Item No. 15. Classification: Open

Date: 20 June 2017

Meeting Name: Cabinet

Report title: Section 77 (change in use of school playing field land) - Approval to obtain Secretary of State consent

Ward(s) or groups affected: Peckham Ward, Grange Ward, South Bermondsey Ward, Rotherhithe Ward

Cabinet Member: Councillor Mark Williams, Regeneration and New Homes / Councillor Victoria Mills, Children and Schools

FOREWORD – COUNCILLOR MARK WILLIAMS, REGENERATION AND NEW HOMES / COUNCILLOR VICTORIA MILLS, CHILDREN AND SCHOOLS

In addition to investing in new homes, libraries, and leisure centres, Southwark Council is also investing heavily in existing and new school provision. A programme worth over £180 million is ensuring that we meet the demand for primary, secondary and special school places but that we also invest in the fabric of existing schools to ensure that all Southwark children are learning in high quality and inspiring environments.

In order to progress with the next stage of our school expansion and investment programme and to deliver wider benefits including new homes, this report seeks authorisation to progress Section 77 applications to change the use of school land for Angel Oak Academy site, Beormund School and Southwark Inclusive Learning Service site, and Cherry Gardens Primary school site.

Angel Oak would be refurbished and significantly upgraded on its current site with a new all weather multi-use games area. Beormund School – a special school serving the entire borough - would move to a new home in Peckham to a new and purpose built school. The new site also affords an increase in the number of places for the only Social, Emotional and Mental Health primary facility in the borough. The same is the case for Cherry Gardens where a huge investment means a state of the art special school is already under construction on the former Highshore School site. The new Cherry Gardens school will vastly improve the learning environment for pupils, have more outside play-space and will provide more places for Southwark children with complex and profound learning difficulties. The Section 77 applications in this report would release land for new uses which would fund the growth in school places and the need to continue to invest in and upgrade our school estate.

RECOMMENDATIONS

1. That cabinet approves the progression of Section 77 applications (disposal or change in use of school playing fields land) and applications under Schedule 1 of the Academies Act 2010 (restriction on disposal and appropriation) to the Secretary of State for Education as set out in the red line plans attached as Appendix A for:

(i) Angel Oak Academy site (Burcher Gale Grove, SE15 6FL),
(ii) Beormund Primary School & Southwark Inclusive Learning Service (SILS4
Pupil Referral Unit) site (Crosby Row, London SE1 3PS), and
(iii) Cherry Gardens Primary School site (Macks Road, SE16 3XU).

2. That, subject to Secretary of State consent, cabinet authorises the director of regeneration to progress all matters relating to the delivery of the schemes.

BACKGROUND INFORMATION

3. The council owns significant assets and sites which provides the opportunity to improve outcomes for our residents through regeneration and redevelopment. There are a number of council owned school sites which could be rationalised and developed to provide improved facilities for education and which would also provide scope for new homes and other associated infrastructure. This also provides the means for an element of funding subsidy to support the provision of new education facilities, affordable homes and associated infrastructure.

4. The three sites listed below and in recommendation 1 above have been identified and assessed for their potential in contributing towards these objectives, and are each subject to a Section 77 application:
   (i) Angel Oak Academy site,
   (ii) Beormund Primary School & Southwark Inclusive Learning Service (SILS4 Pupil Referral Unit) site, and
   (iii) Cherry Gardens Primary School site.

5. Under Section 77 of the School Standards and Framework Act 1998, local authorities are required to apply for the consent of the Secretary of State for Education to dispose of, or change the use of, land used for maintained schools and academies.

6. In July 2014, the council renewed its pledge to deliver a fairer future for all in Southwark in a set of 10 new fairer future promises as well as specific commitments, which include:
   • Deliver value for money across all services
   • Build more quality affordable homes of every kind across the borough
   • Become an age friendly borough
   • Revitalise neighbourhoods
   • Support local people into work.

7. These promises are in recognition of the need for new housing supply whilst improving existing housing, educational and health provision across the borough. In line with this the council also made a pledge in July 2014 to deliver 1,500 of the 11,000 new homes by 2018.

8. A move towards more efficient and higher quality provision must be considered in balance with the financial constraints faced by the council as it prepares for further reductions in our funding from central government. Despite being one of the most deprived areas of the country, the council has faced some of the largest reductions in government funding for local authorities, and will need to make further savings. As such, the council is exploring ways it can continue to deliver value for money for residents and businesses by making even better use of its resources.
9. On 27 January 2015 cabinet agreed to the development of the Southwark Regeneration in Partnership Programme (SRPP). The council is procuring programmes under the Southwark Regeneration in Partnership Programme (SRPP). The objectives of this programme are to develop a number of council owned sites of varying size and development potential. The council holds significant buildings and land assets and there are opportunities to work with developers to attract investment for a range of mixed use schemes.

10. The programme would enable the council to secure new investment into education facilities, including areas which are not traditionally funded through capital grant. However, this will only be possible if the council is allowed the means to reallocate land in a strategic manner to achieve the best long term benefits.

11. The council has a statutory duty under the Education Act 1996 (amended by the Education and Inspections Act 2006) to “secure that sufficient schools for providing: (a) primary education, and (b) secondary education are available for their area” as well as to “secure diversity and increase opportunities for parental choice when planning the provision of school places” in the borough. This duty includes matching projected demand with supply, and ascertaining whether this demand is temporary or permanent.

12. In common with other London boroughs, Southwark has seen a sharp increase in demand for primary places and in 2016 received a record proportion of applications. Birth rates have increased 12% across the borough from 2002-2014. The authority can either expand existing schools or enable free schools or academies to open, as the council is unable under the Academies Act 2010 and Education Act 2011 from opening new schools itself.

13. Since 2010, the council has been committed to supporting, where possible, permanent expansions so that schools, parents and children have certainty over the availability of school places and so that children learn and play in high quality spaces.

14. The suitability of all schools in Southwark and the risks and advantages of expanding each are considered by the council when formulating the primary and secondary expansion programmes. The risks of not expanding and continuing to develop schools to ensure that they meet demand and need are considerable. Section 14 of the Education Act 1996 places a duty on local authorities to ensure that there are sufficient primary and secondary school places in their area. Local authorities must ensure there are enough school places to meet needs as well as working to secure diversity of provision and increasing opportunities for parental choice.

15. As a result, there is currently a programme of investment of approximately £180 million in Southwark schools to increase numbers and address capacity issues across primary, secondary and special schools. Since 2009 and at September 2016 the additional primary places target was 3,200. This will further increase to 4,425 places by September 2018.
16. The primary component of the programme consists of:

• 2 new primary school rebuilds (Albion: redevelopment and regeneration of the site) and Bellenden (a new 2FE on new site)
• 8 primary school expansions. Ivydale, Grange, Crawford, Keyworth, Phoenix, Robert Browning, Charles Dickens, Redriff
• 2 new free schools; Belham and Galleywall.

All of the above are underway and on schedule to deliver additional capacity required.

17. The primary school enlargements formed part of a target of an additional 1,755 primary places by September 2016. Southwark has added a total of 500 permanent reception places in primary schools in Southwark since September 2011 (an increase of 14%). This investment into Primary and SEN schools has improved and increased playing field areas in excess of 7,150m² including a gain of 155m² at the new Cherry Gardens School site. Angel Oak Academy would gain an extra 277m² of external play area and use of the nearby Burgess Park; Beormund Primary would retain a similar sized area of external play space at the proposed new location; and SILS4 which currently does not benefit from any external space, would gain approximately 300m² of external play space.

18. Plans and proposals are also in place for special educational needs and disability (SEND) provision. Plans have been approved by cabinet to expand and relocate Cherry Gardens school and construction is currently underway with an expected completion date of September 2018.

KEY ISSUES FOR CONSIDERATION

Section 77 Consents

19. The procedures and legislation governing the disposal of school playing field land held by local authorities, governing bodies, foundation bodies and trustees are set out in the Department for Education’s non-statutory advice about the protection of school playing fields and public land.

20. The advice describes the main circumstances when relevant bodies need to seek the consent of the Secretary of State for Education to dispose, or change the use, of land used by schools, including playing field land, to ensure playing field land continued protection. It also describes how the Secretary of State will assess applications for consent to dispose, or change the use, of such land. The relevant legislation is Section 77 of the School Standards and Framework Act 1998.

21. The Department for Education will usually only agree to the sale of school playing fields if the sports and curriculum needs of schools and their neighbouring schools can continue to be met and there is clear regeneration benefit for education and other services. Sale proceeds must be used to improve sports or education facilities and any new sports facilities must be sustainable for at least 10 years.
Schedule 1 Consents

22. Schedule 63 (Schedule 14) of the Education Act 2011 makes changes to incorporate a new Schedule 1 to the Academies Act 2010 which extends the requirement to obtain Secretary of State consent to dispose of community school land to include all land in which a freehold or leasehold interest is held by the local authority and which has been used for any school (including any Academy) in the last 8 years. It also removes the disapplication of the requirement for Secretary of State consent in the case of a transfer to an Academy for nil consideration. It is under the new Schedule 1 to the Academies Act 2010 that applications for consent to dispose of local authority land must now be made.

23. The Secretary of State will now consider the suitability of all such land for use by an existing or potential Academy (the legal term which includes Free Schools, University Technical Colleges and most Studio Schools).

24. Local authorities, governing bodies and dioceses should not commence any works on the site or anticipate any future proceeds of sale in anticipation of Secretary of State consent. The following details are required by the Secretary of state when applying for consent under the new Schedule 1 to the Academies Act 2010:

- details of the location and exact area of the land to be disposed of or appropriated
- details of the total site area of the school or former school
- the date (or proposed date) of the disposal or appropriation
- the reasons for the disposal or appropriation of the land and why the local authority does not think that it is covered by 'general consent'
- the educational history of the subject land
- the planned future use of the site; and
- if any potential Academy, Free School, University Technical College or Studio School proposer has approached the local authority about using this land or other land in the area.

Regeneration Strategy

Angel Oak Academy (AOA) - Burcher Gale Grove, London SE15 6FL

25. Angel Oak Academy achieved ‘academy’ status in 2015, and the agreed Heads of Terms with Southwark Council at the point of conversion established the potential to attract investment in the school facilities through the redevelopment of surplus land. Angel Oak Academy is currently a 2 Form of Entry (FE) School. The site will have surplus external area with the potential and capacity to develop housing and community facilities.

- The current site area is 11,718m² which is a generous site for an inner-London school, with large areas of unused external space.

- The Academy and Southwark Council have agreed that the Council should retain approximately 5,420m² of land for residential development from which the development partner (Clarion Housing Group) would provide significant investment for the school’s improvement and expansion along
with the provision of approximately 125 new homes of mixed tenure including council and affordable homes, and associated investment to improve amenity land.

• The school investment includes refurbishment of the main Victorian building, demolition of the existing entrance block and provision of a new multi use games area, enhanced main playground area, a new building extension to provide an assembly hall and gym space, kitchen, ancillary facilities and dining space, with an additional 560m² of play space on the flat roof above the extension. Works will also include new administrative facilities – new reception, meeting rooms, offices etc.

• There is also scope to provide investment in the external landscaping and play space areas. The current site area is not utilised effectively with large areas left underused, and an oversized car park. The works will remove constraints to the layout of existing buildings to create a modern, effective teaching environment.

• The existing playing field land is approximately 4,883m². Proposals under development estimate the retention/creation of approximately 4,980m² of external play space. The DfE Building Bulletin guidelines for external play area range for a primary school on a restricted site is 3,720m². This means that the school’s overall external play area will be 1,264m² larger than the Building Bulletin range.

• It is also proposed that Angel Oak Academy use the nearby Burgess Park to further supplement its improved on-site external area with areas for organised games which would be timetabled for school use. These facilities are within a short walking distance from the school.

Beormund Primary School/Southwark Inclusive Learning Service (SILS) PRU (Crosby Row, London SE1 3PS)

26. The existing site is currently occupied by Beormund Primary School which accommodates 35 full time primary pupils with Social, Emotional and Mental Health (SEMH) needs, and the SILS4 Secondary Pupil Referral Unit (PRU) with a student roll of up to 90.

27. The regeneration strategy is for Beormund School to relocate to a new purpose-built school on the centrally located and more efficient Bellenden site in Reedham Street, London, SE15 4PF. Bellenden School is expanding to a new purpose-built 2FE school in the nearby Dewar Street in 2018 so the site will become vacant and is available for development.

28. The overall area at the existing Beormund Primary School site is 4,280m² excluding the SILS4 PRU area. The proposed site at Bellenden School, Reedham Street is 4,410m² which offers a slight increase in overall site area of 130m². The proposed relocation is recommended for the following reasons:

• The existing Bellenden School is being relocated to a new purpose built facility in the nearby Dewar Street, the site of a former nursing home/sheltered housing facility which was previously deemed surplus to requirements. The proposed relocation of Beormund Primary School to the Bellenden site means that the latter can continue to be used as an
education site and is not subject to the Secretary of State consent, or consideration of the suitability of such land for use by an existing or potential academy or free School.

- The central location of the Bellenden site makes it more accessible across the borough. Beormund Primary is a special needs school serving the whole borough and is not subject to catchment area pupil intake as exists for mainstream schools.

- Initial design studies indicate that the proposed scale, massing and design layout should be received positively from a planning point of view.

- The condition, suitability and sufficiency shortcomings can only be met by relocating Beormund School to the available Reedham Street site as it is not practical to phase out a new build construction programme with the children on site. In addition to the delivery of purpose-built facilities for Beormund School, the proposed site also affords an increase in capacity (from 35 to 45 pupils) for the only Social, Emotional and Mental Health primary facility in the borough.

- There are no suitable alternative sites in the borough to effect a temporary decant for the Beormund pupils if the strategy were to re-provide the school at the Beormund site. A single and permanent move to new facilities at the Bellenden site negates the pressure of temporary provision.

29. The existing net external area at the Beormund Primary site is approximately 2,552m². With the current proposals under development it is estimated the Bellenden site with provide around 2,560m² of external space. The DfE Building Bulletin guidance on external net areas for an SEN school is 4,175m² minimum (excluding grass pitches). In terms of the DfE guidelines for outside area this means that the school will retain an overall external play area approximately the same as the existing site but 1,615m² less than that indicated as the ideal in the Building Bulletin. It is recognised than on restricted sites a flexible approach should be taken on provision and management of the area available, with priority given to those spaces that are most important to the particular needs of the pupils in the setting.

- The relocation will enable the Council to maximise the housing development potential on the existing Beormund Primary School and PRU site which is in central location close to London Bridge and Borough Stations which in turn will enable the council to secure a funding contribution the new building and site for Beormund.

- The funding options for the new provision of the Beormund Primary School include the anticipated return on investment in developing the land, or a financial contribution towards the new school from the housing delivery partner. Government do not provide specific capital grant towards existing special schools.

- It is proposed to re-provide the SILS4 PRU with a new purpose-built facility on the site as it is considered to be an appropriate location given the liveliness and aspirational nature of the surrounding area. It is intended that the PRU re-provision is also funded by the new housing development.
The existing PRU facility does not benefit from any outdoor space, but the proposed relocation on the site will provide approximately 300m² usable external space.

Cherry Gardens site: Macks Road, London SE16 3XU

30. The site currently accommodates the Cherry Gardens SEN Primary school which is relocating and expanding from 46 to 85 pupil place facility and will be accommodated in a brand new purpose-built facility on the vacant Highshore SEN Secondary School site which relocated to new facilities under the Building Schools for the Future programme.

31. The Macks Road site has a play area of approximately 2,905m² and non-play area including the school building of 2,711m². The new facility on the Highshore site will have an increased play area of 3,067m² and non-play area including the buildings at 2,994m². In terms of the DfE guidelines for outside area this means that the school will achieve an additional 162m² of external play space.

32. It is proposed that the site is redeveloped to provide 50 new homes with a mix of social rent, intermediate and private sale units, and enhanced adjacent park land and playground.

33. The release of the Macks Road site for this development will fund additional school expansion schemes including the new Cherry Garden School.

Policy implications

Education

34. The ability to develop the school sites, subject to the Section 77 and Schedule 1 approvals will support delivery of the Council’s Fairer Future objective of guaranteeing a local primary place for every child, and improving educational facilities for the borough’s residents.

35. The expansion of primary schools is required to deliver the Council’s strategy for additional pupil places and is a key part of the Primary Investment Strategy.

Housing

36. The proposed developments for which the Section 77 and Schedule 1 approvals are required will support the overall New Homes programme to develop 11,000 new council homes by 2043. Homes delivered as part of the programme will assist in increasing the supply of good quality affordable housing and will contribute the following targets:

- Policy 5 of the Core Strategy which sets a housing target for the borough of 24,450 net new homes between 2011 and 2026 (1,630 per year)
- The London Plan which sets the borough a housing target of 20,050 net new homes between 2011 and 2021 (2,005 per year) and
- Core Strategy Policy 6 which sets an affordable housing target of 8,558 net affordable housing units between 2011 and 2026.
37. Sharing the benefits of economic growth and regeneration is an underpinning principle in implementation of the Southwark Economic Development strategy 2010 - 2016. The SRPP has the potential to support the strategy by engaging with housing partners and Council contractors to identify and develop entry points for priority groups to access local employment and training opportunities, promote and develop apprenticeships and work placements and embed local economic benefits into procurement.

Community impact statement

38. All the schools are highly valued by their communities and the Council is keen to create these opportunities so that we can jointly work to improve or provide new educational facilities, and increase the housing stock.

39. During the development of these schemes we will liaise with stakeholders and incorporate their suggestions where possible.

Resource implications

40. Any staffing requirements arising from this Section 77 and Schedule 1 application process will be provided from within the existing Regeneration Capital Works team structure, supported by appointed external professional building consultancies.

Legal implications

41. Legal concurrent is provided in paragraphs 49 to 59.

Housing

42. The appropriation of land at these three sites will facilitate the delivery of an estimated 298 new homes of mixed tenure including both council and affordable homes. Where land is appropriated to the HRA, its certified value is added to the HRA capital financing requirement and the HRA’s contribution to capital charges will increase as a result.

43. Although the land to be appropriated is yet to be valued, the revenue cost to the HRA is expected to be modest and will be contained within existing budgets and resources. The subsequent sale of properties as part of the development will also generate capital receipts for future investment.

Education

44. The council’s approved capital programme has budget allocations for the three schools being re-provided on new sites. The budget allocations (inclusive of spend to date on the projects) are:

- Cherry Garden School £16.4m
- Beormund Primary School £12.0m
- SILS4 Pupil Referral Unit £ 3.0m

45. The majority of this council capital investment is not supported by any capital grant and any financial contribution from a developer from these proposals will be recycled into the council’s corporate resources in funding the council’s
approved capital programme.

Consultation

46. Public consultations and exhibitions have been held over the last 12 months with the schools' communities and local community at Angel Oak Academy, Beormund School, and Cherry Gardens School on the proposals for both the housing developments and school expansions associated with the housing developments.

47. Under the School Standards and Framework Act 1998, and as a requirement under the Section 77 applications process, statutory adverts were published in the Southwark News on 06 April 2017, giving notice to the public, of the Council’s intention to dispose off/change the use of playing field land at the subject sites, and invited comments/objections.

48. Primary and secondary schools within a 1 mile radius and a half mile respectively, of each subject site were sent consultation letters on 25 April 2017 with a deadline of 09 June 2017 to confirm whether or not they had use of the subject playing field land if their existing external play provision did not meet their requirements.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

49. Section 77 (1) of the School Standards and Framework Act 1998 ("SSFA") states that a local authority shall not, except with the consent of the Secretary of State, dispose of any playing fields:

(a) which are immediately before the date of the disposal are used by a maintained school for the purposes of the school, or
(b) which are not then so used but have been so used at any time within the period of 10 years ending with that date.

50. Playing fields are defined in that Section as “Land in the open air which is provided for the purposes of physical education or recreation, other than any prescribed description of such land.”

51. Section 77 (3) of the SSFA states (inter alia) that except with the consent of the Secretary of State a local authority shall not take any action (other than the making of a disposal which falls within subsection (1) above) which is intended or likely to result in a change of use of any play fields where

(a) which are, immediately before the date when the action is taken, used by a maintained school for the purposes of the school, or
(b) which are not then so used but have been used at any time within the period of 10 years ending on that date

52. whereby the playing fields will be used for purposes which do not consist or include their use as playing fields by such school.

53. A number of general consents have been issued by the Secretary of State under the General Consent: Section 77 School Standards and Framework Act 1998, but none of the consents apply to the three schools which are the subject of the Recommendation. Application to the Secretary of State for specific consent is
54. Schedule 1 of the Academies Act 2010 (as amended by Schedule 14 of the Education Act 2011) (“Schedule 1”) states in paragraph 4 that if:

(a) a freehold or leasehold interest in land is held by a local authority;
(b) the authority proposes to make a disposal in respect of the land, and
(c) at any time in the period of eight years ending with the day on which the disposal is proposed to be made, the land was used wholly or mainly for the purposes of a school or a 16-19 academy unless the Secretary of State consents, the authority must not make the disposal.

55. Paragraph 6 of Schedule 1 states that if:

(a) a freehold or leasehold interest in land is held by a local authority,
(b) the authority proposes to make an appropriation of the land under Section 122 of the Local Government Act 1972, and
(c) at any time in the period of eight years ending with the day on which the appropriation is proposed to be made the land was used wholly or mainly for the purposes of a school or a 16-19 academy

56. Unless the Secretary of State consents, the authority must not make the appropriation.

57. Paragraph 9 of Schedule 1 states that there is a duty to inform the Secretary of State on the proposed change of use of land from the purposes of a school or 16-19 academy.

58. A number of general consents have been issued in the General Consents: Schedule 1 Academies Act 2010. However, none of the general consents apply to the three schools which are the subject of the Recommendation and specific application to the Secretary of State will be required.

Strategic Director of Finance and Governance (FC16/050)

59. This report is requesting cabinet to approve the progression of Section 77 applications (disposal or change in use of school playing fields land) as detailed in paragraph 1.

60. The report is also requesting, subject to Secretary of State consent, that cabinet authorises the director of regeneration to progress all matters relating to the delivery of the schemes.

61. It is noted that these proposals, if agreed, will be subject to appropriation of land from the General Fund to Housing Revenue Account (HRA) with a corresponding increase in the capital charges for HRA but these are expected to be contained within existing budgets.

62. The strategic director of finance and governance also notes that the cost of relocating the three schools on new sites are already budgeted within the council’s approved capital programme as detailed in the financial implications.

63. It is also noted that any financial contribution from a developer from these proposals will be recycled into the council’s corporate resources in funding the
council’s approved capital programme

64. Staffing and any other costs connected with this report to be contained within existing departmental revenue budgets.

BACKGROUND DOCUMENTS

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<th>Background Papers</th>
<th>Held At</th>
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<tr>
<td>Section 77 guidance document is provided via the link below</td>
<td>N/a</td>
<td>N/a</td>
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<tr>
<td>GW1 Cabinet Report dated 20 October 2015 Southwark Regeneration in Partnership Programme (SRPP) Procurement Strategy (Item 17)</td>
<td>160 Tooley Street, London SE1</td>
<td>Prince Kamanda 020 7525 7489</td>
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<tr>
<td>GW2 Cabinet Report dated 20 September 2016 SRPP Development Partners – Contract Award (Item 17)</td>
<td>160 Tooley Street, London SE1</td>
<td>Prince Kamanda 020 7525 7489</td>
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APPENDICES

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## AUDIT TRAIL

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<th>Councillor Mark Williams, Regeneration and New Homes Councillor Victoria Mills, Children and Schools</th>
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<tr>
<td>Lead Officer</td>
<td>Bruce Glockling, Head of Regeneration Capital Works and Development,</td>
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<tr>
<td>Report Author</td>
<td>Alfred Akpo-Teye, Project Manager Regeneration – Capital Works and Development</td>
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### CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER

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<tr>
<th>Officer Title</th>
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<td>Director of Law and Democracy</td>
<td>Yes</td>
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<td>Strategic Director of Finance and Governance</td>
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<td>Cabinet Member</td>
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<td>Date final report sent to Constitutional Team</td>
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