

BETWEEN

- (1) WEST SUSSEX COUNTY COUNCIL of County Hall, Chichester, West Sussex, PO19 1RQ ("**the County Council**"); and
 - (2) DISTRICT COUNCIL/BOROUGH COUNCIL of [INSERT ADDRESS] ("**the District/Borough Council**"),
- each being referred to as a "**party**" and together the "**parties**".

WHEREAS

- (1) The County Council and the District/Borough Council are local authorities constituted by the Local Government Act 1972.
- (2) Under the Flood and Water Management Act 2010 (the Act) flood risk will be managed within the framework of National Strategies for England and Wales and Local Strategies for each Lead Local Flood Authority area.
- (3) The National Strategy for England has been developed by the Environment Agency and Lead Local Flood Authorities (LLFAs) have the responsibilities for developing a Local Flood Risk Management Strategy for their area covering local sources of flooding
- (4) The County Council is the LLFA for the county of West Sussex
- (5) From 6 April 2012 the Environment Agency's responsibility for issuing flood defence consents under section 23 of the Land Drainage Act 1991 will transfer to LLFAs as a consequence of paragraph 32 of Schedule 2 to the Act coming into force (hereinafter called 'the Consent Regime')
- (6) From 6 April 2012 the Environment Agency's power to require works to maintain a proper flow of water in ordinary watercourses under section 25 of the Land Drainage Act 1991 will transfer to Internal Drainage Boards in internal drainage districts and to LLFAs outside internal drainage districts as a consequence of paragraph 33 of Schedule 2 to the Act coming into force (hereinafter called 'the Enforcement Regime')
- (7) Prior to 6 April 2012 district councils have held powers to require works under section 25 of the Land Drainage Act 1991
- (8) The County Council is of the view that district and borough councils within the county of West Sussex are best placed to carry out both the Consent Regime and the Enforcement Regime because in general there is existing resources and expertise within these authorities
- (9) By virtue of Section 101 of the Local Government Act 1972 and subject as therein provided a local authority may arrange for the discharge of any of its functions by (inter alia) another local authority.
- (10) The County Council and the District/Borough Council have agreed that certain functions of the County Council as LLFA in respect of the Consent Regime and the Enforcement Regime shall be transferred to and

discharged by the District/Borough Council, when required, as set out in this Agreement

NOW IT IS AGREED:

1 Discharge of Function

In the exercise of powers contained in Section 101 of the Local Government Act 1972 the County Council agrees with the District/Borough Council and hereby so arranges that the District/Borough Council shall, when required, discharge on behalf of the County Council such functions and provide such services as are specified in clause 2 of this Agreement.

2 Extent of Transfer

2.1 The functions and services to which this Agreement relates shall include the deployment and management of County Council and District Council staff as necessary to work in partnership to take on the following functions on behalf of the County Council:

2.2 The Consent Regime

2.2.1 Full powers to issue consents for alterations to ordinary watercourses, as set out in section 23 of the Land Drainage Act 1991, shall be transferred to the Borough/District Councils ('the Consent Regime').

2.2.2 The Consent Regime shall follow that set out in Section 23 of the Land Drainage Act 1991 and when implementing the Consent Regime the parties shall follow the procedure as set out in Figure 1 of Schedule 1 attached to this Agreement.

2.3 The Enforcement Regime

2.3.1 Any potential contraventions to section 23 of the Land Drainage Act 1991, as either notified to the Borough/District Council, or identified through their own activities should be investigated by the Borough/District Council and appropriate enforcement action subject to paragraphs 2.3.2, 2.3.3 and 2.3.4 below ('the Enforcement Regime') taken.

2.3.2 When implementing the Enforcement Regime the parties shall follow the procedure as set out in Figure 2 in Schedule 1 attached to this Agreement

2.3.3 Informal enforcement, consisting of advisory contact, including letters, shall take place at the discretion of the Borough/District Council.

2.3.4 Formal enforcement, consisting of the issue of warning letters and enforcement notices and any subsequent legal proceedings, shall be

carried out by the County Council following consultation with the Borough/District Council and the Drainage Strategy Team at the County Council.

2.3.5 The District/Borough Council may be required to provide evidence as part of any enforcement proceedings when requested to do so by the County Council.

3 **Duration, Termination and Variation of Agreement**

3.1 This Agreement shall operate for an initial period of 1 year from the date of this Agreement ("**the Trial Period**"), and thereafter may be extended with the agreement of both parties ("**the Agreement Period**").

3.2 This Agreement may be terminated by either the District/Borough Council or the County Council at any time during the Agreement Period by giving not less than **six** month's written notice of termination to the other party, or such lesser period as the parties may agree in writing.

Comment [W1]: To be agreed

3.3 This Agreement may be suspended by either the District/Borough Council or the County Council at any time during the Agreement Period by giving not less than **three** month's written notice of suspension to the other party or such lesser period as the parties agree in writing.

Comment [W2]: To be agreed

3.4 During the Trial Period the District Council/Borough Council and the County Council will meet not less than **quarterly** to review the arrangement. Thereafter they will meet not less than **once** a year.

Comment [W3]: To be agreed

Comment [W4]: To be agreed

3.5 Variations may be made to this Agreement at any time during the Agreement Period by a written agreement between the parties, signed by the duly authorised representative of each of the parties.

4 **Exercise in Partnership**

4.1 In exercising any functions under this Agreement the County Council and the District/Borough Council will use all reasonable endeavours to comply with the process chart which is set out in Schedule 1 to this Agreement.

4.2 The District/Borough Council shall indemnify the County Council against any claim made against the County Council or loss incurred by the County Council arising from any act or omission in the carrying out by the District Council of the functions exercisable by virtue of this Agreement PROVIDED

THAT this indemnity shall not apply where such claim or loss is wholly or mainly attributable to an act or omission by the County Council.

- 4.3 The County Council shall indemnify the District/Borough Council against any claim made against the District Council or loss incurred by the District/Borough Council arising from any act or omission in the carrying out by the County Council of the functions exercisable by virtue of this Agreement PROVIDED THAT this indemnity shall not apply where such claim or loss is wholly or mainly attributable to an act or omission by the District/Borough Council.

5 **Financial**

- 5.1 For the avoidance of doubt, payments made to either party in respect of the Consent Regime and/or the Enforcement Regime ('the Schemes') under this Agreement shall follow that set out in Schedule 2 of this agreement.
- 5.2 The proportions of funding to each of the Districts and Boroughs as set out in Schedule 2 of this Agreement shall be revised at the end of the Trial Period by the County Council to reflect the actual distribution of workload across West Sussex County during that period and thereafter the funding shall be re-distributed accordingly
- 5.4 The County Council shall be responsible for resourcing and financing any required formal legal enforcement.
- 5.5 The funding provided by the County Council to the District/Borough Councils to operate the schemes shall not exceed the set annual operating budget as determined by the County Council in each year of this Agreement ("**the Annual Budget**"). This Annual Budget will be reported to Select Environmental Services Committee at the County Council, or any such Joint Scrutiny Committee as it set up to provide governance, on each anniversary of the date of this Agreement and the Annual Budget will not be exceeded without the agreement of both parties in writing. Expenditure against the Annual Budget will be reviewed on a quarterly basis.
- 5.6 A report shall be prepared jointly by the parties, annually on the anniversary of the date of this Agreement. Such reports shall include both an operational and financial review of the previous year of this Agreement.

6 **Effect of Termination and Suspension**

- 6.1 It is agreed that if this Agreement is terminated or suspended pursuant to clause 3 each party shall bear its own costs directly attributable to such termination or suspension.

6.2 The suspension or termination of this Agreement will not affect the responsibility under this Agreement to complete the discharge of functions already initiated under this Agreement, or any function exercised prior to suspension or termination.

7 **Dispute Resolution Procedure**

7.1 If any disputes arise out of or in connection with this Agreement the parties shall promptly notify each other of the matter in dispute, and the parties will attempt to settle such a dispute by negotiation between the parties' representatives for this Agreement.

7.2 Where the parties' representatives do not achieve an acceptable resolution, within 14 days of the notification of the dispute, senior representatives of both parties shall meet promptly, and in any event within 21 days of notification of the dispute, in good faith to discuss and seek to resolve the dispute.

7.3 If within 30 days of the notification of a dispute, the processes set out in clauses 7.1 and 7.2 have not resolved the dispute to the satisfaction of both parties, the parties will attempt to settle the dispute by mediation in accordance with the Centre of Dispute Resolution (CEDR) Model Mediation Procedure and the mediation process may be initiated by either party.

7.4 If the parties have not settled the dispute by mediation within 42 days from the date on which the mediation was instituted the dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration which Rules are deemed to be incorporated by reference to this clause.

8 **Law and Jurisdiction**

This Agreement shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

9 **Third Party Rights**

The parties do not intend that any person who is not a party to this Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement.

10 **Successors**

The provisions of this Agreement are binding on any successors in title of the parties unless otherwise expressly or by necessary implication so provided in this Agreement.

11 **Relationship of Parties**

11.1 Save to the extent expressly conferred by this Agreement the District/Borough Council shall not be deemed to be an agent of the County Council and the District Council shall not hold itself out as having authority or power to bind the County Council in any way.

11.2 Nothing in this Agreement shall be construed as creating a contract of employment between the District Council and the County Council.

12. **Costs**

Each party shall be responsible for meeting its own costs associated with the preparation and drafting and execution of this Agreement

Signed for and on behalf of **WEST SUSSEX COUNTY COUNCIL** by:

Name:

Position: Head of Legal and Democratic Services

Signature:

Duly Authorised Signatory

Signed for and on behalf of **DISTRICT/BOROUGH COUNCIL** by:

Name:

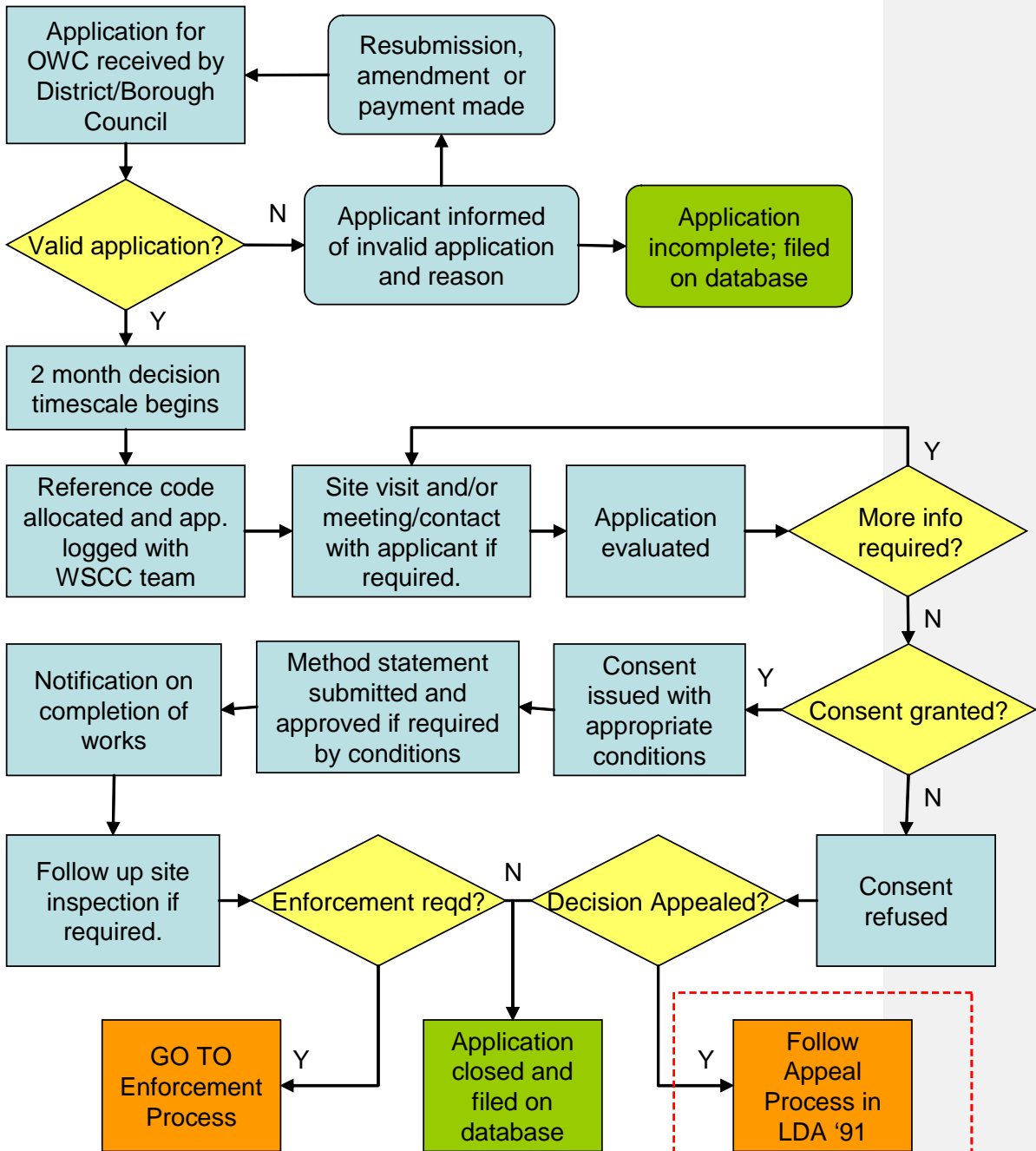
Position:

Signature:

Duly Authorised Signatory

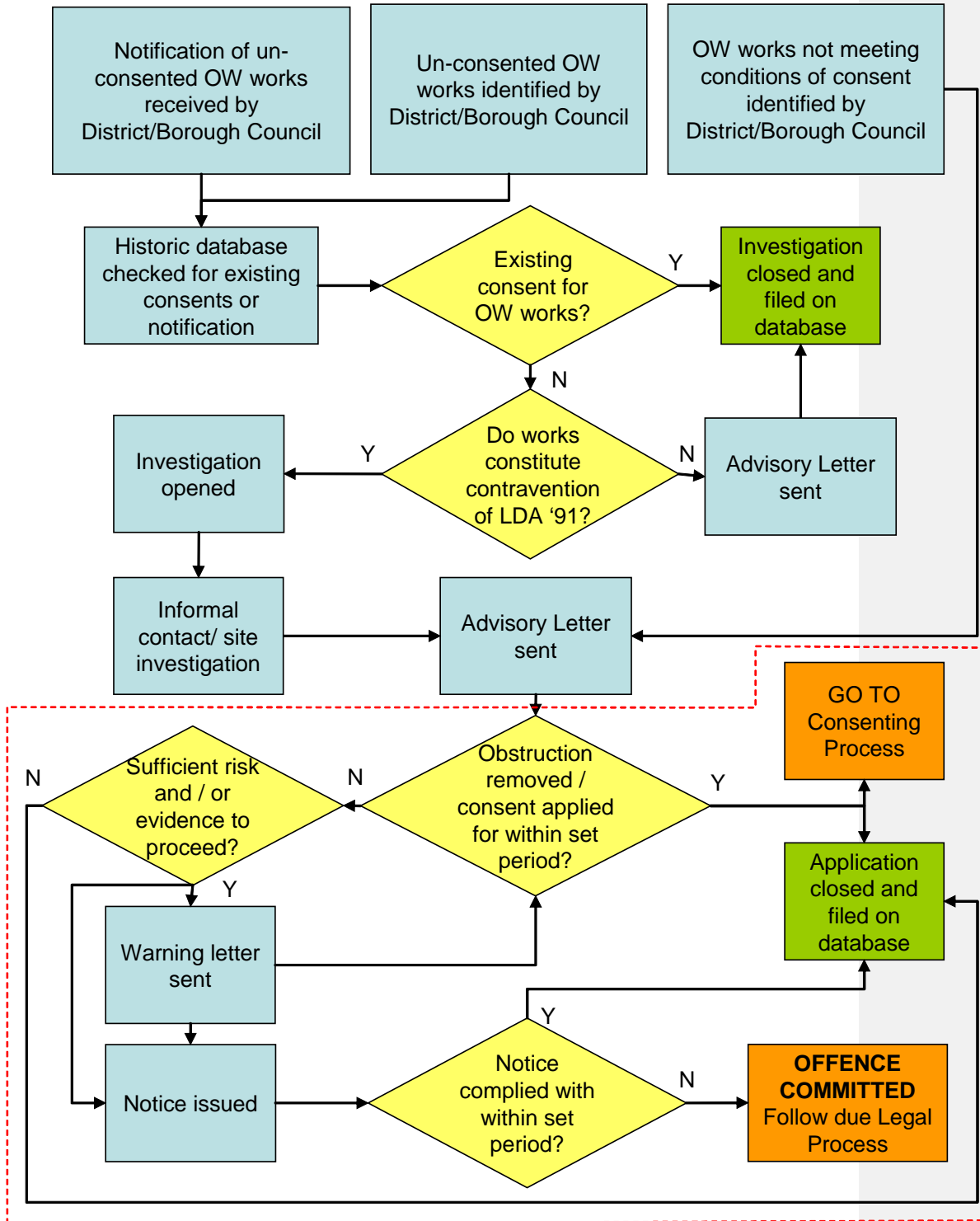
Schedule 1 Process Charts

Figure 1; OWR Application Process



Appeal process to be carried out in partnership with WSCC

Figure 2; OWR Enforcement Process



Formal Enforcement to be carried out in partnership with WSCC

Schedule 2

Financial provisions to be provided by the County Council

Recipient	FTE	Financial Provision p.a./ £
Adur DC	0.25	12,500.00
Arun DC	0.50	25,000.00
Chichester DC	0.50	25,000.00
Crawley BC	0.25	12,500.00
Horsham DC	0.25	12,500.00
Mid Sussex DC	0.25	12,500.00
Worthing BC (included within Adur DC)	0.00	0.00
Total to be paid by West Sussex County Council	2.00	100,000.00

The financial provisions set out above are based on the cost of one FTE at £50,000 p.a (inclusive of uplift of to cover overheads) distributed in the proportions illustrated. These proportions will be revised at the end of the trial period to reflect the distribution of workload across the county.