

**Executive – 22 July 2010**

## **EXEMPTIONS TO STANDING ORDERS RELATING TO CONTRACTS AND FINANCIAL INSTRUCTIONS**

### **Report of the Strategic Director (Resources)**

**Statutory Powers:** s.135(3) Local Government Act 1972.

**Financial Implications:** This report details exemptions to the Standing Orders Relating to Contracts and Financial Instructions, the financial details of which are set out in the Appendices.

### **Purpose**

The purpose of this report is to inform Members of the exemption(s) to the Standing Orders Relating to Contracts and Financial Instructions since the previous Executive meeting, in accordance with the procedure approved by the Council: Minute references 70/07 and 49/07 refers. No decision is required.

**Link to Council's Priorities** – CP6 Improving core service performance in a cost effective way.

### **RECOMMENDATION**

**That the Executive RESOLVES to note the exemptions to the Standing Orders Relating to Contracts and Financial Instructions attached at Appendix A and B.**

### **Background**

1. The Council and its Executive have power to authorise exemptions from the requirement to adhere to the Standing Orders Relating to Contracts and Financial Instructions approved by the Council in December 2007 (Minute references 70/07 and 49/07).
2. These documents state that in certain circumstances, with approval by senior officers and the Leader as well as a review by Internal Audit, an officer may seek an exemption from the need to invite tenders or quotations for the purchase of goods, works, or services without a detailed written report to members. Retrospective reporting of the decisions to the Executive is required.
3. The intention is to make the Exemption process more flexible and less time consuming than that requiring a full report to the Executive in all cases.

### **Exemptions to Standing Orders Relating to Contracts – Appendix A (Amounts between £30,000 and the relevant EU Limit)**

4. Appendix A summarises the applications for exemption to Standing Orders Relating to Contracts approved through the exemption process since the last Executive meeting.

## Exemptions to Standing Orders Relating to Contracts – Appendix B (Amounts between £3,000 and £30,000)

5. Appendix B summarises the applications for exemption to Financial Instructions approved through the exemption process since the last Executive meeting.

### Risk Assessment

6. The following are the significant risks and opportunities identified:

Opportunity	Issues / Obstacles	Benefits
<p>The process for providing officers with approval for exemptions to the Standing Orders Relating to Contracts and Financial Instructions, in certain circumstances, provides more flexibility and the ability to react promptly to situations that arise. This less bureaucratic approach, compared with a formal report to members in all cases, saves time for both members and officers. It retains the control elements needed within a procurement process.</p>	<p>There is a risk that controls within the procurement procedures are undermined if the process is inflexible, bureaucratic, and time consuming. If the above situation was allowed to persist, the Council may not achieve best value for money in the purchase of goods, works, and services.</p>	<p>The key benefits of the process are:  <b>Greater flexibility:</b> managers are able to react quickly to procure services etc. that may reduce the risk of harm to the public or staff, save time, money, and/or risk reputation.  <b>Increased openness:</b> a less bureaucratic approach, in certain circumstances, will encourage managers not to 'take a chance' and ignore procurement rules in high pressure situations.</p>

### Conclusion

7. The process for providing officers with approval for exemptions to the Standing Orders Relating to Contracts and Financial Instructions, in certain circumstances, provides more flexibility and the ability to react promptly to situations that arise. It is also a more open, efficient and less bureaucratic approach than that previously in place.

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Internal Audit Manager

Executive  
 22 July 2010

Mark Seymour  
Strategic Director (Resources)

List of Appendices:

Appendix A: Summary of Exemptions to Standing Orders Relating to Contracts

Appendix B: Summary of Exemptions to Financial Instructions

### Background Documents:

Signed exemption application pro-formas are available to view upon request from Member Support Services.

**SUMMARY OF EXEMPTIONS TO STANDING ORDERS RELATING TO CONTRACTS  
(AMOUNTS BETWEEN £30,000 and the EU LIMIT), APPROVED SINCE THE LAST EXECUTIVE**

**Appendix A**

Lead Officer and Date Approved	Summary of the Application	Reason for the Exemption	Value and Budget
<p>Salcombe Harbour Master Head of Property Services Approved: 7 June 2010 Ordered: 8 June 2010</p>	<p><b>Slipway Hoist and Scrubbing Grid for Batson Boat Park</b> The storage of boats on the Council's car park at Batson Salcombe takes place each winter. The lifting of the boats has been conducted for a number of years by Winters Marine Ltd. However, following a change to the license to operate agreement, Winters has been unwilling to sign the agreement. Consequently there are unresolved Health &amp; Safety and potential liability issues. These issues were brought to Internal Audits attention and they were questioned by the Audit Committee which recommended a report be considered on the way forward for the Boat Park Storage operations by Prosperity Policy Development Group (PPDG).</p> <p><b>PPDG 34/09 RECOMMENDED (Minutes)</b> <i>That the Executive be RECOMMENDED that:</i> 1. <i>The Group note the report and acknowledges the difficulties and risks being managed by the Council of the winter storage operation; and</i> 2. <i>Approval be granted to proceeding with the proposal whereby the Council provide the service of winter storage at Shadycombe / Batson Car Park in house.</i></p> <p>Because of the time imperative, to make any changes to the service for the winter 2010 lift out, the recommendation was presented to full <b>Council on 13 May 2010</b> Council made following:</p> <p><b>17/10 BOAT PARK OPERATIONS – STRATEGY FOR THE FUTURE (Minutes)</b> <i>The Council considered an urgent item that informed of the issues surrounding the operation of the Boat Park and in particular, winter storage.</i></p>	<p>The <b>slipway hoist</b>, supplied by SUBLIFT has a lead time of 4 months for delivery. There is therefore insufficient time to tender the procurement process. If the hoist is not in place for the lift out, the hire of a crane would be £1,400/day and probably required for up to 10 working days which would cost £14,000. There are other companies who manufacture slipway hoists that would do the job; they are all more expensive than the SUBLIFT option. Comparison below:</p> <p>SUBLIFT - £93,000 incl delivery Wise Hoist - £101,300 incl delivery Roodberg - £105,661 excl delivery Sealift - £126,637 incl delivery</p> <p>The <b>wash down facility</b> is only available from one manufacturer which is Blast Green, part of the Fendercare group. Its unique points are that the washing areas are lagoons which can be moved</p>	<p>Self powered slipway hoist Supplied by SUBLIFT £95,000;</p> <p>Wash down facility Supplied by Blast Green, part of the Fendercare Group £40,000</p> <p>Budget: Capital Programme</p>

**SUMMARY OF EXEMPTIONS TO STANDING ORDERS RELATING TO CONTRACTS  
(AMOUNTS BETWEEN £30,000 and the EU LIMIT), APPROVED SINCE THE LAST EXECUTIVE**

**Appendix A**

	<p><i>In discussion, reference was made to:-</i></p> <p><i>(a) the time constraints on this matter. In emphasising the number of high risks identified, it was hoped that the matter could be resolved within the next fortnight. To determine the future strategy, a motion was PROPOSED and SECONDED which sought to give delegated authority to the Strategic Management Team, in consultation with the Leader of Council, the Deputy Leader of Council, the lead Executive Member for Financial Affairs, the Chairman of the Salcombe Harbour Board and the local Ward Members. When put to the vote, this motion was declared CARRIED;</i></p> <p><i>(b) the lack of consultation. A local Member advised that a decision on Boat Storage was likely to have a major impact on a number of local businesses and stakeholders in Salcombe. He therefore expressed surprise that prior consultation had not taken place with either the town council or those local businesses who were directly involved. In accepting that there were gaps in the consultation process, another Member informed that the issue had previously been considered by the Prosperity Policy Development Group, with any Member or interested stakeholder being able to both make representations to and attend this meeting.</i></p> <p><b>RESOLVED</b></p> <p><i>That a decision on the future strategy for winter storage be delegated to the Strategic Management Team, in consultation with the Leader of Council, the Deputy Leader of Council, the lead Executive Member for Financial Affairs, the Chairman of the Salcombe Harbour Board and the local Ward Members.</i></p> <p>The Chief Executive made the following decision on 28 May: In accordance with Council Minute 17/10, I hereby exercise my delegated authority, after consultation has taken place with relevant Members, to approve the actions set out in the report to Council.</p>	<p>from one location to another, there is no immediate requirement to construct a grid set into the car park surface. The other aspect of this product is that it uses a closed loo system for the water so that water consumption is drastically reduced. Pollution should be eliminated.</p>	
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**Appendix A**

	<p><b>Remit and Progress</b></p> <p>There is a requirement to purchase two pieces of equipment, firstly the slipway hoist and secondly the wash down facility. The Slipway hoist will replace the crane, which was previously operated by Winters Marine. The charge to customers for the use of this service will repay the capital investment within 4-5 years.</p> <p>The wash down facility is a new facility, which will use a closed loop system to wash boat hulls, extracting the harmful toxins from the anti-foul entering and polluting the estuary. It will also use considerably less water and generate a small income/environmental levy for its use, which will recover the capital investment in under 7 years.</p> <p><b>Risks</b></p> <p>Without the provision of the hoist, the winter lift out of boats would not be able to proceed. This would result in a loss of income to the Council of approx £55k, damage to the council's reputation and loss of trading opportunities for the local boatyards.</p> <p>Without the wash down facility, the toxic run off from washing the boats antifouling into the estuary will jeopardise the future ability to dredge, as the mud is being contaminated. Furthermore, the constant polluting of the estuary contravenes EA guidelines.</p>		
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**SUMMARY OF EXEMPTIONS TO FINANCIAL INSTRUCTIONS  
(AMOUNTS BETWEEN £3,000 and £30,000), APPROVED SINCE THE LAST EXECUTIVE**

**Appendix B**

Lead Officer and Date Approved	Summary of the Application	Reason for the Exemption	Value and Budget
<p>Head of Spatial Planning and Economy Strategic Director (Community) Approved: 23 June 2010</p>	<p><b>Sherford – Affordable Housing Delivery Mechanism</b> The Sherford planning application was approved in July 2009, subject to resolution of a number of outstanding issues. This included the refinement of a financial mechanism termed ‘the clawback mechanism’ which was developed in response to the economic downturn in order to provide a way delivering affordable housing. Due to the complex and commercial nature of the mechanism, the Council sought external advice from ARK housing consultancy. This advice, for which there was a previous financial exemption, has led to the development of a very detailed mechanism. In addition, the previous advice provided by ARK enabled the Council to secure an increased apportionment of the clawback pool with a value in the region of an estimated additional £12m. The proposed clawback mechanism has been the subject of lengthy negotiations with the developer, Red Tree. Due to the complex and lengthy nature, the appointment of ARK needs to be extended in order to conclude negotiations.</p> <p><b>Remit</b> Broadly, the remit of the consultants will be to continue to assist the Council in finalising the clawback mechanism for the delivery of affordable housing at Sherford.</p> <p><b>Risks</b> The purpose of the extension of the appointment is to ensure the Council secure maximum financial and community benefit from the Sherford new community proposal. Maximising the opportunities to lever in future funding for affordable housing from any up lift in the value of the development has become even more critical in view of the current reductions in public funding through the HCA</p>	<p><b>INCREASED COST / LOSS OF INCOME</b> The background understanding required to provide the advice is so extensive that it is impractical and more costly to seek advice from an alternative source given the current advisors level of engagement. The purpose of the advice is to maximise the community benefit in terms of the overall level of affordable housing delivered by way of the clawback mechanism.</p> <p><b>LIMITED MARKETS</b> There are a limited number of housing consultancies within the region who have the range of experience and expertise required. The choice is further limited by a requirement for the appointed consultants to have a broad range of relationships with key individuals and organisations relevant to the work. ARK Consultancy has an established relationship with the Homes and Communities Agency and a range of other key people and organisations including those representing the Developer. These relationships</p>	<p>The previous financial exemption was sought on the basis of loss of future income to support affordable housing delivery and a limited local market for such advice and was capped at £10k. This limit has now been reached. Negotiations in respect of the clawback mechanism are now in the final stages and should be concluded very shortly. The maximum likely expenditure will therefore not exceed a further £10k and could well be less than this estimate, although it should be recognised that negotiations with the applicant have proved extremely challenging to date.</p>

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**Appendix B**

	<p>The continued engagement of consultants provides additional expertise which is essential to the Council's understanding and final determination of the planning application.</p> <p>The consultants have a strong reputation both generally and specifically in the areas of work the Council are seeking their involvement. They have a proven track record in s.106 negotiations backed up by a number of successful schemes. References from a range of Local Authorities, House builders and Housing Providers are available to support this .</p>	<p>and experience are extremely valuable.</p> <p>In addition to the above, ARK have assisted the Council previously in relation to Sherford. For financial and time efficiency reasons, their historic knowledge is essential in order to meet agreed timescales. Alternative consultants would require additional time and therefore increase the cost to the Council.</p>	<p>The costs of the work will be attributed to the Local Plan Reserve which includes monies awarded through the Housing and Planning Delivery grant which is available to support the delivery of housing.</p>
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