

REPORT TO EXECUTIVE 18 JANUARY 2008  
REPORT BY: STRATEGIC DIRECTOR & CITY SOLICITOR  
WRITTEN BY: TONY MARGRAVE  
Heading LAND AT FORT CUMBERLAND ROAD,  
SOUTHSEA

### **1.0 Purpose of report**

To recommend that the council approve the recommendation set out below.

### **2.0 Recommendation:**

2.1 That the Executive defers further consideration of the report presented for consideration by the Executive on 18 December 2007 until the City Solicitor is able to advise the Executive, that the proposals referred to in paragraphs 3.4 and 3.5 below, have been agreed in terms and form acceptable to him.

### **3.0 Background**

3.1 The report presented for consideration by the Executive on 18 December 2007 ("the December report") attracted considerable public attention. Representations were made

A) Of an environmental nature; and

B) With regard to public access to the beach owned by QinetiQ Limited ("QinetiQ") south of the company's land. Its land was shown hatched in black on the plan named as Plan 2 in the December report.

3.2 The Head of Planning Services advised the Executive on 18 December 2007 that it is still possible for Planning Services to consider the environmental issues that have arisen and also that these will be addressed in proper manner by Planning Services. They are not further addressed by this report.

3.3 Access has been enjoyed by members of the public to Eastney Beach for many years. The legal basis for this is unknown but the fact of long use is not sufficient to confer any legal right to the continued use of Eastney Beach. There have been discussions with QinetiQ with regard to Eastney Beach and consideration of the December report was deferred to enable the company to present its proposals in writing.

3.4 The following is a transcript of the proposal and a supplemental proposal:

(A) The proposal

*QinetiQ hereby offers to Portsmouth City Council ("PCC") to dedicate as access land pursuant to s.16 of the Countryside and Rights of Way Act 2000, the beach comprised in its Fraser site on the date of first occupation of the development to be permitted on the Fraser site under a planning permission in all material respects in the terms of the draft decision notice re A\*26996/AP issued by PCC on 30 December 23005.*

*The offer is conditional on PCC resolving not later than 23:00 on 18 January 2008:*

*1, to enter into the deed of grant of easement in the form already agreed with QinetiQ but so as to exclude clause 6; and*

*2. to appropriate for highway purposes the access road to the Fraser site and the stretch of Fort Cumberland Road between its junction with the Access Road and its junction with Lumsden Road*

(B) The Supplemental proposal

*I refer to our discussions on 7 January 2008 with you, Councillor Terry Hall, officers of Portsmouth City Council ("the Council"), representatives of the Friends of Eastney Beach and representatives of the Eastney Naturist Beach Liaison Group. I also refer to our letter to Tony Margrave of 21 December 2007, which contains an offer by QinetiQ, subject to specified conditions, to dedicate the beach comprised in its Fraser site as access land pursuant to section 16 of the Countryside and Rights of Way Act 2000 ("the Offer").*

*I confirm that, if the Offer is accepted by the Council, and the conditions to which the Offer is subject are fulfilled, not later than 2300 hours on 18 January 2008, QinetiQ will not, during the period from 19 January 2008 to the date on which the beach is so dedicated, prevent public access to the beach except for reasons of health and safety, for the protection of ground nesting birds (on the advice of Natural England) or to prevent the commission of criminal offences on the beach.*

*If, during that period, QinetiQ disposes of the beach to a third party, QinetiQ will procure that the third party gives, and procures that its successors in title give, a confirmation in the terms of the second paragraph of this letter with only necessary adaptation.*

Note:

- i. The Access Road is described in the December report; and
- ii. The wording in the letter of 21 December 2007 has been transcribed verbatim above in 3(A).

- 3.5. QinetiQ presented an additional proposal last year (through its solicitors) that also relates to Eastney Beach.

*“I am instructed to confirm the following proposal in respect of the footpath which is to lead into the eastern corner of the Fraser site:*

*a) If Natural England drops its objection to an extension of the footpath to the adjacent beach owned by the Environment Agency, QinetiQ will not object to or otherwise oppose any planning application by Portsmouth City Council (or another person on its behalf) for the development of an appropriate extension to the footpath. In these circumstances, QinetiQ will also give Portsmouth City Council such reasonable assistance (without, however, incurring any costs) as Portsmouth City Council may reasonably require in making the planning application.*

*b) Before making the planning application, Portsmouth City Council will consult QinetiQ on its terms and take into account QinetiQ's reasonable representations. Portsmouth City Council will submit a copy of the planning application and of any relevant correspondence to QinetiQ.*

*c) The obligations referred to in numbered paragraphs 1 and 2 of this email will be incorporated into the planning agreement to be entered into by Portsmouth City Council and QinetiQ”*

- 3.6 The City Solicitor has reservations with regard to aspects of the recent proposals (3(A) above). Also the City Solicitor is not satisfied that any of the above proposals have been made in a form that is capable of binding future owners of Eastney Beach.

- 3.7 QinetiQ has expressed the opinion that they are, but it has shown no willingness to see the proposals embedded in a form that the City Solicitor is able to approve.

- 3.8 QinetiQ notified the Council last year that if the recommendations contained in the December Report are not approved, it will seek judicial review of the Executive's failure to do so. It has (under the Pre-action Protocol for Judicial Review), invited the Council to investigate a solution by way of Alternative Dispute Resolution (“ADR”). This is acceptable to the Council.

- 3.9 The December report referred to the consideration QinetiQ has promised to pay for the deed of grant, and also that the company has offered to release the Council's Land from restrictive covenants imposed when the Council acquired its land. Its land was shown edged in black on the plan named as Plan 1 in the December report.

- 3.10 The City Solicitor now has instructions that the release is not required. Asset Management Service has accordingly been instructed by the City

Solicitor to re-consider the adequacy of the consideration referred to in the Exempt Report.

- 3.11 It has become apparent that the Council's land is still held for planning purposes. Accordingly notice of the recommendations contained in the December report must be circulated locally for two consecutive weeks and objections must be considered. Having agreed to consider QinetiQ's alleged claim through ADR, the City Solicitor will attend to this shortly in support of the Council's ADR responsibilities.

#### **4.0 Legal Advice**

This report has been considered by the City Solicitor for legal issues.

#### **5.0 Financial Implications**

- 5.1 There are no financial implications to accepting this recommendation.
- 5.2 The courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when settlement is still actively being explored.
- 5.3 It remains to be seen why QinetiQ has shown no willingness to see its proposals secured in manner acceptable to the City Solicitor despite claiming that if the Council acts in reliance on them, that is sufficient to render them enforceable against its successors to Eastney Beach.
- 5.4 If QinetiQ is no longer willing to pursue a solution to its alleged claim through the ADR, it must write a "Letter before Claim" to the Council, which will then be entitled to respond with a "Letter of Response". There will therefore be an opportunity for the Council to take stock, before litigation ensues.

#### **6.0 Conclusions**

The recommendation has been made to report back to the Executive with regard to the current status of the December report, and to provide QinetiQ with an opportunity to re-consider the rationale of refusing to meet the City Solicitor's concerns.

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Michael Lawther, City Solicitor (Strategic Director)

#### **7.0 Access to Information**

##### ***Background List of documents:***

##### ***Section 100D of the Local Government Act 1972 - None Title of Document Location***

**The recommendation(s) set out above were approved/approved as amended/deferred/rejected by the [Executive] [Executive Member] on [date]**

**Signed .....**

[Title of the Leader of the relevant executive member]