

## Report to the Executive for Decision

### 3 April 2006

<b>Portfolio:</b>	Leisure
<b>Subject:</b>	<b>Land at Tips Copse, Stubbington</b>
<b>Report of:</b>	Director of Leisure and Environment
<b>Strategy/Policy:</b>	Parks and Open Spaces
<b>Corporate Objective:</b>	Protecting and Enhancing the environment

**Purpose:**

The purpose of this report is to advise members on the current situation with an area of woodland in Stubbington, together with the implications of taking on the responsibility for the management and maintenance of the land, which is of unknown ownership.

**Executive summary:**

Tips Copse is an area of land in Stubbington, the ownership of which is currently unknown. However, residents of the area and users of the site assume that the Council is responsible for its management and maintenance, although this is obviously not the case. Ward members often receive calls from residents regarding problems such as fly tipping and anti-social behaviour, eg. riding of motor cycles, problem trees. In the past, the Council has taken steps to deal with reported problems because, once the Council has become aware of a potential health and safety issue, it has not always been appropriate to ignore the situation.

Following a request from Councillor Mrs K Mandry, the Scrutiny Board agreed that the Leisure and Community Review Panel be requested to investigate the implications of the possible acquisition by the Council of the land at Tips Copse. After a site visit by members of the Review Panel and the Scrutiny Board, the matter was duly considered by the Panel at its meeting on the 15 March 2006 and the views of the Panel are set out in the briefing paper contained within this report. Any views of the Scrutiny Board, (which meets on 30 March 2006), will be reported at the meeting of the Executive.

**Recommendation:**

Members are asked to consider the situation, as set out in the attached briefing paper having regard to (a) the views of the Leisure and Community Review Panel (as set out in the briefing paper) and (b) any subsequent comments from the Scrutiny Board (which will be reported at the meeting).

**Reason:**

In order for the Executive to consider the current situation of land at Tips Copse, Stubbington and whether to pursue any action in the future.

**Cost of proposals:**

A capital sum of £10,000 to undertake remedial works to bring the site up to an acceptable condition.

An increase in the revenue budget of £1000 in order to undertake routine maintenance.

A potential undetermined sum for compulsory purchase of the site.

**Appendices A:** Site Plan

**B:** Risk Assessment

**Background papers:** None

**Executive Briefing Paper****Date:** 3 April 2006**Subject:** Land at Tips Copse, Stubbington**Briefing by:** Director of Leisure and Environment**Portfolio:** Leisure**INTRODUCTION**

1. Following a request from Councillor Mrs K Mandry, the Scrutiny Board agreed that the Leisure and Community Review Panel be requested to investigate the implications of the possible acquisition by the Council of land at Tips Copse, Stubbington. After a site visit by members of the Review Panel and the Scrutiny Board, the matter was duly considered by the Panel at its meeting on the 15 March 2006 and the views of the Panel are as follows:-
  - (i) any appropriate investigations required to be carried out by the Council to ascertain ownership of the land at Tips Copse, Stubbington, be supported;
  - (ii) if land ownership of the land at Tips Copse, Stubbington is ascertained, the proposal that the Council liaise with the owners to advise on management of the site and, subject to the owner's agreement, progress a partnership/management agreement, be supported;
  - (iii) if it is not possible to establish land ownership, the proposal that the Council consider the acquisition of the land compulsorily, be supported;
  - (iv) the financial costs, identified in paragraph 33 of the report, required to undertake remedial works and sustain routine maintenance, (plus a potential undetermined sum for compulsory purchase of the site should a decision be made to acquire the land), be supported; and
  - (v) the re-establishment of the Friends of Tips Copse Volunteer Group referred to above, be supported.

The Scrutiny Board will consider the matter at its meeting on 30 March 2006 and the comments of the Board will be reported at the meeting of the Executive.

**TIPS COPSE**

2. Tips Copse is a linear piece of ancient woodland. It is 2.5ha in size and is a Site of Importance for Nature Conservation (SINC). The woodland also has a Tree Preservation Order in place (TPO). A plan of the site is attached at Appendix A.

3. The site is considered to have high Conservation Value as Fareham has little Ancient Woodland and Tips Copse exhibits good potential for a diverse flora with management input. Wildlife Value would, no doubt, increase if disturbance levels were brought down to an acceptable level.
4. The National Vegetation Classification (NVC) for this woodland is a W10a *Quercus robur* - *Pteridium aquilinum* - *Rubus fruticosus* woodland, typical sub-community. This is a woodland type common throughout the Borough.
5. Tips Copse does have a considerable diverse ground flora and a recent survey undertaken by Hampshire Biodiversity Information Centre indicated that there were 12 ancient woodland indicators present. This is a good score.
6. Badger activity has occurred in the past, but there is little evidence of current occupation.
7. As part of the Council's research work on the Greenspace Study, an opportunity was identified that the Council could "Acquire the ownership of the Tips Copse site and enhance quality as an area of accessible natural greenspace".

## **OWNERSHIP OF THE LAND**

8. Investigation as to the ownership of the land has revealed the following:-
9. On perusal of the Council's title deeds for land within the vicinity, an Abstract of Title showed that Tips Copse was once part of Newlands Farm, in 1918. At that time, this land was owned by Charles Henry House. In 1925, the farm was conveyed to Maurice Henry Neville House.
10. Newlands Farm was sold by the Executors of Mr MHN House in 1961 and in 1982, was transferred to Basil Baird (Fareham) Limited with an Absolute Title under Title Number HP219620. This title does not include Tips Copse. It is therefore clear that Basil Baird's family, or the Company, have never owned Tips Copse.
11. Mr M H N House died in 1952 and one of his Executors was a Mr Peter Goodman of Warner Goodman and Streat, Solicitors, Fareham. Enquiries were made to Mr Peter Goodman whose recollection was that Tips Copse was sold to Mr Maurice Rupert Burney of Burney Builders.
12. Burney Builders/Heathfield Builders Limited developed the Red Lion Estate in Stubbington; part of which abuts Tips Copse. Mr Burney's firm ceased trading many years ago, either by being bought out or dissolved. Mr M R Burney (deceased), was the father of Mr Burney (deceased) of Kingswell Burney, Solicitors and he acted on behalf of his late father.
13. Mr Money, Solicitor at Kingswell Burney, has confirmed that the firm did act for the late Mr Burney, but that there were no records going back 10 years. Mr Money stated that Mr Peter Madden of Addison Madden, Solicitors, Portsmouth was an Executor for Mr Burney's Will.

14. On the 22 November 2000, the Legal Department wrote to Mr Peter Madden requesting information regarding the late Mr Burney and if the firm held any deeds or correspondence in respect of Tips Copse. No reply was received and, to date, this has not been pursued pending the resolution of the Council's intentions regarding this matter.
15. Up-to-date Searches have been made at H M Land Registry and it has revealed that:-
  - the area hatched black and number 1 on the attached plan is registered under title number HP366721 to Crofton Manor Farms Limited.
  - the area cross-hatched black and numbered 2 is registered with a Possessory Title, under Title Number HP 633049 to Sandra Dawn Hill of 5 Oakdown Road Stubbington – this would imply that this property has encroached into Tips Copse and used it for the benefit of 5 Oakdown Road for more than 12 years.
  - The area hatched black and numbered 3 is registered with an Absolute Title, under Title Number HP 289140 with an Absolute Title to Arthur Edward Madden and Peggy Joyce Madden of 79 Harold Road Stubbington – this would imply that this property has encroached into Tips Copse and used it for the benefit of 79 Harold Road for more than 20 years.

#### **ACQUISITION OR MANAGEMENT OF THE LAND**

16. As set out above, at present the Council does not know who owns the land. Before it can consider what available options there are, it will be necessary to make further enquiries into its ownership, possibly by pursuing enquiries with Mr Peter Madden and other registered owners of small parts of the land, especially Crofton Manor Farms Ltd. The options open to the Council vary, depending on whether ownership can be established.
17. If ownership can be established and the Council only wishes to carry out limited works, such as fencing and path repair, Section 10 of the Local Authorities (Land) Act 1963 enables a local authority, for the benefit or improvement of its area, to erect any building or construct or carry out works on land and may repair, maintain and insure any building or works erected, constructed or carried out and generally may deal with any such building or works in a proper course of management. Whilst this power enables the Council to carry out works on private land, it would be necessary to obtain the owner's consent to go on to the land.
18. A more specific management power relating to countryside areas is contained in Section 39 of the Wildlife and Countryside Act 1981. This section confers a general power on Local Planning Authorities to enter into management agreements with owners and occupiers of land for the purpose of conserving or enhancing the natural beauty or amenity of land or promoting its enjoyment by the public. The agreement can be for a specified period or indefinitely and can impose restrictions and obligations as to carrying out works or operations and

as to the use of the land. The agreement can run with the land and bind successive owners.

19. If an owner cannot be found, then the Council could consider acquiring the land compulsorily. The purpose for which an authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought and that in turn will influence the factors which the confirming Minister will take into account in determining confirmation. Circular advice states that authorities should look to use the most specific power available for the purpose in mind and only use a general power where unavoidable. However, although there are a number of powers relating to the compulsory acquisition of land with a view to providing recreational facilities (Section 19 of the Local Government Act (Miscellaneous Provisions) Act 1976 – leisure/sports facilities, Section 89(5) of the National Parks and Access to the Countryside Act 1949 – reclamation of derelict and unsightly land, Sections 17, 21 and 21(4) of the 1949 Act establishment of nature reserves, Sections 76 and 77 of the 1949 Act – provision of public access, Section 164 of the Public Health Act 1875 – land for use as public parks or pleasure grounds; Section 7 of the Countryside Act 1968 – provision of country parks) none of these specific powers seem to cover the purpose for which the Council might wish to acquire the land at Tips Copse.
20. In the circumstances, the most appropriate power appears to be that contained in Section 226(1) of the Town and Country Planning Act 1990. This section contains two grounds and the Secretary of State takes the view that an Order under section 226(1) should be expressed in terms of either paragraph (a) or (b). Paragraph (a) deals with the acquisition of land to facilitate the carrying out of development. Subject to the Secretary of State's consent, paragraph (b) of Section 226(1) authorises the authority to acquire land which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. The Circular states this paragraph is intended to be used primarily to acquire land which is not required for development, redevelopment or improvement or as part of such a scheme.
21. If an Order is made, it must be served on owners, occupiers, tenants and all persons with an interest in the land. Section 5(1) of the Compulsory Purchase Act (CPA), 1965 requires the Authority to make 'diligent' enquiries to ascertain all those who should be served with a notice of the making of the Order. There is a general power under Section 5A of the Acquisition of Land Act 1981 to serve a Requisition for Information on persons to establish the ownerships and interests of land an authority wishes to acquire. Case law has established that, for the purpose of Section 5 (1) of the 1965 Act, this duty to "make diligent enquiry requires some degree of diligence but does not involve a very great inquiry". The Site Notice procedure provides additional means of alerting people who might feel that they have grounds for being served with a notice.
22. Until it is known if any owners, etc., can be found and, if they can, whether they may object to the Order, it is not possible at this stage to give any detailed indication of timing or costs. If an owner comes forward and requires a public inquiry to consider any objection, then the Council would have to pay the administrative costs of the Inquiry and the expenses incurred by the Inspector in

holding the Inquiry. Circular advice is that, typically, an Inquiry would be held around six months from the submission of the Order for confirmation. At present, the daily amount of costs for an Inquiry is £630, but this is subject to periodic revision. In addition, the Council would incur its own legal and other costs for representation and witnesses. Likewise, the Council would be required to meet the Inspector's costs associated with the consideration of written representations, if all objectors agreed to this procedure being used and the confirming Minister deemed it appropriate, as an alternative to holding an Inquiry. If there are objections the confirming Minister must confirm the Order. If there are no objections or they are withdrawn, the confirming Minister may authorise the Council by notice to confirm its own Order.

23. Once confirmed, the Council would of course have to pay any owner, etc., compensation, based on the value of the land and other factors. If such compensation cannot be agreed, the matter must be referred to the Lands Tribunal for determination. The assessment of compensation is a complex and specialised field, governed by extensive case law and, in the event of disagreement, could lead to the Council incurring considerable costs. However, subject to serving notice to treat and notice of entry on owners, etc., possession can be taken before compensation is settled. As an alternative to the notice to treat procedure, an acquiring authority may prefer to proceed by general vesting declaration. This enables the authority to obtain title to the land without having first to be satisfied as to the owner's title or to settle the amount of compensation. It can therefore be particularly useful where the owners, etc., are unknown.

## **SUMMARY OF ACQUISITION OR MANAGEMENT OF THE LAND**

- Establish ownership of land and enter into a Management Agreement.
- Establish ownership of land and purchase the land.
- Unable to establish ownership, the Borough Council acquires the land compulsorily – (under paragraph 20, the reasons for the Compulsory Purchase Order are set out and paragraphs 21 and 22 explain the procedure).
- If an Order is confirmed, the Council could obtain title to the land by either purchasing the land from the owners who objected to the Order, or if no owners can be found or no settlement of terms can be agreed, the Council can enter into a Vesting Declaration and pay monies for the land into the Chancery Division of the High Court, pending either agreed terms or any interested parties being found subsequent to the Vesting Declaration being paid.
- If monies are paid into Court and, after 10 years, no person has claimed ownership of the land, the monies (less administration fee) can be reclaimed and paid back to the Council.

## **MANAGEMENT AND MAINTENANCE IMPLICATIONS**

24. There are a number of management issues that need to be considered should the Council consider acquiring or taking on full management responsibility for the woodland. These can be split into two areas; (a) Issues that would have to be resolved as soon as practical following the land becoming the Council's responsibility and (b) planned maintenance that would have to be undertaken on an annual basis together with projects that could be undertaken by volunteers.

**(a) Current management issues (priority actions)**

25. The problem that causes most concern on this site is the fact that has open access. This allows for frequent abuse by the use of motor cycles and in some cases, fly-tipping; both of which are potential hazards to pedestrians. Ideally, the site should be fenced with a post and rail fence as a minimum. The cost of this would be in the region of £8,000. Obviously, a more substantial fencing would incur greater cost.
26. As a consequence of the use by motor cycles, a number of the paths have been damaged and are now uneven. In order to rectify this, it would be necessary to purchase and spread 15-20 tonnes of aggregate. The cost of this work would be in the region of £1,000.
27. There would be a need to remove some large trees that have been undermined and some decayed branches close to the path network. This would require a tree contractor for at least three days, at a cost of approximately £1,000.

**(b) Future management**

28. There is little evidence of management in recent years. Much of the path work is intact, but could ideally be widened in places; there is occasional pitting on the paths also which should be filled and smoothed. Other considerations would be the following:
- General thinning of woodland canopy
  - Glade creation
  - Path upgrade and widening
  - Interpretation
29. It is considered that some of this work could be undertaken by a volunteer group, however, it would be necessary to have approximately £1,000 added to the revenue budget to enable routine operations to be undertaken.
30. Establishing a volunteer group would initially need resources from the Rangers, but it is considered that this could be incorporated into their everyday tasks.

**COMMUNITY ENGAGEMENT**

31. There is scope for community involvement at Tips Copse in the form of a small local group; similarly, it is likely that an individual would be found to act as a voluntary warden for the site. In order for a volunteer group to be viable it would need at least four or five members.



32. It is understood that a number of local residents have, in the past, undertaken small tasks in this woodland and it would be possible to re-establish that group.

### **FINANCIAL IMPLICATIONS**

33. The financial implications of taking on the woodland would be as follows:-

- A capital sum of £10,000 to undertake remedial works to bring the site up to an acceptable condition.
- An increase in the revenue budget of £1,000 in order to undertake routine maintenance.
- A potential undetermined sum for compulsory purchase of the site.

### **THE WAY FORWARD**

34. It is assumed that, at the present time, the Council would not wish to acquire the land if an owner could be traced. The problems experienced by the Council are due to the fact that officers have been unable to make contact with an owner and to work with that owner, to try and resolve some of the concerns that residents have i.e. fly tipping and motor cycle use.
35. In order to progress the matter, it would be necessary to undertake further investigation into land ownership to establish if owners can be found.
36. If owners can be found, then the Council could consider providing assistance and advice to reduce resident concerns and also in the management of the copse, from a conservation point of view.
37. If ownership can not be established then the Council could consider undertaking the legal process as outlined in paragraphs 20 to 23 above.

### **CONCLUSION**

38. This report has identified the implications and financial commitment required should the Council decide to pursue management responsibility for the woodland known as Tips Copse, Stubbington.

**Reference Papers:** Scrutiny Board, 29 September 2005, Minute 13(c)  
Leisure & Community Review Panel – 15 March 2006 – Tips  
Cope

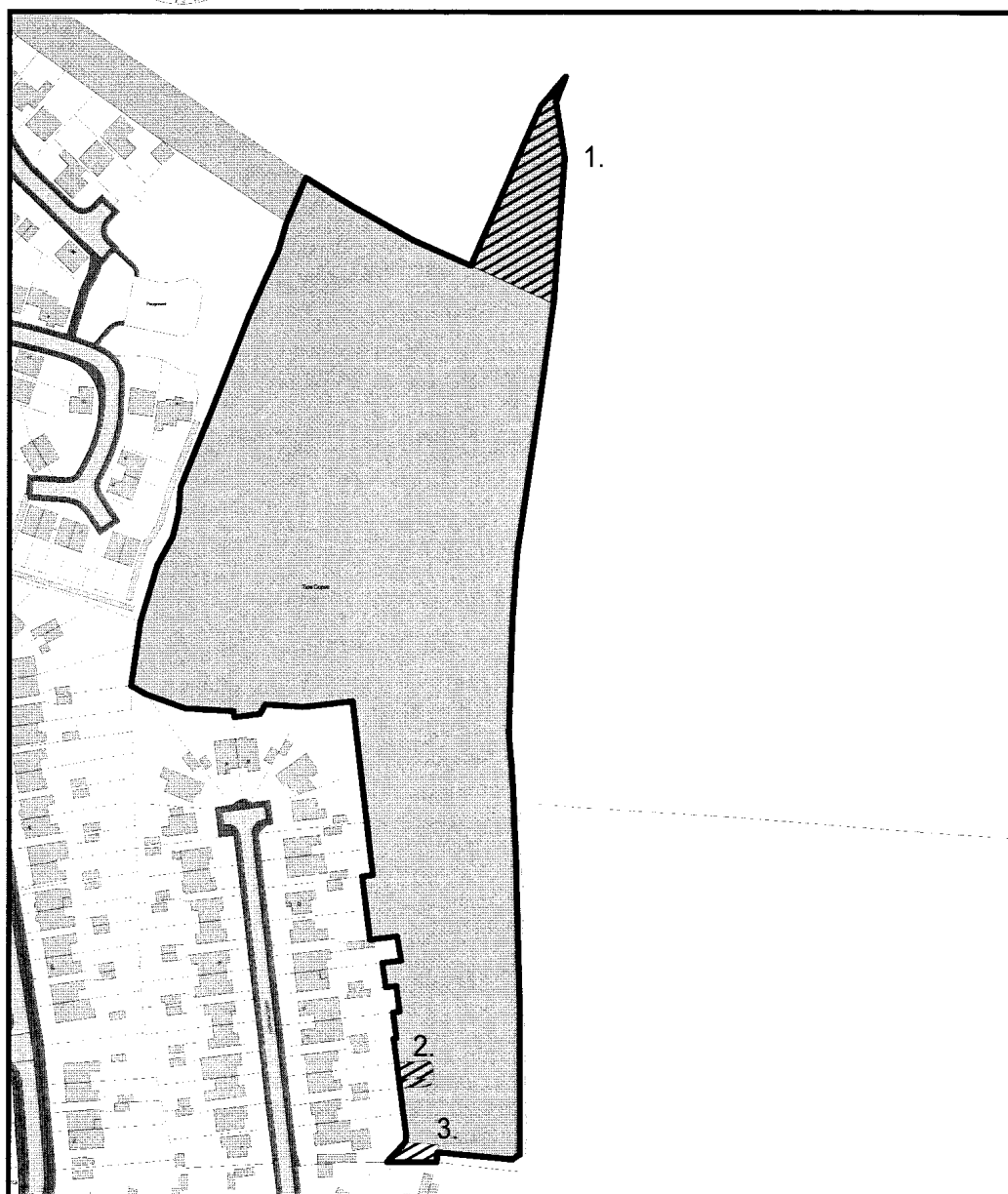
**Enquiries:** For further information on this report please contact Sue Woodbridge.  
(Ext 4546)

## APPENDIX A



# FAREHAM BOROUGH COUNCIL

PO BOX 82 CIVIC OFFICES CIVIC WAY FAREHAM PO16 7TT



Map Ref. Ref.  
Date 16th February 2006 Scale  
Site:-  
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**APPENDIX B****RISK ASSESSMENT**

<b>Impact</b>	<b>Description</b>	<b>Potential Risks</b>	<b>Comments</b>	<b>Potential Opportunities</b>	<b>Comments</b>
<b>CORPORATE OBJECTIVES</b>	Implications in relation to: <ul style="list-style-type: none"> <li>• achieving Corporate Objectives and Priorities</li> <li>• Corporate Governance Responsibilities</li> </ul>	No significant risks		Protecting and enhancing the environment	The woodland is currently unmanaged
<b>PARTNERSHIPS</b>	Implications for any existing partnership arrangements Risks or opportunities for new partnerships	No significant risks		Development of a new friends group for Tips Copse.	Initial increase in resources needed from Rangers but this is achievable.
<b>FINANCIAL</b>	Implications in relation to: <ul style="list-style-type: none"> <li>• Budget Constraints</li> <li>• Funding</li> <li>• Contractual Obligations or Penalties</li> <li>• Use of Land or Assets</li> </ul>	This proposal cannot be met within existing budgets..	Capital funding of £10,000 and £1000 revenue would be required plus the unquantifiable costs of the compulsory purchase process and the costs of acquisition of the land in the event of a successful CPO.	No significant opportunities	
<b>LEGAL</b>	Implications in relation to: <ul style="list-style-type: none"> <li>• Statutory or discretionary powers</li> <li>• National Legislation (e.g. Human Rights, Equal Opportunities, Race equality etc)</li> <li>• Failing to comply with legislative requirements of service</li> <li>• Potential litigation action</li> </ul>	The total costs of compulsory purchase action are unquantifiable at the present time on the basis of current information The Council's potential liabilities under any agreement with the owner of the		No significant opportunities	

Impact	Description	Potential Risks	Comments	Potential Opportunities	Comments
		land are unquantifiable at the present time. Where the Council meets the cost of enhancing land which is not in the Council's ownership, there is a risk that the works will not be maintained by the land owner.			
<b>PERSONNEL</b>	Implications in relation to: <ul style="list-style-type: none"> <li>• Organisational change</li> <li>• Employee policies and conditions</li> <li>• Skill availability</li> <li>• Training and Development</li> </ul>	No significant risks.		No significant opportunities.	
<b>SERVICE</b>	Implications in relation to: <ul style="list-style-type: none"> <li>• performance targets</li> <li>• the operation of the service</li> <li>• the need for Change Management</li> <li>• Competitive advantage of the service</li> <li>• Technological impacts</li> <li>• Innovation</li> <li>• The needs of residents, businesses or visitors to the Borough</li> <li>• Social inclusion</li> </ul>	No significant risks.		No significant opportunities.	
<b>HEALTH &amp; SAFETY</b>	Implications for the Health & Safety of the Public, Employees or Members	No significant risks.		Opportunity to improve the safety of the site already	

Impact	Description	Potential Risks	Comments	Potential Opportunities	Comments
				used by residents.	
<b>CRIME &amp; DISORDER</b>	Implications in relation to: <ul style="list-style-type: none"> <li>• Council's Section 17 Obligations</li> <li>• Community Safety</li> </ul>	No significant risks.		A presence on site could help reduce anti-social behaviour.	
<b>ENVIRONMENTAL</b>	Implications in relation to: <ul style="list-style-type: none"> <li>• Sustainability</li> <li>• Public Health</li> <li>• Physical risks</li> </ul>	No significant risks.		No significant opportunities.	