

PART ONE - PUBLIC

Decision Maker:	EXECUTIVE, RESOURCES & CONTRACTS PDS COMMITTEE AND EXECUTIVE		
Date:	17th October 2023 (ERC PDS) and 18th October 2023 (Executive)		
Decision Type:	Non-Urgent	Executive	Key
Title:	CHURCHILL THEATRE & CENTRAL LIBRARY BUILDING, HIGH STREET, BROMLEY BR1 3UH		
Contact Officer:	Amy Milton, Assistant Director Strategic Property E-mail: amy.milton@bromley.gov.uk		
Chief Officer:	Sara Bowrey, Director of Housing, Planning, Property and Regeneration E-mail: sara.bowrey@bromley.gov.uk		
Ward:	Bromley Town Centre		

1. Reason for report

- 1.1 The site known as Churchill Theatre forms part of a larger property which also comprises Central Library and a number of ground floor retail units. The building was constructed as one in the 1970s, formally opening in 1977.
- 1.2 The site is owned freehold by the Council, with Churchill Theatre being occupied by Trafalgar Group on a lease dated 5th September 2017 which expires on 3rd April 2041. Central Library is occupied and operated by the Council's library provider Greenwich Leisure, and the retail units are held on a long leasehold interest by a private third party.
- 1.3 Buildings of this nature were typically intended to have a lifespan of c. 50 years and as such, many elements of the building and building fabric are considered end of life and beyond economic repair.
- 1.4 Therefore, continuing with the existing lease arrangement with Trafalgar Group for the theatre element until its natural expiry in 2041 is not considered a viable option, as the extent of the works required to ensure a sustainable future for the building could not be completed whilst the building is occupied and operational.
- 1.5 This report sets out the Council's intention to seek a sustainable future for the theatre at the site, via redevelopment .

2. **RECOMMENDATION(S)**

- 2.1 Members of the ERC PDS are asked to note the contents of this report and recommendations for the Executive to approve.

2.2 Members of the Executive are asked to note of the contents of this report and approve the following recommendations:

- a) To delegate authority to the Director of Housing Planning and Regeneration to agree terms with the existing tenant of Churchill Theatre, Trafalgar Group, to gift the Council's freehold interest in the whole site to enable the tenant to invest in the building to ensure a sustainable future for the building and to protect its future use as a theatre. With terms, once agreed in principle, to be subject to further approval by the Executive Committee.
- b) As detailed within this report, the existing arrangement is not sustainable as there are significant works required to the building if it is to have a future, and therefore the existing lease arrangement with Trafalgar Group needs to be terminated to enable the works required on the building to be undertaken which cannot be facilitated whilst the building is occupied and operational. It is therefore recommended that the Landlord's Break Clause in relation to the lease held by Trafalgar Group is triggered which must be served on or before 1st April 2024 in accordance with the terms of the existing lease providing a minimum of 24 months' notice thereby terminating the existing lease arrangement as of 2nd April 2026.
- c) Should Trafalgar Group confirm they are unwilling or unable to take gifted ownership of the site, then it is recommended that the Executive Committee delegate authority to the Director of Housing Planning and Regeneration to openly market a 999-year leasehold interest in the site to secure a private developer to undertake the required redevelopment under a Development Agreement, with the 999 year lease only being granted, with vacant possession, on completion of the agreed scheme as agreed and stipulated within the Development Agreement. All offers received would be reported back to the Executive Committee for a Member decision to enable Member selection of a preferred bidder.

Impact on Vulnerable Adults and Children

1. Summary of Impact: N/A
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Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Excellent Council
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Financial

1. Cost of proposal:
 2. Ongoing costs:
 3. Budget head/performance centre:
 4. Total current budget for this head:
 5. Source of funding:
-

Personnel

1. Number of staff (current and additional): Not applicable
 2. If from existing staff resources, number of staff hours: Not applicable
-

Legal

1. Legal Requirement: Not applicable
 2. Call-in: Not applicable
-

Procurement

1. Summary of Procurement Implications: Not applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Not Applicable
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Ward Cllrs were briefed on 31st May 2023 as to the ongoing discussions with the tenant.
2. Summary of Ward Councillors comments: Ward Cllrs support the Theatre and accept the position that the Council cannot continue as is due to the condition of the building.

3. COMMENTARY

The Site

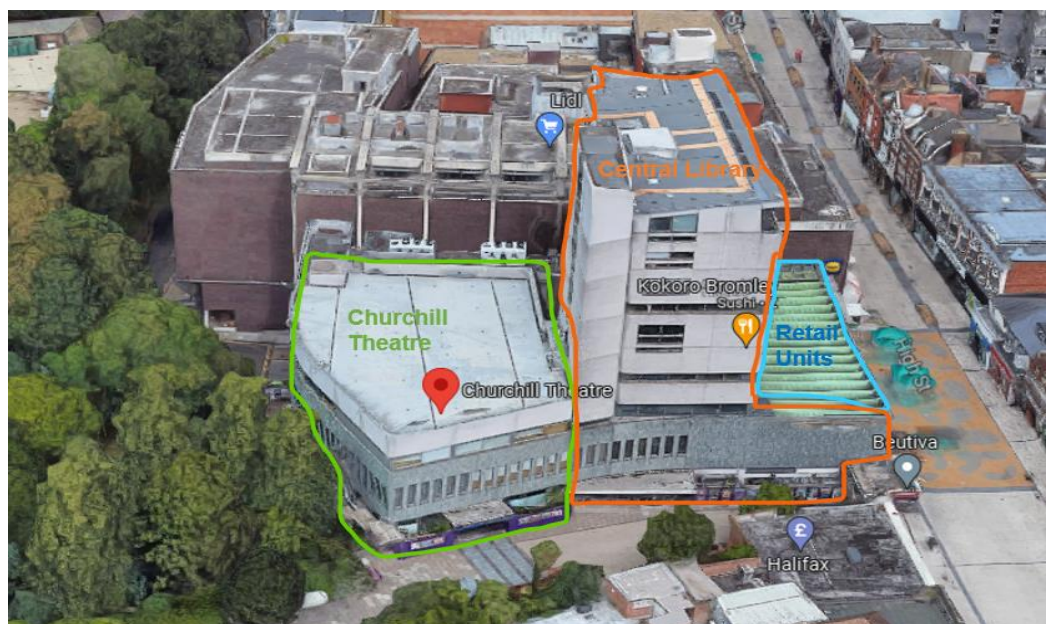
3.1 The site known as Churchill Theatre forms part of a larger property which also comprises:

3.2 Central Library - owned freehold by the Council, and primarily occupied and operated by Greenwich Leisure on a 15-year lease commencing November 2017 and expiring November 2032.

3.3 Ground floor retail units - owned freehold by the Council and held on a long leasehold interest by LCP (for a term of 99 years from June 1975, expiring June 2074) who sublet to the various commercial occupiers.

3.4 The building that Churchill Theatre and Central Library occupy was built as one with construction commencing in 1970 and the theatre formally opening in 1977. It is also physically attached to the neighbouring property to the North which is occupied by Lidl on the ground floor and which has planning permission for conversion of the upper floors into residential apartments.

3.5 The indicative aerial shot below has been colour coded to identify the various occupiers of the building, with Churchill Theatre in green to the far left, Central Library in orange in the centre, and the retail units in blue to the far right. It should be noted that the theatre element of the building has a number of basement levels.



Churchill Theatre Lease & Building Condition

3.6 Churchill Theatre is occupied by Trafalgar Group on a lease dated 5th September 2017 which expires on 3rd April 2041.

3.7 The rent payable to the Council is a peppercorn (i.e. nil). The Council, as landlord, is responsible for the main bulk of the repairs and maintenance at the property.

3.8 Buildings of this nature were typically intended to have a lifespan of c. 50 years. As such, many elements of the building and building fabric are now considered end of life and beyond economic repair.

3.9 Therefore, continuing with the lease until its natural expiry in 2041 is not considered a viable option, as the extent of the works required to ensure a sustainable future for the building could not be completed whilst the building is occupied and operational. Equally, given the scale of the works required, feasibility studies would also need to ascertain the optimum way forward, for example it may be more cost effective to completely redevelop the site as a whole and introduce additional income producing uses to support the viability of the cultural offering at the site going forwards rather than try and repair within the existing structure.

3.10 As identified above, the building comprises three separate elements; the Theatre, Central Library, and the retail units fronting the High Street which are held on a long leasehold interest by a third party. However, the property was built as one, and therefore investment is required in the whole given the shared building fabric, services, M&E etc. if there is to be a sustainable future for any individual element.

3.11 This poses a further challenge as the retail units are held on a long leasehold interest by a private third party and therefore the Council has no operational control over this element. Equally, options are being considered currently to move the Central Library element of the building as part of the Council's commitment to investing in its statutory and operational estate, to ensure its buildings best meet the modern day needs of service users. The proposal is therefore the move central library to a central high street location in the premises that use to be occupied by top shop. The options appraisal for this proposal is set out in a separate report on tonight's agenda. This would leave the Council with the freehold interest in a building where no statutory services are being provided and that requires significant capital investment to keep operational.

Council's Intentions / Recommended Option

3.12 As already noted, the condition of the existing building means that continuing with the status quo is not a viable option, and redevelopment is required for the theatre to have a sustainable future.

3.13 A series of meetings have been held since May 2023 and August 2023 (the time of drafting this report) between the Council and Trafalgar Group to explore possible options. Trafalgar Group have assured the Council that they are committed to the Theatre and wish to continue their operations within Bromley Town Centre. The Council are equally supportive of the Theatre and believe it to be an important contributor to the economic and cultural offering of the Town Centre.

3.14 It is therefore the intention of the Council to enter into formal negotiations with Trafalgar Group to gift the site to them, with a reverse premium to be paid to Trafalgar Group by the Council. This would enable the tenant to viably take ownership of the site and make the necessary investment to ensure a sustainable future for the Theatre at this site.

3.15 The intention would be for the Council to transfer the freehold interest in the whole building, not only the Theatre's existing demise, and this is due to the intrinsic nature of the building fabric which was built as one with shared services etc. and which therefore cannot be redeveloped in part.

3.16 The existing Central Library which forms part of the existing building would therefore need to be relocated within the Town Centre as set out above to enable this, which is part of a separate and already ongoing workstream which is reported separately on tonight's agenda. . The benefit of the Central Library being relocated and the whole site being gifted to Trafalgar Group is that it would enable expansion of the existing theatre offering, and/or the creation of additional income producing uses to support the investment required in the building as a whole within the existing footprint of the building.

3.17 Whilst discussions are still in their infancy and a transaction of this nature would require significant due diligence on both parts to legally execute such an arrangement, it should be noted that such a transaction would include mechanisms to ensure that a Theatre remains operational on the site going forwards (not withstanding that a period of closure to enable the construction works to take place would be required).

3.19 Discussions with Trafalgar Group have so far been positive, and the tenant has confirmed that they have instructed professional advisors to enable these discussions to progress.

Other Options Considered & Discounted

3.20 Continue 'as is' / 'do nothing' – A 'do nothing' approach would mean continuing with the Theatre in situ under the terms of the existing lease which does not expire until 2041. In this instance the Council is under a legal obligation to meet its obligations with regards to repairs and maintenance and this poses a significant challenge both financially but also practically. It is recognised that the building is end of life and meeting these obligations would require significant unbudgeted capital investment and the scale of works required mean it would not be possible to undertake with a tenant in situ and a theatre and library continuing to operate from the building.

3.21 A 'do nothing' approach has therefore been discounted.

3.22 Council led redevelopment of new theatre– The Council could trigger the landlord break notice effective April 2026 for the purposes of self-redevelopment of a new theatre as part of a wider mixed-use scheme. This would minimise the risk exposure to the Council of continuing with the obligations under the existing lease and the new theatre could be let on commercial lease terms to generate an income.

3.23 However, given financial pressures that all Local Authorities are currently facing, a decision was taken following the Operational Property Review (OPR) which was reported to the Executive Committee in November 2022, and Full Council in December 2022, to prioritise investment in the Council's operational estate with funds being directed towards buildings that deliver statutory services, whilst simultaneously taking steps to divest the Council of ongoing maintenance liabilities at properties occupied by commercial tenants and/or those that are delivering non-statutory services to ensure a sustainable future for the Council's operational estate.

3.24 The cost of developing out such a scheme would not be financially viable for the Council and if it were to operate at a loss then there would be issues with regards to State Aid / Subsidy Control to consider by utilising public resources to subsidise a private profit-making entity.

3.25 The Council does not have the expertise to assess the needs of a redeveloped theatre.

3.26 This option has therefore been discounted.

3.31 Site Disposal – The Council could market its freehold interest in the site. This would minimise the risk exposure to the Council of continuing with the obligations under the existing lease.

3.32 However, with the existing lease to Trafalgar Group still in place, this would limit the pool of buyers significantly and the Council would lose any control it currently has over seeking to find a sustainable future for the Theatre.

3.33 It is therefore considered that the benefits of this option are less than the recommended option of seeking to negotiate a deal with the existing tenant to gift them the site and protect the future use of the site as a theatre.

3.34 If following further discussions, Trafalgar Group is not able / willing to take gifted ownership of the site, then the Council would need to consider marketing a long leasehold interest in the site to enable a private developer to take on the redevelopment under a Development Agreement that ensures the Council retains some control/influence over what development is brought forward on the site. Vacant possession would be required for this route to be possible.

3.35 Landlord Break Option

3.36 As detailed within this report, the existing arrangement is not sustainable, and therefore the existing lease arrangement with Trafalgar Group needs to be terminated to enable the works required on the building to be undertaken to support a sustainable future for the site.

3.37 There is a landlord break clause that requires not less than 24 months' notice to be served on the tenant, to trigger any of the following break dates:

- 2nd April 2026
- 2nd April 2031
- 2nd April 2036

3.38 Therefore, the earliest the Council can contractually end the lease would be 2nd April 2026, and that would require the Council to have provided the tenant with notice no later than 1st April 2024.

3.39 This paper is therefore being brought before Members now to enable the upcoming break notice to be triggered, and to seek authority to enter into formal negotiations with the existing tenant, Trafalgar Group, to secure a sustainable future for the Theatre. The intention of these negotiations being to formalise terms whereby the Council gifts its freehold interest in the site to the tenant, and potentially pays a reverse premium to the

tenant, to make this a viable proposition and to ensure the protection of the site for use as a Theatre into the future.

3.40 If following these discussions Trafalgar Group are unable or unwilling to take on the site and a positive conclusion is not reached, then the Council would need to openly market the site for redevelopment purposes to seek a private developer able to deliver a sustainable future for the site instead. To meet the requirements of the landlord break clause legal advice has been sought that confirms the Council in this instance should retain the freehold interest of the site and seek to enter into a Development Agreement with said developer to enable control over the development proposal to be delivered. A 999-year leasehold interest would then only be granted on completion of the agreed development.

3.41 It is important to note that the Council must trigger its landlord break notice in any scenario i.e. regardless of whether the discussions to gift the site to Trafalgar Group are successful or whether Trafalgar Group decide they are unwilling/unable to take gifted ownership of the site to ensure the Council's position is protected.

3.42 As the break notice requires no less than 24 months' notice to be provided, the earliest the break date would take effect would be 2nd April 2026. This therefore provides a long lead in period for the specific terms of the gifting of the site to be negotiated, agreed and executed by the Council and Trafalgar Group. Although every effort would of course be made to conclude these discussions as expediently as possible to minimise business interruption to the Theatre and crystallise the future security of the site, it is worth emphasising that triggering the landlord's break notice does not result in such a transaction needing to have completed by the date the break clause is triggered, as the tenant will continue to occupy and operate the theatre until April 2026 in any scenario (either under their existing lease, or as the freehold owners, in which case their lease would fall away and be superseded by the now tenants freehold ownership).

3.43 However, the element that is important to have concluded by the end of 2023, is confirmation from Trafalgar Group as to their intentions with regards to taking gifted ownership and the reverse premium to be agreed. This is time sensitive as if Trafalgar Group confirm that they are unwilling or unable to pursue this route, then the Council must have alternative development proposals in process for the landlord break notice to be legally triggered. Trafalgar Group have confirmed to the Council that they understand the importance of this timeline and have confirmed that they are able to, and actively are, working towards these timescales in the knowledge that a delay would result in the Council having to openly market the site to protect its position with regards to the landlord break.

3.44 It is not recommended that the Council delays action by looking to trigger any of the later break options as significant investment is required in the building in the short term. Therefore, there is significant financial and legal risk to the Council of delaying action with the likelihood of the Council being unable to meet its obligations under the lease (as the extent of works required cannot be carried out whilst the building is tenanted) between now and the second and third break options being extremely high.

Summary of Recommendations

3.45 The condition of the existing building means that continuing with the status quo is not a viable option, and redevelopment is required for the theatre to have a sustainable future.

3.46 The recommendation is that the Council seeks to agree terms with the existing tenant, Trafalgar Group, to gift the Council's freehold interest in the whole site. This divests the Council of its liabilities under the existing lease and would enable the tenant to viably invest in the building to ensure a sustainable future for a Theatre on the site which would be a legal requirement of any such transaction taking place (with any other supporting uses as they see fit to support the viability of the proposal).

3.47 In order to facilitate this and protect the Council's position, the Council must trigger its landlord break clause on or before 1st April 2024 in line with the provisions set out within the existing lease, thereby terminating the existing lease arrangement as of 2nd April 2026.

3.48 Should Trafalgar Group confirm they are unwilling or unable to take gifted ownership (and a reverse premium) of the site, then it is recommended that the Council openly markets a 999 year leasehold interest in the site to secure a private developer to undertake the required redevelopment under a Development

Agreement, with the lease only being granted with vacant possession on completion of the agreed scheme as set out within the Development Agreement.

3.49 Whilst not the preferred option, it is critical that alternative redevelopment is made possible via invocation of the lease break should Trafalgar Group not wish or not be able to take gifted ownership of the site.

4 IMPACT ON VULNERABLE ADULTS AND CHILDREN

4.1 N/A

5 POLICY IMPLICATIONS

5.1 N/A

6 FINANCIAL IMPLICATIONS

6.1 Included within Part 2 of this report.

7 LEGAL IMPLICATIONS

The following provisions should be considered in respect of the proposed disposal of the Churchill Theatre.

7.1 s.111 Local Government Act 1972

- The Council has power to do anything calculated to facilitate or is conducive or incidental to the discharge of any of its functions.
- The intended proposal to dispose in this report would be effected pursuant to that statutory power as well as pursuant to the Localism Act 2011, the General Power of Competence.

7.2 Section 123 of The Local Government Act 1972

7.2.1 If the intended proposal to dispose were to proceed, Local authorities have the power under s.123 of the Local Government Act 1972 to dispose of land for the best consideration that can reasonably be obtained (usually based on open market value).

7.2.2 s.123 of the Local Government Act 1972 confers power to the Secretary of State to give general consent for the purposes of land disposals by local authorities carried out under their powers in Part 7 of the 1972 Act.

7.2.3 The Local Government Act 1972, General Disposal Consent 2003 removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal of land where the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the well-being criteria in the Local Government Act 2000:

- a) the promotion or improvement of economic well-being;
- b) the promotion or improvement of social well-being;
- c) the promotion or improvement of environmental well-being; and the “undervalue” (i.e. the difference between the unrestricted value of the interest to be disposed of and the consideration accepted) is £2,000,000 or less.

7.2.4 Applications for specific consent should be sent to the Secretary of State and include the following information:

- a) Written description of the land and buildings, the location;
- b) Written description of how the land is currently held by the Council;
- c) Details of any leases, encumbrances such as easements;
- d) Summary of the proposed disposal/transaction.

7.3 Disposal of Land considered as Open Space

If there is any open space within the demise of any proposed disposal Section 123 (2A) will come into play and this states that any disposal of land considered as open space (any land, enclosed or not, on which there are no buildings, and the whole of the remainder of which is laid out as a garden or is used for recreation purposes or lies waste and unoccupied) requires the local authority to give notice of its intention to dispose of the land for two consecutive weeks in a newspaper circulating in the area in which the land is situated, and they must consider any objections to the proposed disposal which may be made to them.

7.4 The Mechanism of the Break Clause in the Relevant Lease

Clause 6.5 of the Relevant Lease provides for the relevant Landlord's Break Right in the following terms:

If the Landlord shall at any time during the Term require possession of the Theatre for the purpose of redevelopment of the same or the Building it may give to the Tenant not less than twenty four months' notice in writing to expire on 2 April 2026 or 2 April 2031 or 2 April 2036 and on expiry of such notice the Lease shall terminate but without prejudice to the rights and remedies of either party in respect of any antecedent claim or breach of covenant.

7.5 In order to be valid, the exercise of the Break Right:

7.5.1 Must be strictly in accordance with its provisions;

7.5.2 Is subject to the satisfaction of any conditions imposed by the Break Right

7.5.3 And any conditions to which the exercise of the Break Right is subject must be satisfied at any material time or times.

7.6 The principal/ only condition to which the Break Right is subject is that during the term, the Landlord shall require possession of the Theatre or the Building for the purpose of redevelopment. That is not the same as a landlord forming an "intention" for the purpose of s.30(1)(f) the Landlord and Tenant Act 1954.

7.7 The clause stipulates essentially that the Landlord comes to the view that it requires possession for the purpose of a redevelopment. In order to determine whether or not possession is required, the Council would first need to formulate potential scheme(s) of development – without doing so, it would not be in a position to determine whether or not it needed possession to carry it out.

7.8 The dictionary definition of "redevelopment" is different being: "the act or process of changing an area by constructing new buildings, typically following a demolition". Consequently, although a substantial refurbishment of the Theatre might constitute substantial works of construction for the purposes of s.30(1)(f) LTA 1954, it would probably not be "redevelopment" for the purpose of Clause 6.5 of the Lease.

7.9 Prima facie in clause 6.5 of the Relevant Lease the condition is triggered when the Landlord at

any time takes the view that possession is required. However, it is likely to be the case that it would be implied that:

- 7.9.1 The decision to carry out the redevelopment (which requires possession) is a bona fide one;
- 7.9.2 The Landlord is required to remain resolved to carry out redevelopment at the time of the service of the notice;
- 7.9.3 The Landlord is required to remain resolved to carry out the redevelopment at the effective date of the break.

7.10 Because Clause 6.5 of the Relevant Lease refers to “redevelopment” in a general sense, it is not necessary that the Landlord has settled on one particular redevelopment, as long as all options under consideration on both occasions identified above (i) constitute a redevelopment (as defined above) and (ii) all such options would require possession (as defined above) to have been obtained. If an option under consideration was “to do nothing”, then the validating intention would not be present.

7.11 It is only necessary for redevelopment to necessitate possession of the Theatre or Building – a wider redevelopment that incorporates one or both would equally be a qualifying redevelopment.

7.12 The necessary minimum steps are: the working out of scheme(s) of development; (all of which) require possession and which the Council subjectively has the intention of implementing on the date of the service of the notice and on the date that it takes effect; and

7.13 Clause 6.5 must be construed by reference to the usual principles of contractual interpretation, so that case-law on the construction of s.30(1)(f) of the Landlord and Tenant Act 1954 is of no direct relevance, i.e. (i) the treatment of the requirement of possession is likely to be treated as equivalent (ii) most, but probably not all, of the elements of s.30(1)(f) would be treated as constituting “redevelopment.”

7.14 Accordingly, the terms of the break right would not be satisfied if the Council was planning to sell - possession would be required for sale not redevelopment in those circumstances.

7.15 However, as long as the Council retained the freehold, there is no difficulty if the option adopted was the grant of a building lease/ agreement for lease granted for a premium (and possibly a ground rent), the exact terms of which (including the specification of the redevelopment) would need to be negotiated with a would- be developer.

8 PROCUREMENT IMPLICATIONS

- 8.1 The Public Contracts Regulations 2015 set out several exemptions to the relevant procurement regulations. In this case, Clause 10 (1) (a) applies in which the regulations do not apply to ‘acquisition...of land, existing buildings...or which concern interests in or rights over any of them’.
- 8.2 Therefore, it is presumed that there are no procurement implications relevant to this report, subject to legal advice that the process for lease arrangements and/or marketing and disposal is in compliance with the exemptions within the Regulations.

Non-Applicable Sections:	HR and Procurement
Background Documents:	

(Access via Contact Officer)	
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