

# Chichester District Council

THE CABINET

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## South Downs National Park Authority

### Development Management Agency Agreement

#### 1. Contacts

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#### 2. Executive Summary

This report outlines the background to the delivery of a Development Management service by the Council on behalf of the South Downs National Park Authority over the previous six years and the key changes proposed in payment for, and delivery of the service for a further period of up to five years. The principal change relates to the approach to payments, which would be based largely on application and appeal casework and an agreed projected number of hours for enforcement work undertaken by the Council. The current and proposed arrangements have been reported to the Overview and Scrutiny Committee and its recommendations are set out in section 9 of this report.

#### 3. Recommendation

**That the Cabinet recommend to the Council:**

- 3.1 To enter into a new Agreement with the South Downs National Park Authority (SDNPA) under section 101 of the Local Government Act 1972 to enable the Council to continue to provide a development management service to the SDNPA for up to three years initially until 30 September 2020 and, subject to a further report to Cabinet and Council, for a further two years up until 30 September 2022 if the arrangements are working effectively and agreeable to both authorities.**
- 3.2 To authorise the Head of Planning Services to conclude negotiations on the Section 101 Agreement including the Service Level Agreement and related Protocols and complete the Agreement.**

- 3.3 To accept the proposed basis for payments set out in appendix 1 and 2 for the delivery of a development management service to the SDNPA.**
- 3.4 To consider the recommendations from Overview and Scrutiny Committee as set out in paragraph 9.3 below.**

#### **4. Background**

- 4.1 The South Downs National Park Authority (SDNPA) originally entered into a legal agreement under S101 of the Local Government Act 1972 with 15 host authorities that have parts of their administrative areas within the national park to enable the delivery of development management services from 1 April 2011 to 31 March 2014. Individual agreements were supplemented with a number of other provisions including protocols relating to enforcement and the management of Section 106 agreements and a Service Level Agreement (SLA). The agency agreement with the SDNPA was extended for a further 3 years in April 2014 (to 31 March 2017). Since the introduction of the host authority delegation arrangements in 2011, ten of the original host authorities have opted out, with the administration of the development management service within those areas transferring back to the SDNPA. With the exception of the relevant County Councils, this has been where the SDNP designation covers a comparatively small proportion of the application workload of these authorities.
- 4.2 The current agency agreement, under which the Council provides a development management service for the area of the national park that falls within Chichester district, was extended earlier this year for a period of 6 months until the end of September 2017 to enable negotiations on any future arrangements to be concluded, after which time the agreement will expire. The Council is paid for this work by the SDNPA annually, based on an estimate of the cost of delivering the service against an assumed level of planning applications and other activity dealt with by the Council in preceding financial years, and subject to a 5% 'tolerance'. Additional payments for non-routine matters (including workloads above the identified tolerance) are subject to separate negotiations. All S106 contributions are paid to and held by the SDNPA as the relevant local planning authority.
- 4.3 The previous S101 agreements have been drafted on the basis of a 3 year term, including a 12 month notice period in the event of termination by either the Council or the SDNPA. They set out the terms under which the council would undertake all development management planning work pursuant to Parts III, VII, VIII and X of the Town and Country Planning Act 1990, and also the operation of the SDNPA pre-application advice service, within those parts of the SDNP in the Council's administrative area. The work also includes general planning enquiries, the making of tree preservation orders, EIA screening/scoping and the administration and determination of planning related applications, appeals and enforcement matters. The SDNPA retains the ability to call in those applications, orders

or consents which it considers may have a significant effect on the purposes for which the SDNP has been designated. During the course of 2016/17, the SDNPA called in some 20 planning applications of varying degrees of complexity, the majority of which were smaller applications in relation to larger historic sites, such as King Edward VII Hospital. This represented approximately 2.4% of all planning applications submitted in that part of the SDNP covered by Chichester District. In addition, the SDNPA called in some 30 other cases comprising pre-application and permitted development enquiries and discharge/compliance with conditions.

- 4.4 Officers have been working with the SDNPA over recent months to review the current arrangements and determine how they might be taken forward. This has included the recording by all the host authorities of time spent by relevant Council staff on different application case types to inform the objective of the SDNPA to attribute an average cost per application. It is envisaged that this will enable a new approach to be established on which to base charges for work undertaken by the Council. To mitigate the risk of significant annual variances in payment levels, officers have raised with the SDNPA the potential for including lower and upper payment thresholds, based upon an agreed tolerance, within the agreement. This matter remains under discussion with the SDNPA. A revised S101 legal agreement, revised protocols and revisions to the SLA are in the process of being prepared which will set out the type and level of service that would be provided by the Council and arrangements for payment over the period of a further agreement.
- 4.5 The SDNPA has advised that it remains committed to delivering its development management service through an agency arrangement with the Council and has made an offer to the Council to undertake the Development Management functions on its behalf within the part of the SDNP within Chichester District.

## **5. Outcomes to be achieved**

- 5.1 To ensure that the proposed agency agreement provides for recovery of all costs incurred by the Council in delivering a development management service for the SDNPA.
- 5.2 Future arrangements should ensure a high quality service continues to be provided and that the character and qualities of the area of the South Downs National Park within Chichester district are protected.
- 5.3 There is also considered to be significant benefit for the Council in maintaining a larger core of experienced planning officers and being involved in planning decision making across the whole District.

## **6. Proposal**

- 6.1 That the Council enters into a new agency agreement with the SDNPA to provide a development management service on the basis of the terms of

the proposals put forward for the Council's consideration. The draft S101 Agreement includes four Schedules; the Service Terms (1), a Service Level Agreement (2); the Financial Provisions (3) and the Protocols (4). The protocols in the 4<sup>th</sup> Schedule relate to Enforcement, Section 106/Community Infrastructure Levy (CIL), exceptional additional payments and SDNPA data recording requirements. Whilst officers are broadly satisfied with the content and format of the proposed arrangements, a number of detailed matters remain under discussion with the SDNPA and Cabinet will be updated at the meeting.

- 6.2 Notable elements in the proposed new agreement are as follows:

Proposal for a 5 year term

- 6.3 Whilst previously each agreement has covered a period of three years, the current proposal is for an initial 3 year term which can be extended to a five year term (up to 31 March 2022) provided both parties are satisfied that the arrangements are working well. This is considered a positive change as it will increase certainty in service delivery but will not affect the ability of either the Council or the SDNPA to terminate the agreement within this period if such a decision was warranted, giving a years' notice of intention to do so. Any proposed extension of the agreement would be reported to Cabinet and Council for consideration.

New arrangements for determining payment levels

- 6.4 A key change proposed in the new agreement is the way in which payment levels will be calculated. The SDNPA proposes to move away from a fixed fee payment per annum to a payment approach largely based upon case work undertaken by the Council on the SDNPA's behalf. The payment arrangements are set out in Schedule 3 to the S101 Agreement (Financial Provisions). Payments to the Council would be based upon the number and case type of applications received and validated, the number of appeals submitted and the total annual cost of providing the enforcement service.
- 6.5 To enable this approach to be introduced, an average cost per application has been assigned to the various application types, which would form the basis of the calculation for payment, based upon the number of each category of application received and validated in the previous quarter, multiplied by the average estimated cost for that application type. The Council's Planning Service has carried out a robust time recording exercise since July 2016 which has provided information to inform average cost per case, including overheads and on-costs, which have been reviewed by SDNPA officers.
- 6.6 It is considered that the proposed move to payment by way of case types will likely result in a more accurate reflection of the cost to the Council of delivering the service on behalf of the SDNPA. Whilst this approach may result in increased uncertainty regarding the level of income that can be expected annually via the agency arrangement, it will ensure that the

Council is paid for workloads actually undertaken. The last 2 years have seen the number of SDNP applications received and validated remain around 1,760 applications per year (an increase of approximately 11% on 2014/15 figures) and there is no indication at this stage that this level of applications is likely to change significantly in future years. However, in the event that there was a significant fall in the number of SDNP applications received and validated by the Council within the term of the agreement, the Council would need to consider how costs might be reduced or staff redeployed to vacant posts elsewhere within the wider DM Service. As outlined within paragraph 4.4 above, the inclusion within the new agreement of an upper and lower threshold cap on payments based on a suitable tolerance either up or down from the estimated cost of DM work for 2016/17 has been raised with the SDNPA. This matter remains under consideration and Cabinet will be updated at the meeting.

- 6.7 Appendix 2 sets out the agreed average cost per case that would be incorporated with the S101 Agreement and would be applied to the number of cases per quarter in order to inform appropriate payment levels. Appendix 3 applies the proposed cost per case type to the numbers of applications received in the financial years 2014/15, 2015/16 and 2016/17. Based on workloads in 2016/17, the payment to the Council would have equated to £942,440. This compares to the payment actually made to the Council of £959,200, i.e. a reduction of £16,760.
- 6.8 The agreement also includes provision for settling costs associated with planning application, appeal and enforcement work that is carried out 'exceptionally' e.g. significant costs in defending an appeal or works in default to secure compliance with a notice when all other enforcement action has failed to do so.
- 6.9 The approach to recovering the cost of undertaking enforcement work on behalf of the SPNPA would be based on an agreed number of projected hours per annum (2,810 for Chichester District Council), based on the results of the time recording exercise. Payment on this basis would amount to £150,770 per annum.
- 6.10 In relation to appeals work, the Council's time and resources spent defending SDNP appeals over the past two years were analysed and an average cost devised, by appeal type. The draft S101 agreement proposes a cost of £60 for each fast-track appeal, £765 for written representation appeals and £10,305 for each informal hearing. Local Inquiries are proposed to be costed on an individual basis recognising that they can vary significantly in cost and their infrequent occurrence; however the cost of the two Inquiries handled by the Council on behalf of the SDNPA in 2015/16 was estimated to average £16,200 per Inquiry and a single Inquiry held in 2016/17 was estimated to cost £25,920.
- 6.11 In light of the proposed approach to payments outlined above, the SDNPA has made the Council an offer of payment for the delivery of a Development Management service largely based upon the cost of casework undertaken as set out in paragraphs 6.4-6.10 above. It is

considered that this approach is appropriate as a basis for determining the Council's costs and that the offer should be accepted.

#### Updating of criteria on which performance is measured

- 6.12 The proposed Service Level Agreement (SLA) has been reviewed and updated from the current version and sets out a range of performance management standards for delivery by the Council of the service. It is proposed to make relatively minor changes to the SLA only, none of which are expected to have a significant impact on the resourcing of the service. The most notable proposed changes include amendments to criteria in respect of the determination of planning applications to reflect changes in national application performance criteria (including for the purposes of 'designation') and recognition of the use of agreed extensions of time to determine applications.

### **7. Alternatives Considered**

- 7.1 The case for the Council continuing to provide a development management service on behalf of the SDNPA has been considered carefully by officers and the Council has previously resolved to confirm its agreement in principle to enter into a new agreement with the SDNPA. It is noted that the SDNPA considers that in general terms, a good quality service has been provided by the host authorities during the first six years. Comparatively few complaints have been received about service delivery and planning application performance in that part of Chichester district within the national park has improved over the last year; significantly exceeding targets.
- 7.2 The alternative option, not to enter into a new agency agreement for a further period would mean that the Council would no longer handle planning and associated applications on behalf of the SDNPA. The financial implications to the Council would also need to be reassessed.

### **8. Resource and Legal Implications**

- 8.1 Recognising the importance of this work, the Planning Service operates a dedicated SDNP Applications Team and shares the resources of the Enforcement Team across both the CDC plan area and the SDNP. Both teams are supported by an administrative support team and specialist advisors in areas such as heritage, ecology, housing and environmental health. Given the staff resources already employed in undertaking this work, the continuation of the provision of a development management service on behalf of the SDNPA would not result in significant resource implications beyond those already identified. Maintaining a larger DM service to support work both in and out of the SDNP also provides greater resilience to the Council in service delivery as a whole and efficiencies of scale in relation to overheads.
- 8.2 A new agreement for a period of 3 years with the potential to extend this to 5 years will provide for greater certainty in service delivery and staff

resourcing whilst allowing for the arrangements to be reviewed at appropriate points during the term of the agreement.

## **9. Consultation**

9.1 The existing agency arrangements and progress on discussions with the SDNPA were reported to a meeting of the Overview and Scrutiny Committee on 13 June 2017. In respect of the proposed agency agreement, the committee resolved:

1. That the operation of the current S101 agreement and Service Level Agreement with the South Downs National Park Authority be noted.
2. That the position and progress that is being made in relation to the negotiations with the South Downs National Park Authority in connection with potential new delegated arrangements from 1 September 2017 be noted.

9.2 The Committee also recommended the following:

That the SDNPA considers the preparation of a Communications Protocol (with district and parish councillors) with the local authorities to whom it contracts development management matters, for inclusion within the agency arrangements.

9.3 The Committee recommended the following to Cabinet:

- 1) If the response from the SDNPA on the above recommendation is not favourable, to develop a Communications Protocol (with district and parish councillors) with the SDNPA and to bring it back to the Overview and Scrutiny Committee for consideration within six months.
- 2) That a corporate task and finish group be set up to review the resources allocated to enforcement in relation to the SDNPA Enforcement Protocol and the Council's Enforcement Strategy and that membership includes a representative from this committee.

9.4 In relation to these recommendations, Cabinet should consider the need for a communications protocol and review of the resourcing of the planning enforcement service in respect of both the CDC and SDNPA service areas.

9.5 Consultation has also been undertaken with the Head of Finance and Governance and the Legal and Democratic Services Manager in respect of the proposals for determining future payments and the content of the new S101 agency agreement.

## **10. Community Impact and Corporate Risks**

- 10.1 Important considerations are that any agreed arrangement delivers a service that is respected by the community, meets the requirements of the SDNPA and ensures the Council is compensated for the agency work undertaken.

## **11. Other Implications**

- 11.1 None.

## **12. Appendices**

- 12.1 Appendix 1 – Draft S101 Agreement, Service Level Agreement and Protocols
- 12.2 Appendix 2 – Agreed costs per case to be used in calculating quarterly payment amounts [Part II – confidential exempt from publication]
- 12.3 Appendix 3 – Comparison of payment criteria applied to the number and type of applications received in the previous 3 years [Part II – confidential and exempt from publication]

## **13. Background Papers**

- 13.1 Current agreement under s 101 of the *Local Government Act 1972*, related Protocols and SLA.