restricted?

3. a) The head of paid service;
- b) The monitoring officer and the chief financial officer;
- c) The chief officers and deputy chief officers;
- d) The political assistants;
- e) Listed posts i.e.
 - i) any one who earns more than spinal column 44 - this sum is presently £29,847;
 - ii) part-timers who would earn more if they were employed as full time;
 - iii) those who regularly advise the authority or any of its committees;
 - iv) those who regularly speak to journalist or broadcast on behalf of the authority.

(It is possible for officers to apply to be removed from the list and details can be obtained from the monitoring officer).

The restrictions

4. A politically restricted officer may not:
 - [a] act at as an election agent or sub-agent;
 - [b] act as a party or branch officer or as a member of a party or branch committee for a committee party if his or her duties would be likely to require participation in the general management of the party or branch or action on behalf of the party or branch in dealings with people who are not members;
 - [c] canvass on behalf of any candidate for election to a local authority or to the UK or European Parliament;
 - [d] speak to the public, or a section of it, with the apparent intention of affecting public support for political party unless it is necessary

for the performance of his or her official duties or publish as author or editor; or

[e] cause, authorise or permit any other person to publish any written or artistic work if the work appears to be intended to affect public support for a political party unless it is necessary for the proper performance of his or her official duties. (The officer is, however specifically allowed to display a poster in the window of his or her home or car).

5. The requirements set out at (d) and (e) do not apply to those appointed as political assistants. Political assistants are subject instead to the following requirements:

[a] not to speak to the public at large or to a section of the public in circumstances or terms which are likely to create the impression that he is speaking as a authorised representative of a political party whether he is so authorised or not; and

[b] not to publish any written or artistic work of which he is the author (or one of the authors) or any written work or collection of artistic works in relations to which he has acted in an editorial capacity or cause, authorise or permit any other person to publish such a work or collection in circumstances which are likely to create an impression that the publication is authorised by a political party, whether or not it is so authorised.

CODE OF PRACTICE ON PUBLICITY

Subject matter

1. Local authorities have a variety of statutory powers which enable them to produce publicity and circulate it widely, or to assist others to do so. Those commonly used include the powers in sections 111, 142, 144 and 145 of the Local Government Act 1972, sections 69, 88 and 90 of the Local Government (Scotland) Act 1973 and sections 15 and 16 of the Local Government and Planning (Scotland) Act 1982; but there are several others.
2. Some of these powers relate directly to the publishing authority's functions. Others give a more general discretion to publicise matters which go beyond an authority's primary responsibilities. For example, section 142(1A) of the 1972 Act and 88(1) of the 1973 Act authorise local authorities to arrange for the publication within their area of information as to the services available in the area provided by them or by other local authorities; and Section 54 of the Public Health (Control of Disease) Act 1984 empowers local authorities to arrange for the publication within their area of information on questions relating to health or disease.
3. This discretion provides an important degree of flexibility, but also heightens the need for a responsible approach to expenditure decisions.
4. In considering the subject areas in which publicity is to be issued, the following matters will be important:
 - (i) the publicity should be relevant to the functions of the authority.
 - (ii) it should not duplicate unnecessarily publicity produced by central government, another local authority or another public authority.

Costs

5. Local authorities are accountable to the public for the efficiency and effectiveness of their expenditure, in the first instance through the audit arrangements.
6. For publicity, as for all other expenditure, the aim should therefore be to achieve the greatest possible cost-effectiveness.
7. To achieve this, there may well be cases where the benefit of higher expenditure to gain better presentation or improve other aspects of publicity will justify the extra cost.

8. Local authorities should therefore always have in mind the extent to which expert advice is needed for publicity.
9. In some cases publicity may justify its cost by virtue of savings which it achieves. More commonly it will be necessary to take a view of the importance of the unquantifiable benefits as compared with other uses to which the resources could be put.
10. In deciding whether the nature and scale of proposed publicity, and consequently its cost, are justified, the following matters will be relevant:
 - (i) whether the publicity is statutorily required or is discretionary.
 - (ii) where it is statutorily required, the purpose to be served by the publicity.
 - (iii) whether the expenditure envisaged is in keeping with the purpose and expected effect of the publicity.

Content and Style

11. Local authorities produce a variety of publicity material. It ranges from factual information about the services provided by the authority, designed to inform clients or attract new ones, to material necessary to the administration of the authority, such as staff recruitment advertising. There will also be publicity to explain or justify the council's policies either in general, as in the annual report, or on specific topics, for example as background to consultation on the line chosen for a new road.
12. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on facts or explanation or both.
13. Where publicity is used to comment on, or respond to, the policies and proposals of central government, other local authorities or other public authorities, the comment or response should be objective, balanced, informative, and accurate. It should aim to set out the reasons for the council's views, and should not be a prejudiced, unreasoning or political attack on the policies or proposals in question or on those putting them forward. Slogans alone will not be an adequate means of justifying or explaining the authority's views or their policy decisions.
14. Publicity relating to the provision of a service should concentrate on providing factual information about the service.
15. In some cases promotional publicity may be appropriate - for example about the local authority's sports and leisure facilities or

about tourist attractions.

16. Publicity touching on issues that are controversial, or on which there are arguments for and against the views or policies of the council, is unavoidable, particularly given the importance of wide consultation whenever material issues arise. Such publicity should be handled with particular care. Issues must be presented clearly, fairly and as simply as possible, although councils should not over-simplify facts, issues or arguments. Again, it is unlikely that slogans alone will achieve the necessary degree of balance, or capture the complexities of opposing political arguments.
17. Publicity should not attack, nor appear to undermine, generally accepted moral standards.
18. Publicity campaigns by local authorities are appropriate in some circumstances: for example, as part of consultation processes where local views are being sought, or to promote the effective and efficient use of local services and facilities, or to attract tourists or investment. Publicity campaigns may also be an appropriate means of influencing public behaviour or attitudes on such matters as health, safety, crime prevention or equal opportunities.
19. Legitimate concern is, however, caused by the use of public resources for some forms of campaigns, which are designed to have a persuasive effect. Publicity campaigns can provide an appropriate means of ensuring that the local community is properly informed about a matter relating to a function of the local authority and about the authority's policies in relation to that function and the reasons for them. But local authorities, like other public authorities, should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy.

Dissemination

20. The main purposes of local authority publicity are to increase public awareness of the services provided by the authority and the functions it performs; to allow local people to have a real and informed say about issues that affect them; to explain to electors and ratepayers the reasons for particular policies and priorities; and in general to improve local accountability.
21. Information and publicity produced by the council should be made available to all those who want or need it. Local authorities should not discriminate in favour of, or against, persons or groups in the compilation and distribution of material for reasons not connected with the efficiency and effectiveness of issuing the publicity.
22. Where material is distributed on matters closely affecting

vulnerable sections of the community - for example, the elderly - particular care should be taken to ensure that it is unambiguous, readily intelligible, and unlikely to cause needless concern to those reading, seeing or listening to it.

23. Local authority newspapers, leaflets, other publicity distributed unsolicited from house to house and information on websites are able to reach far wider audiences than publicity available on application to the council. Councils should give particular consideration to the use of electronic and other new media communication systems. However, councils should ensure that they do not rely solely on such mechanisms and that they do not exclude those without access or easy access to such systems.
24. Such publicity should be targeted as appropriate for its purposes, taking particular care with material touching on politically controversial issues.
25. there is no paragraph 25
26. Local authority newspapers or information bulletins are a special case. They are often a cost-effective means of disseminating information, or facilitating consultation and can provide a means for local people to participate in debate on decisions the council is to take. The advantage of using websites and other information technology for consultations should also be considered. Inevitably such publications will touch on controversial issues and where they do they should treat such issues in an objective and informative way, bearing in mind the principles set out in paragraphs 11-19 of the Code.
27. Where it is important for information to reach a particular target audience, consideration should be given to using the communications networks of other bodies, for example those of voluntary organisations, and making use of electronic communication systems.

Advertising

28. Advertising, especially on billboards or on television and radio, is a highly intrusive medium. It can also be expensive. It may however provide a cost-effective, efficient means of conveying public information to the widest possible audience. Advertising on local radio networks has, for example, been used as a relatively inexpensive means of telling potential clients about local authority services. Advertising can also be the most cost-effective means of publicising a local authority's activities on promoting the social, economic and environmental well-being of the area.
29. The primary criterion for decisions on whether to use advertising should be cost-effectiveness.

30. Advertisements are not normally likely to be appropriate as a means of explaining policy or commenting on proposals, since an advertisement by its nature summarises information, compresses issues and arguments, and markets views and opinions.
31. Advertising in media which cover an area significantly wider than that of the authority is not likely to be an appropriate means of conveying information about a local authority's policies as opposed to attracting people to the authority's area or to use its facilities.
32. The attribution of advertising material leaflets and other forms of publicity that reach the public unsolicited should be clearly set out.
33. It is not acceptable, in terms of public accountability, to use the purchase of advertising space as a disguised means of subsidy to a voluntary, industrial or commercial organisation. Such support should be given openly through the normal grant arrangements. However, the conditions attached to a grant may require the provision of publicity, including publicity for the work of the authority.
34. Any decision to take advertising space in a publication produced by a voluntary, industrial or commercial organisation should be made only on the grounds that it provides an effective and efficient means of securing the desired publicity.
35. Local authorities should never use advertising as a means of giving financial support to any publication associated with a political party.

Recruitment Advertising

36. Local authorities have respected in their staff employment policies the tradition of a politically impartial public service. Their recruitment publicity should reflect this tradition, and the fact that local authority staff are expected to serve the authority as a whole, whatever its composition from time to time.
37. The content of recruitment publicity and the media chosen for advertising job vacancies should be in keeping with the objective of maintaining the politically independent status of local authority staff.
38. Advertisements for staff should not be placed in party political publications.

Individual Councillors

39. Publicity about individual councillors may include the contact details, the positions they hold in the Council (for example, member of the Executive or Chair of Overview and Scrutiny Committee), and their responsibilities. Publicity may also include

information about individual councillors' proposals, decisions and recommendations only where this is relevant to their position and responsibilities within the Council. All such publicity should be objective and explanatory, and whilst it may acknowledge the part played by individual councillors as holders of particular positions in the Council, personalisation of issues or personal image making should be avoided.

40. Publicity should not be, or liable to misrepresentation as being, party political. Whilst it may be appropriate to describe policies put forward by an individual councillor which are relevant to her/his position and responsibilities within the Council, and to put forward her/his justification in defence of them, this should not be done in party political terms, using political slogans, expressly advocating policies of those of a particular political party or directly attacking policies and opinions of other parties, groups or individuals.

Elections, referendums and petitions

41. The period between the notice of an election and the election itself should preclude proactive publicity in all its forms of candidates and other politicians involved directly in the election. Publicity should not deal with controversial issues or report views, proposals or recommendations in such a way that identifies them with individual members or groups of members. However, it is acceptable for the authority to respond in appropriate circumstances to events and legitimate service enquiries provided that their answers are factual and not party political. Members holding key political or civic positions should be able to comment in an emergency or where there is a genuine need for a member level response to an important event outside the authority's control. Proactive events arranged in this period should not involve members likely to be standing for election.
42. The Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000 (which apply under the Local Government Act 2000 to county councils, district councils and London borough councils) prohibit an authority from incurring any expenditure to
 - Publish material which appears designed to influence local people in deciding whether or not to sign a petition requesting a referendum on proposals for an elected mayor;
 - Assist anyone else in publishing such material; or
 - Influence or assist others to influence local people in deciding whether or not to sign a petition.

Publicity in these circumstances should, therefore, be restricted to the publication of factual details which are presented fairly about

the petition proposition and to explaining the council's existing arrangements. Local authorities should not mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view in relation to petitions generally or on a specific proposal.

43. County councils, district councils and London borough councils should ensure that any publicity about a referendum under Part II of the Local Government Act 2000 (the 2000 Act) either prior to or during the referendum period is factually accurate and objective. The referendum period means the period beginning with the date on which proposals under Part II of the 2000 Act are sent to the Secretary of State and ending with the date of the referendum. The publicity should not be capable of being perceived as seeking to influence public support for, or opposition to, the referendum proposals and should not associate support for, or opposition to, the proposals with any individual or group. Local authorities must conform with any specific restrictions on publicity activities which are required by Regulations under section 45 of the 2000 Act.

Assistance to others for publicity

44. The principles set out above apply to decisions on publicity issued by local authorities.

They should also be taken into account by local authorities in decisions on assistance to others to issue publicity. In all such decisions local authorities should, to the extent appropriate:

- (a) incorporate the relevant principles of the Code in published guidance for applicants for grants;
- (b) make the observance of that guidance a condition of the grant or other assistance;
- (c) undertake monitoring to ensure that the guidance is observed.

45. It is appropriate for local authorities to help charities and voluntary organisations by arranging for pamphlets or other material produced and paid for by the organisation to be available for collection by the public in public libraries and other suitable locations. Such material should not offend against any legal provision, (authorities may be able to draw on their powers of well-being in section 2 of the Local Government Act 2000) but (subject to this) any such facility should be made available on a fair and equal basis.

PROBITY RULES FOR PARTNERSHIPS WITH COUNCIL PARTICIPATION

Any partnership in which the Council participates must be asked to observe the General Principles of Conduct (or justify any departure) and to observe the following rules.

Public Duty and Private Interest

1. **If you have a private or personal interests in a question which is to be considered by the partnership, you should declare your interest and have it formally recorded.**
2. You should never do anything which you could not justify to the public or to your organisational management.
3. It is not enough to avoid actual impropriety. You should always avoid the opportunity for suspicion or appearance or improper behaviour.

Pecuniary and other interests

4. Agendas will have an item requesting that interests be declared.
5. If you have a pecuniary interest in a question which is to be considered by the partnership, you should declare your interest, have it formally recorded and vacate the room.
6. If you have an interest in which you might appear at risk of bias by putting private considerations above the public interest, you should declare your interest, have it formally recorded and vacate the room.
7. In considering interests, consideration should be given to the interest of a partner, close relatives or other person forming part of the same household, again applying the principle of avoidance of suspicion.

Gifts and Hospitality

8. If you receive any gift or hospitality as a member of a partnership, in that capacity, you should notify and have it formally recorded within your own organisation.

Membership of Partnership

9. The value is well recognised of different agencies and organisations playing an active part in partnerships. Whatever role you have, you must ensure that your responsibilities within the partnership do not clash with other responsibilities you also hold - whether as an elected member, company director or employee, paid official or in a voluntary capacity - so that your position is weakened to such an extent that your position becomes untenable.

DOCUMENT 2

PART 5

BRISTOL CITY COUNCIL

**CODE OF CONDUCT FOR MEMBERS AND OFFICERS -
PLANNING MATTERS**

CODE OF CONDUCT FOR MEMBERS AND OFFICERS – PLANNING MATTERS

1. INTRODUCTION

- 1.1** **The aim of this code** is to ensure that there will be no grounds for suggesting that a planning decision has been biased, partial or not well founded on planning considerations.
- 1.2** **The aim of the planning process** is to control development in the public interest.
- 1.3** **The role of members and officers in the planning process** is to make planning decisions openly, impartially and with sound judgement for justifiable planning reasons. If you are a member of a development control committee taking part in a decision on a planning matter then you must not predetermine the matter before the matter is considered at the development control committee and you must never give a commitment in advance as to how you are going to vote.
- 1.4** **When this code applies** – to all members of the development control committees and officers at all times when they are involved in the planning process. This would include, for example, making decisions at development control committees, or if an officer making delegated decisions on applications, or on less formal occasions such as meetings between members and officers and/or members of the public on planning matters. The code applies equally to planning enforcement matters or site specific policy issues and to planning applications.
- 1.5** If you have any doubts regarding whether this code or the code of conduct for members or officers applies to their particular circumstances then you should take advice at the earliest possible opportunity from the Head of Legal Services or from a member of his staff. Any such advice should be sought well before any meeting of the local planning authority takes place.

2. RELATIONSHIP WITH THE MEMBERS' CODE OF CONDUCT

- 2.1** Members should always first apply the Members' Code of Conduct which members must comply with and then apply the rules contained in this code which supplements that Code of Conduct for planning purposes.

- 2.2 If Members and Officers do not follow and apply the codes then such Members and Officers will put the Council at risk of proceedings challenging the legality of the decision made or of a complaint to the Ombudsman in respect of alleged maladministration. If you are a member you would also put yourself at risk of being named in a report to the Standards Committee of the Council or if there has been a failure to comply with the Members' Code of Conduct a complaint being made to the Standards Board for England.

3. MEMBERS' PERSONAL AND PREJUDICIAL INTERESTS

- 3.1 Members **must** disclose the existence and nature of any interest at any development control committee, any informal meetings or discussions with officers and any other members. Members should preferably disclose their interest at the commencement of the meeting and not at the beginning of the discussion on that particular matter.

- 3.2 where members have a personal and prejudicial interest in a matter then:-

- they **must not** participate or give the appearance of trying to participate in the making of any decision by the Local Planning Authority.
- they **must not** attempt to represent their ward's views, they should refer the matter to another ward member to do so instead.
- they **must not** be involved with the processing of the application.
- they **must not** seek or accept preferential treatment or place themselves in such a position so as members of the public would think they are receiving preferential treatment because of their position as a councillor. An example would be where a member has a personal and prejudicial interest in a property and uses his/her position as councillor to discuss a planning application concerning his/her property with officers when ordinary members of the public would have no such access to officers.
- they **must** follow the rules in the Members' Code of Conduct
- they **must** notify the Head of Legal Services as monitoring officer in writing and they should note that such notification should be no later than the submission of the application.

4. THE FETTERING OF MEMBERS' DISCRETION IN THE PLANNING PROCESS

- 4.1 Members who sit on a development control committee **must** be careful not to fetter their discretion and by consequence their ability to take part in a planning decision. Members would fetter their discretion if, for example, they made up their minds, or clearly appear to make up their minds (particularly to an applicant, objector or lobby group) on how they intended to vote on a planning matter prior to the development control committee's consideration of the matter and the hearing of the evidence and arguments from all the parties.
- 4.2 If such a member fetters his/her discretion then that member will put the Council at risk of legal proceedings on the grounds of bias, predetermination or a failure to take into account all the factors to enable the proposal to be considered on its own merits and/or a finding of maladministration by the ombudsman.
- 4.3 Members of development control committees **must** take particular note that they will have fettered their discretion in the situation where the Council itself is the landowner, developer or applicant in a planning matter and members have acted as chief advocates of the proposal. To be a chief advocate a person must do something more than being a member of a committee. He/she must have a significant personal involvement in preparing or advocating the proposal. The test is whether you will be or you are perceived by members of the public as being no longer able to act impartially or to determine the proposal purely on its planning merits.
- 4.4 Members of a development control committee **should** always consider whether to participate in meeting where matters relating to another local or public authority of which they are a member or a body to which they have been appointed or nominated by the Council as its representative or a body to which they are a trustee or company director are being decided. If a member has been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of such a body that member **should** always disclose a prejudicial as well as a personal interest and withdraw.
- 4.5 A member of a development control committee **can** take part in the debate on a proposal when acting as part of a consultee body provided the proposal does not substantially effect the well being or financial standing of the consultee body. If such a member does take part then they **must** make it clear to the consultee body that
- that member's views will be based on the limited information before him/her;

- that member must use his/her own judgement and make up his/her own mind on each and every proposal, based on that member's overriding duty to the community and not just the people in that area or ward;
- that member will not in any way commit himself/herself as to how that member or other members may vote when the matter comes to be considered.

A member **must** disclose his/her personal interest regarding that member's membership or role when the committee comes to consider the proposal.

If a member has any doubts in this area then that member should obtain advice from the Head of Legal Services or an appropriate member of his team.

- 4.6 If a member of a development control committee has fettered his/her discretion then that member **must not** speak or vote. Such a member does not have to withdraw from the meeting room but may well consider that it would be appropriate to do so. Such a member **should** explain to the committee that he/she does not intend to speak and vote as it could reasonably be perceived that he/she had judged the matter elsewhere, so that there is a record in the minutes.
- 4.7 A member of a development control committee **can**, of course, use his/her separate speaking rights as a ward member provided he/she does not have a personal and prejudicial interest but such a member **must not** take part in the debate. If a member does exercise these rights then that member should inform the chairman of the committee that he/she wishes to speak in this capacity before the commencement of the matter, remove himself/herself from the members' seating area for the duration of this matter and ensure that his/her actions are recorded in the minutes.

5. **PROTOCOL FOR MEMBER INVOLVEMENT IN PRE-APPLICATION DISCUSSIONS**

- 5.1. The Government, amongst other bodies, has encouraged appropriate member involvement in the pre-application stage of the planning process. The Council encourages member involvement provided members roles in such discussions are clearly understood by members, officers, developers and the public. In particular members of development control committees need to be aware of the distinction between the giving and receiving information and engaging in negotiations. Without this protocol member involvement may inadvertently open a decision to challenge on the ground of apparent pre-determination. Members **should** also be aware that presentations by developers are, in effect, a form of lobbying and that the principles set out in paragraph 6 are relevant. The protocol is as follows:-

- 5.2. Any formal presentation or discussion with a developer should be part of structured arrangements agreed with officers. It may be appropriate for officers of the appropriate seniority to attend such a meeting. Members **should** therefore contact such an officer before attending. For less formal discussions members should have regard to the provisions of this code.
- 5.3. Any presentation should be limited to the development proposal with, perhaps, a question and answer session on factual matters on the clear basis that the discussion is being held to improve understanding of the proposal and not to discuss the merits of the application. A member or an officer present **must** ensure that this is confirmed at the start of the presentation.
- 5.4. Members **must** maintain an impartial listening role at the meeting and avoid expressing advice beyond outlining the adopted policies in the Local Plan and material considerations that would apply to any prospective decision.
- 5.5. Members can ask questions to clarify aspects of a proposal provided they do not develop into negotiations.
- 5.6. Members or an officer present **must** keep a written note of the meeting and that note **must** be attached to the relevant file.
- 5.7. In exceptional circumstances it may be appropriate for members to attend presentations after an application has been submitted. Members **will** need to ensure that the scope of such a meeting is clearly established in advance. Members **should always** take officer advice if you receive such an invitation.
- 5.8. A ward member, who is not a member of a development control committee, can fully participate in pre-application discussions.

6. LOBBYING OF MEMBERS

- 6.1. It is acknowledged that lobbying is an integral part of the planning process. However, care has to be taken to avoid members' integrity and impartiality being called in question.
- 6.2. Members will have to remember that their overriding duty is to the whole community and not just the people in their own particular ward. Members will need to be impartial and they **must not** improperly favour or appear to improperly favour any person, company, group or locality.
- 6.3. If members are lobbied they should explain to the person or group that is lobbying that whilst they can listen to what is being said it prejudices their impartiality and therefore the members ability to participate in the Committee's decision.

- 6.4. Members **must not** accept any gifts or hospitality from any person or group affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, members must ensure that such hospitality is of a minimum and its acceptance is declared as soon as is possible. Members **must** enter hospitality which has a value of £25 or over in accordance with the Council's rules on gifts and hospitality.
- 6.5. If members receive any lobbying correspondence then they should pass it to the Head of Planning Services or one of the planning team's area managers at the earliest opportunity.
- 6.6. If members receive an offer of planning gain or a constraint of development through a proposed s106 obligation then they should immediately refer such an offer to the Head of Planning Services or one of the planning team's area managers.
- 6.7. If a member feels that he/she have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) then that member **must** inform the Monitoring Officer, who may require an investigation.
- 6.8. Members should note that unless they have a personal and prejudicial interest in an application they will not have fettered their discretion or breached this Code if;
- they have listened or have received views from residents or other interested parties;
 - they have made comments to residents, interested parties, other Members or appropriate officers, provided the comments have not amounted to a pre-determination of the issue and those members have made it clear that they are keeping an open mind;
 - they have sought information through appropriate channels; or
 - a member being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided that member explains his/her actions at the beginning of the meeting or item and makes it clear that, having expressed the opinion or ward/local view, that member is not committed to vote in accordance with those views and will make up his/her own mind having heard all the facts and listened to the debate. If this is the case then such a member will have to be extremely careful that he/she does not predetermine the issue on those views.

7. LOBBYING BY DEVELOPMENT CONTROL COMMITTEE MEMBERS

- 7.1. Members **must not** become a member of, or lead, or represent an organisation or body whose primary purpose is to lobby to promote or oppose planning proposals. If members do then they will almost certainly have fettered their discretion and are likely to have personal and prejudicial interests in the matters.
- 7.2. Members can join interest, resident or amenity groups which reflect their areas of interest and which concentrate on issues beyond particular planning proposals. Examples of such groups are local civic societies, the Ramblers' Association, the Victorian Society and CPRE. Members **must**, however, disclose a personal interest when that group has made representations on a particular matter and such members should make it clear to that group and to the Development Control Committee that they have reserved judgement and the independence to make up their own minds on each and every proposal.
- 7.3. Members **must not** excessively lobby fellow members regarding their concerns or views and neither should members attempt to persuade other members how they should vote in advance of a meeting at which a planning decision is to be taken.
- 7.4. Members **must not** discuss at any political group meeting how they are going to vote on a planning matter and neither should they lobby any other member to do so. Political group meetings should never dictate how members should vote on a planning issue.

8. SITE VISITS BY MEMBERS

- 8.1. Members should attend site visits where the relevant development control committee has resolved that a visit is required. All members who decide an application should have the same information. Members who do not attend site visits should not, therefore, take part in the decision making processes of the applications in question.
- 8.2. Site visits will only be carried out when it is strictly necessary and where:
 - particular site factors are significant in the terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and site factors need to be carefully addressed.

- 8.3. A site visit should only be used for an opportunity of seeking information and to observe the site. A member can therefore ask officers questions and seek clarification from them on matters which are relevant to the site inspection.
- 8.4. Members **must not** hear representations from any party at the site visit. If a committee member is approached by the applicant or a third party that member will have to advise them that they should make representations in writing to the Council and direct them to or inform the officer that is present.
- 8.5. Members **must not** express their opinions or views to anyone at a site visit.
- 8.6. Members should not enter a site that is subject to an application or proposal other than on an official site visit, even if it is in response to an invitation, as this may give the impression that the member is biased. The only exception to this being:
- when a member is of the opinion that it is essential for him/her to visit the site other than as part of an official site visit ; and
 - that member has spoken to the Head of Planning Services or an area planning manager; and
 - that member can satisfy himself/herself that the good practice rules on site visits can be complied with.
- 8.7. Members should note that they can observe a site from the road and that Health and Safety procedures **must** be followed at all times.
- 8.8. Occasionally officers will arrange informal site visits prior to a matter being considered at a development control committee. Whilst members should make every effort to attend such informal site visits, a member's non attendance at such informal visits would not of itself prevent that member from taking part in the decision making process.

9. PUBLIC SPEAKING AT MEETINGS BY MEMBERS

- 9.1 Members **must not** allow members of the public to communicate with them during the committee proceedings (orally or in writing or by texting) as this may give the appearance that they are biased.
- 9.2. Members **must** ensure that you comply with the Council's procedures in respect of public speaking.

10. MEMBERS RELATIONSHIP WITH OFFICERS

- 10.1. Members **must never** put pressure on officers to put forward a particular recommendation. This does not prevent members from asking questions or submitting views to the Head of Planning Services or the relevant area planning manager, and such views may be incorporated into any committee report.
- 10.2 If a member wishes to speak to an officer regarding any proposal then they should speak to the case officer as that officer will know the current position regarding a matter. Alternatively, a member can contact the relevant area planning manager.
- 10.3 Members **must** also recognise and respect that officers in the processing and determining of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct. Members should therefore appreciate that officers' views, opinions and recommendations will be based on their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions and decisions of a committee or its members.
- 10.4 Members should also consider the Council's protocol for member/officer relations.

11. DECISION MAKING BY MEMBERS

- 11.1 Members **must** come to a meeting with an open mind on a matter and they **must** demonstrate that they are open minded.
- 11.2. Members **must** comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations, such as Government policy, indicate otherwise.
- 11.3 Members should come to a decision only after due and proper consideration of all of the information reasonably required upon which to base a decision. If members are of the opinion that there has been insufficient time to consider new information or there is insufficient information before them then they should request further information and, if necessary, defer or refuse the application.
- 11.4 A member cannot vote or take part in a discussion at a meeting unless that member has been present for the entire meeting or for the whole of the matter in question and this includes the officers' introduction to the matter. If a member needs to leave a meeting for a short period, such as for a comfort break, that member should seek an adjournment.
- 11.5 The reasons for any deferral have to be recorded.

- 11.6 Members **must** be sure that if they are proposing, seconding or supporting a decision contrary to officer recommendation or the development plan they clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons, like all reasons in such matters, **must** be given prior to the vote and be recorded. Members should also be aware that they may have to justify their decision by giving evidence in the event of any challenge.
- 11.7 The reasons members give for a decision **must** be their reasons. Members cannot ask an officer to give the reasons for them. An officer may assist in the drafting of their reasons.
- 11.8 Members are reminded that development control committees are important hearings. They should act and dress accordingly. They should, for instance, give a matter due consideration and should not talk between themselves or use mobile telephones when a matter is being considered.

12. TRAINING OF MEMBERS

- 12.1 Members should not take part in the decision making process at committee meetings unless they have attended the mandatory planning training prescribed by the Standards Committee of the Council.
- 12.2 Members should attend other specialised training sessions, since these will be designed to extend their knowledge of planning law, procedures, regulations, codes of practice and the development plan. The training will be devised to assist members in carrying out their role as members of a development control committee.

13. THE ROLE OF OFFICERS IN PLANNING MATTERS

- 13.1 Officers **must** when making decisions on applications:
- act fairly and openly at all times
 - consider each and every application with an open mind
 - consider all the material planning considerations attaching the appropriate weight to each one
 - avoid any inappropriate contact with applicants, members and any other interested parties
 - ensure that the reasons for any decision are clearly recorded

- ensure that the reasons for any decision are sufficient and reasonable and that the recording of such reasons comply with the relevant legislation and guidance, for example Article 22 of the Town and Country Planning (General Development Procedure) Order 1995, regarding reasons for approval.

13.2 When reporting to a committee on a planning matter officers **will**:

- provide professional and impartial advice at all times
- ensure that all the information necessary for a decision by members is made available to those members
- ensure that a report includes the substance of all the objections and the views of the consultees
- produce a clear, accurate and objective written analysis of the issues
- make a clear recommendation.

13.3 Every planning application file and other files relating to planning matters should contain an accurate assessment of that matter's history. Particular care should be taken with files relating to delegated decisions which should be as carefully maintained as those files relating to decisions taken by members.

13.4 Any material planning information received after the writing of the report and up to midday of the day of the committee meeting will be presented orally by officers or be included on an amendment sheet.

13.5 The Head of Planning Services or relevant area planning manager may, after consulting the Chair of the relevant development control committee, withdraw any item from the agenda of that committee before that item is discussed by that committee if the circumstances of an application have changed after the report has been prepared.

13.6 Officers have a duty to carry out the decisions of members even when members decide a matter against officer recommendations.

14. DISCUSSIONS REGARDING PLANNING APPLICATIONS

14.1 Officers should have regard to the relevant parts of this code regarding members' involvement in pre application or post submission discussions with applicants, supporters or objectors.

14.2 In particular all officers taking part in such discussions should inform all those present at such discussions that the decision on the particular application will either be taken by elected members in a committee or in specified circumstances by the Head of Planning Services or by a duly authorised officer of her department.

14.3 An officer **must** always take a note of all such meetings. All meeting notes and follow-up correspondence **must** be placed on the relevant file.

15. OFFICERS' DISCLOSURES OF INTERESTS

15.1 Officers **must not** play any part in the processing of any application where they have, or can be perceived to have, a conflict of an interest. Such interests would include financial or professional interests and the interests of family and friends.

16. HOSPITALITY - OFFICERS

16.1 Officers **must not** accept any gift or hospitality from any person or group affected by a planning proposal. Whilst a degree of hospitality may be unavoidable, officers **must** ensure that such hospitality is minimal and its acceptance is declared as soon as is possible.

17. ACTION TO BE TAKEN BY OFFICERS REGARDING DECISIONS TAKEN CONTRARY TO PROFESSIONAL ADVICE

17.1 In matters where members have refused an application against an officer recommendation for approval:

- officers will give their full support to members and any external witnesses in the preparation of the evidence for any planning inquiry
- officers will only give evidence themselves in the exceptional circumstances where their code of professional conduct has not been breached or where a hearing is to be held, with no cross-examination and in this later example the officer concerned has not been involved with formulating the original recommendation
- officers will give their full support to Member decisions that are appealed under the written representations procedure.

18. GENERAL

18.1 This code will be kept under review by the Council's Standards Committee.

ADDENDUM

This code is based on the model code of practice prepared by the Association of Council Secretaries and Solicitors and established standards of good practice. The recent Court of Appeal (Civil Division) case of *Persimmon Homes Teeside Limited and The Queen on the application of Kevin Paul Lewis* [2008] EWCA Civ 746 clarifies the law in this area. That case recognises, for instance, that "...councillors are not in a judicial or quasi-judicial position but are elected to provide and pursue policies. Members of a Planning Committee would be entitled and indeed expected to have expressed views on planning issues..." (per Lord Justice Pill at paragraph 69 of the judgement). The role of members in planning committees according to Lord Justice Rix is that "...there is no escaping the fact that a decision-maker in a planning context is not acting in a judicial or quasi-judicial role but in a situation of democratic accountability..." (paragraph 94 of the judgement). The Court of Appeal found that the test regarding bias is "...one of actual bias, not apparent bias..." (paragraph 90 of the judgement).

The potential implications of this case will be monitored



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