

# Public Document Pack



## Executive Board Sub Committee

Thursday, 18 December 2008 10.00 a.m.  
Marketing Suite, Municipal Building

A handwritten signature in black ink, appearing to read 'David W R'.

**Chief Executive**

### **ITEMS TO BE DEALT WITH IN THE PRESENCE OF THE PRESS AND PUBLIC**

#### **PART 1**

<b>Item</b>	<b>Page No</b>
<b>1. MINUTES</b>	
<b>2. DECLARATION OF INTEREST</b>	
Members are reminded of their responsibility to declare any personal or personal and prejudicial interest which they have in any item of business on the agenda no later than when that item is reached and, with personal and prejudicial interests (subject to certain exceptions in the Code of Conduct for Members), to leave the meeting prior to discussion and voting on the item.	
<b>3. PLANNING, TRANSPORTATION, REGENERATION AND RENEWAL PORTFOLIO</b>	
<b>(A) PLANNING AND RISK SUPPLEMENTARY PLANNING DOCUMENT: APPROVAL FOR STATUTORY PERIOD OF PUBLIC CONSULTATIONS</b>	<b>1 - 59</b>

*Please contact Caroline Halpin on 0151 471 7394 or e-mail [caroline.halpin@halton.gov.uk](mailto:caroline.halpin@halton.gov.uk) for further information.  
The next meeting of the Committee is on Thursday, 15 January 2009*

<b>Item</b>	<b>Page No</b>
<b>(B) FORECAST FINAL CONTRACT COST - WARRINGTON ROAD TRAVELLER TRANSIT SITE</b>	<b>60 - 65</b>
<b>4. HEALTH AND SOCIAL CARE PORTFOLIO</b>	
<b>(A) REQUEST TO WAIVE STANDING ORDERS RELATING TO CONTRACTS EXCEEDING £50,000 BUT LESS THAN £1,000,000</b>	<b>66 - 70</b>
<b>(B) REVIEW OF DIRECT PAYMENTS POLICY &amp; PROCEDURE</b>	<b>71 - 123</b>
<b>(C) DOMICILIARY AND PERSONAL CARE TENDER APRIL 2008- MARCH 2011 - AWARD OF TENDER</b>	<b>124 - 127</b>

***In accordance with the Health and Safety at Work Act the Council is required to notify those attending meetings of the fire evacuation procedures. A copy has previously been circulated to Members and instructions are located in all rooms within the Civic block.***

**REPORT TO:** Executive Board Sub Committee

**DATE:** 18 December 2008

**REPORTING OFFICER:** Strategic Director - Environment

**SUBJECT:** Planning & Risk Supplementary Planning Document (SPD) - Approval for Statutory Period of Public Consultation

**WARDS:** Boroughwide

## **1.0 PURPOSE OF THE REPORT**

1.1 The purpose of this report is to seek approval for the publication of the draft Supplementary Planning Document (SPD) on Planning & Risk for the purposes of statutory public consultation in January and February 2009

## **2.0 RECOMMENDATION: That**

- 1) the draft Supplementary Planning Document (SPD) Planning & Risk be approved for the purposes of statutory public consultation;**
- 2) the comments received at the stakeholder consultation stage, as set out in the Statement of Consultation and responses to them are noted;**
- 3) further editorial and technical amendments that do not materially affect the content of the SPD be agreed by the Operational Director - Environmental & Regulatory Services in consultation with the Executive Board Member for Planning, Transportation, Regeneration and Renewal, as necessary, before the document is published for public consultation; and**
- 4) the results of the public consultation exercise and consequent recommended modifications to the draft SPD be reported back to the Executive Board for resolution to adopt as a Supplementary Planning Document.**

## **3.0 SUPPORTING INFORMATION**

3.1 The need for the Planning & Risk SPD  
There are two special types of development which the Council's UDP defines as providing the potential for significant off site accidental risks and therefore require the production of a Supplementary Planning Document.

3.2 The first special type of development is sites (and pipelines) which hold or handle sufficient quantities of potentially dangerous chemicals as defined by the Planning (Control of Major Accident Hazard) Regulations (COMAH) and associated legislation and which therefore justify special steps to be taken to control their development and also developments around them.

3.3 The second special type of development is airports, which present the same sort of potential for significant off site accidental risks as COMAH and similar hazardous installations.

### Planning & Risk SPD – Appendix 1

3.4 Halton is affected by the Public Safety Zone (and wider flight path) from Liverpool John Lennon Airport. It is also affected by a significant number of hazardous installations and pipelines and their planning consultation zones.

3.5 All these sites and zones are identified in the SPD document which is Appendix 1 to this report. It also contains the proposed policies affecting them and the analysis and justification for those proposed policies.

### Stakeholder consultation stage – Appendix 2

3.6 The new planning system requires that a record be kept of any consultees, their comments and how they have been taken into account, throughout the production of an SPD. A list of those consulted so far at the earlier Stakeholder consultation stage, carried out in August and September 2008, the comments received, and how these were taken into account, is contained in Appendix 2 to this report.

### Scoping stage & Sustainability Appraisal– Appendix 3

3.7 Another requirement is that a scoping exercise must be undertaken to see if a Strategic Environment Assessment (SEA) is required to assess the environmental effects of the SPD. In June & July 2007 a Scoping Report was consulted upon in line with the relevant regulations. The conclusion was that a SEA was not required in relation to this SPD.

3.8 An additional new requirement in relation to producing a SPD is that a Sustainability Appraisal (SA) is produced. The purpose of the SA is to independently assess the contribution that the Planning & Risk SPD will make to achieve the social, economic and environmental objectives of sustainable development. The SA also refers back to the conclusion and responses received in relation to the earlier Scoping Report in 2007.

3.9 The SA Report (Appendix 3) will be consulted upon at the same time as the Draft Planning & Risk SPD.

The final stage after the public consultation process

- 3.10 Once the formal public consultation exercise has been conducted, the responses will be recorded and taken into account.
- 3.11 It is intended that a further report will then be taken to Executive Board, seeking formal adoption of the revised Planning & Risk SPD.

The need for delegated authority

- 3.12 The recommendation in this report asks for delegated authority. In the draft SPD (Appendix 1) identifies hazardous installations and their associated policy zones and planning consultation areas. It is important that these are as up to date as possible and that they can be changed within relatively small time scales. In addition to the possibility of finding other editorial and technical amendments this is the reason for seeking delegated authority.

**4.0 POLICY IMPLICATIONS**

- 4.1 Halton has, as members will know, a special history in respect of the chemical industry and its role in the development of the Borough. Halton also has lengthy experience, unusual expertise and a wide ranging track record of taking a measured and expert approach to the examination and planning of developments in and around hazardous installations that could create or increase the special risks to the community, if not handled carefully.
- 4.2 The need to strike the right sustainable balance between economic prosperity and individual safety has been a very important principle in the process first started by councillors in the run up to Halton's inception in April 1974. One result has been a unique set of risk based Development Plan policies (which have been formalised since 1996) not followed by other local planning authorities who have had to rely solely upon the advice of the Health & Safety Executive on these matters. This report recommends public consultation on the latest stage in the development and evolution of this unusual and important policy advice. The SPD explains in more detail how the UDP's policies should be interpreted and implemented.
- 4.3 As with most other local planning authorities, Halton has always taken full account of the advice from the Health & Safety Executive. However, because of the Council's long standing use of independent expert consultants to help in the Council's decision making processes and the special nature of the Borough, policies significantly different from HSE advice have been developed since the 1980's.
- 4.4 The HSE has always been consulted both on relevant planning applications and Hazardous Substance Consent applications. It has also been consulted at the various stages in the development of Halton's own Development Plan policies. This started in the mid-1990's with the Halton Local Plan policies and continued through the

various statutory steps which lead to the Council's adoption of the current UDP policies.

- 4.5 In more recent years there has been significant interest from some other local planning authorities in the Council's special approach which allows a more measured and balanced local approach to be taken to the special problems faced by an individual local planning authority.
- 4.6 In many ways the risk based planning policies contained within this SPD are not really unusual as other planning policies and advice is also risk based, for example highway safety advice and flood risk advice on planning applications.
- 4.7 The unique importance to Halton of achieving the right balance between its special history and its future sustainable prosperity is shown by the example of Widnes Town Centre's revitalisation. Had the Council followed HSE advice in relation to the initial redevelopment of Widnes Town Centre no retail redevelopment would have taken place. and the Morrisons redevelopment scheme would not have occurred.
- 4.8 This SPD when adopted will form part of the Local Planning Framework for Halton and will be a material consideration in the consideration of any applicable planning applications. It will provide an easier to understand and more detailed policy framework than the UDP itself.

## **5.0 OTHER IMPLICATIONS**

- 5.1 No other implications

## **6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

### **Children and Young People in Halton**

- 6.1 No other implications

### **Employment, Learning and Skills in Halton**

- 6.2 No other implications

### **A Healthy Halton**

- 6.3 No other implications

### **A Safer Halton**

- 6.4 A guiding principle of the SPD is to impose pressure on those responsible for the sources of major accident risks, and improve levels of safety where appropriate

**Halton's Urban Renewal**

6.5 The SPD provides a positive influence in striking the right sustainable balance between economic prosperity and individual safety.

**7.0 RISK ANALYSIS**

7.1 These proposals are not so significant as to require a full risk assessment.

**8.0 EQUALITY AND DIVERSITY ISSUES**

8.1 There are no equality and diversity issues contained in the report.

**9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

<b>Document</b>	<b>Place of Inspection</b>	<b>Contact Officer</b>
<b>Halton Unitary Development Plan</b>	<b>Rutland House</b>	<b>Andrew Pannell</b>



# Planning for Risk

Draft Supplementary Planning Document

December 2008







Halton Borough Council

# Planning for Risk

Draft Supplementary Planning Document  
Public Consultation - December 2008

Presented for public consultation 9th January  
2009 and 20th February 2009



Operational Director  
Environmental and Regulatory Services  
Environment Directorate  
Halton Borough Council  
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This guidance note should be read in  
conjunction with the relevant policies of the  
Development Plan.

# Contents

Page

3	<b>1 Purpose and introduction</b>
4	<b>2 Policy Background</b>
4	European & National policy background – hazardous installations & pipelines
5	National policy background – Airports & Public Safety Zones
5	Regional context and UDP Sustainability Issues
7	<b>3 Guiding Principles</b>
8	<b>4 Policies for Risk creating sites</b>
8	Development at existing sites designated under the Control of Major Accident Hazards (Planning) Regulations 1999 (COMAH) or major accident pipelines
9	Development at new sites for Airport Development or designated under the Control of Major Accident Hazards (Planning) Regulations 1999 (COMAH) or major accident pipelines
10	Inactive Hazardous Substances Consents
11	<b>5 Policies for Development around Risk creating sites</b>
11	Liverpool Airport and Public Safety Zone policy
12	Hazardous installations creating significant off site accidental risks
13	Existing pipelines and hazardous installations which do not create significant off site accidental risks

14	<b>6 Sustainability and Monitoring Issues</b>
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Page

	<b>Appendices</b>
15	<b>A UDP policy extracts</b>
22	<b>B Understanding Accidental Risk Issues</b>
22	Comparative safety issues between hazardous installations, Airports and Flood Risk
24	Individual accidental risks
24	Societal risk
26	Planning blight, urban regeneration and the re use of previously developed land
27	Calculated risk and historic evidence
27	HSE dangerous dose policy advice
29	<b>C</b> List of sites with Hazardous Substances Consent, pipelines and Liverpool Airport and accompanying location maps
36	<b>D</b> Maps of individual risk zones around hazardous installations, pipelines and Liverpool Airport
39	<b>E</b> Maps of planning consultation zones around hazardous installations, pipelines and Liverpool Airport
41	<b>F</b> Information sources
43	<b>G</b> Summary of all policies in the SPD including UDP policy references

# I Purpose and introduction

## Purpose

- 1.1 The purpose of this Supplementary Planning Document (SPD) is to:
1. complement and expand upon policies set out in the approved Halton Unitary Development Plan (UDP) by providing additional and more detailed policies for:
    - deciding how new developments which create significant potential off site accidental risks should be balanced against the benefits they will bring;
    - deciding how new developments, in areas already exposed to significant existing potential accidental risks, should be balanced against the benefits they will bring, and;
  - 2 explain in more detail how UDP policies should be interpreted.
- 1.2 The reduction in the potential for certain land uses (hazardous installations and Liverpool Airport) to create harm through accidents to people or the environment outside the boundary of these land uses is a sustainable objective of this SPD as is the improved potential to create a safe, healthy and prosperous economy, environment and society.

## Introduction

- 1.3 There are two types of land use development which the Council's UDP has defined as providing the potential for significant off site accidental risks:
- sites (and pipelines) which hold or handle sufficient quantities of potentially dangerous chemicals as defined by the

COMAH or pipeline regulations to have the potential for significant off site accidental risks; and

### ■ Airports.

- 1.4 Halton is affected by the Public Safety Zone and wider flight path from Liverpool John Lennon Airport. It is also affected by a significant number of hazardous installations and pipelines. All these sites are identified in appendices to this SPD document.
- 1.5 Section 4 policies for risk creating sites (paragraphs 4.3 & 4.11) in this SPD apply to any part of Halton where new proposals are put forward for Hazardous Substances Consent (HSC). However, for the vast majority of planning application determinations affected by this SPD (see policies for development around risk creating sites in section 5), the geographical coverage of its policies will be confined to the sites already defined in the document and the consultation areas surrounding them. There is no detailed policy for major accident risk issues at Liverpool Airport itself, because it lies outside Halton Council's area. However, any proposal for airport development within Halton that raised off site major accident risk issues would automatically be considered within Strategic Policy S5's general criteria and justification and an appropriate policy is included in this SPD (see policy 4.8).
- 1.6 Where documents are referred to in this SPD references can be found in Appendix F.

## 2 Policy Background

### European & National policy background – hazardous installations & pipelines

- 2.1 Most recent European Union legislation in respect of planning related matters special to the subject of hazardous installations derives from the land use planning requirements of the Seveso II Directive (96/82/EC) as amended by Directive 2003/105/EC. The aim of the Directive is to prevent major accidents which involve dangerous substances and to limit their consequences for man and the environment. European legislation relating directly to these matters started in 1984. Separate UK legislation started in 1982.
- 2.2 The Control of Major Accident Hazards Regulations 1999 (COMAH) and the Planning (Control of Major-Accident Hazards) Regulations 1999 came into force on 1 April 1999. Part of their statutory powers are derived from the Planning (Hazardous Substances) Act 1990 wherein lies the original power establishing Hazardous Substances Authorities (HSA) and the requirement on site operators to apply for Hazardous Substances Consent (HSC). The Planning (Hazardous Substances) Regulations 1992 set out the regulatory requirements for applying for HSC's.
- 2.3 The COMAH Regulations were amended by the Control of Major Accident Hazards (Amendment) Regulations 2005 on 30 June 2005. All these regulations implement the Seveso II Directive, as amended by Directive 2003/105/EC. HSE advice around sites relates to all those sites with Hazardous Substances Consents, not necessarily only COMAH sites. This is because some HSC's do not reach the thresholds that bring sites within the main COMAH legislation (for example liquified petroleum gas has different thresholds). The use of the phrase "hazardous installation" is therefore generally used in this document.
- 2.4 Government planning policy guidance on these matters is contained in DETR Circular 04/2000 (Planning Controls for Hazardous Substances) including the requirement to consult the HSE both on new HSC's and on new development proposals around existing sites. In the latter case consultation occurs utilising the HSE's PADHI consultation system (see paragraph 3 of Appendix E).
- 2.5 Pipelines (as defined under the Pipelines Safety Regulations 1996) which hold or handle sufficient quantities of potentially dangerous chemicals are not defined by the Control of Major Accident Hazard (COMAH) regulations. However, they fall within the remit of this SPD where they are potentially hazardous pipelines generating consultation processes between the local planning authority and the Health & Safety Executive (HSE). They are described in this SPD as hazardous pipelines.
- 2.6 DETR Circular 04/2000 (paragraph 47) and PPS12 (Annexe B, paragraphs B17 & B18) together provide national planning policy guidance for the implementation of the requirements of Article 12.1 of the SEVESO II Directive. Regulation 20 of the Town and Country Planning (Development Plan) (England) Regulations 1999 requires that in formulating their general policies in Part I of a Unitary Development Plan, local planning authorities shall have regard to the objectives of the Directive. These are:
- to prevent major accidents and limit the

consequences of such accidents for man and the environment;

- in the long term, to maintain appropriate distances between establishments and residential areas, areas of public use and areas of particular natural sensitivity or interest; and,
- in relation to existing establishments, for additional technical measures so as not to increase risks to people.

2.7 Local Planning Authorities are required to seek advice from the HSE and Circular 04/2000 makes clear that “In view of their acknowledged expertise in assessing the off-site risks presented by the use of hazardous substances, any advice from HSE that planning permission should be refused for development for, at or near to a hazardous installation or pipeline, or that hazardous substances consent should be refused, should not be overridden without the most careful consideration.”

2.8 For a period of over 15 years Halton Council has liaised closely with the HSE on Development Plan matters, first in relation to the Halton Local Plan (published in 1996) and then in relation to the Unitary Development Plan (published in 2005) and its successor the Local Development Framework. The policies in the current statutory UDP document have been the subject of lengthy and substantial discussions over a number of years including various opportunities for representation and comment (see Appendix A for an extract of all directly relevant parts of the UDP).

2.9 As a result of the special experience and expertise of Halton Council risk based land use planning policies have become statutory planning policies within Halton even though these approved policies differ from national advice given by the HSE to

local planning authorities. Appendix B deals with these matters in more detail. Advice from the HSE nationally is sometimes hazard based (i.e. the consequences of an accident event happening) rather than risk based (i.e. the likelihood of an event actually happening). HSE advice is also based upon the “risk of dangerous dose” to people involving distress as well as the risk of fatalities. Halton’s policies are based more simply on the risk of an accidental death, which is the same basis as is used for public accidental risk policies around Britain’s airports.

### National policy background – Airports & Public Safety Zones

2.10 Government guidance on development within airport Public Safety Zones (PSZ) is contained in DfT Circular 01/2002 (Control of development in airport public safety zones) and the Town and Country Planning (Safeguarding Aerodromes etc) Direction 2002. This Direction is an annex to joint circular 1/2003 (from ODPM & DfT) and mainly deals with safeguarding issues associated with developments which might affect aircraft safety.

2.11 The basic policy objective governing the restriction on development within civil airport PSZ’s is that there should be no increase in the number of people living, working or congregating in PSZ’s and that, over time, the number should be reduced within the PSZ as circumstances allow. There is no policy restriction related to accidental risk affecting land use planning outside of the PSZ.

### Regional context and UDP Sustainability Issues

2.12 One of the core principles of Regional Planning for the North West (RPG13),

which was the Regional Spatial Strategy (RSS), was policy DP2 relating to enhancing the quality of life. Also of some relevance was EC5 (regional Investment Sites), UR4 (Setting Targets for the recycling of land and buildings), and EQ1 (Tackling derelict land and contamination issues).

2.13 RPG has recently been formally superseded by the new RSS. There are no substantial new matters contained in this document that would affect this SPD.

2.14 The Halton Unitary Development Plan (UDP), which was adopted in April 2005, contains strategic aims and objectives set out in Part 1 of the UDP. In relation to Major Accident Land Use Risks policy S5 sets out the policy that creates a sustainable balance between public and environmental protection from possible accidents and the need to allow development to continue in a sustainable way. At the centre of these strategic aims and objectives is the desire of the Council to create sustainable places that all people will want to live and work in.

2.15 Part 2 of the UDP contains policies that seek to implement the broad aims and objectives contained within Part 1 of the UDP Plan. The proposed Planning & Risk SPD is intended to support Policies S5, PR9, PR11 and PR12 by:

- detailing how new developments which could create significant potential off site accidental risks should be balanced against the benefits they will bring
- detailing how new developments in areas already exposed to special existing potential accidental risks should be balanced against the benefits they will bring

2.16 The UDP was subject to a SA at two key stages in its production. These were the

UDP First Deposit and Second (Revised) Deposit stages. This process has helped to ensure that the policies that this SPD is based upon contribute towards achieving sustainable development.

2.17 The reduction in the potential for certain land uses (hazardous installations and Liverpool Airport) to create harm through accidents to people or the environment outside the boundary of these land uses is a sustainable objective of this SPD. The improved potential to create a safe, healthy and prosperous economy, environment and society is also a sustainable objective.

2.18 For all the reasons set out above and explained in detail in Appendix B, Halton Council considered it was both reasonable and proper to complete its detailed policy document (this SPD) in accordance with both adopted UDP policies and current national planning policies related to accidental risk.

2.19 The UDP and its policies will, in due course, be superseded by other planning policy documents in accordance with the Council's Local Development Scheme. All policies directly relevant to this SPD have been "saved" in accordance with the LDS and are therefore still operational for planning policy purposes.

### 3 Guiding Principles

3.1 The guiding principles behind the detailed policies in this SPD are:

- Acknowledging that Halton Council as local planning authority considers 10 chances in a million (cpm) risk of accidental death in one year to be the significant level of off site risk in relation to the potential accident effects on the areas surrounding major accident hazards.
- Imposing a powerful but reasonable pressure on those responsible for the sources of major accident risks through policies to improve these levels of safety further, whenever opportunities arise (for those sites within the responsibility of Halton Council as Local Planning Authority).
- Imposing appropriate constraints on development opportunities near to these potential major accident hazards.

3.2 Appendix B to this SPD sets out a more detailed analysis and explanation of the background issues underpinning accidental risk assessment and acceptability, including societal risk and the interaction with planning blight, urban regeneration and the re-use of previously developed land.





## 4 Policies for Risk creating sites and their detailed interpretation

4.1 Policies in this section are summarised, together with their UDP policy derivations, in appendix G. In this section policies are divided into:

- Policies for development at existing hazardous installations, and;
- Policies for development at completely new airport or hazardous installations

In determining planning applications under these policies, the Council will consult with and take account of any advice received from the Health and Safety Executive, the Environment Agency and other appropriate statutory organisations. There are, effectively, 12 sites within Halton designated under the COMAH regulations or similar legislation. There are also two hazardous installations outside the borough whose planning consultation zones affect Halton. There is one airport (Liverpool) outside Halton which affects the borough for planning consultation purposes. There are 5 pipelines or pipeline networks designated as major accident hazard pipelines. There is no airport site present within the Borough. All these potential major accident risk land uses are identified in Appendix C.

### Policies for development at existing sites designated under the Planning (Control of Major-Accident Hazards) Regulations 1999 or similar legislation or major accident pipelines

4.2 Liverpool Airport lies outside Halton Council's area and is therefore a matter for Liverpool City Council as local planning authority. There is therefore no policy for major accident risk issues at the existing airport itself in this SPD.

### 4.3 Development within a designated hazardous installation or which is a development of an existing hazardous pipeline will be permitted provided:

- **the applicant can demonstrate the proposal will impose no significant development restrictions in terms of off-site accidental risk on surrounding land users, and;**
- **the applicant can demonstrate the proposal has no reasonable alternative method of achieving the development's objective.**

4.4 "Significant development restrictions" are defined as those that increase the extent of any existing off site individual accidental risk of death contour of 10 chances per million (cpm) per year, as a result of a proposed hazardous installation or pipeline development. Where levels may exceed 100 cpm the operator would be expected to take steps to remove surrounding developments before consent could be granted.

4.5 The policy interpretation context for both types of policy restriction is referred to in paragraph 5.4 below. However, the

additional factors outlined in Appendix B paragraph 24, (e.g. that calculation methodology errs on the side of caution), make it logical to err on the side of caution in applying such policies. This must therefore be taken into account in coming to a policy view on the off site effects of any new development proposal within a designated establishment.

- 4.6 Policy 4.3 applies not only to applications for Hazardous Substances Consent (HSC) on existing sites but also to any applications for planning permission on those sites. "Development" covers not only those hazardous substances identified in COMAH legislation but also those circumstances which are included in the definition of development contained within Planning legislation and requiring planning permission (e.g. the means of access to a classified road). It is essential to control development related to major accident risk sites through policies to improve these levels of safety further, whenever such development proposals arise.
- 4.7 Because the processing and storage of hazardous substances means there is an

increased possibility of a major accident, it is always necessary to ascertain if there is a reasonable alternative. It is essential to control development related to major accident risk sites through policies to improve these levels of safety further, whenever opportunities arise (e.g. improvements in safety technology, safer site locations in terms of effects, expanded site boundaries to improve security and control over accident effects)

#### **Policies for development at new sites for Airport Development or new sites designated under the Planning (Control of Major Accident Hazards) Regulations 1999 (COMAH) or hazardous pipelines**

**4.8 In deciding any proposal for airport development within Halton one of the tests will be that the applicant can demonstrate the proposal will impose no significant development restrictions in terms of off-site accidental risk on surrounding land users.**

- 4.9 Policy S5 in the UDP (Major Accident Land



Use Risks) is the strategic policy for major accident risks under which new airport related development should be considered. This is, however, only one of many Development Plan policy considerations under which such developments would be considered including the interrelationship between Halton's Development Plan and Liverpool City Council's Development Plan. It is likely that any airport development within Halton will be related to Liverpool Airport which is primarily located within Liverpool City Council's area.

- 4.10 Significant development restrictions are defined as an individual accidental risk level of 10 chances per million per year as a result of a proposed airport development (where levels may exceed 100 cpm see paragraph 5.4).

#### **4.11 New hazardous installations or pipeline proposals will be permitted provided:**

- **the applicant can demonstrate that the proposal will impose no significant development restrictions in terms of off-site accidental risk on surrounding land users, and;**
- **the applicant can demonstrate the proposal has no reasonable alternative method of achieving the development's objective**

- 4.12 "Significant development restrictions" are defined as an individual accidental risk level of 10 chances per million per year as a result of a proposed hazardous installation or pipeline development. This risk level must also take into consideration any other established hazardous installations or major pipelines nearby. Where levels may exceed 100 cpm the operator would be expected to take steps to remove

surrounding developments before consent could be granted.

- 4.13 The policy interpretation context for both types of policy restriction is referred to in paragraph 5.4 below. However, the additional factors outlined in Appendix B paragraph 24, (e.g. that calculation methodology always errs on the side of caution), make it logical to err on the side of caution in applying such policies. This must therefore be taken into account in coming to an informed policy view on the off site effects of any new development within a designated establishment.
- 4.14 Because the processing and storage of hazardous substances means there is an increased possibility of a major accident it is always necessary to ascertain if there is a reasonable alternative (see paragraph 4.7 above).
- 4.15 In interpreting the 5 policies contained within this section it is essential to examine the detailed potential off site consequences by reference to the policies in section 5 below.

#### **Policy for Inactive Hazardous Substances Consent**

#### **4.16 Sites which have Hazardous Substances Consent and which are inactive will be revoked.**

- 4.17 The Council will revoke existing inactive HSC's where there will be no resulting compensation. This will help clarify that there is no continuing accidental risk issue, will removed unnecessary HSE planning consultation zones, reduce unnecessary administrative burdens and help improvement investment confidence.

## 5 Policies for Development around Risk creating sites and their detailed interpretation

5.1 Policies in this section are summarised, together with their UDP policy derivations, in appendix G. In this section policies are divided into:

- Policies restricting developments around Liverpool Airport within the Public Safety Zone and;
- Policies for restricting developments around established hazardous installations which create significant off site accident risks
- Policies around existing pipelines and hazardous installations which do not create significant off site accidental risks

### Policies restricting developments around Liverpool Airport and Public Safety Zone policy

5.2 The basic policy objective governing the restriction on development near civil airports is that there should be no increase in the number of people living, working or congregating in Public Safety Zones and that, over time, the number should be reduced as circumstances allow. In determining planning applications under these policies, the Council will consult with and take account of any advice received from the Airport Operator in relation to proposals which may not comply with PSZ policy and where the local planning

authority is minded to approve a proposal.

**5.3 Development within the Liverpool Airport PSZ will only be permitted if it comprises a dwelling extension or it would not reasonably be expected to increase the numbers of people living, working or congregating in or at the property or land.**

5.4 National advice from the DETR (DfT public safety zones circular 1/2002) in respect of accidental risks around major airports advises refusal of planning permission for significant new development where the individual risk exceeds 10 chances per million (10 cpm) in one year of death occurring to someone on the ground as calculated on a modelling method related to records of actual accidental risks around airports. This risk level restriction relates to the normal range of development proposals. Within the public safety zone, where the figure exceeds 100 cpm for existing development the airport operator is expected to take steps to remove the development. In addition to house extensions, a change of use involving no increased overall population exposure is an example of the sort of proposal that may be acceptable within the 10 cpm area.

**5.5 Development within the Liverpool Airport PSZ involving very low density of occupation of land may be allowed in certain circumstances.**

5.6 Examples of low density of occupation land uses include long stay and employee car parking, open storage and warehouse developments employing few people and

having few visitors, and public open space in cases where there is a reasonable expectation of low intensity use. Since the majority of the area covered by public safety zone policy within Halton is in the Green Belt most of these sorts of uses would have a policy presumption of refusal against them on Green Belt policy grounds.



**Policies for restricting developments around established hazardous installations which create significant off site accident risks**

**5.7 Development on land within areas around hazardous identified as having an individual accidental risk level exceeding 10 cpm will not normally be permitted.**

5.8 As in the case of Liverpool Airport,

examples of low density of occupation land uses include long stay and employee car parking, open storage, warehouse developments employing few people and having few visitors, and public open space in cases where there is a reasonable expectation of low intensity use, are uses that can still be considered for approval within this policy framework. The same applies to dwelling extensions or where a development would not reasonably be expected to increase the numbers of people living, working, or congregating in or at the property or land.

5.9 If the figure exceeds 100 cpm for existing development no new development would normally be allowed. However, paragraph 24 Appendix B clarifies the different methodology between assumed failure rates at hazardous installations and historical experience of actual accidents, with PSZ policy. The methodology described in paragraph 24 Appendix B is naturally more conservative in its assumptions than the well established PSZ policy structure. It is therefore reasonable to examine individual cases carefully before refusing all development where risk levels exceed 100 cpm or to refuse all but low density development proposals where risk levels exceed 10 cpm.

**5.10 Proposals made by a developer that will mitigate the likely effects of a potential major accident so that they are not considered significant will normally be permitted.**

5.11 It may be unacceptable to reject a desirable new development proposal if substantial and comprehensive measures can be taken to mitigate the effects of a major accident. The developer will be encouraged to negotiate with those responsible for

existing off-site accidental risks to find a solution acceptable to the Local Planning Authority. By way of example a school might be provided with a building protection system to limit the ingress of external gas releases. Equally, it might be possible to reduce existing off site accidental risk from a COMAH site by technological changes in site processes or storage. It might also be possible to reduce COMAH site inventories.

hazardous installations which do not create significant off site accidental risk levels.

**5.15 Development on land within areas around existing hazardous installations or pipelines identified as having an individual accidental risk level below 10 cpm will normally be permitted**

5.12 In determining planning applications under this policy, the Council will consult with and take account of any advice received from the Health and Safety Executive.

5.16 These sites are still the subject of notified consultation zones from the HSE who should therefore be consulted, initially through the PADHI system of consultation, and thereafter through the normal procedures set out in Circular 04/2000.

5.13 The Health and Safety Executive's approach aims to balance the principle of stabilising and not increasing the number of people at risk with a pragmatic awareness of the limited land available for development in the UK. The HSE's approach to risk assessment is set out in a number of guidance documents they have produced, which includes the Planning Advice for Development around Hazardous Installations (PADHI) land use methodology which is used by local planning authorities to generate HSE's normal advice for development proposals within HSE notified planning consultation zones.

**Policies around existing hazardous pipelines and hazardous installations which do not create significant off site accidental risks**

5.14 As a result of research work carried out on planning applications to Halton Council there is clear evidence that none of the existing major accident pipelines covered by this SPD create significant off site accidental risk levels. They fall therefore under the same policy as those existing

## 6 Sustainability and Monitoring Issues

### Sustainability Issues

- 6.1 The UDP was subject to a Sustainability Appraisal (SA) at two key stages in its production. These were the UDP First Deposit and Second (Revised) Deposit stages. This process has helped to ensure that the policies that this SPD is based upon contribute towards achieving sustainable development.
- 6.2 A Sustainability Scoping Appraisal of this SPD was published in June 2007. In accordance with Part 2(9) of the Environmental Assessment of Plans and Programmes Regulations 2004, the Council, as the responsible authority decided, in August 2007, that the intended Supplementary Planning Document is unlikely to have a significant environmental effect and accordingly does not require a Strategic Environmental Assessment. A Sustainability Appraisal Document will be published during the next steps in the public consultation processes.

### Monitoring issues

- 6.3 Chapter 4 in the UDP has 2 objectives set out:
- to reduce the potential of various land uses to cause continuing harm.
  - to improve the potential to create a safe, healthy and prosperous economy, environment and society
- 6.4 The UDP contains 2 specific indicators directly relevant to this SPD. There are no specific indicators related to Airports therefore specific monitoring relates only to

COMAH matters:

- Number of sites designated under the control of major accident hazard regulations 1999 (COMAH).
- Extent of COMAH planning consultation zones.

- 6.5 Since the UDP was adopted in April 2005 there has been a reduction in the number and extent of COMAH sites and their associated HSE planning consultation zones. These will continue to vary during the Plan period and will be monitored as a part of annual monitoring processes. Because of the more detailed policies and plans contained in this SPD, monitoring will extend to 5 monitoring indicators.
- 6.6 The 5 monitoring indicators for this SPD will therefore be:
- Number of sites with Hazardous Substances Consent (but see 6.8 below)
  - Extent of HSE notified planning consultation zones (expressed in hectares)
  - Extent of 10 cpm areas (expressed in hectares)
  - Planning permissions granted and refused within 10 cpm areas
  - Planning permissions granted within HSE consultation zones where HSE advice was to refuse
- 6.7 These 5 indicators are a formalised and quantifiable expression of the extent and impact of major accident hazard land uses within the borough. The less their extent the greater is the likely level of safety experienced by people in Halton.
- 6.8 It is possible that a COMAH site might not require HSC. Where this occurs liaison should take place with HSE. However, for monitoring purposes, only those sites requiring HSC from the Council will be monitored. There are no such sites in the Borough at present.



# Appendix A - UDP policy extracts

HALTON UNITARY DEVELOPMENT PLAN  
Adopted 7th April 2005

## UDP page 10

### PLANNING PROBLEMS AND ISSUES

<p>Paragraph 2</p>	<p>Of particular significance for land use planning is the legacy of the chemical industry in Halton that has left very large areas of land so badly contaminated that they are neither suitable nor commercially viable for development. Much of this land is either in the form of chemical waste tips or in use for low value industrial uses such as open storage and scrap yards. This legacy presents a major disincentive for development in the Borough and makes it impossible to meet Government policy objectives for most new development to take place on previously used land. This is because the location, unsuitability and costs of such sites in Halton are far worse than is normal of a typical urban area. This peculiar situation in Halton therefore has to be taken into account when evaluating the Plan against national planning policy.</p>
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## UDP page 12

### MAJOR ACCIDENTAL RISK INSTALLATIONS

<p>Paragraph 1</p>	<p>Some of the existing chemical industry in the Borough use toxic or dangerous chemicals that are potentially hazardous if accidentally released. These chemical plants are a major source of local employment and prosperity, but storage of these chemicals could have a blighting effect on certain kinds of development in the vicinity and impose slightly increased risk levels for nearby residents. A balance needs to be struck between society's concerns about safety standards, the blighting effect on development and the economic future of Halton's important chemical industry.</p>
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## UDP page 19

### MAIN STRATEGIC AIM

	<p>To transform the quality of Halton's environment and improve economic prosperity and social progress through sustainable development.</p>
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**UDP page 21 and 22****ENVIRONMENTAL QUALITY****1 Aims**

- a To create a safe and healthy environment.
- b To help reduce or counteract greenhouse gas emissions.
- c To help alleviate unavoidable effects of climate change.
- d To make contaminated land safe and bring it back into beneficial use.
- e To enhance the built environment.

**2 Objectives**

- a Transform areas of poor quality environment where poor design, dereliction and inappropriate land uses create an unattractive environment.
- b Ensure that future development is of a quality of design that enhances the built environment.
- c Deal with the historical legacy of the chemical industry with its dereliction and contaminated sites.
- d Ensure that new development and sources of existing pollution do not create unacceptable pollution.
- e Ensure that risk levels from development with the potential to create major accidents are reduced.
- f Encourage development of appropriate renewable energy schemes.
- g Encourage the use of energy efficient designs in all development.
- h Ensure that inappropriate development does not take place in areas at risk from flooding.
- i Protect significant green corridors linked to the Mersey Estuary to assist migration and adaptation of species affected by climate change.
- j Ensure that unsuitable development does not take place on or near to contaminated land, sites with potential to pollute and sites with potential to create major accidents.
- k Establish a network of off-road routes or greenways for walking, cycling and horse riding.
- l Provide safe off-road routes for cyclists linking with the greenway network.

**3 Indicators**

- a Days when air pollution is moderate or high.
- b Number of sites designated under the control of major accident hazard regulations 1999 (COMAH).
- c Extent of COMAH consultation zones.
- d Development on land liable to flood.
- e Area of contaminated land treated, and (separately) the area of derelict and vacant land brought back into beneficial use.
- f Total annual tonnage of air pollutants emitted by industry, and
- g Total annual tonnage of carbon dioxide and other greenhouse gases emitted by industry.

**UDP pages 33 & 34****STRATEGIC POLICIES (PART 1 POLICIES)****S 5 MAJOR ACCIDENT LAND USE RISKS**

- 1 Development will not be permitted if it is:-
  - a Near Liverpool Airport or COMAH Sites and cannot satisfactorily co-exist with their operations; or
  - b Likely to significantly increase major accident risks to life or the environment, or to be unduly restrictive to the development of surrounding land.

**JUSTIFICATION**

- 2 The Borough contains part of the Public Safety Zone (PSZ) for Liverpool Airport. It extends eastwards from the end of the runway into the centre of Hale. National advice from the Office of the Deputy Prime Minister (ODPM) is to refuse planning permission for new significant developments within a PSZ. The definition is based upon international aircraft accident information and policy judgements on the acceptability of risk levels.
- 3 National advice from the ODPM also exists to restrict the height of new developments in areas near to major airports in the interests of the safety of air travellers.
- 4 The Borough contains a number of sites identified under the Control of Major Accident Hazards (Planning) Regulations 1999 (COMAH). Each site has a consultation zone notified to the Council by the Competent Authorities. The Authorities are the Health & Safety Executive (HSE) and the Environment Agency (EA).
- 5 Within each zone there is a requirement to consult the Competent Authority on most significant developments requiring planning permission. Where there is a significant chance of a possible major accident causing accidental death, injury or environmental pollution there has to be a policy judgement as to whether development should be refused or approved. These sites and the associated consultation zones will be identified in Supplementary Planning Documents. These zones are not defined on the proposals map because:
  - a Significant restrictions on development exist only in extremely limited circumstances as set out in policy PR12.
  - b The very limited areas affected may alter over the period of the UDP.
- 6 This policy applies where appropriate to major accident hazard pipelines (as defined in the Pipeline Safety Regulations 1996).

**UDP page 124****CHAPTER 4 - POLLUTION AND RISK****AIMS AND OBJECTIVES**

- 1 The overall aim of the Unitary Development Plan (UDP) is to transform the quality of the environment and improve economic prosperity as well as creating a safe and healthy environment. All these elements are interrelated throughout the UDP. This chapter is no exception.
- 2 This chapter's objectives are:
  - to reduce the potential of various land uses to cause continuing harm.
  - to improve the potential to create a safe, healthy and prosperous economy, environment and society.

## BACKGROUND

- 1 The Borough has an unusual and challenging legacy derived from its long and complicated history as one of the nineteenth century's world centres for the alkali chemical industry. The 1865 Alkali Act owes its origins in part to the evidence put forward as to the gross pollution occurring in the 1850's and 1860's on the banks of the Mersey within what is now Halton Borough.
- 2 The modern resulting mix of businesses includes many still with the potential to pollute and others with the potential to create a major accident risk within the Borough close to housing and town centres in a way which is almost unique in the United Kingdom.
- 3 The range and the degree of residual contamination of land in the Borough is another modern legacy deriving from the alkali chemical industry.
- 4 This combined legacy has had a major effect on the Borough's present social, economic and environmental character and on its present image. This affects the confidence that investors have in bringing modern employment and housing opportunities and other facilities to the Borough. This legacy requires special policies to be applied to encourage the continued transformation of the Borough. The large amount of Halton's contaminated land, the unusually high costs of its remediation, together with the lower land and property prices associated with the overall combined legacy of the chemical industry, makes it extremely difficult to redevelop many of the area's brownfield sites. This in turn means the area's declining population cannot be reversed as easily as in many built up urban areas whose problems of population decline have less complicated origins.
- 5 Also of significance in terms of its potential to create a major accident risk is Liverpool Airport which lies on the western edge of the Borough. It is however, an activity of great importance to a modern local economy and it is necessary to strike the best balance between its benefits and its safety impact on the Halton area.

## UDP page 125

### MAJOR ACCIDENT RISKS

- 7 Throughout the country there exists the possibility of major accidents which could result in major loss of life or damage to the environment. National policies identify two types of land uses in (or adjacent) to Halton which have particular implications in respect of major accident hazards. The first type is airports and the second type is Control of Major Accident Hazards (COMAH) Sites.
- 8 Halton is relatively unusual in that part of its area lies under the flight path of a major (and expanding) airport of great economic significance in the sub-region. The existence of Liverpool Airport creates a slightly increased risk of the remote chance of a major accident affecting the environment and people of Halton even though it is located within the area of Liverpool City Council. It is essential to reach a proper and satisfactory balance between these safety issues and the economic value of Liverpool Airport.

- 9 Halton is also unusual in relation to the number of sites where significant quantities of potentially hazardous chemicals are used or stored. This is partly due to the concentration and nature of chemical installations in the area and the length of time they have been there. These chemical plants are a major source of local employment and prosperity but the storage and use of these chemicals can have a blighting effect on certain kinds of development in the vicinity. The potential increased risk levels from new development in or surrounding a COMAH site is partly reflected in the requirement to consult the Health and Safety Executive (HSE) and the Environment Agency (EA) when planning applications are submitted within these areas.
- 10 It is essential to reach a proper and satisfactory balance between society's concerns about safety standards and the economic future of Halton's important chemical industry.
- 11 The proposed policies strike a proper balance by:
- Acknowledging what society currently considers to be an acceptable level of safety in relation to the potential accident effects on the areas surrounding major accident hazards.
  - Imposing a powerful but reasonable pressure on those responsible for the sources of major accident risks, by a policy to improve these levels of safety further, whenever opportunities arise (for those sites within the responsibility of Halton Council as Local Planning Authority).
  - Imposing appropriate constraints on development opportunities near to these potential major accident hazards.

## UDP pages 129 to 131

### PR9 DEVELOPMENT WITHIN THE LIVERPOOL AIRPORT PUBLIC SAFETY ZONE (PSZ)

- 1 Development within the Liverpool Airport PSZ will only be permitted if it falls into one of the following categories:
- a It comprises a dwelling extension.
  - b It would not reasonably be expected to increase the numbers of people living, working or congregating in or at the property or land.

### JUSTIFICATION

- 2 National advice from the DETR (DfT public safety zones circular 1/2002) in respect of accidental risks around major airports advises refusal of planning permission for significant new development where the individual risk exceeds 10 chances per million (10 cpm) in one year of death occurring to someone on the ground as calculated on a modelling method related to records of actual accidental risks around airports. This risk level restriction relates to the normal range of development proposals.
- 3 Certain types of development involving very low density of occupation of land may be allowed in certain circumstances. Other types of development involving very large congregations of people in the vicinity of Liverpool Airport (e.g. a major sports stadium) may not be allowed even where the individual risk level is less than 10cpm.
- 4 Within the public safety zone, if the figure exceeds 100 cpm the airport operator would be expected to take steps to remove the development. It is not expected that this will arise within Halton within the Plan period.
- 5 The Liverpool Airport Public Safety Zone will be identified in a Supplementary Planning Document.

## PRI 0 DEVELOPMENT WITHIN THE LIVERPOOL AIRPORT HEIGHT RESTRICTION ZONE

- 1 Development within the Liverpool Airport height restriction zone will only be permitted if it is below the height notified to the Council by the relevant authority and would not cause a hazard to air travellers.
- 2 Development within the Liverpool Airport height restriction zone will not be permitted if it would otherwise cause a hazard to air travellers.
- 3 Tree planting and other landscape improvements in the vicinity of Liverpool Airport considered under Policy GE28 - The Mersey Forest, must not adversely affect the operational integrity or safety of the airport.

### JUSTIFICATION

- 4 The Council is notified by the Civil Aviation Authority that they wish to be consulted about certain types of development around airports to ensure that the safe passage of air traffic will not be interfered with by, for example, high buildings or waste facilities which might attract large populations of birds near airports.
- 5 The varying height zones cover the whole of the Borough and are therefore not shown on the Proposals Map but the Local Planning Authority keeps records of these areas.
- 6 While Policy GE28 seeks to encourage tree planting and landscape improvements as part of the Mersey Belt project, it is important that such planting does not adversely affect the operational safety of the airport.

## MAJOR ACCIDENT RISKS

### PRI 1 DEVELOPMENT OF SITES DESIGNATED UNDER THE CONTROL OF MAJOR ACCIDENT HAZARDS (PLANNING) REGULATIONS 1999 (COMAH)

- 1 Development that falls within the designated COMAH definition will be permitted provided that all of the following criteria can be satisfied:
  - a The applicant can demonstrate that the proposal will impose no significant development restrictions in terms of off-site accidental risk assessment on surrounding land users.
  - b There is no reasonable alternative method of achieving the development's objective.

### JUSTIFICATION

- 2 Proposals for new COMAH proposals or for the expansion or amendment of existing sites should result in no significant development restrictions that would reduce the effective choice of proper land uses in the surrounding consultation zone notified to the Council by the Competent Authority.
- 3 Because the processing and storage of hazardous substances means there is an increased possibility of a major accident it is always necessary to ascertain if there is a reasonable alternative.
- 4 Current COMAH sites and major accident hazard pipelines and their consultation zones will be shown in a Supplementary Planning Document as they may change over the plan period.

- 5 Significant development restrictions are defined as an overall accidental risk level of 10 chances per million per year as a result of a proposed COMAH development and any other established COMAH sites nearby.
- 6 In determining planning applications under this policy, the Council will consult with and take account of any advice received from the Health and Safety Executive.

## PRI2 DEVELOPMENT ON LAND SURROUNDING COMAH SITES

- 1 Development on land within consultation zones around notified COMAH sites will be permitted provided that all of the following criteria can be satisfied:
  - a The likely accidental risk level from the COMAH site is not considered to be significant.
  - b Proposals are made by the developer that will mitigate the likely effects of a potential major accident so that they are not considered significant.

## JUSTIFICATION

- 2 The definition of what constitutes a significant major accidental risk is related to the same policy development framework for risk levels set out in the justification to Policy PR9 above, where an individual accidental risk level of 10 chances per million (cpm) in a year is the maximum considered acceptable, with the same provisos set out in the justification to Policy PR9.
- 3 It may be unacceptable to reject a desirable new development proposal if substantial and comprehensive measures can be taken to mitigate the effects of a major accident. The developer will be encouraged to negotiate with those responsible for existing off-site accidental risks to find a solution acceptable to the Local Planning Authority.
- 4 COMAH consultation zones in Halton will be shown in a Supplementary Planning Document as they may change over the plan period.
- 5 In determining planning applications under this policy, the Council will consult with and take account of any advice received from the Health and Safety Executive. The Health and Safety Executives approach aims to balance the principle of stabilising and not increasing the number of people at risk with a pragmatic awareness of the limited land available for development in the UK. The HSE's approach to risk assessment is set out in a number of guidance documents they have produced, which includes the PADHI land use methodology. This particular guidance is designed to help planners and developers who want to work out for themselves what the likely response of the HSE will be if the HSE were to be consulted about a planning proposal.

# Appendix B

## Understanding Accidental Risk Issues

### Introduction

- 1 The Planning & Risk SPD is intended to be supplementary and complementary to the adopted planning policies contained in the UDP which establish that 10 chances in a million (cpm) individual risk of death is the primary criterion for establishing whether the effect of a development proposal is significant in affecting individual accidental risk from the special land uses which are the subject of this SPD. By seeking to clarify, in more detail than in the UDP, how potential individual accidental risks are balanced against the benefits that development proposals bring, this SPD provides a clearer policy framework for individual development control decisions. This appendix provides:
  - greater depth and explanation of adopted UDP policies
  - a review of external policies to ensure adopted UDP policies are still reasonable and not out of date
  - confidence that UDP policies can continue to be used in the future
- 2 The SPD is site specific, showing designated sites and their surrounding consultation zones. These affect a significant (though reducing) area of the Borough. In terms of sustainability or environmental impact issues the probability, duration, frequency and reversibility of the potential effects of a major accident do not raise a serious problem, partly because the chances of a hazardous installation site accident or an aircraft crashing are both extremely low within the Plan period. When the UDP was being prepared DfT Circular 1/2002 was issued. Research carried out in relation to safety around airports (R&D report 9636 - June 1997) considered special limitations on large assemblies of people, even outside of the PSZ's 10 cpm area, should be considered. The UDP was prepared on that basis but, in practice, central government planning policy, as set out in Circular 1/2002 contained no reference at all to this prospective restriction. Although the UDP was approved subsequent to that circular this matter was not taken into account. To ensure that the Planning & Risk SPD is up to date in terms of national planning policies the SPD has been made consistent with this planning policy advice.
- 3 The primary policy issue relates to considering the risk of an individual or a group of individuals being killed as a result of a major accident involving either a major escape of chemicals from a hazardous installation or major accident hazard pipeline or from an aircraft crashing as it lands or takes off from Liverpool Airport. An additional effect is the potential impact of such accidents on the environment itself.
- 4 The Council's approved UDP policies, upon which this SPD expands, use the same standard of individual accidental risk occurrence for policy constraints in relation to both hazardous installations and airports within Halton. This is because:
  - Halton has extensive experience in relation to the acceptability of these types of risk as a factor in planning decision making;

### Comparative safety issues between Hazardous Installations and Airports and Flood Risks

- because of a view held both by Halton Council and by national government that there should be consistency and openness in the setting of standards for this form of policy making.
- 5 That standard is therefore based upon extensive national government sponsored research work carried out into actual accidental risks around airports and the probability of aircraft crashing upon property, particularly in and around airports. Halton Council's view is that it is impractical and unnecessarily complex to distinguish between different types of land use with the capacity to cause a major accident which has off site consequences in terms of potential multiple fatalities. Aircraft accident information has a wide ranging and clear evidence base. It was therefore, reasonable to follow that national policy line, unless there were compelling reasons to take a different policy view.
  - 6 HM Treasury published a report on the setting of safety standards in November 1996. The objective of the 1996 report was to strike the best balance of costs and benefits in such situations. The nature and level of risk, means that more weight should be put on the considered preferences of those at risk. The report's view was that there could and should be more consistency of approach to different areas of safety regulation within government. HSE advice to Local Planning Authorities differs from risk policy in relation to land use planning and Airport Public Safety Zones. Because Halton saw no compelling reason to apply different risk and safety standards between these types of land use it has maintained a consistency of approach.
  - 7 PPS25 (Flood Risk) published in December 2006 indicates that a risk-based approach

should be adopted at all levels of planning in relation to this area of public planning policy making. DEFRA and the EA commissioned and published research related to Flood Risks including Flood Risks to People (e.g. R&D Technical Report FD2317 published in July 2003) underpinning PPS25 policies. Research included the risk of accidental death caused by flooding and reached similar conclusions as did the work underpinning government guidance on airport PSZ's.

- 8 Halton Council's Planning & Risk policies are a consequence of extensive local experience. They are based upon





substantial knowledge and research, in particular the advice received from its expert consultants. UDP policies are consistent with other national government policies in relation to this major accident risks.

### Individual accidental risks

9 An individual accidental risk of one death in one million people each year is generally accepted without concern (according to the Royal Commission on Environmental Pollution and a number of other sources) and higher levels appear to be tolerated in certain circumstances. In 2007 HSE stated (consultation document CD212) in a consultation document about societal risk (paragraph 3.2), that there are well established tolerability criteria for individual risk, both for workers and for members of the public, which are:

- The annual risk of accidental death for workers from work activities should be less than 1,000 in 1,000,000
- The annual risk of death for members of the public who are exposed to an involuntary risk from work activities should be less than 100 in 1,000,000.

10 Accidents which result in multiple fatalities and accidents that result from other people's actions, and not from natural disasters, tend to be less well tolerated by people. Where people see some clear personal benefit, despite the possibility of accidents, and where people are well informed about the nature of accidental risks, they tend to be better tolerated by people and by public decision makers (see July 1993 Scientific American article).

11 In relation to the need to compare like with like in terms of risk comparability, many accidental risks are ones to which people are only exposed for a small

proportion of time. Air travel is a good example. Statistics are usually quoted in relation to either passenger distance travelled or as a risk of exposure over a whole year. The reality is that the average person is only exposed to such risks for a short time in any one year. This is borne out by accident statistics rates for air flight personnel who spend far more time on aircraft than individual passengers.

12 In relation to comparing the risk for someone exposed to a nearby hazardous installation to (for example) someone exposed to a possible motor vehicle accident, it is essential to allow for likely time exposure, since it is clear from available information that people generally tolerate much higher levels of risk in activities to which they are only exposed for more limited periods of time.

13 Taking these various factors into account in respect of understanding individual risk have been important elements in the Council reaching a considered view as to an acceptable level of individual major accident risk exposure for spatial planning policy making within Halton.

### Societal risk

14 In 2007 HSE (Consultation document CD212 - Proposals for revised policies to address societal risk around onshore non-nuclear major hazard installations) defined the chance of accidents that could harm a number of people in one go as 'societal risk'. They defined 'Societal risk' as "a way to estimate the chances of numbers of people being harmed from an incident. The likelihood of the primary event (an accident at a major hazard plant) is still a factor, but the consequences are assessed in terms of level of harm and numbers affected, to provide an idea of the scale of an accident

in terms of numbers killed or harmed. ...It is in effect a measure of several combined issues - what things could go wrong at such sites, how likely they are to happen and how many people could be affected as a result? Societal risk is therefore dependent on what processes and substances are at the sites, and on the size, location and density of the population in the surrounding areas."

- 15 In the associated Initial regulatory impact assessment document to the HSE's 2007 consultation document (paragraph 46) is the following statement "Within the limited confines of the analysis described in Annex I, we show that the effect of incorporating societal risk is to shift the balancing point in favour of safety. Using only individual risk the boundary where development should not be allowed is where risk exceeds 88 cpm. Depending on the functional form for societal risk and value of H (number of households) chosen, this falls to between 28 and 4.4 cpm when societal risk is included." It would appear that this analysis is based upon risk of death and not upon the current policy base used by the HSE of "risk of dangerous dose" (see paragraph 30 below for this definition).
- 16 The assumed functional form for societal risk analysis in this annex is related to a number of highly variable assumptions including judgements as to how much people are put off by the thought of multiple fatalities rather than a series of single fatalities and also the value society places in economic terms upon the loss of life. The HSE analysis produces a revised figure of 28 – 4.4 cpm individual risk of accidental death above which new development is justified in being stopped or seriously controlled. This figure lies broadly within the same area of risk as the 10 cpm individual risk figure in Halton's UDP which
- 17 Societal risk was defined in DEFRA/ Environment Agency sponsored research published in March 2006 relating to Flood Risks to People as "Average annual societal risk is the estimated annual number of people being harmed or killed due to flooding". This differs from the HSE definition but both share the same concern expressed in paragraph 10 above about the acceptability to society's decision makers of accidents involving multiple fatalities.
- 18 Both DEFRA flood risk policy and Airport Public Safety Zone acknowledge the existence of "societal risk" as a concept that should be considered but do not allow it to complicate the resulting policies. There is nothing fundamentally different in terms of potential off site risks from an airport or from a hazardous installation. Airport off site risk policies do not have a separate, complicated and difficult to understand "societal risk" issue for determining planning applications around them even though the issue is acknowledged and therefore taken into account. There is a simpler and easily understood protection regime which, in the Halton area is similarly applied (to ensure consistency). to hazardous installations and pipelines as well.
- 19 Whilst current HSE advice (and Halton's current planning policies on accidental risk) already take the issue of societal risk (as defined in paragraph 14 above) into
- tries to strike the right policy balance on accidental risk matters affecting Halton. In addition, the decision making methodology used over many years by Halton Council has to be set within the context described in the 1993 Scientific American article referred to earlier. The article describes how adequate approaches to handling risk issues result in the development of good policy.

account within those areas already covered by established HSE planning consultation zones, there remains a potential societal risk issue for areas outside the current HSE planning consultation zones (see HSE's CD212 consultation document). Since the individual accidental risk of death levels involved, outside the current HSE planning consultation zones, are so low as to be wholly insignificant, it is reasonable to discount this matter in terms of public policy making for spatial planning policies. In addition, the consultation processes involved in the government producing DfT Circular 1/2002 involve consideration of such matters and its final policy advice (see paragraph 2 above) contained no proposed development restrictions outside of the 10cpm PSZ boundary.

- 20 In terms of spatial planning policy further large scale developments within the inner areas of established hazardous installation planning consultation zones in Halton are unlikely to have a sufficiently dramatic effect on the overall numbers of people exposed to significant accidental risks to justify additional explicit policies dealing with societal risk. This takes into account that the risk levels set by Halton's UDP policies fall within the same area of risk as that described in the HSE 2007 consultation document's initial regulatory impact assessment (CD212 see paragraph 16 above).
- 21 Taking these various factors into account in respect of understanding societal risk issues has been important in the Council reaching a considered view that an acceptable level of individual major accident risk exposure for spatial planning policy making is an appropriate approach within Halton.

### Planning blight, urban regeneration

### and the re use of previously developed land

- 22 National planning policies over a wide range of documents are clear about the need to encourage urban regeneration and the need to encourage the best use of previously developed land. Halton has a special legacy resulting from its long association with the chemical industry (see Appendix A page 15 paragraph 2 and page 18 paragraphs 1-5) and this has had a major effect on the Borough's present social, economic and environmental character and on its present image. This affects the confidence that investors have in bringing modern employment and housing opportunities and other facilities to the Borough. This local legacy requires special urban regeneration planning policies to be applied to encourage the continued transformation of the Borough. These policies are set out throughout the UDP but in particular can be seen in Chapter 1 on Regeneration. The effects of any restrictions which further discourage the best use of previously developed land in the Borough have therefore to be weighed carefully by the Council in formulating its policies.
- 23 Advice given by the HSE to refuse developments around hazardous installations at risks levels greatly below that already existing nearer to established sites in the Borough has meant that councillors have had great difficulty understanding the application of what they consider to be different standards in risk assessment. If new development is worth stopping then existing development is also worth removing if already exposed to much greater risks. Such a (national) policy already applies around airports. The issue of consistency in public decision making is also relevant to applying the same accident

risk standards to determining applications for development around established major accident risk sites and applications for new or expanded major accident risk sites themselves. Such sites are more unusual than ordinary housing and commercial developments, and more difficult to replace or move if surrounding land uses imposed safety constraints on their activities. There is arguably a greater economic cost compared to the benefit of allowing such sites at higher risk levels. This factor was taken into account in relation to airports which resulted in the policy decision to apply a consistent approach to accidental risk issues notwithstanding the economic arguments that could be put forward in favour of applying different safety standards. Halton Council has also taken account of these matters in applying consistent standards whilst applying a policy pressure to improve safety standards in the interests of sustainability.

### The difference between calculated risk and historic evidence

24 The lack of precision of chemical site risk calculations and their foundation on assumed failure rates rather than historic experience, in contrast to the aircraft crash policy situation, makes it difficult to justify expensive and community damaging measures such as demolishing houses which might be unnecessary, based on failure rate assumptions used in those calculations rather than evidence of past actual individual risks. The blighting impact of such policies is self evident and, because the calculation methodology always errs on the side of caution, it is logical to err on the side of caution in applying such policies. Spatial planning safety policies have demonstrable economic and social effects which a local planning authority must take into account in its overall interpretation of

Development Plan policies relevant to each specific planning application.

25 In Halton elected representatives have for many years been well briefed on the comparative risk context surrounding COMAH related decision making so they have been more easily able to make balanced judgements about the acceptability of such remote accidental risks. The levels of acceptability of individual risk now built into Halton's UDP reflect the experience and concerns of the Council over many years.

26 Although the sites identified in this SPD are obviously of significance in terms of their potential to create major accident risks, their activities are also of great importance to a modern local and national economy. It is therefore necessary to strike the best balance between the economic and social benefits of a more vibrant economy in minimising planning blight and the safety impact on the Halton area of these sites.

27 The probable effect of the SPD will therefore be to indirectly improve investment confidence in the built environment within the Borough and thereby reduce unnecessary urban blight by striking the right balance between development requirements and an acceptable level of accidental risk.

### HSE "dangerous dose" policy advice position

28 Paragraph 3.8 of the HSE's 2007 consultation document (CD212) states "The Government's view therefore is that informed public opinion, and not solely professional judgement, should guide decisions..." This is exactly the approach taken at Halton over many years which,

through constant public exposure and debate, has resulted in a simple and robust policy framework which strikes the right balance between development requirements and an acceptable level of accidental risk.

- 29 As a result of the special experience and expertise of Halton Council risk based land use planning policies have become statutory planning policies within Halton even though these approved policies differ from national advice given by the HSE to local planning authorities. Advice from the HSE nationally is sometimes hazard based (i.e. the consequences of an accident event happening) rather than risk based (i.e. the likelihood of an event actually happening).
- 30 HSE advice is also based upon the “risk of dangerous dose” to people. This involves severe distress to all, a substantial number requiring medical attention and some requiring hospital treatment as well as the risk of fatalities (about 1%). Whilst Halton’s policies do not explicitly take into account the HSE’s “dangerous dose” concept it is considered that the individual

accidental risk of death policy level adopted in the UDP takes sufficient account of both the “dangerous dose” concept and the “societal risk” concept not to warrant the introduction of additional policy complications which achieve little difference in terms of actual public safety. Halton’s policies in relation to hazardous installations, pipelines and airports are therefore based, more simply, on the risk of an accidental death, which is also the basis used for national public accidental risk policies around Britain’s airports.

### Conclusion

- 31 Taking these various factors into account, in respect of understanding individual risk, societal risk, planning blight issues and the HSE’s own policy advice position, have been important in the Council reaching a considered view that an acceptable level of individual major accident risk exposure of 10cpm, for spatial planning policy making, is an appropriate approach within Halton.



## Appendix C

List of sites with Hazardous Substances Consent, pipelines and Liverpool Airport and accompanying location maps

### I Security

- 1.1 Detailed site location information is not contained in this SPD for security reasons. If additional information is required the Council's Operational Director, Environment and Regulatory Services should be contacted in the first instance (see Appendix F)

### 2 Active hazardous installations within Halton

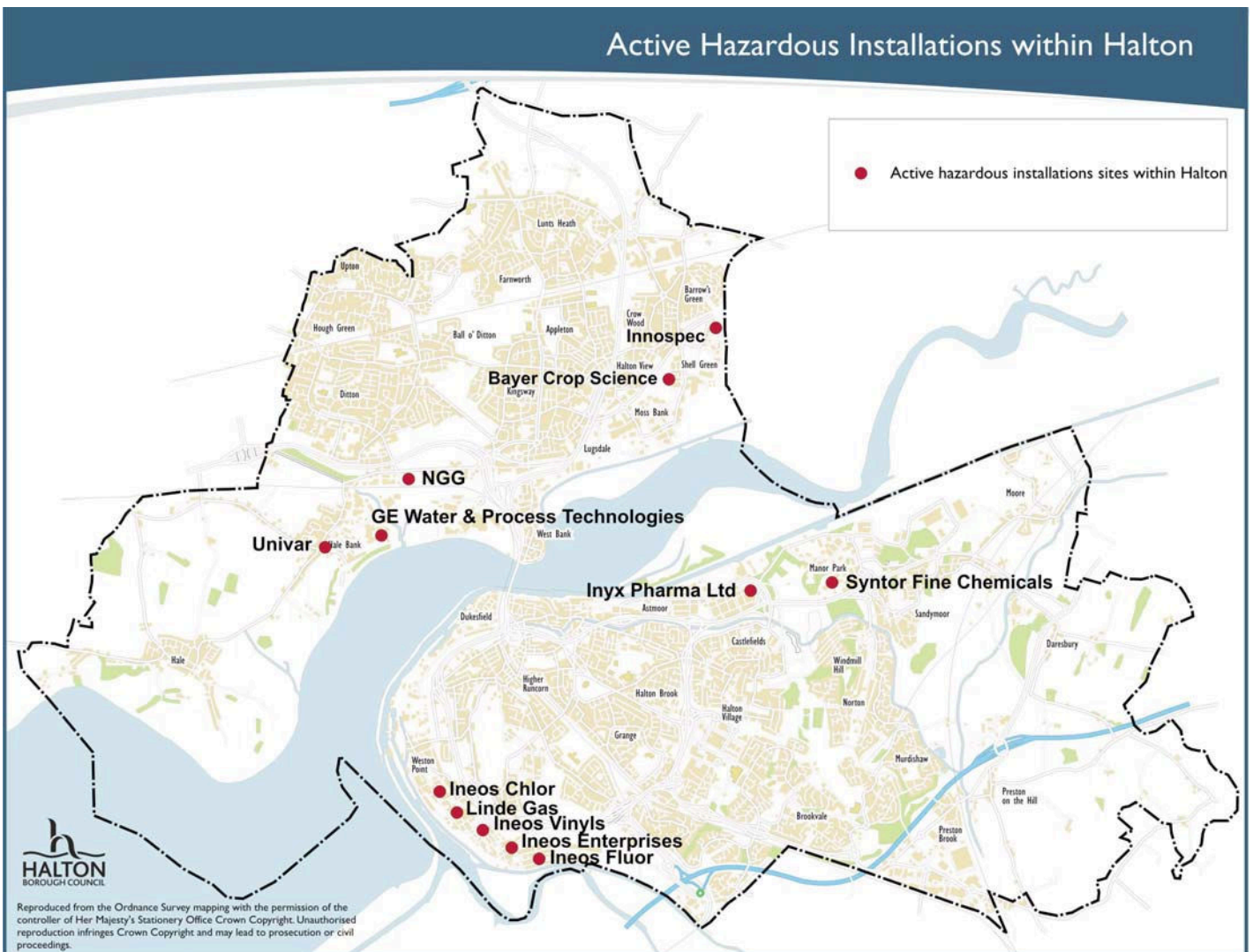
- 2.1 **Innospec**, Dans Road, Widnes. This is a lower tier COMAH site. An amended HSC, which may affect the HSE's planning consultation zones, is under consideration in 2008. Previously known as Aroma and Fine Chemicals Ltd and as Bush Boake Allen
- 2.2 **Bayer Crop Science**, Gorse Lane, Widnes. This is a top tier COMAH site. Its 10 cpm estimated area has an extremely small effect outside the site boundary. The company has announced its intention to close the site in 2009.
- 2.3 **National Grid Gas (NGG)**, Ditton Road, Widnes. Formerly British Gas North Western. Gas holder is a lower tier COMAH site.
- 2.4 **Univar, Halebank**, Widnes. Formerly known as Ellis & Everard. This is a lower tier COMAH site. Its 10 cpm estimated area currently has an effect outside the site boundary. An amended HSC, which may reduce this effect and the HSE's planning consultation zone is likely to be under consideration in 2009.
- 2.5 **GE Water & Process Technologies**, Foundry Lane, Halebank, Widnes. Formerly known as GE Betz and before that as Dearborn's. This is a lower tier COMAH site. An amended HSC, which should reduce the HSE's planning consultation zone, is under consideration in 2008. Its 10 cpm estimated area has an effect outside the boundary of the site but only affects other chemical industry premises.
- 2.6 **Pharmaserve North West**, Arkwright Road, Astmoor, Runcorn. Formerly known as Inyx Pharma and Miza Pharmaceuticals. It is not a lower tier COMAH site.
- 2.7 **Ineos Chlor**, Weston Point, Runcorn. Formerly ICI. This is a top tier COMAH site. Its 10 cpm estimated area has a substantial effect outside the site boundary, covering most of Weston Point and Weston Village in Runcorn and also affecting part of Vale Royal District Council's area.
- 2.8 **Linde Gas Ltd**, Weston Point, Runcorn. Within the Ineos site is a separate specialised gas handling operator, Linde Gas Ltd. Off site effects are contained within the Ineos site. This is not a lower tier COMAH site.
- 2.9 **Ineos Vinyls**, Weston Point, Runcorn. Formerly European Vinyls Corporation Ltd and before that ICI. This is a top tier COMAH site. Its 10 cpm estimated area has a substantial effect outside the site boundary, covering parts of Weston Point and Weston Village in Runcorn and also affecting part of Vale Royal District Council's area.
- 2.10 **Ineos Fluor Ltd**, Weston Point, Runcorn.

Formerly ICI. This is a top tier COMAH site. Its 10cpm estimated area has a substantial effect outside the site boundary, covering most of Weston Point and Weston Village in Runcorn and also affecting part of Vale Royal District Council's area.

2.11 **Ineos Enterprises Ltd**, Weston Point, Runcorn. Formerly ICI. This is a top tier COMAH site. Its 10cpm estimated area has a substantial effect outside the site boundary, covering most of Weston Point and Weston Village in Runcorn and also affecting part of Vale Royal District Council's area.

2.12 **Syntor Fine Chemicals**, Unit 11, Boleyn Court, Manor Park, Runcorn WA7 1SR. Granted HSC (06/00231/HSC) in August 2006. This is a lower tier COMAH site. Its 10 cpm estimated area has a small effect outside the boundary of the site

2.13 A map showing the location of each of these sites is shown below

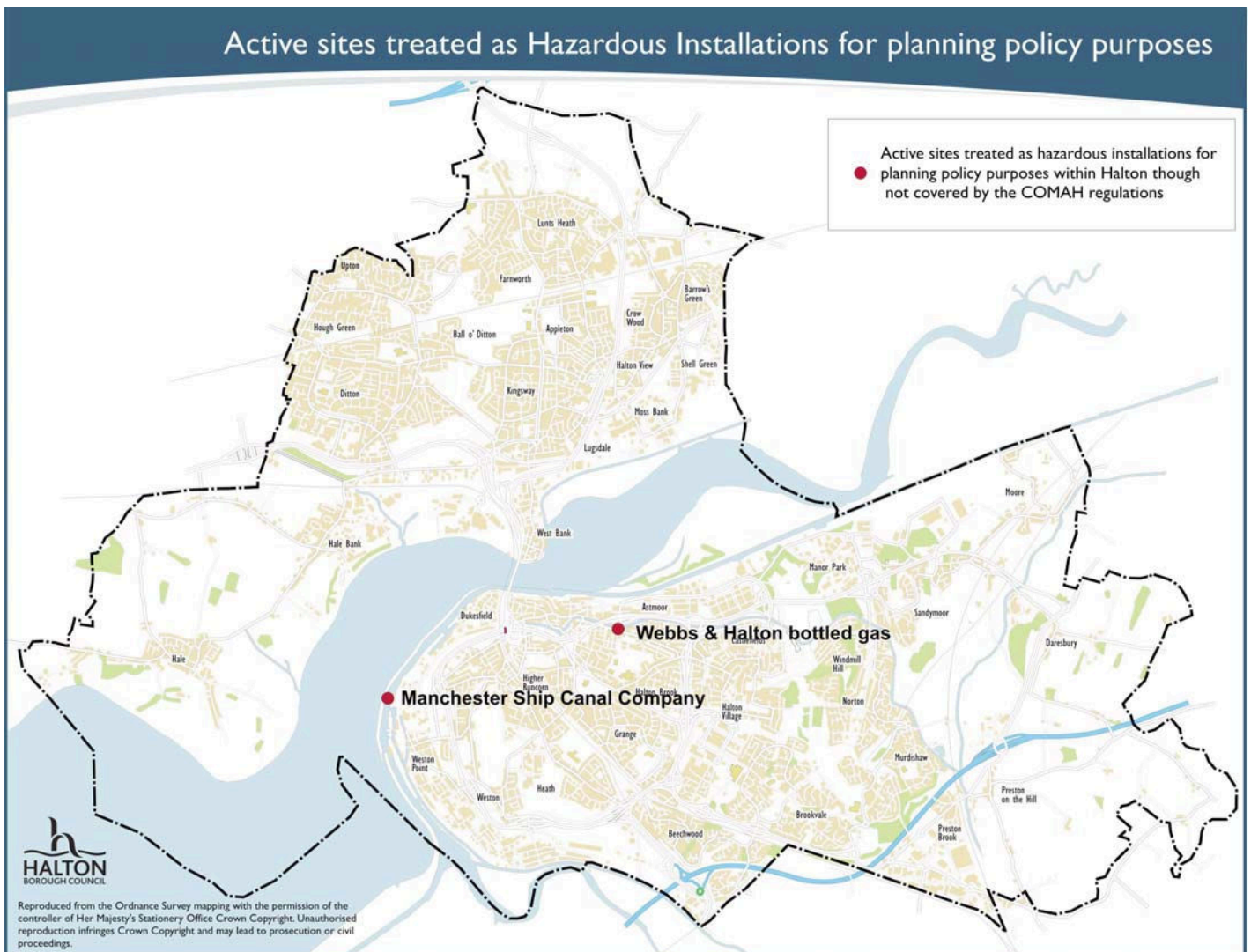


**3 Active sites treated as hazardous installations for planning policy purposes within Halton though not covered by the COMAH regulations**

- 3.1 Webbs & Halton bottled gas, Halton Road, Runcorn. Although this is not formally a COMAH site it still currently falls under the 1982 NIHHS regulations (as amended) and, for planning purposes, is therefore being treated as a hazardous installation.
- 3.2 Manchester Ship Canal Company, Runcorn Lay-by, Runcorn Docks. This is not a

COMAH establishment and therefore has no COMAH planning consultation zone. It is, however, in an HSE Consultation zone list (CZL) because of an explosives licence. Since it does not fall under the COMAH regulations its site has only been identified by general reference to the Ship Canal in the Runcorn Docks area .

- 3.3 A map showing the location of these sites is shown below





#### 4 Active COMAH sites outside Halton but potentially affecting it

4.1 Pentagon Fine Chemicals, Halebank, in Knowsley Council's area. Used to be known as Great Lakes and before that as Ward Blenkinsop. This is a top tier COMAH site. Its 10cpm estimated area should have little affect in Halton although Old Higher Road and a small part of Halebank Road (which are all in the Green Belt) might be affected. It is a matter primarily for Knowsley Council to deal with in accordance with its own planning policies. However, automatic consultation with HSE using the PADHI system (see Appendix E, paragraph 3) would ensure an

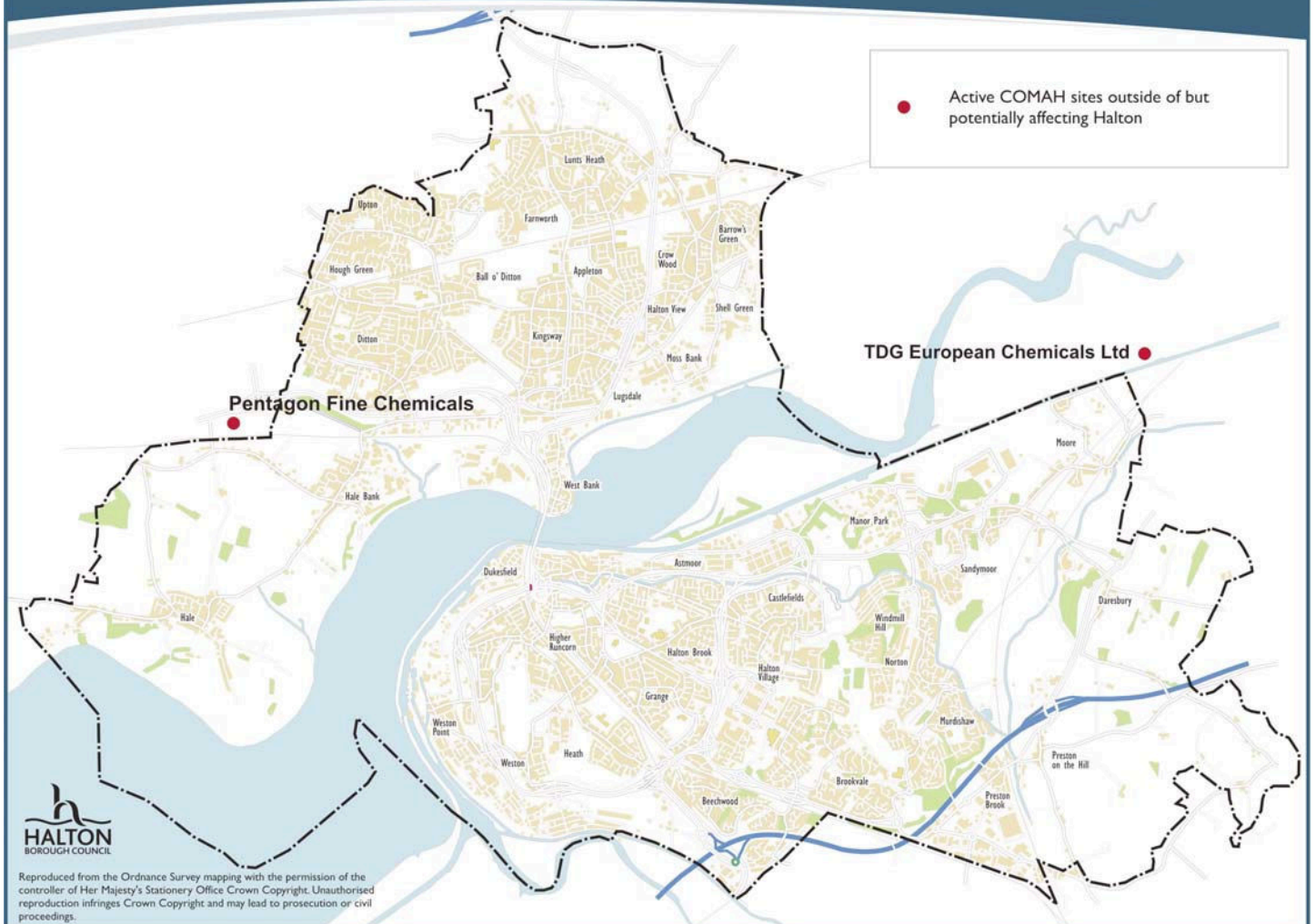
assessment takes place if any new development proposals come forward.

4.2 TDG European Chemicals Ltd, Acton Grange Distribution Centre, Birchwood Lane, Moore in Warrington Council's area. This is a top tier COMAH site.

#### 5 Active Airport sites outside of but affecting Halton

5.1 Liverpool Airport, Speke, Liverpool City Council's area. Its 10cpm estimated area affects Hale Village in Halton in the form of the notified Public Safety Zone.

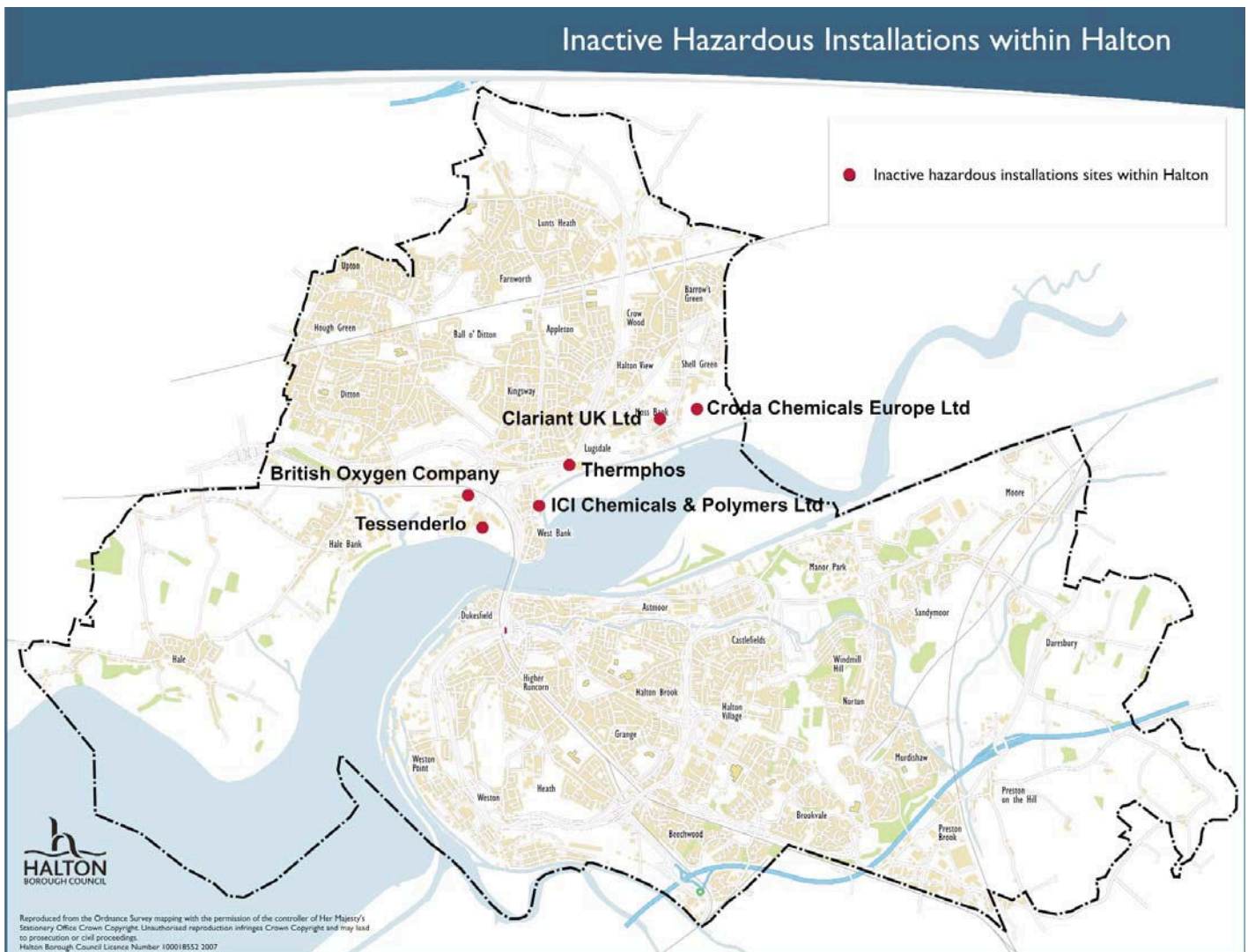
Active COMAH sites outside of but potentially affecting Halton



**6 Inactive hazardous installations within Halton ( sites still with Hazardous Substance Consent)**

- 6.1 Croda Chemicals Europe Ltd (better known locally as Croda Bowman), Gorsey Lane, Widnes. Site has been closed and up for sale for some years. This was a lower tier COMAH site.
- 6.2 Clariant UK Ltd, Tanhouse Lane, Widnes; formerly known as RV Chemicals. Site has been closed for some time and redeveloped for ordinary commercial uses – unopposed revocation is being considered. This was a lower tier COMAH site.

- 6.3 British Oxygen Company, West Bank Dock Estate, Widnes. Site has been closed for some time and redeveloped by O'Connor's as part of the Merseyside Multimodal transportation facility identified in the UDP as the Ditton Strategic Rail Freight Park. This was a lower tier (equivalent) COMAH site
- 6.4 ICI Chemicals & Polymers Ltd, Widnes Experimental Works, Waterloo Road, Widnes. Site has been closed for some years and redeveloped for ordinary commercial uses. This was a lower tier (equivalent) COMAH site.



- 6.5 Tessengerlo, West Bank Dock Estate, Widnes. Formerly known as Elf Atochem, Marchem, Norsochem and Albright & Wilson's. This was designated as a top tier COMAH site. Its 10 cpm estimated area had a very small effect outside the site boundary. The site has now closed and has been demolished – unopposed revocation is being considered.
- 6.6 Thermphos, Earle Street, Widnes. Formerly Rhodia, and Albright & Wilsons and now owned by Thermphos, this site was a lower tier COMAH site until Rhodia notified HSE that storage quantities had been reduced to sub-notifiable levels in 2001. It still has a deemed HSC.
- 6.7 The sites are still identified in the HSE's list as sites with COMAH consents. Even though a number of these sites have been redeveloped for other purposes Hazardous Substances Consents have an unlimited life in accordance with the legislation. Some of these sites may therefore ultimately need to have their HSC status revoked by Halton Council (see policy 4.16). Those which are the most important in relation to planning blight and urban regeneration issues will be completed first, using the unopposed procedures set out in the legislation wherever possible because this involves the Council in no compensation issues.
- 7 Notified Pipelines**
- 7.1 In relation to notified pipelines within the Borough the HSE planning consultation zones are shown in Appendix E and are dealt with and listed below.
- 7.2 Natural Gas, ethylene, vinyl chloride and various oil products are transported along these pipelines. There are other pipelines (e.g. a hydrogen pipeline) which do not fall under this notification and consultation system, essentially because they are not considered a sufficient risk to justify special consultation arrangements.
- 7.3 Unlike Airports or hazardous installations, pipelines have 2 special characteristics:
- they represent a potential accidental risk along a line rather than at one particular site; and,
  - much of the length of each pipeline lies under land owned by third parties from whom the pipeline operator has purchased a way leave. That way leave (or sometimes their direct ownership of the land) gives the pipeline operator rights and duties to operate the pipeline safely and also prohibits development over the pipeline unless it is first removed, diverted or suitably protected.
- 7.4 Work carried out as part of a planning application submitted to Halton Council by expert risk assessment consultants (see Appendix F) has demonstrated that one of the larger ethylene pipelines in the Borough generates individual accidental risk levels well below the 10 cpm level that would mean policy PR12 should be applied. It is therefore likely that this situation applies to all notified pipelines within the Borough. Development on top of a pipeline itself would in any case be protected by either ownership or way leave controls and by the statutory consultation and notification system already in place.
- 7.5 The SPD does not therefore identify any 10 cpm areas anywhere. The purpose of identification of pipelines, for spatial planning policy purposes, is therefore only concerned with consultation and notification with the HSE.
- 7.6 The summary list of pipelines is as follows:
- NGG's High Pressure gas network which is divided into a number of different pipelines which are of different

diameters and run at different pressures and therefore generate widely differing consultation zones with the HSE

- SABIC UK Petrochemicals Transpennine Ethylene pipeline (formerly Huntsman and I.C.I.)
- Shell's Grangemouth to Stanlow ethylene pipeline
- Shell's oil pipelines from Carrington to Stanlow
- Ineos' VC pipeline in Runcorn

7.7 Detailed information on the locations of pipelines is held by Halton Council in its internal planning records systems. It is not normally available for detailed public inspection for security reasons. For their general location reference should be made to the consultation map in Appendix E to this SPD.

# Appendix D

## Maps of individual risk zones around Hazardous Installations, pipelines and Liverpool Airport

1 The main purpose of these maps is to identify those areas likely to be affected by UDP Policies PR9 (Development within the Liverpool Airport Public Safety Zone – PSZ) and PR12 (Development on land surrounding COMAH sites). In the case of the Airport the 10 cpm defined area was notified to Halton Council by central government and is identified on the UDP proposals map.

2 In the case of other 10 cpm areas (which are around certain hazardous installations) their current extent is based upon interpretation of a number of data sources including:

- HSE notified consultation maps which identify “inner zones” in certain cases. These consultation zones are related to the risk of a “dangerous dose” as defined by the HSE (see Appendix B’s reference to the 2007 HSE consultation document on Societal Risk). However, these zones can be a helpful indication of the nature and extent of the accidental risk of death involved;
- Various relevant work commissions by DNV who are the Council’s risk

Estimated likely areas affected by 10c.p.m. polices within Halton



assessment experts;

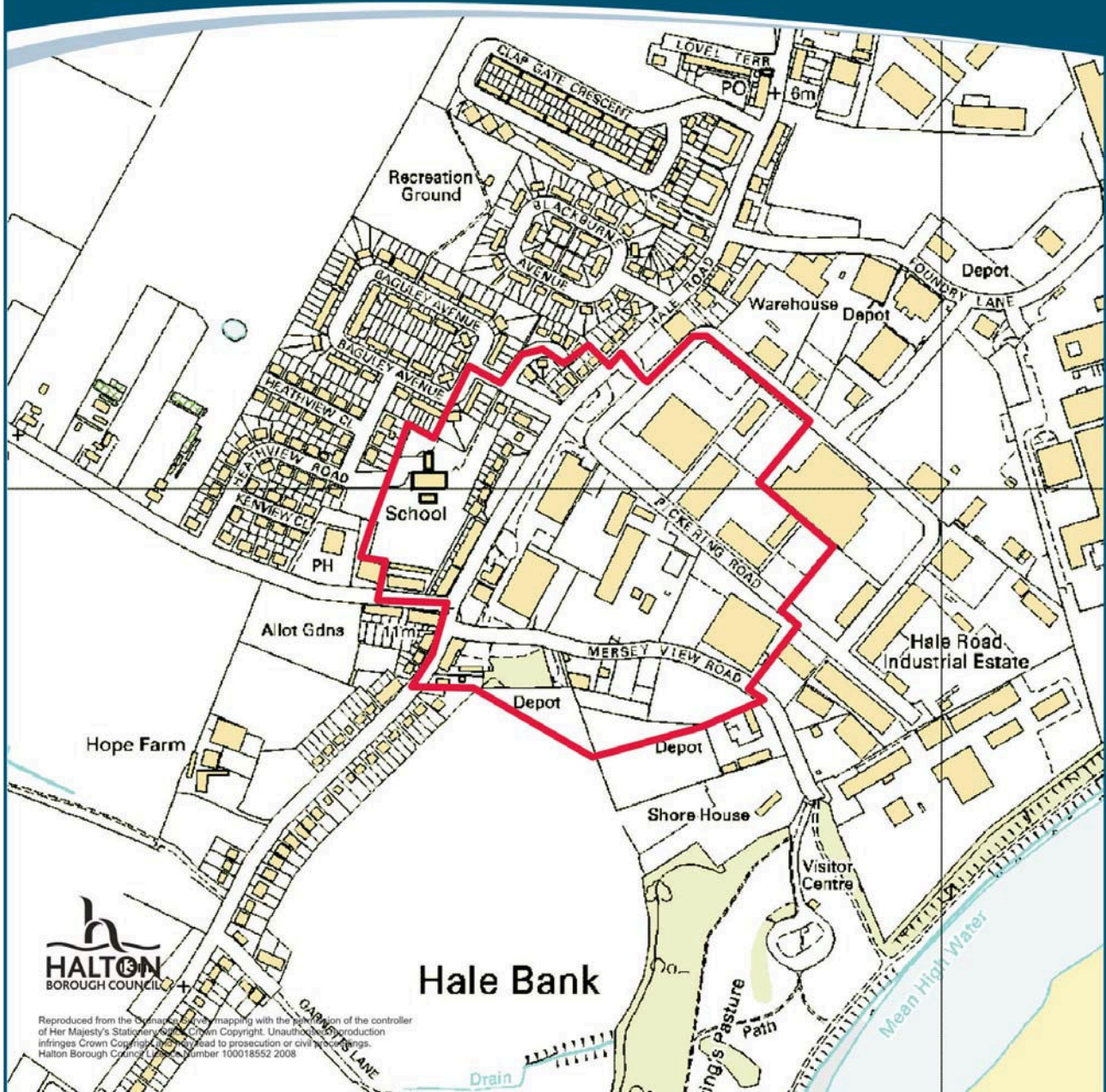
- Consultations by Halton Council on various planning applications over a number of years which have produced a data base of individual cases to support these initial estimates, from both the HSE and DNV.

capable of definition on individual maps. Until more detailed information is available the consultation processes triggered by the HSE planning consultation zones shown in Appendix E will provide the method by which any more detailed assessment is required in relation to planning decisions affected by this SPD's policies

3 The map shows all 10 cpm areas. Only 2, those for Univar and for Ineos have been

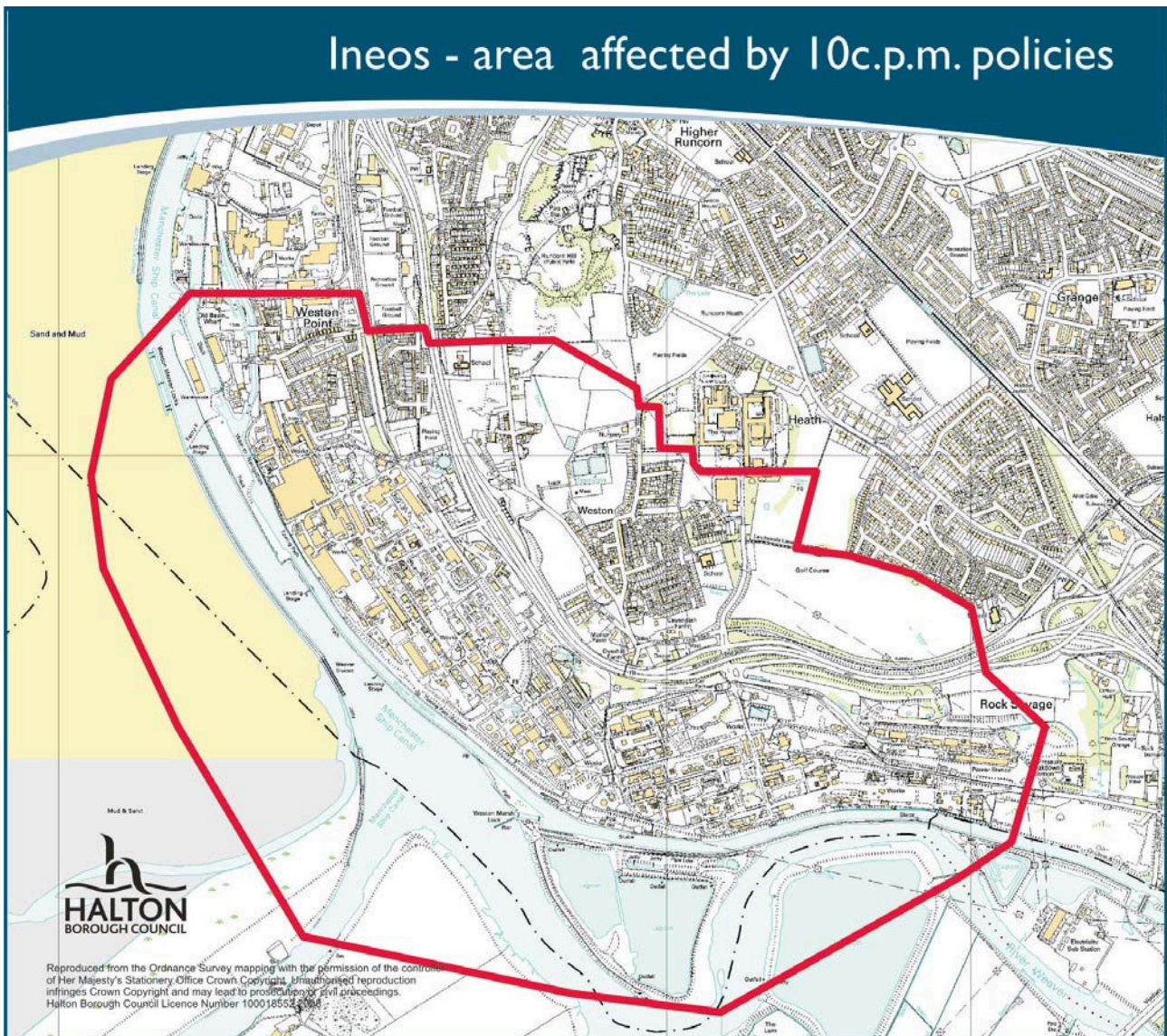
4 These sites and zones will be revised and

## Univar - area affected by 10c.p.m. policies



updated based upon any new information relating to:

- More detailed information on defined areas of accidental risk.
- Approval of any new HSC's, pipelines or airports
- Revocation of any existing HSC's
- Modification or reassessment of any existing HSC's



## Appendix E

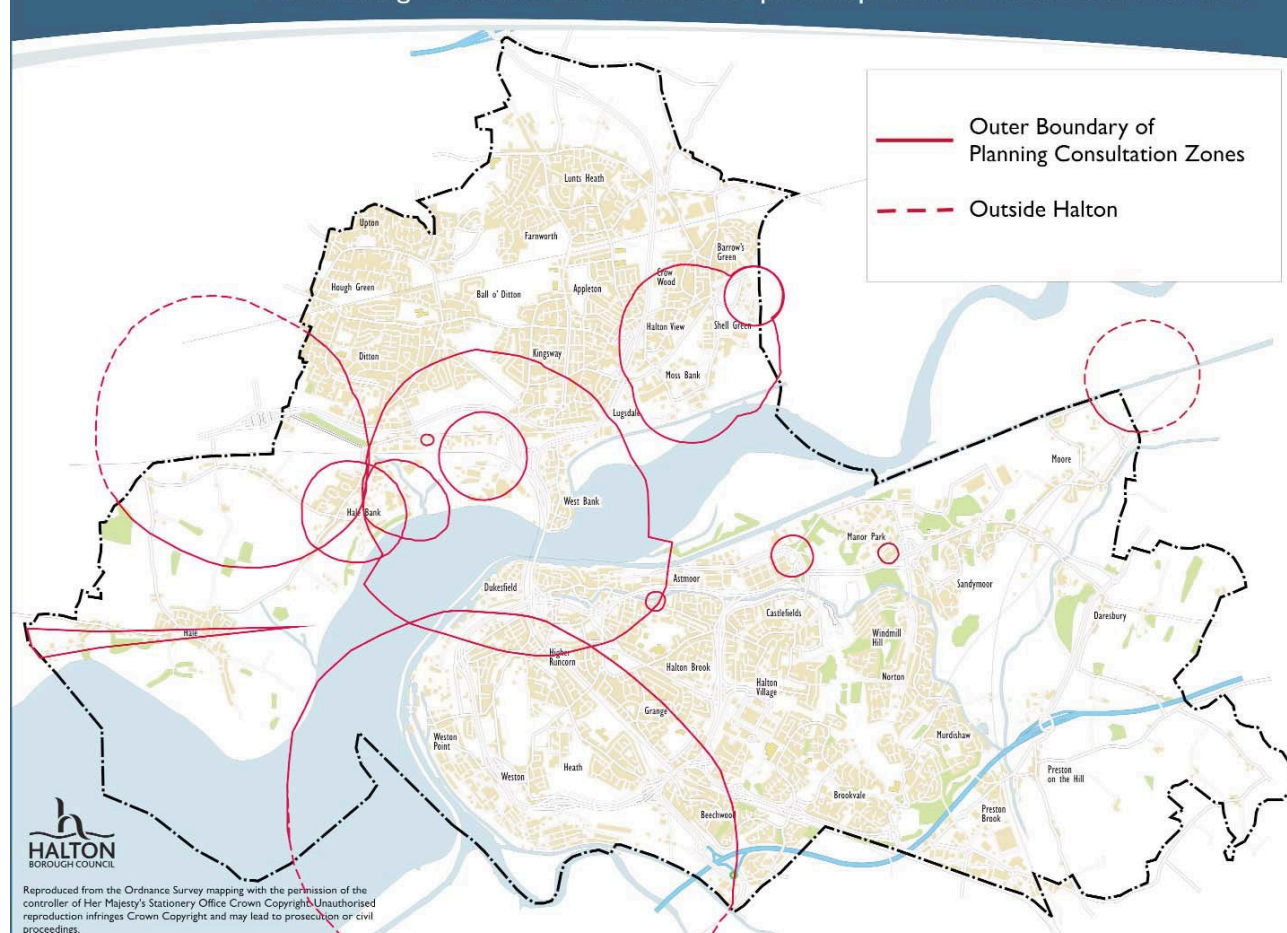
### Planning consultation areas for Liverpool Airport, pipelines and Hazardous Installations in relation to UDP Policies S5, PR9, PR11 and PR12

- 1 The main purpose of these maps is to identify those areas within which the Council as Local Planning Authority is expected to consult the HSE or Liverpool Airport when new development proposals are put forward.
- 2 It should be noted that the area related to Liverpool Airport is the same as the 10 cpm area. That is because the airport has no interest in being consulted about areas outside this Public Safety Zone from the

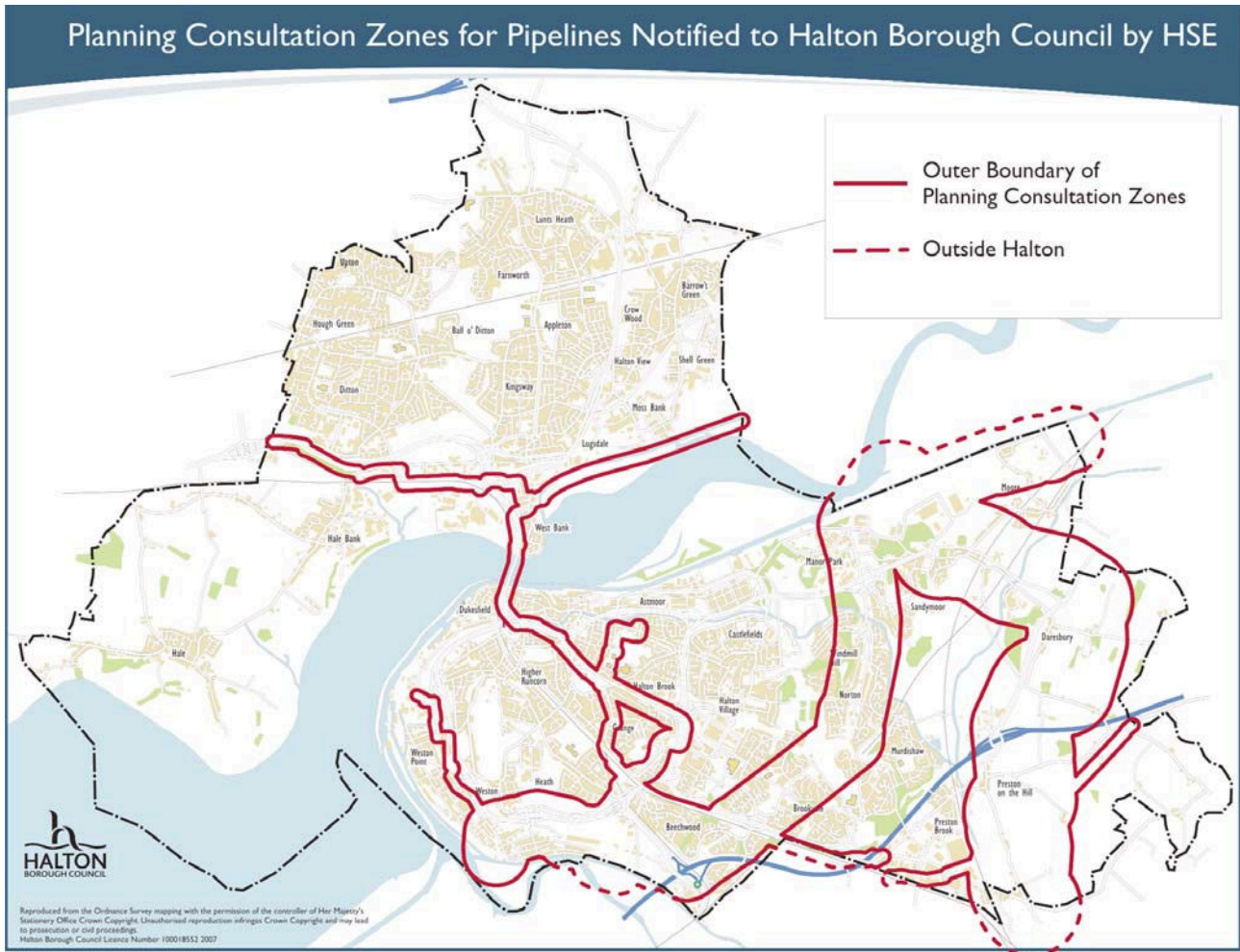
viewpoint of airport accidents which could have an effect upon people or the environment within Halton

- 3 The other planning consultation zones shown on the map are those derived from formal notification from the HSE and require, for certain types of planning application, that consultation takes place with the HSE. Most of these consultations are carried out using the HSE's PADHI system held within the Council's offices which usually generates a "do not advise against" comment. Where the PADHI system generates an "advise against" comment, further consultation takes place with the HSE before the Council makes any determination on a planning application and due regard is given to those comments along with all other relevant policy matters set out in this SPD.

HSE Planning Consultation Zone for Liverpool Airport and Hazardous Installations







4 The Council is the responsible authority for receipt of notification of various sorts of pipeline which fall under various pieces of pipeline legislation including the Pipeline Safety Regulations 1996. When these pipelines have been notified to the HSE some generate significant consultation zones in accordance with the HSE's procedures. The HSE then expects to be consulted on development proposals in a similar way to COMAH arrangements.

- 5 These zones will be revised and updated based upon any new information relating to:
- Approval of any new HSC's pipelines or airports
  - Revocation of any existing HSC's
  - Modification or reassessment of any existing HSC's pipelines or airports

6 It is important to appreciate that this SPD does not deal with policy PR10 (Development within the Liverpool Airport Height Restriction Zone) which affects nearly the whole Borough. Because its primary purpose relates to protecting the safe passage of air traffic into and out of Liverpool Airport it is not relevant to this SPD although the Council must take it into account in dealing with planning applications in accordance with the requirements set out in joint Circular 1/2003. It is a policy concerned with protecting a spatial planning activity (and its users) located in Liverpool City Council's area (i.e. the airport) and does not relate directly to planning policies affecting individual accidental risks to people who live or work within Halton, which is what policy PR9 addresses.

## Appendix F

### Information sources

#### European legislation

Directive 96/82/EC  
Directive 2003/105/EC

For these and other European legislation reference should be made to the UK national legislation created to implement it (see below).

#### UK national legislation

To access a downloadable copy of the relevant **Acts of Parliament** go to:  
[www.opsi.gov.uk/acts.htm](http://www.opsi.gov.uk/acts.htm)

1990 - Planning (Hazardous Substances) Act  
2004 - Planning & Compulsory Purchase Act

To access a downloadable copy of the relevant **Statutory Instruments** go to:  
[www.opsi.gov.uk/stat.htm](http://www.opsi.gov.uk/stat.htm)

1982 - Notification of Installations Handling Hazardous Substances Regulations  
1992 - Hazardous Substances COMAH Regulations  
1996 - Pipeline Regulations - SI 1996/825 - Pipeline Safety Regulations 1996 - defines major hazard accident pipelines.  
1999 - Hazardous Substances COMAH Regulations  
1999 - Planning (Hazardous Substances) Regulations - SI 1999/981 - Planning - Control of Major Accident Hazards Regulations 1999 (COMAH) – amending earlier SI dealing with Planning HSC matters.  
2002 - Town & Country Planning (Safeguarding Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002 within the associated Circular. This

Direction and Circular provide the authority and sourcing for the safeguarding maps held by Halton Council and categories of development controlled in the interests of public safety for air passengers. These include, for example, policy control issues relating to bird strikes and wind turbines as they affect air safety, as well as restricting the height of development in general through large parts of Halton.

2004 - SI 2004/2204 - Town & Country Planning (Local Development) (England) Regulations - and the requirement to take account of COMAH in Development Plans go to  
[www.opsi.gov.uk/si/si2004/20042204.htm](http://www.opsi.gov.uk/si/si2004/20042204.htm) ;

#### UK national and regional policy guidance

To access a downloadable copy of the relevant **Government Planning Policy Statements** go to:  
[www.communities.gov.uk](http://www.communities.gov.uk)

1996 - HM Treasury 3 November 1996 Press Release on setting of safety standards (not available online)  
2000 - DETR Circular 04/2000 Planning Controls for Hazardous Substances  
2002 - Department for Transport Circular 01/2002 Control of Development in airport Public Safety Zones which provides guidance on the operation of the consent procedure for hazardous substances which implement the land use planning requirements of Directive 96/82/EC, known as the Seveso Directive, on the control of major-accident hazards. It also provides guidance on philosophy and risk levels applicable within PSZ's and consequences in terms of restrictions on development and provisions for compensation (same philosophy applied by HBC to COMAH zones as well)  
<http://www.dft.gov.uk/pgr/aviation/safety/c>

- ontrolofdevelopmentinairpor2984;
- 2003 - DfT/ODPM Circular 1/2003 which provides advice to local planning authorities in England and Wales regarding the safeguarding of aerodromes, technical sites and military explosives storage areas. It contains rules in relation to height of buildings and types of development.  
<http://www.dft.gov.uk/pgr/aviation/safety/safeguarding/safeguardingaerodromestechni>  
 2988 and includes The Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002, which is reproduced at Annex 1 of this Circular and which came into effect on 10 February 2003, applies to military explosives storage areas in addition to aerodromes and technical sites.
- 2003 - Environment Agency Flood Risk – R&D Technical Report FD2317 – July 2003
- 2004 - Planning Policy Statement 12 Annex B paragraphs B17 & B18

### Halton Council documents

- 1996 - Local Plan
- 2005 - UDP - To access a downloadable copy of the relevant **sections of the UDP** go to [http://www.cartoplus.co.uk/halton/text/00pref\\_4\\_strat\\_pol.htm](http://www.cartoplus.co.uk/halton/text/00pref_4_strat_pol.htm) for Strategic Policies (Part 1) and look at Policy S5. For detailed (Part 2) policies go to [http://www.cartoplus.co.uk/halton/text/04\\_pr\\_pollution.htm](http://www.cartoplus.co.uk/halton/text/04_pr_pollution.htm) for the whole of Chapter 4 and in particular paragraphs 7 – 11 of the introduction and policies PR9 – PR12
- 2003 - Planning application containing expert report about safety and ethylene pipeline number 03/00706/OUT was approved 02 February 2004. The proposal was an outline application for construction of area short term custody facility and ancillary development including landscaping and car parking, with all

matters reserved, on Land At Manor Park Runcorn Cheshire. For further information and to be able to examine the submitted report contact Halton Council's Operational Director, Environment and Regulatory Services.

### HSE policy advice

- 2007 - PADHI – Planning Advice for Development around Hazardous Installations
- 2007 - HSE Consultation document CD212 Proposals for revised policies to address societal risk around onshore non-nuclear major hazard installations – published April 2007
- 2007 - HSE Consultation document CD212 Initial regulatory impact assessment Proposals for revised policies to address societal risk around onshore non-nuclear major hazard installations – published April 2007

### Other Documents

- 1993 Risk Analysis and Management - article by M. Granger Morgan in the July 1993 issue of Scientific American.

## Appendix G

Summary of all policies contained in SPD with references to UDP policies

### 4 Policies for Risk creating sites

**Policies for development at existing sites designated under the Planning (Control of Major-Accident Hazards) Regulations 1999 or similar legislation or major accident pipelines**

- 4.3 Development within a designated hazardous installation establishment or which is a development of an existing major accident pipeline will be permitted provided:**
- the applicant can demonstrate the proposal will impose no significant development restrictions in terms of off-site accidental risk on surrounding land users, and;
  - the applicant can demonstrate the proposal has no reasonable alternative method of achieving the development's objective. (see UDP policy PRI 1)

**Policies for development at new sites for Airport Development or designated under the Planning (Control of Major Accident Hazards) Regulations 1999 (COMAH) or hazardous pipelines**

- 4.8 In deciding any proposal for airport development within Halton one of the tests will be that the applicant can demonstrate the proposal will impose no significant development restrictions in terms of off-site accidental risk on surrounding land users (see UDP policy S5).**

**4.11 New hazardous installation or proposals that fall within the designated COMAH definition or is a hazardous pipeline will be permitted provided:**

- the applicant can demonstrate that the proposal will impose no significant development restrictions in terms of off-site accidental risk on surrounding land users, and;
- the applicant can demonstrate the proposal has no reasonable alternative method of achieving the development's objective (see UDP policy PRI 1)

**Policy for Inactive Hazardous Substances Consent**

- 4.16 Sites which have Hazardous Substances Consent and which are inactive will be revoked.**

## **5 Policies for Development around established Risk creating sites**

### **Policies restricting developments around Liverpool Airport and Public Safety Zone policy**

**5.3 Development within the Liverpool Airport PSZ will only be permitted if it comprises a dwelling extension or it would not reasonably be expected to increase the numbers of people living, working or congregating in or at the property or land (see UDP policy PR9).**

**5.5 Development within the Liverpool Airport PSZ involving very low density of occupation of land may be allowed in certain circumstances (see UDP policy PR9).**

### **Policies for restricting developments around established COMAH sites which create significant off site accident risks**

**5.7 Development on land within areas around established hazardous installations identified as having an individual accidental risk level exceeding 10 cpm will not normally be permitted (see UDP policy PR12).**

**5.10 Proposals made by a developer that will mitigate the likely effects of a potential major accident so that they are not considered significant will normally be permitted (see UDP policy PR12).**

### **Policies around existing hazardous installations and accident pipelines and which do not create significant off site accidental risks**

**5.15 Development on land within areas around existing hazardous installations and pipelines identified as having an individual accidental risk level below 10 cpm will normally be permitted (see UDP policy PR12 and S5).**





Planning for Risk  
Halton Borough Council  
Operational Director  
Environmental and Regulatory Services  
Environment Directorate  
Halton Borough Council  
Rutland House  
Halton Lea  
Runcorn  
WA7 2GW  
[www.halton.gov.uk/forwardplanning](http://www.halton.gov.uk/forwardplanning)

# Halton Borough Council

## Planning & Risk

### Draft Supplementary Planning Document

## Statement of Consultation

Presented for stakeholder public consultation between 15th August 2008 and  
26th September 2008

Forward Planning  
Environment Directorate  
Halton Borough Council  
Rutland House  
Halton Lea  
Runcorn  
WA7 2GW



# 1 Introduction

- 1.1 Under the Planning and Compulsory Purchase Act 2004 it is a requirement to prepare and publish a Consultation Statement for a range of planning policy documents, including Supplementary Planning Documents (SPDs). This is a reflection of Government's desire to "strengthen community and stakeholder involvement in the development of local communities".
- 1.2 This Consultation Statement is being made available during the formal period of public consultation, alongside the draft SPD and the Sustainability Appraisal Report, in accordance with Regulation 17 (1) of the Town and Country Planning (Local Development) (England) Regulations 2004.

# 2 Stakeholder Consultation

- 2.1 SA Scoping Report consultation  
The Sustainability Appraisal Scoping Report for the Planning for Risk SPD, incorporating a Strategic Environmental Assessment Screening Statement, was made available for consultation from Thursday 21<sup>st</sup> June to Thursday 26<sup>th</sup> July 2007.
- 2.2 Halton Borough Council in consultation with the statutory environmental consultation bodies (the Countryside Agency, English Heritage, English Nature and the Environment Agency) determined that the Planning for Risk SPD was not likely to have significant environmental effects and, accordingly, an environmental assessment was not required as part of the Sustainability Appraisal process.
- 2.3 Stakeholder consultation  
The stakeholder public consultation took place between 15<sup>th</sup> August 2008 and 26<sup>th</sup> September 2008. By the nature of the subject matter set out in this SPD it was considered desirable and appropriate to consult widely with organisations who might possibly have an interest in an unusual and relatively specialised subject for a Supplementary Planning Document. A wide range of organisations, ranging from Registered Social Landlords to Parish Councils and adjacent Local Authorities, were consulted. In addition bodies such as the Health & Safety Executive and the Environment Agency were also consulted as were all the current operators of hazardous installations and Liverpool Airport (Peel Holdings). A summary list of consultees follows the list of consultation responses received at the end of this report.
- 2.4 Covering letters with the SPD were sent out by post or electronically on 6<sup>th</sup> August 2008 giving a background explanation as to the significance of the document and special letters were sent to the HSE, Vale Royal

Council and to National Grid Gas. Replies were received between 26<sup>th</sup> August 2008 and 26<sup>th</sup> September 2008.

2.5 Comments received and the resulting responses are contained in the following table.

<b>Consultee</b>	<b>Date &amp; Method of response</b>	<b>Comments</b>	<b>Response</b>
National Grid Gas (NGG)	26 Aug e-mail	All references to Transco should be deleted and replaced by NGG	Amendments made
Health & Safety Executive	27 Aug letter	<ol style="list-style-type: none"> <li>1. Would prefer Halton to refer to "hazardous installations" rather than "COMAH sites".</li> <li>2. Recommended a definitive policy to remove inactive sites with hazardous substances consents</li> <li>3. Reference to para 19 of Appendix B and request to remove reference to being "killed by an asteroid"</li> <li>4. Reference to para 24 of Appendix B and "demolition of streets of houses" is not HSE policy</li> </ol>	<ol style="list-style-type: none"> <li>1. Relevant amendments made</li> <li>2. new policy included.</li> <li>3. replace phrase with "are so low as to be wholly insignificant"</li> <li>4. There is no implication that this is HSE policy. Impact of reference is, however, reduced by a simpler reference to demolition of houses rather than streets.</li> </ol>
Sabic UK Petro-chemicals	29 Aug letter	Ref on page 34 to Huntsman should be amended to Sabic UK Petrochemicals	Amendment made to list and to map
GO-NW	25 Sept letter	<ol style="list-style-type: none"> <li>1. Sections 4 &amp; 5 should be reformulated to concentrate on looking at where the SPD can add value to what is in the UDP by providing further detail and clarification.</li> <li>2. Paras 2.12/ 2.13 can be updated to simply refer to the new RSS.</li> <li>3. Para 6.2 makes reference to the SA report being consulted on at a later stage – must be at the same time as the draft SPD.</li> <li>4. Para 6.6 suggests</li> </ol>	<ol style="list-style-type: none"> <li>1. The refinements and additions to the established UDP policies is the best method of providing further detail and clarification.</li> <li>2. The paragraphs have been updated.</li> <li>3. SA will be consulted on at same time as SPD.</li> <li>4. Indicator added.</li> </ol>

		another indicator could be “% of planning permissions granted within HSE consultation zones contrary to HSE advice”	
Halton & St Helens Primary Care Trust	25 Sept letter	No comments to make	Noted
Halton Council Emergency Planning	25 Sept e-mail	1. Various comments made relating to accuracy of information in relation to Bayer Site, Shepherd Widnes Ltd, Tessenderlo, Ineos Enterprises, APPH Ltd Runcorn, Linde Gas, Inyx PHarma, TDG and Sabic UK Petrochemicals. 2. Comment also made in relation to restricted nature of emergency planning zone maps.	1. Jan Archer and Council Planning staff met HSE in Bootle on 6 <sup>th</sup> November 2008 and clarified all site specific matters raised. Appropriate amendments have been made to the draft SPD document. 2. Emergency Planning Zone maps differ from HSE Planning Consultation zone maps in that the latter are fully in the public domain.
Peel Holdings	26 Sept letter	1. No specific comments from Peel Holdings (Land & Property). 2. Peel Airports Group generally support Airport PSZ policy. The Airport Master Plan to 2030 includes a proposal to extend the runway into Halton which would extend the PSZ further. There are no plans to submit a planning application.	1. Noted. 2. Because Peel Airports Group have no proposals to submit any planning application for a runway extension in Halton any future possible application would be dealt with in the normal way including taking account of this SPD's policies
United Utilities	26 Sept letter	The photo of Norton Water Tower raises confusion as to its relationship to COMAH matters	Water Tower was shown as an example of a building within a pipeline consultation zone. Photo removed to avoid

			any confusion
4NW	26 Sept e-mail letter	Draws attention to current RSS position (now approved) in particular policy RT5 (Airports). This requires support for John Lennon Airport and its expansion requirements subject to its effects and the extent they can be mitigated	Policies 4.8, 5.5, and 5.5 in the SPD provide a proper and balanced detailed interpretation of the balance to be struck by RSS policy RT5 in respect of off site accidental risks from the airport.
Environment Agency	26 Sept – by letter	Support SPD purpose	Noted

2.6 A summary list of all those consulted is given below:

Government Office North West	North West Regional Assembly	Cheshire County Council
Knowsley Metropolitan Borough Council	Liverpool City Council	St Helens Metropolitan Borough Council
Vale Royal Borough Council	Warrington Borough Council	Ellesmere Port & Neston Borough Council
Highways Agency	Natural England (North West Region) Regional Advocacy and Partnerships Team, Planning & Advocacy	Environment Agency
English Heritage North West Region	Network Rail	North West Development Agency
Mercury Personal Communications	T-Mobile Ltd	Orange PCS Ltd
Airwave MMO2 Ltd	O2 UK Ltd	3 UK Ltd
National Grid Transco	United Utilities Properties Solutions	United Utilities
Daresbury Parish Council	Hale Parish Council	Preston Brook Parish Council
Moore Parish Council	Sandymoor Parish Council	Halebank Parish Council
Mobile Operators Association	Aston Parish Council	Dutton Parish Council
Frodsham Town Council	Halton & St Helens Primary Care Trust	English Partnerships

List

Anchor Housing Trust	Arena Housing Association	Carr Gomm
CDS (Liverpool) Ltd	Cosmopolitan Housing Association	English Churches
Guinness Trust	Halton Housing Trust	Housing 21
Liverpool Housing Trust	North British Housing Association	Riverside Housing Association
William Sutton Trust	Health & Safety Executive	PEEL Holdings
DNV Consulting	HSE	Risk Management
HBC Legal	Innospec	Bayer Crop Science
Transco plc	Univar	GE Water & Process Technologies
Inyx Pharma Ltd	Ineos Chlor	Linde Gas Ltd
Ineos Vinyls	Ineos Fluor Ltd	Syntor Fine Chemicals
Webbs & Halton bottled gas	Manchester Ship Canal Company	Liverpool Airport
Pentagon Fine Chemicals	TDG European Chemicals Ltd	Transco's High Pressure gas network
Sabic UK Petrochemicals	Shell's Grangemouth to Stanlow ethylene pipeline	The Stobart Group
St Modwen Properties PLC	Thermphos Uk Ltd	

**REPORT TO:** Executive Board Sub Committee

**DATE:** 18 December 2008

**REPORTING OFFICER:** Strategic Director – Environment  
Strategic Director – Health and Community

**SUBJECT:** Forecast Final Contract Cost - Warrington  
Road Traveller Transit Site

**WARDS:** Daresbury and Castlefields

### **1.0 PURPOSE OF THE REPORT**

- 1.1 Finance Standing Order 5.1.5 requires that a contract which exceeds a tender price by more than 5% should be reported by the appropriate Strategic Director to the Executive Board Sub. Accordingly this report informs the Board of an increase in costs of delivery of 57% on the tender price of the Warrington Road Transit Site. The total costs can nevertheless be contained within the Council's housing capital programme by using an unspent contingency.

### **2.0 RECOMMENDATION: That the report be noted**

### **3.0 SUPPORTING INFORMATION**

- 3.1 The construction of a transit site for Travellers at Warrington Road, Runcorn, was agreed by Executive Board on the 1<sup>st</sup> November 2007. The project was governed by time constraints due to the requirements of the Castlefields Regeneration Programme which are detailed in Appendix 1. In order to achieve the required completion date, the Executive Board Sub-Committee, at its meeting on the 29<sup>th</sup> November 2007, approved the waiving of Procurement Standing Orders, by virtue of Standing Order 1.6 for reasons b, c and d. The normal tender process would have prevented the project being completed within the required duration, which would have potentially caused financial detriment to the Council.
- 3.2 The contract for the civil engineering works was awarded to D. Morgan Plc in February 2008. Full Planning Permission was granted in March 2008 and site work commenced in April 2008.
- 3.3 A total project budget of £500,000 was allocated from the Council's housing capital programme. This allowed for Morgan's tender of £408,647, in addition to standard fees and payments to utility providers.
- 3.4 Subsequently it was necessary to include a number of unforeseen additional items in the contract including dealing with problems of

bringing services to the site. The combined financial result of these factors is a projected over-spend of £234,110. (Full details of the items and issues culminating in the additional cost will be fully detailed in a final account document. The main issues and costs are included in Appendix 1.)

#### **4.0 POLICY IMPLICATIONS**

**4.1** The project will help to achieve the Council's Equality and Diversity objectives as they relate to Travellers.

#### **5.0 OTHER IMPLICATIONS**

##### **5.1 Financial Implications**

The funding shortfall can be met from an unspent contingency within the housing capital programme without the need for additional Council resources.

#### **6.0 RISK ANALYSIS**

The additional unforeseen items (as listed in Appendix 1) were all necessary to achieve a fully operational, safe scheme within the required timeframe which complies fully with current legislation. Not carrying out any of these items would have compromised one or more of these criteria.

#### **7.0 EQUALITY AND DIVERSITY ISSUES**

Equality and Diversity issues are being fully addressed by the construction of this facility for travellers. Latest Government recommendations for the facilities and specification for travellers' sites has been taken into consideration in the design of the site. Provision of a transit site will make a significant contribution to the Council's efforts to support equality and diversity.

#### **8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

<b>Document</b>	<b>Place of Inspection</b>	<b>Contact Officer</b>
Traveller Site Needs Study	Rutland House Halton Lea	Phil Watts
Site Assessment	Rutland House Halton Lea	Phil Watts

**APPENDIX 1**

Details Of Items, Issues And Costings Causing Over-Spend,

Warrington Road Transit Site

The reasons for the additional expenditure are summarised below:

- **An existing pole-mounted transformer was deemed inadequate and unsafe to provide a supply to the new site.** Scottish Power decided that it would be necessary to provide an additional sub-station. The total cost of the sub-station, which includes for design and construction of the building by our contractor in addition to equipment and installation costs from Scottish Power, is £72,289.
- **An initial investigation of United Utilities' records indicated a sewer along the length of Warrington Road to which a foul water connection should have been feasible.** However, following detailed on-site investigation it was found that the sewer was not suitable and United Utilities denied a connection application. To facilitate foul drainage a septic tank had to be installed. In order to minimise revenue expenditure associated with emptying the tank it was necessary to install a large tank costing £34,272.
- **The cost of water supply to site increased from the original estimated cost** since the main from which supply should have been taken was found to be unsuitable due to its size and condition. The supply had therefore to be provided from a more distant main. This cost totalled £10,173.
- **Other extra services costs** relate to protection of existing gas and telecommunications plant in the verge, connection charges to surface water sewer, and cctv survey requirements by United Utilities prior to allowing connection. These costs totalled £4,478.



Therefore the additional total cost for the provision of services to the site is £121,214. This sum excludes the installation of site drainage and associated works which are covered by the main contractor price.

- The original contract duration was exceeded due to significant delays in acquiring the Scottish Power supply. The risk of delays due to the service provider's timescales was recognised and mitigated through early communication with providers; however issues internal to Scottish Power caused a delay outside of the control of the Council. As a result, the contract had to be split into the main site works, and then a further phase for the installation of buildings, landscaping, electrical and fencing works to co-ordinate with Scottish Power's timescales. This incurred associated de-mobilisation and re-mobilisation costs of £41,273. This amount also includes security measures to protect the site during the closedown between the phases of work, contractual payments relating to a contractual extension of time and repeat visits from sub-contractors who had priced to carry out the works in only one visit at an agreed point in the programme.
- **Additional costs of £29,874, relate to alteration and refinements to the design.** These were issues which were unforeseen at the start of the works on site. However, it was necessary that the project commenced rapidly in order to meet the required completion of the works and allow for the occupation of the site by September 2008. The time constraints were due to the then requirements of the Castlefields Regeneration Programme. The marketing of proposed housing sites located adjacent to a temporary traveller's site had been delayed pending the relocation of the travellers. In order to achieve substantial capital receipts from these sites it was then envisaged that marketing would start in September 2008.
- **The risks associated with design alterations were taken into account in the selection of the form of contract.** The New

Engineering Contract (NEC) was selected. The NEC form of contract is now the norm as compared to the traditional 'Institute of Civil Engineering' (ICE) contract. It promotes partnership working between the contractor and client. Over-spend is proportioned between the two parties, as are savings, which encourages the contractor to work in an open book manner, to budget and to mitigate any over-spend. The use of ICE would have inevitably resulted in an increased over-spend.

- **Additional items amounting to a cost of £22,023 relate to increases in the construction thickness and defect correction works due to underlying ground conditions.** Initial site investigations excavated trial pits to a depth of four metres. Solid clay was evident to that depth and it was determined that the ground was solid and suitable for a normal construction thickness for the formation and concrete slab base. Unfortunately, cracking became evident following the casting of the first two sections of the concrete slab. Following investigation by structural engineers, it was concluded that this was caused by poor ground conditions underlying the limits of the trial pits. Vibrations from vehicular movements on Warrington Road were being transmitted via a peat band, at a depth of approximately 4.5 metres, which was causing ground movements and cracking. To take these conditions into account, a thickened slab, heavier reinforcement and thicker sub-base was then used.
- Sundry other minor items such as re-measures of estimated contractual sums and minor works including variations of specifications to items such as manhole covers totalled £15,402.
- **A cost of £4,324 was due to problems with the adjacent property and owner.** The continuing depositing of sewage adjacent to one boundary with the neighbouring site was identified during the early site clearance operations.

To summarise, the additional expenditure totals £234,110 incorporating:

Acquisition of Services	= £121,214
Delays	= £41,273
Design changes	= £29,874
Unforeseen Ground Conditions	= £22,023
Sundries	= £15,402
Issues with Adjacent Landowner	= £4,324
Total	= £234,110

**REPORT TO:** Executive Board Sub Committee

**DATE:** 18 December 2008

**REPORTING OFFICER:** Strategic Director – Health & Community

**SUBJECT:** Request to waive Standing Orders relating to contracts exceeding £50,000 but less than £1,000,000.

**WARD(S)** Borough-wide

## **1.0 PURPOSE OF THE REPORT**

1.1 To request that the waiving of procurement standing orders 3.1-3.9 which places a requirement on the Council to tender for contracts with a value greater than £50,000 but not exceeding £1,000,000.

## **2.0 RECOMMENDATION: That:**

- (i) In the exceptional circumstances set out below, for the purposes of standing order 1.6, procurement standing orders 3.1-3.9 be waived on this occasion on the basis that the current provider offers value for money and is performing well in meeting the needs of vulnerable service users with a learning disability.**
- (ii) Delegated powers be approved to enable the Strategic Director, Health and Community, in conjunction with the portfolio holders for Health and Community, to expand an existing 2yr contract with European Wellcare for the provision of supported living services, to the value set out in 3.8 and 6.2 of this report.**

## **3.0 SUPPORTING INFORMATION**

3.1 Objective 6 of the Valuing People White Paper relates to Housing “to enable people with learning disabilities and their families to have greater choice and control over where and how they live”.

3.2 Halton Borough Council is performing well at supporting people to live in their own home rather than being admitted to long-term residential care. Within Halton, around 200 Adults with Learning Disabilities are being supported to live in their own tenancies and over twenty people are waiting to be offered similar opportunities.

3.3 In June 2007, difficulties arose in one of the services and an

individual (Client A) had to be moved out of their home in order to manage risk within the service. The existing contracted agency continued to deliver support within a new location. This individual has settled into their new home, the service provision no longer presents as a risk and their family are very satisfied with the support being provided.

- 3.4 Halton Borough Council has recently been given notice on another service for a client with learning disabilities (Client B). Following a 'best interests' meeting with care professionals and family, it was agreed that this person should live with a family member, on a temporary basis, until an alternative supported tenancy could be found.
- 3.5 Both of these clients with a learning disability are now being successfully supported by the same agency, European Wellcare and have indicated that they would like to live in the same property. This report therefore proposes that clients A and B live together and that European Wellcares' existing contract for supported living services is expanded to include delivery of care and support to both clients.
- 3.6 The establishment of this shared supported housing service will also offer value for money. The Council currently pays for care and support to be delivered to Client A in a property that is large enough to provide supported accommodation for two people. This does not make best use of limited housing resources and does not offer opportunities for efficiencies, gained by sharing support between clients living in the same property.
- 3.7 Taking into account the potential efficiencies referenced above and the choice being expressed by individuals, approval is sought for a waiver standing orders on the basis that compliance with the tendering requirement of Procurement Standing Orders Part 3, 3.1-3.9, is not practicable for reasons of urgency, in that, as service provision has been terminated at short notice and in order to ensure the safety of the clients and to limit the disruption experienced by vulnerable clients, that a contract be awarded to the current support provider.
- 3.8 Given that the current service provider successfully supports these vulnerable clients within different locations, it is proposed that the existing contract with European Wellcare (to March 2010) is expanded, at an estimated cost of £106,300. European Wellcare is an accredited supporting people provider and has a proven track record of delivering support to people with learning disabilities who challenge services. To ensure financial advantage through competition and secure value for money for the Council in the longer term, the service will be tendered in 2010.

**4.0 BUSINESS CASE FOR WAIVING STANDING ORDERS**

**4.1 Value for Money**

The hourly rate proposed for this service is £12.60.

Recent value for money assessments undertaken during Supporting People service reviews have determined a reasonable hourly rate for similar services between £12.00 and £13.00 per hour. The proposed costs therefore offer value for money when benchmarked against other contracted services within Halton.

By delivering services within the same property it will be possible to reduce the number of hours purchased from the provider, resulting in the following approximate savings over the lifetime of the contract:

ALD Pooled Budget saving	£37,848
Supporting People saving	£624

**4.2 Transparency.**

In order to ensure transparency is it proposed that the service will be closely monitored by the Supporting People team against the set standards for the specification for this service.

In addition, within the new Supporting People contracts there are clauses that reference freedom of Information act, data Protection, Equality and Diversity and Confidentiality, which ensure that Providers are obligated to work within the correct procedures.

**4.3 Propriety**

The process for the award of this contract, subject to approval of this Committee, complies with Halton Borough Council's standing orders in relation to procurement. The contract is liable to termination if, any instances of corruption by this organisation or its staff members occur, ensuring compliance with anti corruption policies.

**4.4 Accountability**

Accountability for the report remains with the relevant Strategic Director. The decision is a matter for the Sub-Committee but would appear to be consistent with the Council public stewardship duties in relation to use of resources.

In common with other contracts this process will be open to both internal and external audit.

**4.5 Position of the contract under the Public Contracts Regulations 2006**

This is a part B exempt service under the Contracts Regulations

2006, and it means that there is no need to advertise in the OJEU although when the contract is awarded we have to give notice to OJEU of the award of contract within a specific period of time (48 days).

**5.0 POLICY ISSUES**

None.

**6.0 Financial Implications**

6.1 The cost of current service provision to these clients is met from the ALD Pooled Budget and Supporting People Grant. The proposed change to service delivery will result in the following savings:

ALD Pooled Budget saving	£37,848
Supporting People saving	£624

6.2 The estimated cost of the contract over 16 months is £106,300.

**7.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

**7.1 Children & Young People in Halton**

None.

**7.2 Employment, Learning & Skills in Halton**

Supported living providers support vulnerable individuals to maximise their potential to participate in training and to obtain work.

**7.3 A Healthy Halton**

The provision of supported housing enables individuals to live in a stable environment that effectively supports clients to maintain and improve their health.

**7.4 A Safer Halton**

Supported housing enables some of the most marginalised and vulnerable of Haltons residents, to be safely supported within and as members of our community.

**7.5 Halton's Urban Renewal**

None

**8.0 RISK ANALYSIS**

81 Risk to vulnerable clients is reduced through contracting with a provider with a proven track record of delivering good quality

services for people with a learning disability.

**9.0 EQUALITY AND DIVERSITY ISSUES**

9.1 The agency awarded a contract would be expected to comply with the Council's policies relating to Ethnicity and Cultural Diversity as well as promoting social inclusion of some of the most disadvantaged people in the Borough.

**10.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

None under the meaning of the Act.



**REPORT TO:** Executive Board Sub Committee

**DATE:** 18 December 2008

**REPORTING OFFICER:** Strategic Director, Health & Community

**SUBJECT:** Review of Direct Payments Policy & Procedure

**WARDS:** Borough-wide

## **1.0 PURPOSE OF REPORT**

1.1 To provide the Board with an update on consultation events held across the Borough and seek approval for the proposed changes to the draft Direct Payments Policy & Procedure for Adult Social Care.

## **2.0 RECOMMENDED: That**

- (1) the findings of the consultation process held on Direct Payments Policy and Procedural changes for Adult Social Care (Appendix 1) are noted.**
- (2) Option 3 as set out in section 4 be approved.**
- (3) the Direct Payments policy and procedure (Appendix 2) be amended as follows as set out below to:**
  - to introduce an eligibility criteria to determine the rate at which DP's will be set, based on current good practice (Appendix 3)**
  - to reflect the changes introduced by the Mental Capacity Act 2005, with additional detail on capacity**
  - to reflect the growth in Personal Assistants (PAs) and, if required, include payroll charges in the set-up costs, and annually thereafter as a supplement to be paid to the service user if required, when employing a PAs from 01.04.2009.**

## **3.0 SUPPORTING INFORMATION**

### **3.1 Background**

3.1.1 Following presentation to Healthy Halton Policy and Performance Board on 10<sup>th</sup> June 2008, Executive Board Sub Committee approved a number of changes to the Direct Payment Policy & Procedure on 25<sup>th</sup> July 2008, for public consultation. These are stated in full in section 4.1 and Appendix 2.

3.1.2 Halton Borough Council's Direct Payment rates for 2008/9 are

2008/9 RATES	AGENCY	Personal Assistant (PA)
Standard	£10.70	£9.35
Complex	£11.36	£11.36

3.1.3 Appendix 4 benchmarks Halton's Direct Payment rates for new and existing service users against neighbouring Councils. This highlights significant differences – Knowsley's rates are £7.85, £9.28 or £11.47(enhanced), St Helens pay £9.13 for a PA and £11.05 for an agency.

3.1.4 Currently, there are no criteria for assessing which level of hourly rate service users should be receiving. Therefore, a review was undertaken to establish current best practice, aiming for a greater degree of equity and consistency in how rates are applied across all service user groups.

3.1.5 Implementation of such a criteria will introduce consistency both in relation to all community care packages arranged by Care Managers and those purchased via DP's, as well as ensuring FACS criteria eligibility will be applied. Additionally, comparability would be maintained against our nearest neighbour Local Authorities.

3.1.6 Consultation on changes to the policy for Direct Payment Service users was undertaken in October and November 2008 for existing and potential future Direct Payment service users and residents of Halton. All current direct payment service users were sent a copy of a survey form to complete and seven presentations/ open forums were held in locations across the Borough so that people could discuss the proposals with officers and make their views known.

3.1.6 Appendix 1 attached to this report summarises comments made by Direct Payment service users, their carers and potential future recipients of Direct Payments. Copies of the detailed individual comments are available on request.

3.1.7 The results of the survey have been considered as regards the impact the introduction of the proposed eligibility criteria would have on new and existing service users and the direct payment rate paid now for new service users and for existing service users. A number of options for Members to consider are stated in section 5 of this report.

#### **4.0 FINANCIAL IMPLICATIONS**

##### **4.1 Context: Analysis of Existing Direct Payment Service Users**

4.1.1 An analysis for Existing Direct Payment Service Users as at 30th September 2008, revealed that 194 Adult Services users received DP for services (excluding respite and children's services), with: -

- 44 (23%) paid at £9.35;
- 23 (12%) paid at the agency rate of £10.70 and
- 127 (65%) paid at £11.36.

4.1.2 Employment of PAs now represents 52% of all activity with service users employing one of more carers.

4.1.3 An analysis of sample payroll data showed that, where HBC pay the service user £9.35 per hour, the majority of employees' gross pay is £7.00 per hour (average £7.05 per hour) and average £8.56 if the service user is paid £11.36 per hour.

4.1.4 These rates are well above the legal minimum wage (from 01.10.2008) of £5.73, if service users employ a PA, including on-costs of employer's National Insurance, 20 days' holiday entitlement and 8 public holidays.

4.1.5 If the basic PA rate of £9.35 (2008/9 rate) is paid this would still allow service users to pay PAs above the minimum wage up to a maximum of £7.40 an hour allowing for full holiday cover and employers national insurance at 12.8%, and meet the criteria in the Direct Payment guidance notes. This rate is slightly higher than the average Halton BC domiciliary care agency 2008/9 employment rate which ranges from £6.23 to 7.20 an hour.

4.1.6 Where PAs are employed, the DP team supplies a standard contract of employment, which is used by the vast majority of service users. This contract allows for variation to hours worked and rates of pay, stating in s1.4 "*the employer may from time to time require you to carry out other duties with additional pay either on a temporary or permanent basis. Alternatively the Employer may have to reduce your duties and pay accordingly to their assessed continuing needs*". Consequently, variation in hourly rate is permissible under the current contractual arrangements.

4.1.7 To ensure a consistent application when determining the Direct Payment rate existing service users may potentially be assessed as standard and not complex and the assessed DP rate of payment could fall. **Seventy-eight personal assistants are currently paid above the £7.40 threshold rate**, including full holiday pay and employers NI.

4.1.8 Members are thus asked to consider the following options, given the positive consultation response for the adoption of the criteria for new and existing service users and comments made by existing service users.

## **4.2 Financial Options**

### **4.2.1 Option 1**

**Approve the eligibility criteria for new service users only with immediate effect. Current DP payments rates for existing service user packages would be unchanged. When existing packages of care are reviewed any additional hours would be paid at the new assessed rate.**

The present perceived inequality would not be addressed for existing DP service users as noted by service users in all service areas. Existing PA's would continue to be paid at above market care pay rates for Halton. No potential savings would be generated and best value would not be achieved when comparing PA rates in particular across neighbouring LA's. The Council may be subject to legal challenge having two systems for new and existing service users.

#### 4.2.2 Option 2

**Approve the eligibility criteria for new service users with immediate effect and existing service users from 1.4.2009. When existing packages of care are reviewed any additional hours would be paid at the new assessed rate.**

This action could create poor relations between the PA and service user, potentially causing the service user to lose a good PA due to a potential reduction in pay. The short lead in time could cause financial uncertainty to both the PA and service user.

#### 4.2.3 Option 3

**Approve the eligibility criteria for new service users with immediate effect and for existing service users from 1.10.2009. When existing packages of care are reviewed any additional hours would be paid at the new assessed rate.**

The longer lead in time would allow service users and PAs more time to adjust to any potential charge. The effect of the longer lead in time could allow the Direct Payment team to support the service user in assessing the maximum PA hourly rate which could be paid given NI earning thresholds, hours worked and if full holiday cover was taken by the service user. Guidance could also be given to the service user if a potential top up would be required if the service user wished to continue paying the carer or family member at the same rate.

4.2.4 With options 2 and 3 potential savings would be generated if existing service users currently employing agency staff or PA's receiving a DP at the rate of £11.35, on review were assessed as meeting the standard rather than the complex support criteria. The full year effect may be up to a £100K saving if on review assessed need reduces from standard to complex. This money would then be available to provide additional services where necessary.

4.2.5 Of the above, option 3 strikes the best balance between equity, appropriate remuneration to the PA and Service user, retaining valued PAs with support provided during the implementation process.

4.2.6 In addition, DP agency rates will be kept under review, for further amendments in line with changes to tendering arrangements for domiciliary care agencies. New contracts are to be in place from 1st April 2009. Concerns over outlier agency rates will be addressed with both domiciliary care and group social

activity external agency providers, as part of the current tendering and commissioning process. Consideration will also be given to the fact that Personalised and Individualised budgets are proposed to be introduced in 2010/11.

## **5.0 POLICY IMPLICATIONS**

5.1 The DP Policy & Procedure (Appendix 2) has been amended in the following areas:

- To introduce eligibility criteria to determine the rate at which DP's will be set based on current good practice (see page 6-7 of the Policy)
- To reflect the growth in Personal Assistants and to include payroll charges in the set up costs if required, and annually thereafter as a supplement to be paid to the service user if required, when employing a Personal Assistant/s from 1.4.2009.
- To reflect the changes introduced by the Mental Capacity Act 2005, with additional detail on capacity – Appendix 1 to the Policy.

## **6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

### **6.1 Children & Young People in Halton**

At this time, the proposal covers Adult Social Care Services only. The DP Team currently provides services to sixteen Children via a SLA with Children and Young People's Directorate.

### **6.2 Employment, Learning & Skills in Halton**

The proposal would ensure DP hourly rates reflect the cost of service and that local services to meet local need can be developed with care staff employed by the service users either via an agency or as PAs.

### **6.3 A Healthy Halton**

The proposal clearly demonstrates the Council's commitment to promoting the service user's independence, health, well-being and choice and inclusion through receipt of Direct Payments, as well as ensuring value for money.

### **6.4 A Safer Halton**

None identified.

### **6.5 Halton's Urban Renewal**

None identified.

## **7.0 RISK ANALYSIS**

- 7.1 Any reduction from the complex rate of £11.35 to the standard rate of £9.35 could result in service users needing to reduce their PA's hourly rate of pay or top up contributions themselves to either a PA or an agency. The delayed introduction of these new arrangements for existing service users, could reduce transitional difficulties. Some service users and carers may continue to express their dissatisfaction at a rate cut for care and social activities which are on review are not considered complex. The Council will need to ensure that they have ongoing dialogue with existing direct payment service users during the implementation phase and to monitor any future impact on care and services.
- 7.2 To date, all service users when paid at the average agency rate of £10.70 top up the funding privately or if employing social activity providers, where required, to employ their preferred provider.
- 7.3 By including payroll costs in start up costs and, if required, thereafter for Direct Payment recipients who employ PA's directly, potential difficulties and debt, in relation to tax and national insurance payments could be avoided. DP recipients, and in the future, Individualised Budgets recipients, could thereby employ a PA directly to meet their support needs, which is consistent with the Government's directive to promote the uptake of Direct Payments and Individualised Budgets.

**8.0 EQUALITY & DIVERSITY ISSUES**

- 8.1 All service users who choose to have their support needs met via DPs will have sufficient funds to access the services that they have been assessed as needing. It would also introduce consistency across all community-based services. The continued presence of the complex rate of £11.35 would allow for complex needs to be met, with the introduction of DP criteria providing consistency.
- 8.2 If a Payroll Service is not funded for DP recipients who employ PAs directly, inequality would be created with service users from other neighbouring and nationwide Local Authorities.

**9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

<b>Document</b>	<b>Place of Inspection</b>	<b>Contact Officer</b>
Presentation to the Healthy Halton Policy & Performance Board, 10/06/08	Runcorn Town Hall	Audrey Williamson Operational Director Adults of Working Age
Direct Policy & Procedure Report, Executive Board Sub Committee, 25/07/08	Municipal Building	Dwayne Johnson Strategic Director Health & Community



**APPENDIX 1**

Health & Community  
Directorate

Summary results of the consultation on Direct Payment Policy and Procedure  
Changes for new and existing Direct Payment service users  
18<sup>th</sup> December 2008

**1.0 Introduction**

1.1 DP rates were first set in 1999 by taking an average of Halton Borough Council's (HBC) accredited domiciliary care agency rates at the time. In subsequent years, the DP hourly rates were uplifted by annual percentage inflation rates. The Direct Payment Policy and Procedure has been revised annually to take into account legislative changes and increases to direct payment rates approved by members.

1.2 The Direct Payments Guidance notes for Community Care, Services for Carers and Children's Services 2003 state, "... the Direct Payment should be sufficient to enable the recipient lawfully to secure a service of a standard that the Council considers is reasonable to fulfil the needs for the service to which the payment relates."

1.3 In 2007/8 Halton BC's current payment rates were reviewed for new and existing service users and benchmarked against neighbouring Local Authorities.

1.4 The 2008/9 Direct Payment approved rates are as follows:-

	<b>AGENCY</b>	<b>PA</b>
<b>2008/9 RATES</b>	£10.70 Standard	£9.35 Standard
<b>from 7.4.2008</b>	£11.36 Complex	£11.36 Complex

1.6 Appendix 4 shows an updated comparison of Personal Assistant (PA) and agency rates for HBC's nearest neighbours who responded to HBC's survey in 2008/9. It can be seen that HBC's PA hourly rate is considerably higher than that of other neighbouring authorities.

1.7 Halton's rates also include a two-week contingency at the start of the agreement plus up to £259.00 in start up costs for insurance, CRB checks and recruitment. Additional to this, service users employing a personal assistant currently receive if required financial support via Disability Direct, who provides competitively priced payroll service under a successful pilot initiative. Annual payroll charges for a four weekly payroll are £7 per payroll including VAT, and online e filing of year-end returns, £58.75 per client including VAT. Thus total cost per service user is £142.75 by Disability Direct, which represents good value for money also demonstrating a high level of service user of satisfaction.

1.8 DP rates will be kept under review, for further amendments in line with changes to tendering arrangements for domiciliary care agencies. New contracts are to be in place from 1st April 2009.



## 2.0 Methodology

2.1 All Direct Payment service users were made aware via the October quarterly Direct Payment Newsletter of the proposed changes to the Direct Payment Policy and Procedure and consultation events to be held to capture people's ideas and opinions. A Survey form (Section 4) was also designed and posted out to all Direct Payment service users who did not attend the first consultation event to capture views. Telephone surveys were also conducted for Adults with Learning Disabilities (ALD), Older People, Mental Health and Physical and Sensory Disabilities (PSD) service users in addition. This questionnaire was also used to capture the views of future potential recipients of a direct payment service across all service areas.

2.2 Seven consultation events/ open forums were held across Runcorn and Widnes in October and November so that service users and or their carers could come and talk to Halton Borough Council (HBC) officers about direct payment proposals. The HBC officers who attended these events were:

- Paul McWade, Operational Director, Health & Partnerships
- Hazel Coen, Divisional Manager, Finance & Support
- Kerry Bibby, Acting Senior Finance Officer Direct Payments
- Julie Dearden, Client Finance Officer, Direct Payments Team
- Social Worker Representatives from Older Peoples Services, PSD and Mental Health Services

2.3 Consultation was held in a variety of venues to seek views from new and existing service users:

- The Stobart Stadium, Widnes – Main advertised event also publicised in Libraries, Health Centres and Community Centres
- An informal meeting of physical and sensory disability service users at Bridgewater Day centre.
- "Happy Hearts Club" at Ditton Community Centre, Widnes
- Mental Health Carers Forum – Runcorn
- Mental Health Carers Forum – Widnes
- Residents of Dorset Gardens, Palace fields
- Halton Speak Out – an event organised for ALD service users. Officers of HBC did not attend this last mentioned event.

2.4 A summary of the responses made is provided in Section 3 of this report, with a copy of the questionnaire included in section 4.

### 3.0 Summary of Results

#### 3.1 Future Use of an Eligibility Criteria

- **Yes**                                **75**    **(82% of respondents)**
- No                                        16    (17 % of respondents)
- No Opinion Given    1    (1% of respondents)

Overall 82% of respondents thought that the introduction of a criterion was a good idea whilst 17% disagreed with the introduction of a criterion. Some ALD and PSD existing service users who on review may no longer be considered as complex for social activities, mainly held this view.

#### 3.2 Consideration if this proposed criterion is fair and equitable to all service users

- **Yes**                                **68**    **(74% of respondents)**
- No                                        20    (22% of respondents)
- No Opinion Given    4    (4% of respondents)

The majority of respondents 74% thought the criterion is fair to all, 22% thought it was not fair and 4% had no opinion either way. It was clear from the consultation events held that an imbalance exists now, which needs addressing. There was a general perception that some social workers treat different service users differently when awarding packages and the assessment now is open to interpretation. There was also a comment made voiced by Halton Speak Out that "People who shout the loudest get the most". Concerns were also raised by ALD and PSD existing service users that the person cared for may not on review fall into higher level under new proposal, and have been previously assessed as higher.

#### 3.3 Should we help service users with their payroll costs

- **Yes**                                **81**    **(88% of respondents)**
- No                                        6    (7% of respondents)
- No Opinion Given    5    (5% of respondents)

The majority of respondents 88% were in favour of mainstreaming the present pilot to help Direct Payment Service users with their payroll costs as a supplement, if required, to be paid from 1.4.2009. 5% had no opinion either way and 7% voted "no" with comments made including "Ratepayers should not pay any more to give someone a choice. The council has to get the full money off ratepayers".

#### 3.4 Changes to the Mental Health Capacity Act

Legislative changes affecting Mental Health Service users were in particular discussed with two Mental Health Carers Forums to widen the scope of Direct Payments to this under represented group. Several carers of service users with mental health problems supported the idea of a DP but were concerned, if their carer held this money, they would be pressurised by the service user to spend on drink and drugs. Carers felt support via the Appointee team (to hold money and pay bills), was a good idea and would encourage them to use a DP.

**3.5 Overall comments about Direct Payments**

A range of general comments both positive and negative were made from positive comments made about “members of the Direct Payments team, they have always come across to me as polite, professional and caring and very on the ball. I have always over the past 18 months found it a pleasure to deal with them. Thank You.” to concerns over the social work assessment process which will be addressed individually with service users.

3.6 Current rates for a Personal Assistant were considered reasonable “ in line with Knowsley and local market rates“. Others commented on the fact they currently receive £11.36 an hour and pay £9.00 an hour to their PA and may in future be assessed at the standard rate. This would mean that the service user would have to cut the payment rate under the contract or top up payments to the carer, and were concerned how this potential reduction may be perceived by a carer or a family member “She’s valued and does a good job. How can we turn around and tell her we’re cutting her money? It devalues her, puts a strain on our good relationship. What if she decides to leave?”

3.7 For agency providers comments were also made that £10.70 is too low does not cover the cost of care from some domiciliary care agencies, which charge more than this if service users choose this agency. The current contracted rates of certain social activity providers was also raised as a concern who charge £12.98 per hour plus mileage, plus entrance fee, plus subsidiary costs (lunch etc). Whilst service users commented that “ this provider offers access meaningful, structured, stimulating activities. In short they offer what young, active people want to do”, other commented “M Power is great but too expensive”. Halton Speak Out also commented that Direct payments do not seem to be currently used to access meaningful work.

**Section 4 QUESTIONNAIRE: Asking you about Direct Payments**

The Council needs to look at our Direct Payment Policy and Procedure for new and existing service users and have asked us to consult with people who get Direct Payments.

At the moment people get £9.35 an hour, £10.70 an hour or £11.36 an hour depending on your assessed need?

What are your views on the following:

- Do you think the council should use an eligibility criteria to work out who gets what rate of Direct Payment, for example who should get £9.35 an hour, £10.70 an hour or £11.36 an hour?

YES  NO

If yes, do you have any comments on the proposed eligibility criteria?

If no, please state what eligibility criteria should be used?

- Do you feel the criterion is fair and equitable to all Direct Payment service users?

YES  NO

If no, please state why not

- Should we help Direct Payment Service users with their payroll costs as a supplement to be paid from 1.4.2009?

YES  NO

If no, please state why not

- Any other comments, please write below

Name (Optional).....

**Please return the attached to a member of Staff from Halton BC or speak to a member of staff directly if you have any questions on the presentation today**

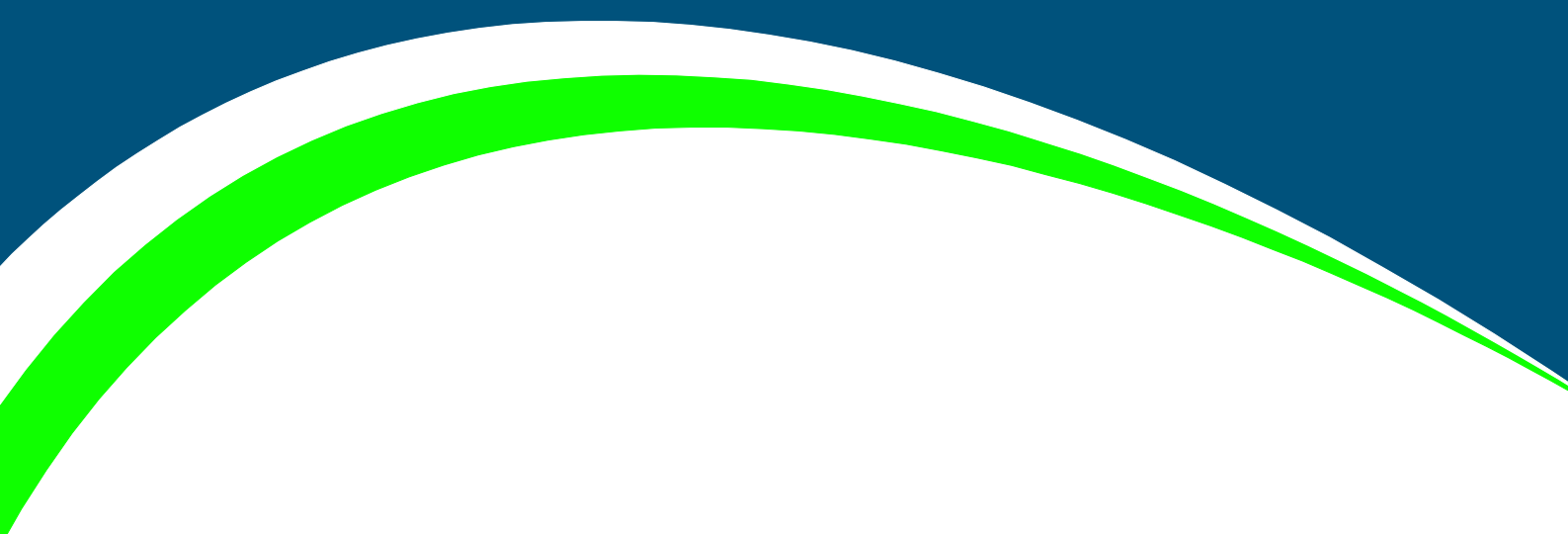
**APPENDIX 3**

Prior to a decision being made with the service user and Halton BC, if they want a DP or a service provided by the authority, FACS criteria for eligibility must be applied.

<b><u>Direct Payment Rate Criteria</u></b>
<p><b><u>High Level Need/ Complex Support Criteria = £11.36 (Agency &amp; PA)</u></b></p> <p>In addition to some indicators for standard support below, the individual has:</p> <ul style="list-style-type: none"> <li>• High level of challenging behaviours (requiring a level two risk assessment and a risk management plan to manage safety) and employed Carers require additional skills (beyond those required by carers who meet needs below) as certified by formal training. Certificates will need to be produced.</li> <li>• Complex needs which are eligible for SS/PCT joint funded package</li> </ul>
<p><b><u>Standard Support Criteria = £9.35 PA or £10.70 Agency rate</u></b></p> <p>The individual has <i>an assessed need for</i>:</p> <ul style="list-style-type: none"> <li>• Assistance to take medication</li> <li>• Support with incontinence</li> <li>• Physical assistance to use the toilet</li> <li>• Assistance with moving and handling</li> <li>• Assistance with washing/ bathing</li> <li>• Support to eat/ drink</li> <li>• Specific support and assistance to stimulate development of communication and/ or negotiation skills.</li> <li>• For support to access social activities.</li> <li>• NB. Supporting People and ILF funding will be used to support other social activities for the service user.</li> </ul> <p><i>And/ or</i></p> <p>Mental Health Needs that meet critical/ substantial FACS criteria or are demonstrably preventative and require support.</p>

**Appendix 4- Comparison of Local Authority Direct Payment Rates 2008/9**

<u>APPENDIX 1</u>	<u>HALTON</u>	<u>CHESHIRE</u>	<u>TAMESIDE</u>	<u>KNOWSLEY</u>	<u>WIGAN</u>	<u>ST HELENS</u>	<u>STOCKPORT</u>
<b><u>AGENCY RATES</u></b>	<p>Standard Rate £10.70 per hour                      Complex Rate: £11.36 per hour</p> <p>The rate for any part of an hour is achieved by dividing the hourly rate</p>	<p>East Rates</p> <p>£12.30 per hour</p> <p>£11.19 per 3/4 hour</p> <p>£7.87 per 1/2 hour</p> <p>£5.66 per 1/4 hour</p> <p>West Rates</p> <p>£11.00 per hour</p> <p>£9.73 per 3/4 hour</p> <p>£7.52 per 1/2 hour</p> <p>£5.41 per 1/4 hour</p> <p>Sleeping Night £65.59                      Waking Night £83.39</p>	Hourly rate of £9.25 per hour	<p>£7.85</p> <p>£9.28</p> <p>Enhanced up to £11.47</p> <p>These rates are applied whether the person is employing a PA or an agency.</p> <p>The rate for any part of an hour is achieved by dividing the hourly rate.</p>	<p>If using an agency, the Agency Rate for that particular agency the client decides to use would be applied, as long as it was within the current rates.</p> <p>Don't have different rates for people who choose to pool their DP's or access group activities.</p>	<p>Standard Rate: £11.05</p> <p>If anyone wants to use an agency who charge more, then they have to make up the difference with their own money.</p> <p>Any special rates are negotiated individually.</p>	<p>£9.71 per hour</p> <p>£5.20 per 1/2 hour</p> <p>Same if using a PA</p> <p>No different rates for complex / challenging packages.</p> <p>No lower rates for group activities.</p> <p>Standard annual increase of 2% inflation each year</p>
<b><u>PERSONAL ASSISTANT RATES</u></b>	<p>Standard Rate £9.35 per hour                      Complex Rate: £11.36 per hour</p> <p>The rate for any part of an hour is achieved by dividing the hourly rate</p>	<p>£10.18 per hour</p> <p>£9.23 per 3/4 hour</p> <p>£6.75 per 1/2 hour</p> <p>£4.76 per 1/4 hour</p>	Hourly rate of £9.25 per hour	<p>£7.85</p> <p>£9.28</p> <p>Enhanced up to £11.47</p> <p>These rates are applied whether the person is employing a PA or an agency.</p> <p>The rate for any part of an hour is achieved by dividing the hourly rate.</p>	<p>£7.20 8.00am-8.00pm</p> <p>£9.60 evenings/weekends</p> <p>£45.11 midweek sleep</p> <p>£47.54 weekend sleep</p> <p>These rates do not include Holiday Pay.</p> <p>Consider the higher rate for all hours for complex needs, sometimes negotiated rates</p>	<p>Standard Rate: £9.13</p> <p>People need to budget in these amounts for any NI employer contributions.</p> <p>Any special rates are negotiated individually.</p>	<p>£9.71 per hour</p> <p>£5.20 per 1/2 hour</p> <p>No different rates for complex / Challenging packages</p> <p>Standard annual increase of 2% inflation each year</p>

A decorative graphic consisting of a thick, bright green curved line that starts from the left edge of the page and arches towards the right, set against a dark blue background.

**Direct Payments  
Policy, Procedure and Practice**

8th version  
Updated: APRIL 2008

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**CONTENTS**


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	<b>Page</b>	<b>Paragraph</b>
<b>POLICY</b>		
Purpose	2	1.1
Introduction to Direct Payments	2	1.2-1.6
Halton's Direct Payment Scheme	2	1.7-1.9
What Direct Payments can be used for	3	1.10
What Direct Payments cannot be used for	3	1.11
Who can qualify for a Direct Payment	3	1.12
People who do not qualify for a Direct Payment	4	1.13
Direct Payment Rates	4	1.14
Eligibility Criteria	5	1.15
 <b>PROCEDURE</b>		
The 4 Stages	6	2.0-2.4
Stage 1: Assessment	7	3.0-3.2
Stage 2: Implementation	9	4.0-4.13
Stage 3: Monitoring	13	5.0-5.13
Stage 4: Reviewing	16	6.0-6.7
 <b>APPENDICES</b>		 <b>Page 18 onwards</b>



<b>INFORMATION SHEET</b>
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<b>Service area</b>	Health & Partnerships
<b>Date effective from</b>	1 <sup>st</sup> April 2008
<b>Responsible officer(s)</b>	Hazel Coen - Divisional Manager (Finance & Support) Audrey Fearn- Principal Manager (Client Finance)
<b>Date of review(s)</b>	April 2009
<b>Status:</b> <ul style="list-style-type: none"> <li>• <b>Mandatory (all named staff must adhere to guidance)</b></li> <li>• <b>Optional (procedures and practice can vary between teams)</b></li> </ul>	Mandatory
<b>Target audience</b>	Adults and Older People's Social Care Services staff
<b>Date of committee/SMT decision</b>	<ul style="list-style-type: none"> <li>• Executive Board Sub Committee 20.3.2008</li> <li>• Healthy Halton Policy &amp; Performance Board 10.6.08</li> <li>• Executive Board Sub Committee 25.7.2008</li> </ul>
<b>Related document(s)</b>	Direct Payments Guidance, Community Care Services for Carers and Children's Services (Direct Payments) Guidance England 2003.
<b>Superseded document(s)</b>	1 <sup>st</sup> version dated 6 <sup>th</sup> December 2000 2 <sup>nd</sup> version dated 25 <sup>th</sup> July 2002 3 <sup>rd</sup> version dated December 2003 4 <sup>th</sup> version dated December 2004 5 <sup>th</sup> version dated September 2005 6 <sup>th</sup> version dated November 2005 7 <sup>th</sup> version dated March 2007
<b>File reference</b>	DP/DEC00/1

## ***POLICY***

- 1.1 **Purpose**  
The purpose of this Policy, Procedure and Guidance is to tell staff about their role and responsibility with regard to Direct Payments, which also encompasses the needs of people from diverse communities. A separate guide has been written for people who use our services. The documents complement each other and strive to develop the greatest degree of independence and choice for people who need services in Halton.
- 1.2 **Introduction to Direct Payments**  
The Direct Payments Guidance Community Care Services for Carers and Children's Services Guidance England 2003 requires Social Services to make direct cash payments to enable a person to obtain for themselves the services that they have been assessed as needing, subject to eligibility.
- 1.3 The following groups of people may be eligible for Direct Payments:
- Older and disabled people aged 16 or over
  - People with parental responsibility for disabled children
  - Carers aged 16 or over in respect of carer services
- 1.4 The Direct Payment is made by Social Services instead of providing or arranging for the provision of services. The person then uses the money to purchase services to meet their assessed needs. In the case of disabled children, the parent or person with parental responsibility secures services to meet the needs of the child and their family.
- 1.5 Direct Payments must be made to all individuals who are eligible to receive them and want them. Each eligible individual should be offered the choice of having their needs for a service met through Direct Payments as part of the care planning process.
- 1.6 If a Care Manager feels it is appropriate for a third party to receive the Direct Payment on behalf of the person, the third party must open a separate dedicated bank account to receive the Direct Payment and must adhere to the conditions set out in the Direct Payment Contract.
- 1.7 **Halton's Direct Payment Scheme**  
The Direct Payments Scheme was originally launched as a one-year pilot from January 2001. Since then funding has been agreed to run the scheme on a permanent basis.
- 1.8 The project was developed in partnership with people who use services, statutory, independent, voluntary sector organisations and representative groups and is linked to other local activities for example, carer services and information provision.
- 1.9 The scheme is co-ordinated and managed by a manager and an assistant (telephone number 01928 704436), who are managed by

## ***Practice***

### **Concept of Direct Payments**

"Direct Payments help people who want to manage their own support to improve their quality of life. They promote independence, choice and inclusion by enabling people to purchase the assistance or services that the council would otherwise provide in order to live in their own homes, be fully involved in family and community life and to engage in work, education and leisure"

Department of Health Direct Payments Guidance 2003

### **The Direct Payment Guidance 2003**

Replaces the Community Care (Direct Payments) Act 1996 Policy and Practice Guidance issued in 2000, the Carers and Disabled Children Act 2000 Direct Payments for young disabled people Policy and Practice Guidance issued in 2001 and the passages on Direct Payments contained in the Carers and Disabled Children Act 2000 Carers and people with parental responsibility for disabled children issued in 2001.

### **Relevant services**

The duty to make Direct Payments applies to:

-a community care service within the meaning of section 46 of the National Health Service and Community Care Act 1990

-a service under section 2 of the Carers and Disabled Children Act 2000

-a service which local councils may provide may provide under section 17 of the 1989 Act (provision of services for children in need, their families and others)

### **Government policy guidance**

"The Government wants to see more extensive use made of Direct Payments in particular by those groups that have not made wide use of them up to now. For that reason local councils now have not just a power but a duty to make Direct Payments in certain circumstances." This has important implications for the way that local councils undertake assessment and care planning discussions with individuals and for local councils'

own commissioning procedures and planning.

Department of Health Direct  
Payments Guidance 2003



***POLICY CONTINUED***

The Health & Community Directorate and have close links with other local user groups and service providers.

**1.10 What Direct Payments can be used for**

Direct Payments can be used to buy relevant services/equipment to meet needs identified as part of a person's care plan and may be used in the following ways:

- Employing a Personal Assistant – the person arranges services in a way that suits them. If a person employs personal assistants directly, whether as a sole or secondary employer, they must make adequate arrangements to fulfil their consequent responsibilities as an employer.
- Buying services from an agency.
- For short-term care (respite) in residential care which does not exceed a four week period in any 12 months (see below).
- Purchasing equipment that would otherwise have been provided by Social Services. (A policy and procedure for a pilot scheme for Direct Payments and Equipment is in place).
- [To fund a carers break.](#)

Any service purchased must be as cost effective or efficient as the Local Authority could arrange or buy.

**What Direct Payments cannot be used for****1.11**

- To relieve the Directorate of its statutory responsibilities towards a service user who is perceived as troublesome or difficult

- To purchase local authority services.

- For permanent residential care for adults. Direct Payments may be used to purchase short-term care (respite) in residential care. This is calculated as follows:

*“Where two periods of residential care are less than 4 weeks apart, they should be added together to make a cumulative total which should not exceed four weeks. If the two periods are more than 4 weeks apart they are not added together.”*

***Department of Health Direct Payments Guidance 2003.***

- For residential accommodation for a disabled child or disabled young person for any single period in excess of four weeks and for more than 120 days in any period of 12 months.

- Personal assistance cannot be purchased from a partner or close relative living in the same household as the Direct Payments recipient other than in exceptional circumstances, which must be agreed by the Council in writing.

**Who can qualify for a Direct Payment****1.12**

To be eligible for a Direct Payment a person user must:-

- Be ordinarily resident in the Borough of Halton
- Be assessed as eligible to receive services (This includes carer services).
- Agree to receive Direct Payments instead of services (for children under 16 consent must be obtained from a person with

***Practice***

When setting up a direct payments scheme, local councils are encouraged to actively consider how to include people with different kinds of impairment, people from different ethnic backgrounds and people of different ages. When considering whether a person's need for a service can be met by means of a direct payment, local councils should consider the provision of direct payments for both intensive packages and lower level services, long and short term provision and they are also encouraged to think about how direct payments can be assimilated into preventative and rehabilitative strategies.

"Department of Health Direct Payments Guidance 2003"

**What Direct Payments cannot be used for**

"Unless a council is satisfied that it is necessary to meet satisfactorily a person's needs, a council may not allow people to use direct payments to secure services from a spouse, from a partner or from a close relative (or their spouse or partner) who live in the same household as the direct payment recipient."

The restrictions given are not intended to prevent people using their direct payments to employ a live-in personal assistant.

The restriction applies where the relationship between the two people is primarily personal rather than contractual."

Department of Health Direct Payments Guidance 2003."

***POLICY CONTINUED***

parental responsibility, usually a parent).

- Be able to manage Direct Payments with or without support
- Satisfy the Council that financial controls will be adhered to.

**People who do not qualify for a Direct Payment**

1.13

The Regulations specify that Direct Payments may not be made to certain people whose liberty to arrange their care is restricted by certain mental health or criminal justice legislation as follows:-

- Patients detained under mental health legislation who are on leave of absence from hospital;
- Conditionally discharged detained patients subject to Home Office restrictions;
- Patients subject to guardianship under mental health legislation and those covered by the new power of supervised discharge introduced by the Mental Health (Patients in the Community) Act 1995;
- People who are receiving any form of aftercare or community care which constitutes part of a care programme initiated under a compulsory court order;
- Offenders serving a probation or combination order subject to an additional requirement to undergo treatment for a mental health condition or for drug or alcohol dependency;
- Offenders released on licence subject to an additional requirement to undergo treatment for a mental health condition or for drug or alcohol dependency; and
- People subject to equivalent Scottish mental health or criminal justice legislation.

**Direct Payment Rates**

1.14

For all new service users from 1<sup>st</sup> April 2008

Where a service user chooses to employ:

- An agency, a **standard rate of £10.70 per hour** (reduced pro rata for part hours e.g. ¾ hour £8.03, ½ hour £5.35, ¼ hour £2.68) will be paid based on the average agency hourly rate across Runcorn and Widnes.
- A **personal assistant (PA)**, a **standard a rate of £9.35 per hour** will be paid.

The **complex rate of £11.36 per hour** would only paid in exceptional circumstances, for both agency and personal assistants with the direct approval of the respective Operational Director, given the complexity of the service user's needs having met the eligibility criteria (see para. 1.15).

This would introduce consistency across the board in relation to all community care packages arranged by both Care Managers and those purchased via a Direct Payment.

***Practice*****The final decision**

Whether a direct payment is appropriate or not, the Client Finance Manager must take into consideration whether the person will be able to cope with the responsibilities.

**Advice on making decisions about the ability to manage**

"The council should ensure it takes into account all relevant factors before making a decision not to make a direct payment:

The person's understanding of direct payments, including the actions required on their part:  
Whether the person understands the implications of taking or not taking on direct payments  
What help is available to the person  
The nature of the services the person is assessed as needing:  
What arrangements the person would make to obtain services."  
Department of Health Direct Payments Guidance 2003.

***POLICY CONTINUED******Practice***Existing Service Users (to be implemented from 1<sup>st</sup> April 2009)

Respective Social Work teams will review existing Direct Payment packages using the criteria in para. 1.15. All service users will be informed that the new assessed rates for both agency and personal assistants as outlined above will be implemented on 1<sup>st</sup> April 2009.

Direct Payment rates will be kept under review, for further amendments in line with changes to tendering arrangements for domiciliary care agencies.

**1.15 Eligibility Criteria**

FACS criteria for eligibility must be applied to those individuals who wish to receive a Direct Payment:

Standard Support Criteria: £10.70 per hour Agency rate / £9.35 per hour PA rate

The individual has an assessed need for:

- Assistance to take medication.
- Support with incontinence.
- Physical assistance to use the toilet.
- Assistance with moving and handling.
- Assistance with washing/bathing.
- Support to eat/ drink.
- Specific support and assistance to stimulate development of communication and/or negotiation skills.
- Support to access social activities

**NB:** Supporting People funding and ILF will be used to support other social activities for the service user.

**And/or**

- Mental Health needs that meet critical/substantial FACS criteria or is demonstrably preventative and requires support.

High Level Need/ Complex Support Criteria: £11.36 per hour (Agency & PA)

In addition to some indicators for standard support:

- The individual has a high level of challenging behaviours (requiring a Level 2 risk assessment and a risk management plan to manage safety) and the individual's employed Carers require additional skills as certified by formal training. Certificates will need to be produced.

**And /Or**

- The individual has complex needs, which are eligible for a Social Services/PCT joint funded package.

## ***PROCEDURE***

### 2.0 **THE 4 STAGES**

The Directorate will undertake a four-stage process in order to make Direct Payments.

#### 2.1 **Stage One: Assessment**

Assessment is a crucial process and Direct Payments can only be offered to someone who has been assessed as eligible to receive services. The Directorate's Social Workers and, where equipment is required, Occupational Therapists will work with the person to assess what their needs are.

#### 2.2 **Stage Two: Implementation**

At stage two the person has received an assessment and expressed an interest in receiving a Direct Payment. It is the responsibility of the Direct Payments Assistant to tell them about the details of managing a Direct Payment and to set up the Direct Payment for them.

#### 2.3 **Stage Three: Monitoring**

At this stage the person is receiving a Direct Payment. It is the responsibility of the Direct Payments Assistant to monitor how the Direct Payment is being used. The Direct Payments Assistant will provide support to the person for up to six weeks or until they are able to manage the monitoring process independently.

#### 2.4 **Stage Four: Reviewing**

Reviews take place to ensure that the Direct Payment is being managed satisfactorily. Adults in receipt of Direct Payments review their needs at least annually with the Social Worker and/or Occupational Therapist and Client Finance Manager/Assistant. Children are reviewed at least every six months.

## ***Practice***

### **Assessment**

Existing policy and practice guidance on assessment should be followed whether or not the person being assessed is likely to receive service provided by the local council or direct payments. Department of Health Direct Payments Guidance 2003

### **Implementation**

Councils should give the person information and support as early in the process as possible about what receiving direct payments will involve. In order to make an informed decision, people need to understand what is involved in managing direct payments. Department of Health Direct Payments Guidance 2003

### **Monitoring**

Monitoring arrangements should be consistent both with the requirement for the council to be satisfied that the person's needs for the service can and will be met and with the aim of promoting and increasing choice and independence.

Department of Health Direct Payments Guidance 2003

### **Reviewing**

Councils should follow existing guidance on carrying out reviews. The fact that the council is making direct payments rather than arranging services itself does not affect its responsibility to review an individual's care package at regular intervals.

Department of Health Direct Payments Guidance 2003



**PROCEDURE CONTINUED****Practice**3.0 **STAGE ONE: ASSESSMENT**3.1 **SOCIAL WORKER PROCEDURES**

Direct Payments can only be offered to someone who has been assessed as eligible to receive services. There is no difference in the assessment process, which must include an assessment of whether Direct Payments are appropriate and of whether the person is able to manage them. The procedure to be followed is detailed below:

1. Undertake an assessment / review. All eligible individuals should be offered the option of Direct Payments. There is a leaflet (available from the Client Finance Team) that the Social Worker should give to the person.
2. If the person is interested in receiving Direct Payments the Social Worker will need to determine their **willingness** to receive a payment, **ability** to state preferences and make choices, **capability** to manage the Direct Payment and **competence** to take legal responsibility for arranging their own care services. Appendix 1 provides the definition of willing, able, capable and competent [and of capacity under the Mental Health Act 2005](#).
3. The Social Worker will need to ask the person's permission to share a copy of their assessment, care plan and Independent Living Team report (if appropriate), with the Client Finance Team.
4. Following the assessment and funding approval, the Social Worker will complete the Request for Direct Payment Form and send to the Care Arrangers will all necessary documentation. The Care Arrangers will complete a SUISS and pass to the Client Finance Team for set up. The Client Finance Team will arrange to visit the person within 3 weeks. The Direct Payment Assistant will log the request onto the Direct Payments database. A joint visit with the Social Worker is preferred.
5. On the joint visit it is important that the following is carried out:
  - The Direct Payments Assistant will give the person a copy of "Personal Assistants - A Guide to Getting Started". This guide will be used to help the person understand what is involved in managing Direct Payments.
  - As a guide to deciding if Direct Payments is a suitable service for the person the Direct Payments Assistant and Social Worker will use the questions in Appendix 2.
6. After this initial visit the service user will be left to think about the scheme. After several days the Direct Payments Assistant

**Assessment**

"There is no difference in the assessment of a person's need for services although under the Regulations a local council must also be satisfied that the person's need for services can be met by means of a direct payment. It is important that the needs-led focus of the assessment is retained. In order to ensure that the person's assessed need for the relevant service can be met by means of a direct payment, each local council should consider the person's needs and also discuss with anyone to who it proposes to offer direct payments how he or she intends to secure the services. Councils will want to be satisfied that the person's assessed needs can and will be met and that the money is being spent appropriately in securing services to meet those needs."

Department of Health Direct Payments Guidance 2003

**Carer assessment**

The Department of Health policy and practice guidance and the Carers (Recognition and Services) Act 1995 emphasise the importance of considering carers' needs when completing a community care assessment. A carer is someone who has a personal or family relationship with the disabled person, not someone who is being paid to provide care or support to the disabled person using the Direct Payment.

If as a result of a carers' assessment the carer has needs for personal assistance in his or her own right then these needs may be met either through the provision of a service or a Direct Payment.

**Mixed packages of care**

It may be appropriate to offer a mixed package of direct payments and council arranged services. This may be particularly useful for people used to receiving direct services, such as older people, And who may need to increase their confidence.

Department of Health Direct Payments Guidance 2003

**PROCEDURE CONTINUED**

will telephone the person. If they wish to proceed the Direct Payments Assistant will arrange a second visit to start the implementation stage.

7. At the end of the implementation stage when the service user has signed a contract and the Direct Payments Assistant has set up the Direct Payment the Social Worker will be informed and sent a copy of the contract. At this stage the Social Worker will need to record information onto CareFirst. The Direct Payments Assistant will check that this has been done.

**Practice**

3.2

**OCCUPATIONAL THERAPY PROCEDURES**

As part of the assessment the need for Occupational Therapy input may be identified. In this instance the Social Worker usually refers the person to the Independent Living Team for an Occupational Therapy Assessment.

**Equipment Assessments:**

Equipment will be supplied with relevant information and/or literature. The person receiving Direct Payments should ensure all personal assistants (employed by them) are competent to use the equipment correctly. The person should also ensure that any new employees are competent to use the issued equipment.

**ILT Hoist Assessments:**

1. Following a referral from the Social Worker the Occupational Therapist will carry out a hoist assessment, and recommend the appropriate equipment where necessary (as per standard hoist procedures).
2. When the hoist assessment is completed the Social Worker and the Direct Payments Assistant will be informed of the outcome so it can be included in the care plan.
3. Equipment will be supplied with relevant information and/or literature. The person receiving Direct Payments should ensure that any personal assistant (employed by them) has the relevant skills in order to use any moving & handling equipment. This includes ensuring that any new employees are competent to use the issued equipment.
4. The provision of the equipment will be subject to standard review procedure. The outcome of these reviews will be forwarded to the Social Worker and Direct Payments Assistant.

**Independent Living**

“Independent living is the concept of empowering disabled people to control their own lives as far as possible and to have the freedom to participate fully in the community. It is not the name of a particular service or provision but should be the objective of services and provision.

Support for independent living includes personal assistance, information, housing, education, access to public goods and services, employment and training and access to the environment and the political arena.”

Social Services Inspectorate “New Directions for Independent Living.”

**Direct Payments**

“Direct Payment schemes for people aged over 65, became available on 1<sup>st</sup> February 2000, reinforcing the belief that people who have made their own choices throughout their lives should have the right to decide how people arrange their own social care. Direct Payments for older people will enable those who take this option to live for longer in their own homes in the community, in touch with family and friends. Younger people with physical disabilities have often chosen to use their Direct Payment to employ a personal assistant or occasional support, depending on the level of need.”

Social Services Inspectorate  
“Modern Social Services”

**PROCEDURE CONTINUED****Practice****4.0 STAGE TWO: IMPLEMENTATION**

4.1 In order to make an informed decision people will need to understand what is involved in managing Direct Payments and be helped through the process. The Direct Payments Assistant is responsible for this stage, but before this process begins, they need to know the following:-

**4.2 Direct Payment Rates**

Contact Direct Payments Section, Client Finance Team for current rates.

**4.3 Start-up costs**

This is a one-off payment to cover start-up costs up to a maximum of £259. For example, this payment could be used for setting up interviews, purchasing insurance, buying protective clothing for personal assistants and placing adverts. An amount is agreed between the Direct Payments Assistant and person up to the maximum of £259. At this stage the Direct Payments Assistant will inform the Team Practice Manager of the agreed amount. The set up costs are paid directly into the recipient's bank account.

The amount paid depends on individual circumstances, e.g. a person wishing to employ personal assistants for their full care needs may be entitled to the full amount of £259. A person who will receive Direct Payments to purchase support from an agency may only be entitled to a proportion of the full amount.

From 1<sup>st</sup> April 2008 start up costs will incorporate an allowance for payroll service costs incurred when a service user employs a Personal Assistant. By including payroll costs, in start up costs if incurred and if required annually thereafter, potential difficulties and debt in relation to tax and national insurance payments by the individual in receipt of the Direct Payment could be avoided.

**4.4 Contingency**

A contingency sum (for use in emergencies) is paid with the first regular Direct Payment and is equivalent to 2 weeks Direct Payment. When a sum of money is used from the contingency the person will need to complete the relevant form giving reasons and proof of expenditure. People should give notice to their Social Worker, wherever possible, prior to using any amount from this fund. If the expenditure is approved, then the contingency is 'topped up'. If the expenditure is not approved then the person should pay back the contingency from private funds.

**4.5 Example of form used to calculate Direct Payment**

See Appendix 3.

**4.6 Separate bank account**

The Local Authority requires evidence that the monies made

**Determination of payment levels**

'The guiding principle in determining the level of a Direct Payment should be to set it at a level which reflects as closely and fairly as possible the actual cost at which individual service users can purchase the services which they are assessed to need. Equally there should be equity between those users who participate in such a scheme, and those who are unable or prefer not to participate.

Payments to service users under this scheme should, therefore, be made on the basis that the user is given sufficient, but no more than sufficient, funds to purchase the same quantity and same quality of care which would be arranged for a service user of the same Local Authority with the same assessed needs who remains outside the Direct Payments scheme.'

CIPFA 'Accounting and Financial Management Guidelines.'

**Start up costs**

These costs are refundable to the authority if the service user decides not to proceed with the Direct Payment scheme, although there may be exceptional circumstances when it is deemed unreasonable to request the full amount to be returned.

**Contingency fund approval**

Contingency fund needs to be approved by the relevant Practice Manager and Client Finance Manager.

**PROCEDURE CONTINUED****Practice**

available are being used to meet the identified and agreed needs as determined by the assessment. It is therefore necessary that recipients of Direct Payments to purchase care services have a separate and exclusive bank account to manage their Direct Payments.

**4.7 Insurance**

Extra insurance is incurred by the introduction of the Direct Payment scheme, i.e. employer's liability and public liability. The cost of this will be met by the authority within the start-up costs, upon proof of payment. The contingency fund can be used to pay insurance fees and a receipt must be sent to the Local Authority along with a "Request for Reimbursement of Contingency" form, to ensure repayment.

**4.8 Direct Payments and Trusts**

A Trust may administer the Direct Payment for the person, but that person must retain responsibility for receiving the payment and determining how it is to be used. The important principle, which must be addressed before making a Direct Payment, is that the Local Authority should satisfy itself that the relationship between the person and the Trust/agent/power of attorney, will honour the spirit of independent living, before a Direct Payment is agreed.

**4.9 Fairer Charging Policy**

Halton Borough Council's Fairer Charging Policy takes account of a person's ability to pay for services they receive. People receiving a service are asked to give details of income and benefits that they receive, details of any savings and investments that they have and details of any disability spending that they have. Any financial contribution the person needs to make towards the cost of their care will be taken out before the Direct Payment is paid into their bank account.

**4.10 How the money can be spent**

When signing the Direct Payment contract, the service user will be taking responsibility for arranging their services, and spending the cash payment in the way that is shown in the contract. It is essential that the contract is clear that people using Direct Payments have flexibility about how the money is spent.

**4.11 Buying services from an agency**

Any services purchased by the person must be as cost effective or efficient as the Local Authority could arrange or buy. In discussions with the person receiving the Direct Payment it is important that the Direct Payments Assistant explains that the Local Authority is not liable to pay VAT, and it is not possible for the Local Authority to make extra provision to cover the cost of VAT.

**4.12 Employing a personal assistant**

Many people will chose to employ a personal assistant. In this case the person becomes an employer and must make adequate

**Support groups**

When discussing direct payments with people, local councils will wish, wherever possible, of offer the option for them to be put in touch with a support group or local centre for independent living, or a peer support group of people who already manage direct payments.

Department of Health Direct Payments Guidance 2003.

**Rates of pay for personal assistants**

The service user will negotiate the

**PROCEDURE CONTINUED**

arrangements to fulfil their consequent responsibilities. Halton has seen a growth in the number of personal assistants employed by those in receipt of a Direct Payment since the scheme began.

**4.13 Arrangements in emergencies**

It is essential that each person receiving a Direct Payment has made arrangements to cover potential emergencies, for example if a personal assistant is sick. If these arrangements break down and it is not possible for the person to have their needs met, then ultimately the Local Authority is responsible for arranging services for them. This should be done via contacting the person's Social Worker or the Emergency Duty Team.

The Direct Payments Assistant is responsible for implementing the Direct Payment. The procedure is detailed below (taking into account the conditions outlined above):

1. Once the person has confirmed they want to use Direct Payments, the Direct Payments Assistant will arrange to visit them for a second time.
2. The Direct Payments Assistant will contact Income and Assessment for details of how much the person has been assessed to pay and will set up a service user file.
3. The Direct Payments Assistant will agree start up costs with the person and inform the Practice Manager of the relevant team.
4. The Direct Payments Assistant will send the person 2 copies of the Statement Letter, an Offer Letter and a Bank Details Form. The person accepts the offer by:-
  - setting up a bank account
  - completing the 'Bank Details' form
  - Signing both statements, returning 1 to the Direct Payments Assistant and keeping 1 for themselves.
5. The person will then start to look for a suitable provider to meet their assessed needs. This provider can be a personal assistant, an agency or self employed individual. If the person chooses to employ a personal assistant then the Direct Payments Assistant, will if required, assist them with this process.
6. On receipt of the signed statement letter and bank details form, the Direct Payments Assistant will arrange for start up costs to be paid into the person's bank account.
7. Once the person has found a suitable provider the Direct Payments Assistant will prepare a contract for signing (appendix 5). Four copies of this contract are required, one for each of the following:

**Practice**

rate of pay with their own personal assistant.

**Emergency contact numbers**

Emergency Duty Team – 01606 76611.

**Statement of Direct Payment**

In order for this statement to be produced the Social Worker will need to submit a financial assessment. If this has happened the statement can be produced within 5 days of receipt of a copy of care plan and memo from Direct Payment Manager.

**Contract with service user**

'It is important that the service user fully agrees to managing Direct Payments before the first payment is made. This will allow the user not only to recruit staff or service providers, but also give them time to set up recording and payment systems themselves.'

CIPFA 'Accounting and Financial Management Guidelines.'

If the service user is assessed as eligible for a Direct Payment then an agreement will be reached about the amount of money each recipient will receive on a weekly basis. The calculation of the weekly cost of a Direct Payment package will be the result of an agreement of the number of hours required at a specific time of the day, to meet the care needs identified in the care assessment. If the service users need change then a new contract will be drawn up.

**Criminal Records Bureau checks**

## ***PROCEDURE CONTINUED***

- The Direct Payments recipient
  - Direct Payments Team
  - Income and Assessment section
  - Social Worker
8. The 'Statement of Direct Payment' letter forms part of the contract and is copied to the above.
  9. A copy of the care plan and Independent Living Team report, if appropriate, also forms part of the contract and is copied only to the service user.
  10. To begin payments the Direct Payments Assistant will raise the first 4 weekly payment, together with the 2 weeks contingency payment. The Direct Payment Assistant will raise a payment every four weeks and will record the details on the financial database. The Direct Payments Assistant will also "flag" on Agresso to stop invoicing the service user for their financial contribution.
  11. The Direct Payments Assistant will supply the person with all the necessary records and advice for keeping quarterly financial records and records of support received and tell them about their responsibilities to retain invoices/receipts and bank statements. These will be supplied in the form of a "start up" stationery pack which will be tailored to the individual. This start-up pack will be provided by the Direct Payments Assistant approximately one week before the Direct Payment is due to start.
  12. At this stage the Direct Payment scheme user will be expected to start making their contributions towards the cost of their support to coincide with the first Direct Payment.
  13. During the initial 6-week period the Direct Payment Assistant will arrange to meet the person on a frequency appropriate to their needs.

## ***Practice***

### **of Personal Assistants**

It is the responsibility of the Client Finance Manager to raise service user awareness about the importance of ensuring CRB checks are carried out on personal assistant.

The service user will be encouraged to ask personal assistants to get a CRB check carried out. If the PA is likely to have access to children then the PA must be checked by the CRB

**PROCEDURE CONTINUED****Practice****5.0 STAGE THREE: MONITORING**

5.1 At this stage the person is receiving Direct Payments and these need to be monitored. All financial records and returns can be subject to auditing at any time.

**5.2 What if the money is not spent?**

There may be a number of reasons why a surplus has accrued in the bank account, for example, there may be outstanding tax or national insurance not yet due or paid. Alternatively, the person may be 'saving care' to cover extra costs that may be incurred when they take personal assistant with them to a special event, although this need must be agreed with their Social Worker. Also the contingency money will be kept in the bank account as a reserve. Any credit balance should be explained to the satisfaction of the Client Finance Manager. If there is a credit balance in the account without a satisfactory reason, the Local Authority will reduce the person's next payment.

**5.3 What if there is an overspend?**

If there is a problem with a person overspending the Direct Payment, then advice and support will be offered and the overspend corrected. If the problem persists, then the Client Finance Manager may need to reassess the ability of the person to manage the scheme or a reassessment of need under the Community Care Act may need to be undertaken by a Social Worker. If a person spends more money than is allowed by the Direct Payment package, then they are liable for this from their private funds. If services paid for have not been received, it is the responsibility of the person to seek a refund from the service provider. Equally the service provider should pursue the recovery of debts from the person, if services have been received and not paid for.

**5.4 Repayment**

The Local Authority can seek repayment if the monies made available have not been used to purchase services identified in the care plan and contract, or were used to purchase services identified as being excluded. It is essential that honest mistakes are seen as such, and repayments should only be sought where monies have been spent inappropriately or not spent at all.

**5.5 Recovery of Direct Payment**

It may be necessary to recover unspent Direct Payments if a service user dies. Contractual responsibilities must be met before determining the amount of Direct Payment to be recovered. See Appendix 5 Direct Payment Contract "Responsibilities of Direct Payment Recipient" (Item 14).

**Responsibility for quarterly audit returns**

It is the responsibility of the Direct Payments Assistant to check audit returns and provide quarterly reconciliation. The group accountant in financial services will provide advice and guidance where necessary.

**Checks when monitoring Direct Payment**

- Have all necessary records been received?
- Are they fully completed and total correct?
- Does the balance on the financial record agree with the bank balance – bank reconciliation?
- Does the income agree with the office payment record?
- Are payments supported by invoices/wage records and in accordance with identified needs?
- Is the level of Direct Payments reasonable, i.e. no surplus accruing

The account should be in credit but surplus should be represented by amounts owing by service user (wages not yet paid) / contingency funds / payments outstanding to Inland Revenue.

**PROCEDURE CONTINUED****Practice****5.6 Self Certification**

Small Packages of Care – New Service Users

If the Direct Payment package is on average 15 hours per month or less, regular full financial inspections may not be necessary. These packages could be dealt with under an annual “self certification” scheme.

Established Direct Payment Service Users – those service users who are able to demonstrate they have maintained records as required by the scheme and have had regular monitoring checks, may also be given the option of “self certifying” on an annual basis. This option will be a joint decision between the Direct Payments monitoring service and the service user, and an assessment of risk will take place.

**5.7 Equipment**

The person receiving Direct Payments is responsible for considering manual handling risks. The Direct Payments Assistant will feed back any concerns about use of equipment to the Independent Living Team.

5.8 Each person receiving Direct Payments must provide the Local Authority with audit returns on at least a quarterly frequency, indicating how their Direct Payment has been spent. The aim of this return is to ensure that the person is receiving enough money to pay for services whilst at the same time ensuring the monies are being spent as agreed. Once it has been established that the person is managing their Direct Payment satisfactorily, either alone or with help, the frequency of financial monitoring may be adjusted after discussion with the person.

5.9 During the first 6 weeks the Direct Payments Assistant will monitor that the needs identified on the care plan are being met and the Direct Payment is being managed effectively. Detailed below is a list of the records that need to be kept:

**5.10 Records to be kept by Client Finance Team**

- Direct Payment record of audit checklist (appendix 17)
- Initial offer letter
- Statement letter of Direct Payment/assessed charge
- Copy of care plan and Independent Living Team report (if appropriate)
- Contract
- Start up list for Direct payment (appendix 18)
- Diary notes (appendix 19)
- Direct Payment database
- Self certification form (if appropriate)
- Any other relevant information to the account

**5.11 Records to be kept by service user**

If person employs a personal assistant:

- Copies of all records, i.e.
- Quarterly returns

**Summary of records for employing personal assistant**

- Quarterly return
- PAYE/NI records
- Evidence if assistant is self employed
- All receipts for expenditure from Direct Payment fund
- Record of assistants holiday/sickness

**Summary of records for buying from an agency**

- Budget statement
- Invoices
- All receipts



***PROCEDURE CONTINUED***

- Time sheets
- Income and expenditure record
- Quarterly return to Inland Revenue
- BACS advice slips
- Cheque stubs
- Bank statement
- Service user contribution
- Sickness records
- Holiday records
- Contingency
- Saving care
- Amendment to bank details
- Self certification form (if appropriate)

If person purchases services from an agency:

- Quarterly return to show hours of service purchased during the period, the cheque number and payee and the amount paid out

All invoices and receipts for the quarter

- 5.12 From the onset of Direct Payments, the Direct Payments Team will use the "Diary Notes"/Record of Audit Checklist sheet to log results of visits, any discrepancies and any enquiries or issues relating to their Direct Payment.
- 5.13 A database is kept to record statistical records relating to Direct Payments. This is completed by the Direct Payment Assistant at referral; start of the Direct Payment, six-week review, first audit and quarterly audits and at each payment date.

***Practice*****Summary of records for all Direct Payment recipients**

- BACS advice slips
- Bank statements
- Cheque books
- Paying in books
- Contingency records
- Time sheets

**Tax records**

All tax records must be kept for 6 years for Inland Revenue purposes.

The authority is not obliged to fund the actual cost associated with the users preferred method of securing services if the service can be secured more cheaply in another way.

**Tax Record**

It must be noted that all tax records must be kept for six years for Inland Revenue purposes.

**PROCEDURE CONTINUED****Practice****6.0 STAGE FOUR: REVIEWING**

6.1 Once a person has been set up to receive Direct Payments, the Direct Payments Assistant will offer support for up to six weeks or until the person is able to manage the monitoring process independently. At six weeks the Client Finance Manager/Direct Payments Assistant will co-ordinate a joint review with the Social Worker, Occupational Therapist (if appropriate). The review will cover the following areas:

- Checking and reviewing all financial records to ensure the person is maintaining all the records necessary for the monitoring of expenditure and services
- Ensuring the Direct Payment is being used to meet the person's needs as outlined in the care plan and the Independent Living Team report (if appropriate)
- Ensure the services have been received and the Direct Payment has been used cost effectively
- Identifying and resolving any difficulties the person has in managing Direct Payments
- Confirming there have been no changes in circumstances and the person is still eligible to receive Direct Payments
- Checking that any equipment supplied by the Independent Living Team is being used correctly (where relevant).

6.2 If the outcome of the review is satisfactory, quarterly support visits by the Direct Payment Assistant will start. If there are any concerns about how well the person is managing the scheme they will receive more regular visits and support. For Adults, the Social Worker will continue to review the person's care needs at least annually. For children in need in the community, reviews of the child in need plan should take place at least every 6 months.

**6.3 What happens if a service user's circumstances change?**

It is vitally important that if the circumstances of a person change, the Direct Payment Assistant be notified immediately. It is in everyone's interest to ensure that events such as hospital admissions or long absences from home are properly recorded.

**6.4 What if difficulties arise?**

Direct Payments will not be withdrawn at the first sign of difficulty. The Department of Health guidance suggests that the following questions should be asked:

- Has the person's needs changed?
- Is the amount of money provided sufficient to enable the person to secure the relevant services?
- Is the person able to manage Direct Payments or can they do so with assistance?
- Does the person wish to continue receiving Direct Payments?
- Has all the money been spent towards achieving the outcomes identified in the care plan?
- Have services for which the person has paid been received?

**Reviewing**

"Councils should follow existing guidance on carrying out reviews. As with all services, the projected timing of the first review should be set at the outset. The purpose of the review remains to establish whether the objectives set in the original care plan are being met. It should therefore cover whether the person's needs have changed, whether the use of direct payments is meeting assessed needs and how he or she is managing direct payments." Department of Health Direct Payments Guidance 2003

**Frequency of Monitoring**

The frequency of monitoring will be dictated by the length of time the person has managed a direct payment either alone or with help and their particular circumstances. Once a council is satisfied a person is managing the direct payments satisfactorily, reviews should be at the same intervals as for other people receiving services.

**Children identified as needing services under section 17 of the 1989 Act**

Reviews may be necessary more often so that the council remains satisfied that the direct payment promotes and safeguards the welfare of the child. The Framework for the Assessment of Children in Need and their Families reminds councils that it is good practice to review plans for children in need in the community at least every 6 months.

Department of Health Direct Payments Guidance 2003.

"Whilst the Local Authority is relieved of its responsibilities to arrange services for recipients of direct payments, it still has an obligation to satisfy itself that the services purchased meet the needs of the service user, and that the care needs of the service user are reviewed at regular intervals. These duties should be performed by care staff from the Local Authority." CIPFA Accounting and Financial Management Guidelines

**PROCEDURE CONTINUED**

- Has the money been spent wisely?

**Practice****Discontinuing Direct Payments**

The council should discuss with individuals as soon as possible if it is considering discontinuing direct payments to them. They should be given an opportunity to demonstrate that they can continue to manage direct payments, albeit with greater support if appropriate..... the council should not automatically assume when problems arise that the only solution is to discontinue or end direct payments.

Department of Health Direct Payments Guidance 2003

6.5

**When to discontinue Direct Payments**

The person to whom Direct Payments are made may decide at any time that they no longer wish to continue to receive them. The Local Authority may also discontinue Direct Payments temporarily or permanently as outlined in the Direct Payment Contract (Appendix 8). However before a decision is made, full and frank discussions must take place with everyone involved. The Client Finance Manager may consider that it is more appropriate to recoup any overpayment as a result of such circumstances at the quarterly audit rather than disrupt the regular payment system. In all circumstances where Direct Payments are discontinued whether temporarily or permanently, careful consideration should be made about any contractual responsibilities, i.e. terminating employment, redundancy etc. These issues will need to be discussed by the person and the Client Finance Manager/Direct Payments Assistant before the agreement is finalised.

6.6

When signing the Direct Payment contract, the person takes responsibility for arranging their own personal assistance and spending the payment to meet their needs as outlined in the care plan. It is essential that the Direct Payments Assistant makes it clear to them what the money may or may not be spent on and how much flexibility the person has over the way the money is spent.

6.7

**Complaints**

The person receiving the Direct Payment may invoke the Directorate's complaints procedure if they think that the procedures are unfair or have been unfairly applied to them. Contractual issues between the person, their personal assistant or agency providing the service cannot be dealt with under the complaints procedure.

**Definitions for use in determining whether a person is able to manage a Direct Payment**

**Willing**

Is the person willing (with or without assistance) to receive a Direct Payment and all the responsibilities involved? The person receiving a Direct Payment must understand (with or without assistance) all the conditions they will be required to meet. These conditions include taking day to day control of their personal assistance, payment of bills, managing the bank account, preparation of quarterly audit returns and making arrangements for cover in emergencies.

**Able**

The person receiving the Direct Payment must have the ability to express (with or without assistance) a preference about the way in which they wish to have services provided. This can be illustrated by looking at what the person does now and how much control they are able to exert upon their personal assistance.

**Capable to manage**

The Direct Payments Assistant and the Social Worker will need to agree that the service user understands the nature of the agreement they are entering into. The Direct Payment contract is legally binding upon the Local Authority and the service user. It is essential, therefore, that the service user is either personally able to keep the necessary records, e.g. national insurance and tax, or with the assistance of the Direct Payments Assistant or makes appropriate arrangements for their responsibilities in such areas to be completed on their behalf. Such support in managing a Direct Payment will need to be identified before a Direct Payment contract can be made.

**Competence**

The test of legal competence will vary according to the extent of the support that the recipient of the Direct Payment receives. In circumstances where the support is extensive, e.g. through the creation of a Trust or agent to manage all recruitment and payments, the assessor may judge that the person's ability to express preferences in the way in which they wish to have services provided will be sufficient to fulfil their obligations outlined in the Direct Payments contract. The test of competence in this area must vary according to the individual circumstances, from a high degree when the person is to manage all of the responsibilities of their Direct Payment without assistance, to a low degree when the person's management relates to simple day to day choices and preferences.

**Mental Capacity Act 2005**

A significant factor influencing the assessment will be the answer to the question "Does the person currently take other important decisions for him/herself?"

The Mental Capacity Act 2005 states that a person is unable to make a decision if he/she is unable:

- (a) To understand the information relevant to the decision;
- (b) To retain that information;

- (c) To use or weigh that information as part of the process of making the decision;  
or
- (d) To communicate his decision (whether by talking, using sign language or any other means).

It also states that:

- A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).
- The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.
- The information relevant to a decision includes information about the reasonably foreseeable consequences of
  - Deciding one way or another; or
  - Failing to make the decision.

**APPENDIX 2**

**Question to be used by direct payment manager in assessing if a user is suitable to receive a direct payment**

- Does the person understand (with assistance if necessary) the nature of the direct payment scheme?
- Can the person express preferences with assistance to communicate if necessary between different types of service?
- Does the person currently take important decisions for him/her self (with assistance if necessary)?
- Is the person able (with assistance if necessary) to access appropriate support to enable them to manage direct payments?
- Will the person be able to keep the necessary records (with or without assistance)?
- Does the person understand the legal responsibilities that may arise if he or she becomes an employer, and can he or she cope with them (with or without assistance)?
- Will the person be able to ensure that he or she receives the services paid for (with or without assistance)?
- Is the person likely to be able to manage the scheme on an ongoing basis, as opposed to having a fluctuating or deteriorating condition, which may affect his or her ability to manage?
- Will this arrangement secure the greatest degree of independence for the recipient?

It may be that, even if a person scores negatively on some of these questions, with skills training the direct payments scheme can become a suitable option in the future.

Dear

Please find below details of how we have worked out the money that we will pay to you under the Direct Payment scheme. The amount we pay you may change if your circumstances change. You should pay the money you get into your Direct Payment Bank Account.

	£
The total cost for your services is	.....
This was worked out from	
.... Hours at an hourly rate	.....
.... Hours at an hourly rate	.....
.... Hours at an hourly rate	.....
.... Hours at an hourly rate	.....
.... sessions of night sitting at £.per night	.....
Total Direct payment each week	.....
Less your contribution from your income/benefits	.....
= A total direct payment to you of	.....

If you need any more information about how we worked out your direct payment please contact me on

If you are not happy with the service you receive from Social Services then you can complain and I have enclosed a leaflet, which explains the complaints procedure.

If you agree with the amounts shown please sign this form and return it to me in the prepaid envelope supplied.

Yours sincerely

Signed by Direct Payments Assistant .....

Authorised by Principal Manager .....

Service User Signature .....

Dear

**DIRECT PAYMENT SCHEME**

I am pleased to offer you the Direct Payment Scheme and enclose a statement, which details how much we will pay you each week.

Please sign and complete the bank details form and statement enclosed and return them to me in the pre paid envelope supplied. When I receive these forms I will arrange for an initial start up payment of £.....to be paid into your Direct Payment bank account.

When you have employed your provider and agreed a start date with them I will arrange for a contract to be prepared and signed.

We will discuss with you the date that our first payment will be made to you. The first payment will include a contingency payment of £.....(equivalent to 2 weeks payments) which you can use in an emergency.

Direct Payments are made to you every 4 weeks. Your first payment will include enough money to pay for one month's care in advance and the contingency payment.

The Council have to be sure that you are spending your Direct Payment appropriately, therefore, I need to remind you that you need to

- Open a separate bank account for your Direct Payments to be made into
- Keep a record of how you spend the money we give you. These records will be monitored weekly for the first 6 weeks and on a quarterly basis after that.
- Understand that Direct Payments cannot be used to pay close relatives.
- Government regulations prohibit Direct Payments from being used to pay a spouse or partner, or a close relative living in your household. Direct Payments should not be used to pay close relatives living elsewhere, or other people living in the same household. This does not prevent people using the Direct Payment to pay someone who has been specially recruited to be a live-in personal assistant. Direct Payments cannot be used to pay close relatives who live elsewhere, or other people living in the same household. For this purpose the Government defines a close relative as a parent, parent-in-law, aunt, uncle, son, daughter, son-in-law, daughter-in-law, stepson, stepdaughter, brother, sister or the spouse or partner of any of the above.

If you do not want to proceed with the Direct Payments scheme, then the initial payment of £..... will be repayable to the Council immediately. Your current care services provided to you by the Council will continue as at present.

I look forward to receiving the signed statement and confirmation of bank details. If you need any more information please do not hesitate to contact me 01928 500 740.

Yours sincerely  
Direct Payments Assistant  
Enc.



**HALTON BOROUGH COUNCIL  
DIRECT PAYMENTS CONTRACT**

THIS AGREEMENT is made the \_\_\_\_\_ day  
of \_\_\_\_\_ 200

Between **HALTON BOROUGH COUNCIL** (“the Council”) of  
Halton Lea, Runcorn and

(“the recipient”) of

**WHEREAS:**

- (a) the Council has conducted an assessment and subsequently determined that the needs identified in the attached care plan (Schedule 1) should be provided for the Recipient;
- (b) the Recipient is willing, able and has the capacity to arrange for the services marked (\*) in the care plan (Schedule 1) to be met and the Council is willing to make a payment direct to the Recipient to enable him/her to do so; and
- (c) this agreement is made in accordance with the requirements of the Community Care (Direct Payments) Act 1996, and Carers & Disabled Children Act 2000.

The purpose of this agreement is to set out the responsibilities and obligations of Halton Borough Council and \_\_\_\_\_, the Recipient of the Direct Payment.

It is agreed by the parties as follows:

- 1 (a) The Council agrees to pay the Recipient 4 weeks Direct Payment every 28 days in advance starting on \_\_\_\_\_ and in accordance with the arrangements set out in the Direct Payment Statement Letter.
- (b) The equivalent of 2 weeks Direct Payment will be paid starting on \_\_\_\_\_ in accordance with the arrangements set out in the Direct Payment Offer Letter as a contingency fund, which must only be used in accordance with the conditions as detailed in paragraph 20.
- 2 The Council will make the Direct Payment by Banks Automated Clearing System (BACS) into a separate and dedicated Direct Payments account in the Recipient's name. The account number is \_\_\_\_\_ at \_\_\_\_\_ Bank.

### **3-8 USE OF THE DIRECT PAYMENT**

- 3 The Council intends that a Direct Payment is the means by which the individual Recipient independently secures the services that the Council agreed the Recipient needs following assessment.
- 4 The Recipient will use the Direct Payment monies to meet the needs identified in the care plan.
- 5 The Council may increase or decrease the amount of the Direct Payment to the Recipient at any time on account of a change in assessed needs. Before decreasing the amount of the Direct Payment the Council will give the Recipient a minimum of one weeks notice in writing and the reason for such decrease.
- 6.1 A review of the support package and Recipient's record keeping will take place 6 weeks after receipt of the first payment(s) to identify and respond to any problems which

may have arisen and to prepare for the necessary monitoring (see paragraph 10).

6.2 The Council will formally review the assessment of the Recipient and the operation of this agreement every 12 months (ie within every 12 month period there should be at least one review). That review will determine whether the Recipient's needs have changed and how the Recipient is coping with the arrangements for ensuring the provision of the services that meet these needs.

7. The Recipient will not use the Direct Payment to employ/pay any partner (married or unmarried) or a close relative living in the same household (close relative means parent, parent-in-law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, step-son or daughter, brother, sister or the spouse or partner of any of the preceding) to provide the services, **unless in exceptional circumstances**. This also applies to Direct Payments made to a person who has parental responsibility for a disabled child (Direct Payments paid in accordance with S172(a) Children Act 1989) and to payments made to a child aged 16 or 17 (Direct Payments paid in accordance with S17A (2) (b) Children Act 1989).

8. The Recipient will not use the Direct Payment;

- (a) to employ/pay for services provided by a local authority, NHS authority or NHS trust.
- (b) for permanent residential care for adults or for provision of residential accommodation for a disabled child or disabled young person for any single period in excess of 4 weeks and for more than 120 days in any period of twelve months.

## **9-25 RESPONSIBILITIES OF THE DIRECT PAYMENT RECIPIENT**

- 9 The Recipient agrees that it is his/her responsibility to make all appropriate arrangements to meet the identified needs and agrees to comply with all legal requirements that may arise in making such appropriate arrangements including all Inland Revenue requirements and applicable employment legislation, to include Stakeholder Pensions and Redundancy requirements as appropriate.
  
- 10 In order to enable the Council to monitor the use by the Recipient of the Direct Payment, the Recipient will:-
  - (a) use the bank account number and ensure it will be used only for all transactions in respect of the Recipient's care plan.
  
  - (b) notify the Council as soon as possible of any changes in circumstances and details of the use of any element of the contingency funds (in a form specified by the Council). Failure to comply with this requirement will result in the Direct Payments being suspended.
  
  - (c) to maintain up to date records, supply these records to the Council when requested to do so, and retain all financial records for the current financial year and the preceding 6 years.
  
  - (d) Pay for their care by either cheque or a direct debit. Cash transactions are not acceptable.
  
  - (e) To pay into the above bank account each time a Direct Payment is deposited, monies identified as the service user contribution, where applicable.
  
  - (f) Small Packages of Care – New Service Users  
If your Direct Payment package is on average 15 hours per month or less, you may not be subject to regular full financial inspections. Instead, the

monitoring of your Direct Payment may be dealt with under an annual “self certification” scheme.

This will mean that:

- The Direct Payments team will undertake an initial 6 week check (see 6.1 in this Contract).
- After the first check with you to make sure you are happy using the Direct Payment system and that your financial records have been satisfactorily maintained, you will be asked to submit an annual “self certification” form. This will include a declaration that you have used your Direct Payment monies in accordance with the Direct Payments scheme, acknowledging that the Health & Community Directorate retains the right to audit your records if they want to.
- You should continue to maintain and retain all records as listed in Section 10c of this Contract.

(g) Established Direct Payment Service Users – Those established Direct Payment service users who are able to demonstrate they have maintained records as required by the scheme and have had regular monitoring checks, may also be given the option of “self certifying” on an annual basis. This option will be a joint decision between the Direct Payments monitoring service and the service user, and an assessment of risk will take place. The Health & Community Directorate retains the right to audit service users’ records at any time. You should continue to maintain and retain all records as listed in Section 10c of the Contract.

11 There may be a number of reasons why a surplus has accrued in the bank account. For example, there may be outstanding tax or national insurance not yet due or paid. The contingency money will also be kept in the bank account as a reserve. Alternatively, the Recipient may be ‘saving care’ to cover extra costs that would be incurred

when they take personal assistant(s) with them to a special event. However, this need must be agreed with their Social Worker and identified with relevant details on their care plan. The credit balance should be explained to the satisfaction of the Direct Payment Manager. However, if there is a credit balance in the account without a satisfactory reason, the Local Authority will reduce the Recipient's next payment.

12 Without prejudice to its rights (to terminate this agreement, under paragraphs 15 and 24) the Council may require the Recipient to repay to the Council the Direct Payment or any part of it if the Council is satisfied that:-

- (a) the Direct Payment or any part of it has not been used to secure the provision of the Services or some part of the Services, or
- (b) the Recipient has not met the conditions set out in paragraphs 7 or 8 or any other conditions of this agreement, or
- (c) the Recipient has received payment from a third party (for example, the Independent Living Fund) for the Services or some part of the Services.

13 If the Recipient is admitted to hospital or other full time care, the Council will pay the Direct Payment in full for the first 14 days of any such admittance (subject to a maximum payment of 14 days in any 12 month period) and shall pay half of the Direct Payment for the following 14 days of any such admittance (subject to a maximum of 14 days in any 12 month period). Thereafter, the Direct Payment shall be suspended until the Recipient is discharged from hospital or other care and recommences to receive the Services. In any other circumstances, the Council may make a temporary suspension of the Direct Payment if the Recipient is temporarily unable to receive the Services for any other reason.

- 14 It is the responsibility of the recipient of Direct Payments to name a person to administer closure of the Direct Payment in the event of their death. It is this person's responsibility to ensure that non-committed funds are returned to the Directorate.
- 15 It is the responsibility of the Direct Payment recipient to ensure that legal requirements, common sense and good practice are adhered to and ensure that the people they employ are not put at risk of being injured or infected as a result of the work they do. When a personal assistant comes into a Direct Payment recipient's home both parties take on extra responsibilities.

It is the Direct Payment recipient's responsibility to provide a healthy and safe workplace for people they employ and not to do anything, or ask them to do anything which may cause them injury. It is also the duty of the person being employed not to do anything which might endanger either themselves or the Direct Payment recipient at any time.

(See "Guide to Employing Personal Assistants").

- 16 The service user is responsible for manual handling risk assessments, and the Direct Payments Manager will feed back any concerns regarding the use of equipment to the Independent Living Team.
- 17 The Recipient has the right to complain under the Council's Social Care, Housing and Health Directorate's complaints procedures about the operation of this agreement, but not regarding the service purchased direct from an agency or regarding matters relating to the employment of personal assistants.
- 18 Either party may terminate this agreement by giving the other party 4 weeks notice in writing.

- 19 The Recipient will notify the Council of any changes in circumstances as soon as possible.
- 20 The Recipient will allow a representative of the Council reasonable access to:-
  - (a) their home to enable a review of the care needs, and
  - (b) papers on transactions relating to spending of their Direct Payment monies.
- 21 The Recipient will be liable for payments under the Council's Charging Policy for the Community Care Services and payment will be made in accordance with the standing policy and procedures (see paragraph 10e), if appropriate. The Recipient agrees that such charges may be deducted at source from the Direct Payment.
- 22 Calculation of the Direct Payment will be made in accordance with the Rate of Pay Schedule contained in the statement letter and the Care Plan details. These will both be reviewed annually.
- 23 The Recipient must seek the Social Worker's approval for all expenditure of Contingency Fund monies. Any Contingency Fund may be used:-
  - (a) for covering illness of the Recipient that requires 1-3 days increased support, or
  - (b) in exceptional circumstances as agreed with the Social Worker in advance if possible
  - (c) to pay Statutory Sick Pay to Personal Assistants when they are unable to provide services to the Recipient due to illness in accordance with Statutory Sick Pay Regulations made by the Department of Social Security.
- 24 If there is a problem with the Recipient overspending the Direct Payment, then advice and support should be offered



and the overspend rectified. If the problem persists, then the Direct Payment Manager may need to reassess the ability of the Recipient to manage the scheme, or a reassessment of need may need to be undertaken by a Social Worker. If the Recipient spends more money than is allowed in the Direct Payment package, then they are liable for this extra support from their private funds. If Services paid for have not been received, it is the responsibility of the Recipient to seek a refund from the Service provider. Equally, the Service provider should pursue the recovery of debts from the Recipient, if services have been received and not paid for.

If the Recipient disputes the amount determined by the Council, he/she may appeal against the decision. The Act gives the Local Authority the power to seek a repayment if the monies made available have not been used to purchase services identified in the Care Plan and contract, or were used to purchase a service from any of the people identified as being excluded. It is essential that honest mistakes are seen as such, and repayments should only be sought where monies have been spent inappropriately or not spent at all.

- 25 The Recipient may not assign or otherwise subcontract responsibility of any part of the Agreement without the prior written consent of the Council.
- 26 Neither the Recipient of Direct Payments nor his/her employee(s) shall, in any circumstances, hold themselves out as being:-
  - (a) the servant or agent of the Council, nor
  - (b) authorised to enter into any contract on behalf of the Council in any way to bind to the performance, variation, release or discharge of any obligation.

## **27-29 RESPONSIBILITIES OF THE COUNCIL**

- 27 (a) Any of the terms and conditions of this agreement are not being met by the Recipient after advice and support have been given to assist the Recipient to meet these terms and conditions.
- (b) The Recipient is not spending the Direct Payments, or any part of them on Services to meet the needs identified in the Care Plan after advice and support have been given by the Council.
- (c) In terminating this agreement, the Council will provide up to 4 weeks monies in order to finalise this arrangement.
- 28 In the event that the arrangement by the Recipient for the provision of the Service to him/herself breaks down (including back up arrangements), whether in an emergency or not, the Council undertakes to ensure that the Recipient receives the Services that the person has been assessed to receive to meet their agreed needs. It is the responsibility of the Recipient to notify their Social Worker immediately of any such situation.
- 29 The Council will:-
- (a) provide support and advice to Recipients of Direct Payments to enable them to receive and manage their payments, and to advise of any changes in relevant legislation;
- (b) make payments as detailed in this agreement, for the purchase of services as agreed;
- (c) have no responsibility for the service(s) purchased, beyond the provision of the Direct Payment;
- (d) formally review the assessment every 12 months or more frequently if required by the Recipient or their Social Worker (and subsequently payment may be varied accordingly);

- (e) monitor and audit the spending of Direct Payments.
- 30 The Recipient of the Direct Payment is recommended to, and is responsible for obtaining employer’s liability insurance and public liability insurance.
- 31 The authority is not liable to pay VAT, and it is not possible for the authority to make extra provision to cover the cost of VAT.
- 32 The Recipient of the Direct Payment is required to, and is responsible for obtaining **Enhanced** Criminal Records Bureau Checks of his/her potential employee(s).
- 33 Variations to this Agreement may only be made by the written consent of both parties, other than variations in the assessment.
- 34 The Council and the Recipient agree to comply with all current and future legislation relevant to the provision of this Service.
- 35 Recipients of Direct Payments who choose to adopt this means of meeting their needs are advised to consult the Direct Payments Manager for advice and support.
- 36 *“I agree to information given about myself being used and processed by the Council for the purposes of the administration of the Direct Payments account and other legal purposes of the Council. I also agree that the information may be shared with other agencies on my behalf and that my details will be held on a database”.*

IN WITNESS WHEREOF the parties hereto have signed this agreement the day and year first before written

Signed by  
For and on behalf of  
Halton Borough Council

Signature .....

In the presence of:

Signature of Witness .....

Name of Witness .....

Address of Witness .....

.....

Signed by the said

In the presence of: ..... (recipient sign here)

*(service user signature or power of attorney)*

Name of Witness: ..... (witness)

Address of Witness: .....

.....

Signature of Witness: ..... (witness sign here)

Name and .....

Address of Person

Identified to administer .....

Closure of account in

The event of death .....

**APPENDIX 6**

**DIRECT PAYMENTS SELF CERTIFICATION FORM**

New service users whose Direct Payment packages average 15 hours per month or less may “self certify” in certain circumstances. Established Direct Payment service users who are able to demonstrate they have maintained records as required by the scheme may also be invited to “self certify”. If service users choose this option, then the following declaration must be completed:

I ..... (name of service user) hereby declare that I have received Direct Payments for my support needs.

I confirm that the funds received from Halton Borough Council have been used to provide services to meet the needs detailed in my Care Plan.

I further confirm that I have complied with all Inland Revenue requirements and employment legislation, (where applicable). I also confirm that I have maintained adequate employer’s liability insurance (where applicable), maintained all records and agree to keep all records as per Section 10c in the Contract.

This self-certification covers the period from ..... to .....

Details on last bank statement:

Bank Statement Number .....

Period covered from ..... To .....

Balance .....

I acknowledge that Halton Borough Council retains the right to audit my accounts.

SIGNED ..... PRINT NAME .....

DATE .....

**REPORT TO:** Executive Board Sub-Committee

**DATE:** 18 December 2008

**REPORTING OFFICER:** Strategic Director Health & Community

**SUBJECT:** Domiciliary and Personal Care Tender  
April 2008- March 2011 – Award of Tender

## **1.0 PURPOSE OF REPORT**

- 1.1 To inform Members of the outcome of the tender process for the award of contracts to deliver domiciliary and personal care services within the Borough

## **2.0 RECOMMENDED THAT:**

- (i) **The recommendation will be given in a supplementary paper after the officers have had to opportunity to appraise all competent tenders received.**

## **3.0 SUPPORTING INFORMATION**

- 3.1 For the purposes of this tender domiciliary care is defined as *personal, domestic duties and social/emotional support associated with ordinary living that a person might usually perform for himself or herself or by a competent and caring friend or relative*. The service is generic, and will therefore be available to all members of the community, including those with learning disabilities, physical or sensory disabilities, people with mental health needs and older people.
- 3.2 The current Domicillary Care contracts expire in April 2009. These domiciliary care contracts will deliver domiciliary and personal care to all vulnerable adults with various social care needs ranging from older people to adults with physical, learning and mental health needs.
- 3.3 It is proposed that the Contracts will commence on 27<sup>th</sup> April 2009, and will run for a period of three (3) years with the possibility of an extension for a further one (1) year.
- 3.4 The contracts will be awarded on a geographical basis, and some organisations will be working in more than one “zone”. This will provide consistency for the Authority and the Providers.
- 3.5 Sufficient budget provision exists in the revenue estimates for expenditure on the tender.

- 3.6 The Strategic Director of Health and Community has conducted the tender process in line with the Council's Procurement strategy, policies, relevant Standing Orders and best practice.
- 3.7 By the date of the Executive Board Sub-Committee on 18<sup>th</sup> December tenders will have been received and fully evaluated.
- 3.8 Deadline for receipt of completed Invitations to Tender was 3<sup>rd</sup> December 2008, with the Panel Evaluation taking place on 4<sup>th</sup> and 5<sup>th</sup> of December. Presentations to the Panel of the successful tenderers will take place on 10<sup>th</sup> December.
- 3.9 At the Executive Sub Committee meeting on the 18<sup>th</sup> December, a supplementary paper will be circulated detailing the names of tenders, tender sums and making recommendations for award of contracts.

#### **4.0 POLICY IMPLICATIONS**

- 4.1 There are significant TUPE implications linked to the award of these contracts and officers are looking to maximise the time available to successful tenderers to meet the potential requirement for the transfer of significant numbers of domiciliary care staff currently working in Halton.
- 4.2 This report is therefore submitted to members, in advance of the supplementary paper to be tabled on 18<sup>th</sup> December, in order to seek approval for the timely award of contracts.

#### **5.0 OTHER IMPLICATIONS**

- 5.1 Not applicable

#### **6.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

##### **6.1 Children and Young People in Halton**

None identified

##### **6.2 Employment, Learning and Skills in Halton**

None identified.

##### **6.3 A Healthy Halton**

The provision of high quality effective domiciliary care enables individuals to remain in their own home and to maintain and improve their health outcomes.

##### **6.4 A Safer Halton**

None identified.

#### **6.5 Halton's Urban Renewal**

The provision of Domiciliary care enables people to remain in their homes thus contributing to sustainable local communities.

### **7.0 RISK ANALYSIS**

#### **7.1 Financial Risk:**

The tender process has been conducted in line with value for money principles and compliant with market testing. Tenderers were given an indicative price against which to submit their pricing schedule and this agreed in consultation with the Directorate Finance Managers.

The recommendations made the Members in respect of the award of the contract will be in line with the MEAT principle (Most Economically Advantageous Tender)

#### **7.2 Contractual Risk:**

The terms of the contract against which the tender is being let have been checked and agreed by the Legal Services Department and are designed to protect the Councils' interests.

### **8.0 EQUALITY & DIVERSITY ISSUES**

8.1 The provision of domiciliary care is a council service that is delivered to the most vulnerable and socially excluded members of the community and the letting of this contract will enable the Authority to meet its duties to promote inclusion and fair access to services for all local residents.

### **9.0 REASON (S) FOR DECISION**

9.1 Not applicable

### **10.0 ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

10.1 Not applicable

### **11.0 IMPLEMENTATION DATE**

11.1 Not applicable

### **12.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

12.1 There are background papers but they are not included as they are



exempt because they contain information relating to an individual or to the financial or business affairs of a particular person.

**13.0 JUSTIFICATION FOR TAKING THE ITEM IN PART II**

- 13.1 Depending on the outcome of the appraisal process and subsequent content of the intended supplementary paper, it may be necessary for members to consider taking the supplementary paper as an exempt item, as this paper contains information relating to an individual or to the financial or business affairs of a particular person.