

WIRRAL COUNCIL

DELEGATED DECISION

SUBJECT:	<i>NEIGHBOURHOOD PLANNING – APPROVAL OF PUBLICATION, EXAMINATION AND LOCAL REFERENDUM ON A PROPOSED NEIGHBOURHOOD PLAN FOR DEVONSHIRE PARK</i>
WARD/S AFFECTED:	<i>DEVONSHIRE PARK IS IN PRENTON WARD BUT LIES DIRECTLY ADJACENT TO THE WARD BOUNDARIES WITH BIRKENHEAD AND TRANMERE AND WITH OXTON</i>
REPORT OF:	<i>STRATEGIC DIRECTOR REGENERATION AND ENVIRONMENT</i>
RESPONSIBLE PORTFOLIO HOLDER:	<i>COUNCILLOR PAT HACKETT ECONOMY</i>
KEY DECISION?	<i>NO</i>

1.0 EXECUTIVE SUMMARY

- 1.1 The Devonshire Park Neighbourhood Planning Forum, which was designated by the Council in April 2013 as the statutory neighbourhood forum for the Area shown on the map attached to this report, has now formally submitted their proposed Neighbourhood Development Plan to the Council for publication and independent examination.
- 1.2 The Council must now comply with the legal process set out in Schedule 4B of the Town and Country Planning Act 1990; Section 38A of the Planning and Compulsory Purchase Act 2004; Part 5 of the Neighbourhood Planning (General) Regulations 2012 and the Localism Act 2011. This report therefore seeks approval to:
- (1) publicise the proposed draft Neighbourhood Development Plan for no less than six weeks, to bring it to the attention of people who live, work or carry on business within the Area;
 - (2) appoint an independent examiner, with the agreement of the Forum, through the national Neighbourhood Planning Independent Examiner Referral Service;
 - (3) subject to no additional substantive issues being raised in response to statutory consultation, submit the draft Plan and any comments received to independent examination by the examiner appointed; and
 - (4) subject to the recommendations of the examiner, arrange for a local referendum to be held, to allow the community within the Area to vote on whether the proposals should be made part of the statutory land-use Development Plan for Wirral.
- 1.3 The final making (or adoption) of the Neighbourhood Development Plan, following the results of the local referendum, must be approved by a resolution of Full Council.

2.0 BACKGROUND AND KEY ISSUES

- 2.1 Cabinet on 21 June 2012 agreed that the constitution of the proposed Devonshire Park Neighbourhood Planning Forum and the associated Neighbourhood Area boundary

satisfied the requirements of section 61F and 61G of the Town and Country Planning Act 1990 (Minute 25 refers). Following a six-week consultation period, within which no substantive representations were made, Council resolved to designate the Devonshire Park Neighbourhood Planning Forum as the sole neighbourhood planning body for the Neighbourhood Area for a period of five years (30 April 2013, Minute 147 refers).

- 2.2 The Devonshire Park Neighbourhood Planning Forum (the Forum) published their draft Neighbourhood Development Plan for Devonshire Park for public consultation on 31 May 2013, following earlier consultation including a series of public meetings, a questionnaire survey and consultation on an earlier draft version of the plan. Their draft Neighbourhood Development Plan was accompanied by a statement of public consultation; a summary of questionnaire responses; and appendices setting out relevant local development plan policies and an extract from the national Use Classes Order.
- 2.3 The draft Neighbourhood Development Plan and its accompanying documents were made available for public inspection on the website of the Devonshire Park Residents Association; at Birkenhead Central Library; Birkenhead One-Stop Shop; St Joseph's Parish Hall in Greenbank Road; and at the North Annexe of Wallasey Town Hall. Over 300 organisations, including the Council and the consultation bodies identified in Schedule 1 of the national regulations, were notified by letter and a newsletter was hand-delivered to all the dwellings within the Plan Area. The initial deadline for comment of 12 July 2013, was later extended to 26 July 2013.
- 2.4 The publication of the Forum's draft Neighbourhood Development Plan, prior to submission to the Council, has therefore complied with the relevant national regulations, to publicise the details of the proposals "in a manner that is likely to bring it to the attention of people who live, work or carry on business in the Neighbourhood Area" for a period of not less than six weeks.
- 2.5 The Forum has further revised their draft Plan, following an analysis of the consultation responses and the completion of a pre-submission 'health check', undertaken by an accredited Neighbourhood Plans Independent Examiner and has now formally submitted their modified draft Plan to the Council for independent examination.
- 2.6 The Council must now follow a non-discretionary statutory process set out in Schedule 4B of the Town and Country Planning Act 1990 (as amended) and associated legislation and Regulations.
- 2.7 In particular, the Council must confirm that the submitted documents meet the prescribed requirements; publish the submitted documents for statutory consultation for no less than six weeks; and arrange for them to be made subject to independent examination by a suitably qualified and experienced person who does not have an interest in any land that may be affected by the Plan, who will recommend whether the Plan proposals are suitable to be submitted to a local referendum before being formally made part of the statutory land-use Development Plan for Wirral by Council resolution.

3.0 THE SUBMITTED DOCUMENTS

- 3.1 The following documents, which are attached as appendices to this report, have been submitted for publication and independent examination:

1. the final proposed Neighbourhood Development Plan;
2. a map of the Area to which the proposed Plan relates;
3. a Consultation Statement, setting out how people have been consulted and how any issues raised have been addressed;
4. a Basic Conditions Statement, explaining how the proposed Plan meets the relevant statutory requirements of the 1990 Act;
5. a Sustainability Assessment Report;
6. a Strategic Environmental Assessment Screening Report; and
7. a Habitats Regulations Assessment Report.

3.2 The contents of each of these documents are considered in further detail below.

Consultation Statement

- 3.3 The Consultation Statement contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan; explains how they were consulted; summarises the main issues and concerns raised by the persons consulted; and describes how these issues and concerns have been considered and, where relevant, addressed in the proposed Neighbourhood Development Plan.
- 3.4 The Consultation Statement therefore complies with the requirements of the relevant national regulations.

Basic Conditions Statement

3.5 The Basic Conditions Statement sets out how the basic conditions for neighbourhood planning and other considerations, as prescribed by Schedule 4B to the Town and Country Planning Act 1990 (as amended), the Planning and Compulsory Purchase Act 2004 (as amended) and relevant national regulations, have been satisfied.

3.6 In particular, the Statement sets out that:

- the preparation of the proposed Plan has met the requirements and prescribed conditions of the Neighbourhood Planning (General) Regulations 2012;
- the Devonshire Park Neighbourhood Planning Forum is the relevant qualifying body, authorised to prepare and submit a proposed Neighbourhood Development Plan for the Neighbourhood Area;
- the policies in the proposed Plan only relate to the development and use of land within the designated Neighbourhood Area;
- the proposed Plan specifies the period for which it is to have effect, a period from 2014 to 2030;
- the proposed Plan does not include any policies or proposals for any excluded development;
- the proposed Plan does not relate to more than one neighbourhood area and there are no other neighbourhood plans in place for Devonshire Park;
- the proposed Plan has been prepared with regard to national policies and advice contained in guidance issued by the Secretary of State, as set out in the National Planning Policy Framework and its associated Planning Practice Guidance;
- the proposed Plan will contribute to the achievement of sustainable development, as demonstrated in an accompanying sustainability assessment;
- the proposed Plan is in general conformity with strategic policies contained in the Development Plan for the Borough, including the Council's Unitary Development Plan

(adopted February 2000), the Joint Waste Local Plan for Merseyside and Halton (adopted July 2013) and the emerging Core Strategy Local Plan; and

- the proposed Plan does not breach and is otherwise compatible with EU obligations and Convention rights within the meaning of the Human Rights Act 1998, including habitat protection and likely significant environmental effects, as demonstrated in accompanying Strategic Environmental Assessment and Habitats Regulations Assessment reports.

3.7 The Basic Conditions Statement therefore complies with the requirements of the Acts and the relevant national regulations.

Sustainability Assessment Report

3.8 Although a formal sustainability appraisal is not required by the Acts or by national regulations, the potential impact of the policies in the proposed Plan have been considered against the twenty-five local economic, social and environmental sustainability objectives used by the Council to appraise the sustainability impacts of emerging statutory development plan documents, including the Wirral Core Strategy Local Plan.

3.9 The Sustainability Assessment Report concludes that the principal issues relate to the benefits and dis-benefits of promoting a higher or lower increase in the number of people likely to be able to live within the Neighbourhood Area and that given the nature of the changes proposed, the Neighbourhood Development Plan would on balance continue to support a sustainable pattern of future development.

Strategic Environmental Assessment Screening Report

3.10 The Strategic Environmental Assessment Screening Report concludes that the proposed Plan will not have any significant environmental effects in terms of EU Directive 2001/42/EC or any associated national regulations and that the proposed Plan will not therefore require an additional statutory Strategic Environmental Assessment.

3.11 The findings of the SEA Screening Report will have to be confirmed by Natural England, English Heritage and the Environment Agency, who are the appropriate statutory consultees for strategic environmental assessments, before the Plan is submitted to independent examination.

Habitat Regulations Assessment Report

3.12 The Habitat Regulations Assessment Report, which has also been reviewed by the Council's environmental advisors the Merseyside Environmental Advisory Service, concludes that the proposed Plan is unlikely to have any significant effect on the conservation objectives of any relevant European Site and that no further "appropriate assessment" is required to satisfy the requirements of EU Directive 92/43/EEC or any associated national regulations.

3.13 The findings of the HRA Report will have to be confirmed by Natural England, before the Plan is submitted to independent examination but Natural England have already indicated, in response to previous consultation, that they do not consider that this Plan poses any likely significant risk to internationally or nationally designated nature conservation sites (in a letter dated 11 July 2013).

Conclusions

- 3.14 On the basis that the submitted documents together form part of a valid neighbourhood planning proposal that appear to comply with all the relevant legislative requirements, it is concluded that the submitted documents are suitable to be published for public comment for a period not less than six weeks, to comply with national regulations for publicising a plan proposal for a neighbourhood development plan and to be submitted to independent examination.
- 3.15 Any subsequent information that may lead to an alternative conclusion will be reported to the Cabinet Member for the Economy before the Plan is submitted to independent examination.

4.0 ARRANGEMENTS FOR PUBLIC EXAMINATION

- 4.1 In addition to publishing the Plan proposals, the Council must make appropriate arrangements for their independent examination, including the appointment of a person, with the consent of the Devonshire Park Neighbourhood Planning Forum, to carry out the examination, which may include a public hearing for the purpose of receiving oral representations.
- 4.2 The examiner must be someone who is independent of both the Forum and the Council; does not have an interest in any land that may be affected by the Plan proposals; and must have appropriate qualifications and experience.
- 4.3 The examiner will consider whether the Plan proposals meet the basic conditions of the Town and Country Planning Acts and their associated regulations and will recommend whether they are suitable to be submitted to a local referendum and whether the area for any referendum should extend beyond the designated Neighbourhood Area.
- 4.4 The examiner can also recommend modifications that the examiner considers necessary to ensure that the Plan proposals meet the basic conditions, secure compatibility with Convention rights or to correct errors, and that the Plan as modified be submitted to a referendum.
- 4.5 If the examiner finds that the Plan proposals do not meet the basic conditions they must recommend that the Plan proposals are refused.
- 4.6 The Council must consider each of the recommendations made in the examiner's report and decide what action to take in response to each recommendation. If the Plan proposals are found to meet the basic conditions the Council must hold a local referendum. If the examiner finds that the Plan proposals do not meet the basic conditions and recommends refusal, the Council must refuse the Plan proposals.
- 4.7 The Council must publish the examiner's report and the Council's decisions. The Council's decisions in response to the recommendations of the examiner are subject to a six-week period of judicial review, beginning with the day on which the Council's decisions are published.

4.8 Any decision that would vary from following the recommendations of the examiner will be the subject of a separate additional report, before the Plan proposals are refused or are submitted to a local referendum.

Appointment of Examiner

4.9 There are four main options for the appointment of an independent examiner

- (i) an arrangement to use a suitably experienced employee from another local planning authority, which could be part of a potentially reciprocal agreement which could effectively be free of charge other than for officer time;
- (ii) requesting that a planning inspector be appointed by the Secretary of State, at £1,000 per day plus expenses;
- (iii) selection of an examiner through a newly established nationally accredited selection service, at £750 per day plus expenses; and
- (iv) the Council itself advertising for a (or a number of) suitable candidate(s), at a fee to be arranged on an independent basis.

4.10 The first option has been discounted because of the reluctance of adjoining authorities to enter into a reciprocal agreement, principally due to a shortage of staff resources and concerns about the public perception of independence. An Inspector appointed by the Secretary of State is the most expensive option, at approximately £1,000 a day plus expenses. The final option would involve the Council in a potentially lengthy and uncertain process, which may not attract an appropriately reliable examiner of suitable quality.

4.11 The most efficient, cost effective option would therefore appear to be the use of the newly established Neighbourhood Planning Independent Examiner Referral Service (NPIERS), which has been specifically set up with the support of the Government's Department for Communities and Local Government and relevant professional bodies, to provide access to a pre-vetted professionally certified shortlist of suitably qualified and impartial independent examiners on an 'as needed' basis, from which it is then open to the Council to select.

4.12 It is therefore recommended that the Council applies to NPIERS to identify three suitable potential examiners, for selection with the agreement of the Devonshire Park Neighbourhood Planning Forum, following the consideration of CVs and interview.

4.13 The relevant Officer Decision Notice to authorise an exemption under Part E119 of the Council's Constitution was approved by the Council's Procurement Manager in July 2014.

4.14 Further information about NPIERS can be viewed at <http://www.rics.org/uk/join/member-accreditations-list/dispute-resolution-service/neighbourhood-planning-independent-examiner-referral-service-npiers/>

5.0 LOCAL REFERENDUM

- 5.1 Neighbourhood planning proposals that have been approved following independent examination must be confirmed by a majority vote in a local referendum before being adopted by a resolution of Full Council.
- 5.2 The question that must be asked in the referendum is prescribed in national regulations and must be "*Do you want Wirral Council to use the neighbourhood plan for Devonshire Park to help it decide planning applications in the neighbourhood area*". The minimum period between the publication of a statutory notice announcing the date of the referendum and the date of referendum itself must be 28 working days.
- 5.3 The referendum will be decided by a simple majority of those voting in the referendum. The result of the referendum is subject to a six-week period for judicial review, beginning with the day on which the result of the referendum is declared.
- 5.4 Where a majority has voted in favour of the Plan proposals, the Council must make (or adopt) the Plan as soon as reasonably practicable after the referendum has been held.
- 5.5 The decision to make the Plan, after the result of the referendum, is also subject to a six-week period for judicial review, beginning with the day on which the decision to make (or not make) the Plan is published.
- 5.6 The final recommendation to make the Neighbourhood Development Plan will be the subject of a separate, additional report, prior to being submitted to Full Council.

6.0 RELEVANT RISKS

- 6.1 The main risks to the making (or adoption) of the proposed Neighbourhood Development Plan are legal, procedural and financial.
- 6.2 The Council must fully comply with the requirements of the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004 (as amended) and their associated national regulations. Processes that do not comply with statutory requirements will be vulnerable to legal challenge and could incur additional and/or abortive costs.
- 6.3 The proposed Plan prepared by the Forum may not be recommended as suitable to be submitted to local referendum by the independent examiner or may not obtain a majority vote in a local referendum, again, leading to additional and/or abortive costs which are set out in section 10 below.
- 6.4 The principal risks have been mitigated by checking the submitted documents for compliance with statutory requirements prior to publication, by ensuring that the Plan proposals have been brought forward following adequate public consultation and by the completion of a pre-submission 'health check' by an appropriately qualified independent person in September 2014.

7.0 OTHER OPTIONS CONSIDERED

- 7.1 There is no other option available to the Council once a valid neighbourhood planning proposal has been submitted to the Council.

8.0 CONSULTATION

- 8.1 Devonshire Park Neighbourhood Planning Forum has already undertaken public consultation to inform the pre-submission development of their proposed Neighbourhood Development Plan, to meet the requirements of national regulations, as set out in their accompanying Consultation Statement.
- 8.2 The proposed Devonshire Park Neighbourhood Development Plan and the supporting documents attached to this report will be made available for public inspection and comment for a period of six weeks on the Council's website; at Birkenhead Central Library; Birkenhead One-Stop Shop; St Joseph's Parish Centre; and at the North Annexe of Wallasey Town Hall.
- 8.3 The Council will notify any previous respondents and any consultation body which is referred to in the Forum's consultation statement that the final Plan proposals have now been received and will, in addition, seek to bring the Plan proposals to the attention of people who live, work or carry on business within the designated Neighbourhood Area by publishing a public notice in the weekly planning notice in the local free press.

9.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 9.1 Devonshire Park Neighbourhood Planning Forum is a voluntary community-based organisation set up to satisfy the requirements of national regulations, which include an open membership that is representative of the local community within the area.
- 9.2 Voluntary, community and faith groups have been able to take part in previous consultations on the content of the emerging Plan proposals and will also be able to take part in the consultation and examination of the submitted Neighbourhood Plan.

10.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 10.1 The publication and deposit of the submitted documents, as set out in section 8 of this report, is previously untested but is unlikely to cost more than £1,000, which can be funded through existing resources for Regeneration and Planning.
- 10.2 A grant of £5,000 is currently available from the Government's Department of Communities and Local Government, as a contribution towards the Council's costs, following the statutory publication of the submitted documents.
- 10.3 Based on recent local experience, the cost of appointing an independent examiner is expected to cost between £10,000 and £15,000, which can be funded through existing resources for Regeneration and Planning. An Officer Decision Notice for the procurement of an independent examiner through the Neighbourhood Planning Independent Examiner Referral Service was approved by the Head of Regeneration and Planning on 23 May 2014 and by the Council's Procurement Manager in July 2014.
- 10.4 Other costs associated with supporting the public examination, such as the hire of rooms and equipment etc, if required, will need to be met from existing resources within the Directorate for Regeneration and Environment.
- 10.5 An additional grant of £20,000 is currently available from the Government's Department of Communities and Local Government, as a further contribution towards the Council's costs, following the successful completion of the examination, provided that the examiner recommends that the proposal proceeds to referendum. The Government

announced in October 2014 that claims can continue to be submitted up to 31 March 2016.

- 10.6 A referendum of registered electors within the Devonshire Park Neighbourhood Area is expected to cost between £4,000 and £5,000, based on estimates from the Council's Electoral Services division.
- 10.7 The costs of setting up and running the local referendum will have to be met from existing resources within the Directorate for Regeneration and Environment, less any remaining unexpended grant monies, with additional staffing support from the Council's Electoral Services.

11.0 LEGAL IMPLICATIONS

- 11.1 The Council, as the local planning authority, has a legal duty to support the Devonshire Park Neighbourhood Planning Forum in their preparation of their proposed Neighbourhood Development Plan.
- 11.2 The Council must publicise Plan proposals, as soon as possible after receiving a valid neighbourhood planning proposal and submit them to independent public examination in compliance with Schedule 4B of the Town and Country Planning Act 1990 (as amended).
- 11.3 The person to be appointed to undertake the examination must be appointed with the agreement of the Neighbourhood Forum.
- 11.4 Subject to the recommendations of the examiner appointed, the Council must submit the proposal to make the proposed Neighbourhood Development Plan to a local referendum.
- 11.5 Subject to a majority of vote in favour of making the Plan, the Council must then make the proposed Neighbourhood Development Plan part of the statutory Development Plan for Wirral by a resolution of Full Council.
- 11.6 There are opportunities for judicial review throughout the Plan making process, as outlined in the main body of the report, when the Council decides on the actions that should be taken in response to the recommendations contained within the independent examiner's report; when the result of the referendum is declared; and when the Council resolves to make (or not to make) the Plan proposals, in accordance with section 61N of the Town and Country Planning Act 1990 (as amended).

12.0 EQUALITIES IMPLICATIONS

- 12.1 Has the potential impact of your proposals been reviewed with regard to equality?
(a) Yes and the impact review can be accessed at <http://www.bit.ly/regenEIA>
- 12.2 The review indicates that the potential for a negative impact on people with lower incomes or needing to live in residential institutions or hostels has been considered and that appropriate mitigation has already been provided within the wording of the proposed Neighbourhood Development Plan and by the existing provisions of national planning legislation.

13.0 CARBON REDUCTION IMPLICATIONS

13.1 The Sustainability Assessment Report submitted alongside the proposed Plan indicates that the proposed Neighbourhood Development Plan would continue to support a sustainable pattern of future development (paragraph 3.8 above refers).

14.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

14.1 Once made by Council resolution, the Devonshire Park Neighbourhood Development Plan will form part of the statutory land-use Development Plan for Wirral alongside the Council's Unitary Development Plan, the Joint Waste Local Plan for Merseyside and Halton and the emerging Core Strategy Local Plan and will be used in the determination of individual planning applications falling within the designated Neighbourhood Area identified in the Neighbourhood Development Plan.

14.2 In the intervening period, weight may increasingly be able to be attached to the policies in the emerging Neighbourhood Development Plan, according to the stage that has been reached and the extent to which there are unresolved objections, in line with the guidance set out in paragraph 216 of the National Planning Policy Framework (March 2012).

14.3 There are no community safety implications arising from the Devonshire Park Neighbourhood Development Plan.

15.0 RECOMMENDATIONS

15.1 That the Devonshire Park Neighbourhood Planning Forum is notified that the submitted documents attached to this report are approved and that the Council now intends to publicise and arrange for the independent examination of the proposed Neighbourhood Development Plan.

15.2 That the Director for Regeneration and Environment is authorised to take all the steps necessary to comply with Schedule 4B of the Town and Country Planning Act 1990 (as amended); Section 38A of the Planning and Compulsory Purchase Act 2004; Part 5 of the Neighbourhood Planning (General) Regulations 2012; and the Localism Act 2011, up to but excluding the final making of the Neighbourhood Development Plan as part of the statutory land-use Development Plan for Wirral, in consultation with the Cabinet Member for the Economy.

15.3 That the Director is authorised to publicise the submitted documents to bring the proposed Neighbourhood Development Plan to the attention of the people who live, work or carry on business within the designated Neighbourhood Area.

15.4 That the Director is authorised to make arrangements for the independent examination of the proposals and, with the agreement of the Neighbourhood Planning Forum, to appoint a suitably qualified and experienced independent examiner to examine the proposals from the national Neighbourhood Planning Independent Examiner Referral Service.

15.5 That the Director is authorised, subject to the recommendations of the examiner appointed, to submit the proposal to make the Neighbourhood Development Plan to a statutory local referendum in accordance with the relevant national regulations.

15.6 That subject to a majority vote in a local referendum, the final recommendation to make the Neighbourhood Development Plan part of the statutory Development Plan for Wirral is reported and recommended for approval by Full Council at the appropriate time.

16.0 REASON FOR RECOMMENDATIONS

16.1 To comply with the Council's statutory obligations to administer statutory land-use planning proposals submitted by a designated Neighbourhood Forum, in accordance with the Town and Country Planning Act 1990 and Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011) and relevant national regulations.

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APPENDICES

Appendix 1 – Proposed Neighbourhood Development Plan
Appendix 2 – Map of Plan Area
Appendix 3 – Consultation Statement
Appendix 4 – Basic Conditions Statement

REFERENCE MATERIAL

[Localism Act 2011](#) (Part 6, Chapter 3 and Schedules 9 to 12 refer)
[The Neighbourhood Planning \(General\) Regulations 2012 \(2012, No. 637\)](#) Parts 2, 3 and 5 refer
[Neighbourhood Planning \(Referendums\) Regulations 2012 \(SI 2012 No. 2031\)](#)(as amended)
[National Planning Policy Framework and Practice Guidance \(CLG, March 2012\)](#)
[The Neighbourhood Planning Independent Examiner Referral Service \(NPIERS\)](#)

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Cabinet – Neighbourhood Planning Vanguard – Wirral Proposal (Minute 320)	3 February 2011
Cabinet – Neighbourhood Planning – Area and Forum Designations (Minute 25)	21 June 2012
Cabinet - Neighbourhood Planning Forum Designations – Devonshire Park and Hoylake (Minute 221)	14 March 2013
Council - Neighbourhood Planning Forum Designations – Devonshire Park and Hoylake (Minute 147)	30 April 2013