

<p>Cabinet</p> <p>30 January 2018</p>	
<p>Report of: Ann Sutcliffe, Acting Corporate Director, Place</p>	<p>Classification: Unrestricted</p>
<p>Confirmation of Article 4 Direction – Office (B1a) to Residential (C3)</p>	

Lead Member	Councillor Rachel Blake, Cabinet Member for Strategic Development, Waste and Air Quality
Originating Officer(s)	Marissa Ryan-Hernandez (Strategic Planning Manager), Tom Clarke (Planning Officer)
Wards affected	Bethnal Green; Blackwall & Cubitt Town; Bow West; Canary Wharf; Limehouse; Mile End; Poplar; Spitalfields and Banglatown; St Katharine's and Wapping; St Dunstan's; St Peter's; Weavers; Whitechapel
Key Decision?	Yes
Community Plan Theme	A fair and prosperous community

Executive Summary

On 19th September 2017 the Mayor-in-Cabinet made an Article 4 direction to remove permitted development rights which allow change of use from offices (Use Class B1(a)) to residential (Use Class C3) without a full planning application in particular parts of the borough. The direction covers key concentrations of office and economic activity such as around the City Fringe and the north of the Isle of Dogs and seeks to maintain the function and viability of the areas covered. The direction is supported by a justification report (attached as Appendix 2) and has been informed by detailed and robust evidence base on offices and employment land which has supported production of the Council's new Local Plan.

In order for the Article 4 direction to take effect, it must be confirmed. It is required from 1st June 2019 to ensure continued protection of the locations cited above, as an existing exemption from the form of permitted development outlined will cease on 31st May 2019.

A period of public consultation on the Article 4 direction and the boundaries to which it applies has now been undertaken, having run between 2nd October and 12th November 2017. The Secretary of State has been informed of the direction. Therefore, all statutory requirements have been met.

As such, this report seeks approval to confirm the Article 4 direction and for it to take effect following the current exemption ceasing on 31st May 2019.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Confirm the Article 4 direction made on 19th September 2017 which removes permitted development rights from offices (B1(a)) to residential (C3) within the areas shown on the map attached as Appendix 1;
2. Note that if confirmed, the Article 4 Direction will come into effect on 1st June 2019.

1. REASONS FOR THE DECISIONS

- 1.1 Permitted development ("PD") between offices (use class B1(a) and residential (use class C3) was introduced in May 2013. The Council objected to this form of permitted development, and in common with other inner-London boroughs was successful in gaining an exemption which covered the west of the borough (City Fringe) and the north of the Isle of Dogs. The areas of exemption covered most of the borough's designated office/employment locations which include areas of global economic significance (Canary Wharf) and a significant quantum of office space (such as Aldgate). An unmanaged loss of office space in those locations could have a negative impact on the borough's supply of office floorspace, jobs and the ability to meet future office and employment growth projections as set by the London Plan.
- 1.2 The current exemption will cease on June 1st 2019. The Council is able to remove permitted development rights where there is local justification for doing so, and therefore maintain the areas of exemption, by implementing what is termed an Article 4 direction.
- 1.3 There are two types of Article 4 direction – 'immediate' and 'non-immediate'. An immediate Article 4 direction takes effect either immediately following it being made, or at any other time within one year of being made. A 'non-immediate' Article 4 direction takes effect after a period of not less than one year after being made, but not longer than two years. The main difference is that if the Article 4 takes effect less than one year from being made the Council is liable to compensate affected landowners. After one year, there is no compensation. In this case an immediate Article 4 direction is not necessary because the exemption is in place until 1st June 2019 which has allowed sufficient time to prepare the Article 4 direction before 1st June 2018.
- 1.4 This Article 4 direction is supported by a justification report, attached as Appendix 2. The attached report is itself underpinned by national and regional guidance and the Council's evidence base on employment. The latter consists of the Employment Land Review (2016) ("ELR") and Preferred Office Location Study (2017) which were prepared to support the Council's new Local Plan for which a 'Regulation 19' pre-submission consultation closed on 13th November 2017.

- 1.5 The Mayor of London is supportive of London's existing areas of exemption being retained, articulated in particular through the Central Activities Zone Supplementary Planning Guidance (CAZ SPG) and City Fringe Opportunity Area Planning Framework (OAPF). The importance of offices to the existing exemption areas is also demonstrated through the fact they were exempted in the first place.
- 1.6 The Council used this opportunity to identify further areas of the borough not covered by the existing exemption in which permitted development rights from offices to residential should be removed. This resulted in the following areas being additionally included within the Article 4 direction, supported by recommendations within the ELR:
- The designated town centre (Neighbourhood Centre) at Mile End.
 - The remaining areas of Cambridge Heath and Whitechapel that fall outside of the existing exemption zone but within existing or proposed Local Plan designations (employment and town centres).
 - The designated Local Office Location (proposed Local Employment Location within the new Local Plan) at Blackwall.
- 1.7 A borough-wide Article 4 direction was not considered as appropriate due to the Council having insufficient evidence to justify it. The ELR advocates a "targeted" approach to focus on locations such as the Central Activities Zone/City Fringe, designated employment locations and town centres. A previous attempt in Islington to implement a borough-wide Article 4 was refused by the Secretary of State on the basis of it being applied "disproportionately" with insufficient evidence to justify the approach. A less comprehensive boundary was subsequently agreed. Officers therefore consider the proposed boundary of this Article 4 direction to be proportionate, protecting the borough's existing supply of office floorspace where it is most important and viable while according with the spirit of the permitted development to help meet housing targets elsewhere.
- 1.8 To make and confirm Article 4 directions there are statutory requirements that must be addressed to comply with legislation (outlined in paragraph 3.15), such as, completing a period of formal public consultation. This was carried out between 2nd October and 12th November 2017, and details of the consultation are set out in paragraphs 3.16 and 3.17. The Article 4 direction has been prepared in accordance with all statutory requirements.

2. ALTERNATIVE OPTIONS

ALTERNATIVE OPTION A: NO ARTICLE 4 DIRECTION IS ISSUED

- 2.1 The Council could decide to cancel this Article 4 direction. This option is not recommended, as without the ability to effectively assess proposals for change of use from offices through the planning system it is likely the borough's supply of office floorspace and the success and viability of key employment locations would be undermined. The importance of those areas

has been established by their inclusion within the existing areas of exemption. The loss of offices would compromise the borough's ability to meet employment projections and maximise jobs for local people. It would also mean that the Council would not be able to manage the location, size, tenure mix or quality of new housing being produced through this form of permitted development.

ALTERNATIVE OPTION B: ARTICLE 4 DIRECTION IS MODIFIED

- 2.2 The Council could decide to propose significantly amended boundaries for the Article 4 direction, or seek to extend it to cover the whole borough. This option is not recommended. The existing exemption area which this Article 4 direction covers, contains the most viable and important areas of existing office floorspace which are generally located within the most accessible parts of the borough. This Article 4 has already slightly extended the existing exemption by including parts of the Cambridge Heath and Whitechapel designated town centres/proposed Local Employment Locations (LELs) outside of the existing exemption zone, the designated Local Office Location (LOL) at Blackwall (proposed to be re-designated as a Local Employment Location (LEL) within the emerging Local Plan), and the Mile End designated neighbourhood town centre as recommended by the Council's evidence base (Employment Land Review 2016). Our evidence does not justify an Article 4 direction elsewhere but it does recommend the "targeted" approach being proposed. A recent attempt by London Borough of Islington to introduce a borough-wide Article 4 direction was refused by the Secretary of State on the basis of it being unjustified. There is an urgent need to have the Article 4 direction in place by 1st June 2018. This key deadline could be compromised if the Council undertook the risky strategy of attempting a borough-wide Article 4, as this would require further and more extensive research which may not support the case, be more prone to challenge and could be more challenging to defend. A further statutory public consultation would also be required, creating additional delay.

3. DETAILS OF REPORT

- 3.1 On 30th May 2013 the Town and Country Planning (General Permitted Development) Order 1995 was amended to enable permitted development – in other words a change of use without need for a full planning application – from offices (B1(a)) to residential (C3) via a process known as "Prior Approval".
- 3.2 This was initially introduced for a period of three years, but was subsequently made permanent. Offices need not be vacant in order for the permitted development to apply. The only stipulation was that they had been in office use (B1(a)) prior to 30th May 2013 and that there were no concerns for the local authority arising from:
- Transport and highways impacts of the development
 - Contamination risks on the site
 - Flooding risks on the site

- 3.3 Properties coming into use as offices from 30th May 2013 or later were not eligible for this form of permitted development.
- 3.4 The Government's intention to introduce this permitted development right was communicated to local authorities in January 2013. At that point they were given the opportunity to apply for exemptions, with the Council duly making such an application while also objecting to this permitted development right more generally.
- 3.5 The application for exemption was successful in part, with two exemption areas being agreed within the borough. These were:
- The area of the borough to the west which is covered by the GLA's City Fringe Opportunity Area Planning Framework and the Central Activities Zone designation.
 - The area of the borough to the east which is covered by the Isle of Dogs Community Infrastructure Levy (CIL) charging schedule.
- 3.6 Both of those areas contain a significant volume of existing and potential B1(a) floorspace including employment clusters of international significance and strategic importance to London. Land values for residential use are very high in those areas, making residential development lucrative in comparison to commercial uses. Without the exemption, it is likely that a significant quantum of B1(a) floorspace may have been lost. However, the exemption will cease on 31st May 2019.

Mechanism to maintain exemption from PD

- 3.7 In order to remove permitted development to respond to local circumstances, local authorities may make what are termed 'Article 4' directions. Article 4 directions may be brought forward as 'non-immediate' to take effect between one-two years from notice being issued or 'immediate' in which case for a one year period local authorities are liable to compensate landowners affected by the Article 4. To avoid compensation payments, non-immediate Article 4 directions can be made which take effect at least one year from the date of confirmation.
- 3.8 In most cases the local authority would need to make a decision on the urgency of the Article 4 direction; in other words assessing whether an immediate Article 4 direction is necessary due to the extent of loss (or potential loss) of employment space irrespective of compensation liabilities, or whether a non-immediate Article 4 direction to avoid compensation is more appropriate. Tower Hamlets benefits from knowledge that its existing exemptions from permitted development will cease on 31st May 2019. Therefore an immediate Article 4 direction need not be a consideration, unless the recommendations of this report are not followed.

The need for an Article 4 direction

- 3.9 The importance and significance of employment land (within the 'B' uses of the Town and Country Planning (Use Classes) Order 1987 (as amended)) and floorspace for providing jobs and fuelling economic growth and regeneration in the borough is recognised by the Council. Alongside economic growth strategies and programmes of support for local enterprise, the Council actively seeks to protect and improve such business land and floorspace through the planning process by protecting existing viable employment land and floorspace, designating key employment clusters and areas of employment activity and supporting new employment space in the most viable locations. This not only supports existing businesses, helping them to thrive, but also to encourage new enterprise and growth to provide job opportunities for local people.
- 3.10 Prior to introduction of this PD, the provision of B1(a) floorspace in the borough could be fully managed through the planning system to ensure proper consideration of proposals which might result in the loss or reduction of B1(a) floorspace. Since its introduction, the ability of the Council to maintain sufficient floorspace to help meet future projected need has been undermined.
- 3.11 Much employment space in the borough is within the B1(a) office use class. Offices also make up the bulk of the borough's significant projected future employment growth as set out in the Greater London Authority's (GLA) London Plan and this is reflected by the recent 'Employment Land Review' (ELR) (2016) produced as evidence for the Council to support its own new Local Plan (anticipated to be adopted in 2018). The London Plan projection is for 125,000 new jobs by 2036.
- 3.12 The ELR identified a significant shortfall of 547,000sqm of office space to meet the London Plan projection. That means it is essential that there is no unmanaged loss of existing office floorspace; any loss through permitted development would further compound the existing deficit.
- 3.13 Furthermore, residential developments arising from permitted development from offices are not required by the legislation to provide the affordable housing, amenity space, child playspace or minimum space standards that might be expected of proposals subject to full planning applications. Given the height and scale of many existing office buildings within the exemption areas, it is quite plausible that residential conversions would severely constrain the Council's ability to provide sufficient affordable housing to meet identified need and to ensure appropriate living standards for the health and wellbeing of future residents.

Timetable

- 3.14 Without the Council confirming the Article 4 direction to remove permitted development, there is a risk that the employment function of many of the borough's key employment areas would be undermined and the ability to meet projected future growth would be constrained. Therefore the Council

should take steps to maintain the current exemptions in place beyond the cessation date of 31st May 2019 by confirming the Article 4 direction by 1st June 2018 to avoid any payment of compensation. That deadline is critical, as due to the high land values in the borough the Council's financial liability should an immediate Article 4 direction become necessary could be considerable.

Requirements to produce an Article 4 direction

- 3.15 In order to make an Article 4 in accordance with Regulation (10) of the Town and Country Planning (General Permitted Development) (England) Order 2015 direction a number of tasks must have been completed. Table 1 below sets these out and states how they have been addressed:

Table 1:

Requirement	How the requirement has been met
The change of use to be addressed by the Article 4 direction is clearly set out	The use classes to which the direction applies are clearly set out on the direction (B1(a) to C3).
Identification of the geographical boundaries to which the Article 4 will apply	The boundaries have been recorded on the Councils GIS system, and explanation is provided within the justification report (Appendix 2)
For boundary information to be mapped and recorded and made available	The boundaries have been electronically mapped and made available on the Council's website
Compilation of robust and up-to-date evidence to support the Article 4 direction and the boundaries/ properties to which it would apply	The Article 4 is supported by evidence base which has been produced to support the Council's new Local Plan, and has been made available for comment as part of statutory public consultation
For the evidence to inform a clear justification to be included with decision-making reports and be published alongside the Article 4 direction	A justification paper has been produced and is included as part of this report (Appendix 2)
Consideration of whether an immediate Article 4 direction is required, and if so for an assessment to be completed to identify the likely financial liability and risks to the Council from doing so	This was completed and included within the previous Cabinet report to support the making of the Article 4 direction, in this case an immediate Article 4 direction is not required
Undertaking public consultation for a period of at least three weeks, including publishing a Public Notice on the Council's website and in local press, displaying site notices at	Consultation was undertaken over a six week period between 2 nd October and 12 th November and all requirements were met, as outlined in paragraph 3.16

locations to be covered by the Article 4 direction, and for the Secretary of State to be informed in writing of the Confirmation of the Article 4 direction	
Publication of a notice of the confirmed Article 4 direction including maps and supporting information on the Council's website for at least one year before the Article 4 direction takes effect	This will be published on 1 st June 2018 should the Article 4 direction be confirmed following this Cabinet meeting, and the notice is attached as Appendix 5.
Publication of a notice on the Council's website when the Article 4 direction takes effect on 1 st June 2019	This will be published on 1 st June 2019 should the Article 4 direction be confirmed following this Cabinet meeting, and the notice is attached as Appendix 6.

Public consultation

- 3.16 Public consultation on Article 4 directions is guided by Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. This requires that consultation must take place for a period of at least 21 days (three weeks); the Council undertook consultation over an extended period of six weeks between 2nd October and 12th November 2017. In support of the consultation, a public notice was published in local press (East London Advertiser) and on the Council's website, an e-mail was sent to persons registered on the Council's planning policy contact list and site notices were displayed in prominent locations throughout the areas covered by the direction. The Secretary of State was also informed in writing.
- 3.17 Following the period of statutory consultation a total of three representations were received. A summary of the main points raised by each representor are set out below:

Historic England – Support for the proposed direction, noting much of the proposed areas are covered by conservation area designations so therefore mixed use in those locations will likely benefit their continued sustainability and identity.

Port of London Authority – Confirmation the Authority has no comments.

Transport for London – No objection, and ensures office accommodation continues to be located in the borough's most accessible locations.

Resource implications

- 3.18 Where an Article 4 direction is in place, planning applications for developments that would otherwise have benefited from permitted development (or Prior Approval) are free of charge. There are clear benefits from introducing this Article 4 direction in terms of protecting office floorspace, jobs and the viability of strategic employment areas and also ensuring the

quality of any residential development that may come forward. It should also be recognised though that some applications that do come forward may be of considerable scale, therefore requiring significant officer resource but without the significant fee income associated with such proposals.

Conclusion

- 3.19 There is justification and evidence for maintaining the existing exemption areas in the borough from office to residential permitted development by making an Article 4 direction. Following statutory public consultation there has been no objection to the direction and two representations which support it. It is now recommended that the Article 4 direction is confirmed and that it will take effect from 1st June 2019.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 Following the completion of the public consultation that was undertaken during October and November 2017, this report seeks the approval of the Mayor in Cabinet to confirm the Article 4 direction which will remove permitted development rights from certain areas of the borough. This will affect the landowners' rights to change the use of premises from offices to residential within these areas.
- 4.2 When the current regulations granting permitted change of use rights were introduced in May 2013, two areas within the borough were exempt - the 'Central Activities Zone' and 'Tech City'. The existing exemptions expire on 31st May 2019, and it is proposed to extend the exemption period within these areas and also to add the Mile End neighbourhood town centre area. In order to avoid the risk of any compensation payments to disadvantaged landowners (paragraph 1.3) the Notice of Article 4 direction must be published by 1st June 2018. Paragraphs 3.14 set out the key deadline dates that must be met.
- 4.3 The main costs associated with the process to extend the direction are staffing related and are financed from within existing resources. The proposed consultation (paragraphs 3.18 to 3.20) will lead to expenditure on items such as advertising and printing for which there is existing budgetary provision. It is not considered that the consultation process will require the need to hire venues or facilitate public meetings.
- 4.4 As set out in paragraph 3.21, any planning applications that are submitted for change of use within these areas and that would otherwise have benefitted from permitted development rights will continue to be free of charge. Although the potential value of the loss of these fees is not quantifiable, the policy has to be weighed up against the benefits to the local economy and the employment opportunities that retaining the office space offer.

5. LEGAL COMMENTS

- 5.1 This report asks the Mayor in Cabinet to authorise the confirmation of an Article 4 Direction. Article 4 Directions are made under the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GDPO”) and remove the right to carry out the specified development without the need for planning permission. In this case the direction will prevent a change of use from an office use (use class B1(a) to a residential use (class C3) without planning permission, in the areas covered by the order.
- 5.2 The procedure for making an Article 4 direction that will not have immediate effect is set out in Schedule 3 of the GPDO. This provides that as soon as practicable after the direction is made, the LPA are required to give notice by local advertisement. Site notices must also be erected within the areas to which the direction relates and notice must be served on relevant owners and occupiers (unless an exception applies). A minimum period of 21 days must be given for any representations to be made. This report confirms that the statutory consultation requirements have been met. Subject to confirmation, the direction can come into force any time after 28 days have elapsed from the date of notice being given, but the direction must come into force within 2 years.
- 5.3 The Council sent a copy of the direction and the notice to the Secretary of State on the same day as the notice of the direction was first published by local advertisement. Officers have confirmed that the Secretary of State has asked for further information regarding this direction and has not yet confirmed its position. It should be noted that the Secretary of State has power to cancel or modify a direction made under article 4 by a local planning authority at any time before or after its confirmation.
- 5.4 National policy on the use of Article 4 Directions is set out in paragraph 200 of the National Planning Policy Framework. This provides that the use of Article 4 directions to remove national permitted development rights should be limited to situations where this is necessary to protect local amenity or the wellbeing of the area.
- 5.5 In deciding whether to confirm this direction, the local planning authority has taken into account the three representations received during the consultation period. Two of the representations were from Port of London Authority and Transport for London who confirmed they have no comments/objection and one representation was from Historic England who confirmed that they support the direction.
- 5.6 Section 108 of the Town and Country Planning Act makes provision for compensation to be payable where an application for planning permission (that would formally have been permitted development) is refused or is granted subject to conditions different from those in the GDPO. However, as the change from office to residential is ‘prescribed development’ within regulations, so long as 12 months’ notice is given before the Article 4 direction takes effect, no compensation will be payable.

- 5.7 Pursuant to section 9D of the Local Government Act 2000 all functions of an authority are executive functions unless they are specified as not in either the 2000 Act or the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended). Whilst some planning functions cannot be the responsibility of the Executive, the confirmation of an Article 4 direction is not a specified function and it is therefore an Executive decision.
- 5.8 When considering the recommendations in this report, regard must be given to the public sector equalities duty to eliminate unlawful conduct under the Equality Act 2010. The duty is set out at Section 149 of the 2010 Act. It requires the Council, when exercising its functions, to have 'due regard' to the need to eliminate discrimination (both direct and indirect discrimination), harassment and victimisation and other conduct prohibited under the Act, and to advance equality of opportunity and foster good relations between those who share a 'protected characteristic' and those who do not share that protected characteristic. As noted in the One Tower Hamlets section below, an equalities analysis has been carried out and concludes that the project does not appear to have any adverse effects on people who share protected characteristics and that no further actions are recommended at this stage.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 An Equalities Assessment has been prepared and is included as Appendix 3. Officers will continue to work with the Council's Equalities team to ensure actions are undertaken to mitigate the likely impacts on the equality profile of those affected by the Article 4.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The Article 4 direction will enable the Council to continue to ensure that employment land and jobs are protected where they are viable and meet a need, to the benefit of the wider community. The development of sites following the policies and guidance contained within the new Local Plan will generate Section 106 and Community Infrastructure Levy (CIL) contributions where relevant. This may include the delivery of new affordable housing, local enterprise and employment opportunities, public realm enhancements and infrastructure. This is not necessarily the case for homes delivered through Prior Approval from offices.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The Article 4 direction would not directly have any environmental implications as it simply removes permitted development rights from buildings that are already in place. However, a result of the permitted development right is that conversion to residential use can take place without addressing policy requirements ordinarily required of new development which include promoting greater energy efficiency. As such, the removal of permitted development which will result in full planning applications having to be submitted rather than

Prior Approvals which should lead to higher quality residential developments where change of use is determined to be appropriate.

- 8.2 Fundamentally, the Article 4 direction would also result in more sustainable development as the permitted development right is considered detrimental to the balance of land uses in areas that are suitable for employment use and provide significant numbers of jobs.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 A Project Initiation Document (PID) was drafted in 2016 which considered and addressed the risks associated with the Article 4 direction. The primary risk associated with the Article 4 direction is that it is not confirmed and that from 1st June 2019 the borough's key offices and employment locations are undermined, or that significant amendments are required which result in a new Article 4 direction being made along with a further period of statutory public consultation.

- 9.2 If an alternative Article 4 direction is proposed due to substantially altered boundaries which cannot be made before 1st June 2018, the Council then has a further decision to make. Either the replacement Article 4 direction is to take effect with less than one year's notice in which case the Council would be liable to compensate any affected landowners should they submit an application for change of use in the period until the one year's notice is achieved. The financial liability to the Council could be considerable. Alternatively, the Council could allow the full one year notice period which risks opportunistic landowners bringing forward sites for conversion under Prior Approval before the Article 4 takes effect thus undermining the supply of employment land and the viability of key employment areas.

- 9.3 These risks can be mitigated by confirming the Article 4 direction which has already been made and consulted on.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 The Article 4 direction would not directly have any implications on crime and disorder reduction, but the removal of permitted development rights would result in the need to submit full planning applications which should accord with the Council's Local Plan. This means that policies which seek to ensure the design of developments minimises opportunities for crime and creates a safer and more secure environment are addressed.

11. SAFEGUARDING IMPLICATIONS

- 11.1 The Article 4 direction is not considered to give rise to any safeguarding implications.
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Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- Appendix 1 – Map of Article 4 boundaries
- Appendix 2 – Justification for Article 4 Direction
- Appendix 3 – Equality Analysis Quality Assurance Checklist
- Appendix 4 – Article 4 Direction
- Appendix 5 – Confirmation Notice (to be formally published 1st June 2018)
- Appendix 6 – Notice of the Article 4 taking effect (to be formally published 1st June 2019)

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE.

Officer contact details for documents:

N/A