

Title of meeting: Portfolio Decision Making - Planning Policy and City Development

Date of meeting: 24th March 2022

Subject: **Building Control Partnership Agreement**

Report by: Tristan Samuels, Director of Regeneration

Report Author: Ian Maguire, Assistant Director Planning & Economic Growth, Regeneration

Wards affected: All

Key decision: No

Full Council decision: No

1. Purpose of report

- 1.1 The Building Control Partnership legal agreement and Memorandum of Understanding have been updated to reflect the current operation of the partnership and to formalise a streamlined and more efficient financial management system. This report seeks approval for the Council to agree to an updated Deed of Delegation and Memorandum of Association for the joint provision of Building Control services.

2. Recommendations

- 2.1 That the authority is given to the Director of Regeneration to sign an updated Deed of Delegation and Memorandum of Association for the joint provision of Building Control services.

3. Background

- 3.1 The legal agreement and underlying Memorandum of Understanding (MOU) to form the Building Control Partnership (BCP) was originally signed by Fareham Borough Council and Gosport Borough Council in 2002.
- 3.2 The BCP currently operates under the legal agreement and MOU signed on 4th February 2016 to reflect Portsmouth City Council Building Control service joining the Partnership.

4. Reasons for recommendations

- 4.1 The existing legal agreement is now over five years old and needs updating to

reflect current operational practices, changes to financial arrangements and to improve clarity.

- 4.2 As part of a financial opportunities review of the Partnership, the existing financial system used for the partnership has been reviewed and found to be outdated and inefficient.
- 4.3 The success of the Partnership has led to annual surpluses being generated, which in accordance with the Building Regulation charging regulations, have been held as a business reserve for the purpose of investment in the service and for contingency funding in the event of a deficit being made. The legislation governing charging under the Building Regulations stipulate that fees should only be set to cover expenditure or investment and should not be used to cross subsidise other service areas.
- 4.4 The BCP Business Reserve currently stands at £332,000 and although planned investment in service improvement, such as funding the Vanguard process have been completed and others planned, the reserve has continued to grow to a level that risks a challenge.
- 4.5 BCP income is made up of approximately 80% fee-earning work generated mainly from Building Regulation applications and 20% from funding for non-fee earning work covering mainly statutory services such as dangerous structures, demolitions, enforcement, postal address management and administering initial notices. The charging regulations mean that non-fee earning work must be funded by the three partnership authorities.
- 4.6 The basis for assessing and re-charging non-fee earning work for the partnership authorities has been via information from timesheets which were filled in on a daily basis by all BCP staff members. The time sheet system was found to be cumbersome, inaccurate, and resulted in charges to partners that did not wholly reflect the level of activity carried out on behalf of each partner. The system also resulted in a disproportionate amount of financial invoicing and reconciliation between partners on a monthly and annual basis.

CHANGES TO THE LEGAL DOCUMENTATION

- 4.7 The changes to the legal agreement and MOU are either:
- cosmetic in terms of updating definitions, terminology and improving wording.
- or to
- reflect the improvements made to the financial system.

CHANGES TO THE FINANCIAL SYSTEM

- 4.8 The new financial system will create a non-surplus model which will be based on BCP fee earning income being subtracted from overall expenditure. The difference will represent the cost of non-fee earning work and will be funded by the

partnership authorities as set out below. Under this system, all partnership authorities will benefit from a lowering of cost for non-fee earning work as BCP fee-earning income levels increase. Annual surpluses will not be generated in the future under this system.

- 4.9 Instead of the time sheet system, the apportionment of the non-fee-earning expenditure will now be based on the fee-earning income percentages generated by each authority over a 3-year rolling period. This will be subject to an annual review to ensure the level of charging to each authority is still appropriate.
- 4.10 The new system will result in charges to individual authorities being a more accurate and a fairer reflection of the work carried out by BCP staff.
- 4.11 The new agreement documents that the Partnership will hold a Downturn Reserve of an initial sum of £150,000 which may be authorised by the BCP Client Manager Panel following consultation with the BCP Member Panel in the event of a loss of income or to fund other costs associated with adverse economic conditions. The initial cost of the Downturn Reserve will be funded from the existing BCP Business Reserve.
- 4.12 An annual adjustment of the Downturn Reserve will be determined by The Partnership Finance Officer to account for operational costs and inflation.
- 4.13 The level of the Downturn Reserve will be reviewed, as a minimum every 3-years, by BCP Client Manager Panel following consultation with the BCP Member Panel.
- 4.14 A three-year investment plan has been developed to facilitate ongoing improvement of the Partnership and to allow the Partnership to meet the costs associated with the new Building Control system detailed in the draft Building Safety Bill that is currently passing through parliament. The remainder of the existing Business Reserve has been allocated to fund this plan.
- 4.15 The updated legal documentation has been agreed in consultation with all three partners' legal teams and will be taken through formal decision-making processes at all authorities.

CONCLUSION

- 4.16 The updated and amended legal agreement and MOU will improve the resilience and the productivity of the BCP and result in a fairer charging system, whilst ensuring the Partnership authorities can benefit from future success and growth of the BCP.

5. Legal implications

- 5.1 The amended Deed of Delegation and Memorandum of Understanding has been approved by legal services

6. Director of Finance's comments

- 6.1 As stated in the main body of the report the major change to the current agreement will be around the treatment of any reserve balance that may accrue as a result of fee earning activity by the Partnership.
- 6.2 The new agreement states that this reserve can not be higher than £150,000 and any balance above this will be distributed back to the partner authorities as decided by the BCP member panel which includes the Portfolio holder for Planning Policy and City Development.
- 6.3 This amendment could lead to a lower than budgeted contribution to the Partnership but it can not be guaranteed as an ongoing saving.

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Signed by:

Appendices:

- A:** Updated Deed of Delegation for the joint provision of Building Control services
B: Updated Memorandum of Understanding

Background list of documents:

- Existing Deed of Delegation for the joint provision of Building Control services
Existing Memorandum of Understanding

The recommendation(s) set out above were approved/ approved as amended/ deferred/
rejected by on

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Signed by: