



**DRAFT PORTFOLIO HOLDER DECISION NOTICE**

**PROPOSED INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR ENVIRONMENT**

**TOPIC - TRANSFER OF PLAY AREAS AND RECREATION GROUND AT WHITELEY TO WHITELEY PARISH COUNCIL**

**PROCEDURAL INFORMATION**

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Corporate Director (Governance), the Chief Executive and the Head of Finance are consulted together with Chairman and Vice Chairman of The Overview and Scrutiny Committee and any other relevant overview and scrutiny committee. In addition, all Members are notified.

If five or more Members from those informed so request, the Leader may require the matter to be referred to Cabinet for determination.

**If you wish to make representation on this proposed Decision please contact the relevant Portfolio Holder and the following Committee Administrator by 5.00pm on Friday 20 July 2012.**

**Contact Officers:**

**Case Officer:** Damian Offer, Tel: 01962 848419, Email: [doffer@winchester.gov.uk](mailto:doffer@winchester.gov.uk)

**Committee Administrator:** Nancy Graham, Tel: 01962 848 235, Email: [ngraham@winchester.gov.uk](mailto:ngraham@winchester.gov.uk)

**SUMMARY**

On 9 February 2011, Cabinet gave approval, in principle, to the transfer of six play areas and Meadowside Recreation Ground from the City Council to Whiteley Parish Council (CAB2118 refers). Final approval was confirmed by the Leader in September 2011 (PHD366 refers), which also approved the release of £7,100 from the Whiteley Fund for legal fees incurred in respect of the transfer.

The land tenure at Whiteley has proved extremely complex, requiring lengthy and detailed investigations into the various titles, deeds and covenants covering land at Whiteley. This has necessitated considerable additional work by the external firm of solicitors appointed to act for the Council, over and above that originally envisaged in their original fee estimate. Although the Council has sought to keep the fees as low

as possible by utilising officer time for all routine work, the legal fees incurred in completing the transfer will significantly exceed the amount stated in PHD366. The external solicitors have advised that their total fees for completing the transfer (which they expect to do by the end of July) will be approximately £20,000.

This report therefore seeks approval for the release of up to £22,000 (£20,000 plus 10% contingency) from the Council retained element of the Whiteley Fund for payment of legal fees incurred in completing the transfer of land to Whiteley Parish Council.

### **PROPOSED DECISION**

- 1) The approval be given to the release of up to £22,000 from the Council-retained element of the Whiteley Fund for payment of the legal fees incurred in completing the transfer of land to Whiteley Parish Council.

### **REASON FOR THE PROPOSED DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

The Council could terminate the arrangement with the external firm and allocate the completion of the transfer the Council's own Legal Section. However, the latter already has a considerable workload and no capacity to progress the completion of this transfer within the desired time-frame (the Parish Council is pushing for the transfer to be completed by the end of July). External solicitors were appointed on the basis that the Council's Legal Services Team had insufficient capacity to take this work on.

The Council has incurred legal fees of approximately £17,000 to date. There would therefore be a minimal cost-saving (£3-5k) in bringing the work back in house.

The preparation of the transfer document is almost complete and the solicitors have advised that there remains little further work to do. A draft of the transfer has already been supplied to the Parish Council's solicitor.

The Parish Council's solicitor has expressed full confidence in the diligence and thoroughness of the solicitors selected by the Council. Furthermore, the Parish Clerk has advised the Head of Landscape and Open Spaces that their solicitor does not anticipate that there will be significant queries over the draft transfer document due to the thoroughness of the firm's work.

Although there will be further fees incurred, it is proposed that the Council proceeds with the current approach and retains the services of the external solicitors to complete the transfer.

### **RESOURCE IMPLICATIONS:**

Further officer time in supporting the external solicitors in completing the transfer (Legal and Landscape and Open Spaces).

City Council's legal fees of up to £22,000 (a final cost estimate of £20,000 has been received from Davitt Jones Bould) to complete the transfer. These fees are to be paid from the portion of the Whiteley Fund retained by the City Council following the transfer (£206,969 as at 1 April 2012).

**CONSULTATION UNDERTAKEN ON THE PROPOSED DECISION**

The Head of Legal Services and Head of Finance have been consulted on the PHD Notice.

**FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE**

**DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED**

n/a

**DISPENSATION GRANTED BY THE STANDARDS COMMITTEE**

n/a

**Approved by: (signature)**

**Date of Decision:**

**Cllr Roger Huxstep - Portfolio Holder for Environment**