

CHIEF EXECUTIVE'S URGENCY POWERS

CABINET RECOMMENDATIONS AND STATUTORY ISSUES REQUIRING DECISIONS

The Chief Executive has powers under section 9 of the Scheme of Delegation within the Constitution as follows "to exercise any power to protect the interests and well being of the inhabitants of the Borough and the Council where it is considered necessary and desirable, in consultation with the Leader of the Council and the relevant Portfolio Holder and subject to notification of the relevant decision making body."

1 CABINET RECOMMENDATIONS

1.2 Those decisions, which would have been referred to Council from Cabinet from the meetings dated 4 February and 17 March 2020, as listed below, are important to continue the Council's operations would have been referred to Council at its meeting on 9 April 2020. Following consultation with the Leader and relevant Cabinet Members, the Chief Executive is therefore agreeing those recommendations. This notice of decision is being published on mod gov to ensure all members of Council are aware.

1.3 The full wording in the minutes of the Cabinet recommendations are attached as an appendix. Please note, the 3 decisions on the Notices of Motion and CAB106: Nar Valley Phase 4 from 4 February 2020 Cabinet meeting have not been included in this decision.

4 February 2020

- CAB101: Treasury Management Strategy for 2020/21 and Prudential Indicators for 2019/20 and 2022/23
- CAB102: Capital Programme and Resources 2019-24
- CAB104: Hunstanton Coastal Management Plan

17 March 2020

- CAB115: Capital Strategy 2020/21

DECISION:

The recommendations from Cabinet set out in the appendix and listed above are approved.

STATUTORY MATTERS REQUIRING DECISIONS

There are 2 statutory matters which also would have been referred to Council on 9 April 2020 which require attention.

2 APPOINTMENT OF MONITORING OFFICER

2.1 The council's existing Monitoring Officer has resigned from the position to focus on her role at North Norfolk District Council.

2.2 The Monitoring Officer is a statutory appointment and has specific responsibilities in respect of ensuring good governance within the authority. Section 5 of the Local Government and Housing Act (1989) As Amended, sets out the legal basis.

2.3 The Monitoring Officer has a range of functions that they need to perform. Some of the key elements are:

- (i) Reporting to the Authority in any case where the Monitoring Officer is of the opinion that any proposal or decision of the Authority has or is likely to give rise to any illegality or maladministration
- (ii) To be responsible for matters relating to the conduct of members and officers, including investigations into the conduct of Members
- (iii) To be responsible for the operation of the council's constitution.

2.4 It is proposed that Alexa Baker be appointed the Borough Council's. Ms Baker is a Local Government Lawyer, therefore is appropriately qualified and experienced for the role.

DECISION:

That Alexa Baker, Local Government Lawyer from Eastlaw is appointed Monitoring Officer for the Council with immediate effect.

3 DISCIPLINARY AND DISMISSAL PROCEDURES FOR STATUTORY OFFICERS

PURPOSE OF REPORT/SUMMARY:

The statutory officers of the council, the Head of Paid Service (Chief Executive), the Section 151 Officer (Assistant Director Resources and Section 151 Officer) and the Monitoring Officer, have duties to advise and protect the council as a corporate body. Accordingly these three statutory posts are protected by law under specific regulations from unwarranted political interference in carrying out their proper duties. In the event that disciplinary action is contemplated against a statutory officer members need to ensure that the Council has a clear structure and procedure to be used which complies with the regulatory requirements and relevant terms and conditions of employment.

The Local Authority (Standing Orders)(England)(Amendment) Regulations 2015 amended the previous legislation and changed the statutory process for dismissing the Head of Paid Service, Monitoring Officer and Chief Finance Officer ("the relevant officers"). The Council was advised of the new regulations at its meeting in May 2015 and approved changes to the Constitution at that time. These changes provided an outline of the new requirements but no detail as to how the rules would be progressed or Member responsibilities.

The purpose of this report is to advise members of the nationally negotiated and agreed Model Disciplinary Procedure and Guidance which incorporate the relevant statutory requirements, agreed by the Joint Negotiating Committee (JNC) for Local Authority Chief Executives, which also be applied for the Monitoring Officers and Section 151 Officer.

This Model Procedure has been adopted across England and it is now recommended to this Council to govern any future disciplinary procedures for the relevant Statutory Officers employed by the Borough Council of King's Lynn and West Norfolk.

KEY ISSUES:

The recommendations in this report will require the Council to agree new procedures and establish a standing Investigating and Disciplinary Committee (IDC), an Appeal Committee (AC), and an Independent Panel. Officers will also require authorisation to amend the Constitution to give effect to these changes and arrange appropriate mandatory training for members of the new committees and the persons that will comprise the Independent Panel.

OPTIONS CONSIDERED:

N/A – the proposals are consistent with the requirements of the Local Authority (Standing Orders)(England)(Amendment) Regulations 2015 and the Joint Negotiating Committee (JNC) for Local Authority Chief Executives.

RECOMMENDATIONS:

That the following be agreed:

- 1) To revise the terms of reference of the Appointments Board to deal with disciplinary matters relating to the relevant officers. This committee is to be a

politically balanced committee, at least one of whom is to be a member of the Cabinet.

- 2) To revise the terms of reference of the Licensing and Appeals Panel to deal with appeals against disciplinary sanctions short of dismissal relating to the relevant officers. This committee is to be a politically balanced committee, at least one of whom is to be a member of the Cabinet.
- 3) That in the case of a complaint being received against a relevant officer, the decision whether to refer the matter to the Investigating and Disciplinary Committee (IDC) will be delegated to a sub-committee of the IDC consisting of three members, and which will be politically balanced as far as is practicable. All decisions made by the sub-committee will be made in consultation with the Executive Director and Chief Executive/Monitoring Officer as appropriate. The three members forming the sub-committee will then be excluded from participating in any process arising from their decision.
- 4) That the IDC will have delegated responsibility for the appointment of an Independent Investigator to undertake an investigation into any matter it considers warrants investigation. Such investigator to be appointed from the list provided by the National Joint Secretaries, and co-ordinated by the Executive Director.
- 5) That the Investigating and Disciplinary Committee (IDC) will have delegated responsibility for the suspension of "the relevant officers." In the event of the need for urgency, this function to be delegated to the Chief Executive, should there be a need to suspend the Monitoring Officer or Section 151 Officer, or the Monitoring Officer should there be a need to suspend the Chief Executive, in all cases the decision to be made in consultation with the Chair of the IDC and the Executive Director.
- 6) To establish an Independent Panel comprising at least two people appointed under section 28 Localism Act 2011 to advise Council in the event of a recommendation from the Independent Disciplinary Committee to dismiss a relevant officer.
- 7) That the Executive Director be authorised to develop a procedure, based on the NJC Model Disciplinary Procedure but adapted to reflect the specific details outlined in this report, to be followed in the case of a complaint against a statutory officer.
- 8) That the Monitoring Officer be authorised to make all necessary and consequential amendments to the constitution to give effect to these recommendations.
- 9) That the Executive Director be authorised to arrange appropriate mandatory training for members serving on the Investigating and Disciplinary Committee and Appeals Committee and the Independent Persons serving on the Independent Panel.
- 10) That the Investigation and Disciplinary Committee and Appeals Committee be appointed and seats thereon allocated to political groups in accordance with the rules of proportionality and that appointments be made to Committees in accordance with the nominations received from political groups.

REASONS FOR RECOMMENDATIONS:
To ensure compliance with The Local Authority (Standing Orders)(England)(Amendment) Regulations 2015

1. Background

The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 amended the Local Authorities (Standing Orders) (England) Regulations 2001 by changing the statutory process for dismissing the Head of Paid Service (in our case, the Chief Executive), the Monitoring Officer and the Chief Finance Officer (in our case, the Assistant Director Resources and Section 151 Officer (these posts are referred to as “the relevant officers”).

The new regulations specify that the dismissal of a statutory officer can only be approved by Full Council after considering a report by an independent panel. The Council’s constitution was amended to reflect the requirements of these revised regulations in May 2015.

2. Current Position

More detailed guidance and a model procedure for dealing with disciplinary action against relevant officers has now been introduced by the Joint Negotiating Committee on Local Authority Chief Executives Terms and Conditions of Service (JNC), to enable Council’s to introduce detailed procedures to deal with any disciplinary action against relevant officers. (NB. The JNC is the negotiating body for the Local Government Association (LGA) representing employer local authorities and the Association of Local Authority Chief Executives (ALACE) representing officers (union side)). These model procedures spell out in detail the process to be followed and the member structure to support the process and are being adopted by many Council’s across the country.

Whilst the JNC Conditions of Service are incorporated in all the statutory officers’ contracts of employment, the model procedure requires to be adopted by Full Council to ensure that the council does not breach contractual conditions of employment in the event that disciplinary action is contemplated or pursued against a statutory officer.

The Council’s Standing Orders are currently progressing through a planned review, providing the opportunity to include the recommendations arising from this report.

3. Model Procedure

The key features of the model procedure involve four stages - an Investigating and Disciplinary Committee (IDC), an Appeals Committee, the Independent Panel and the Council. The model procedure itself is very detailed and provides guidance as to how matters should be considered at each of the four stages.

The recommendations outlined in this report outline key decisions that need to be made to integrate the model procedure into the Council’s constitution. It is further proposed that the Executive Director be authorised to take the model procedure and adapt it to suit the specifics of the Borough Council of King’s Lynn and West Norfolk (eg. specific panel/committee names, job titles etc).

4. Recommendation

Given that the relevant officers will have JNC terms and conditions referred to in their contracts of employment which could potentially lead to a breach of contract argument if Council did not follow the JNC model, it is recommended that the Council adopts the structures of the model procedures and applies it to all three relevant officers.

It should be noted that not all complaints, allegations or other issues about a relevant officer should lead to a referral to an IDC. The model procedure recommends that Council's determine their own method of filtering complaints and the proposed use of a sub-committee of the IDC as a filter will facilitate the redirection of complaints to the appropriate Council procedure or to filter out those that have no merit.

5. Financial Implications

There are significant costs associated with the process once it is initiated. However at this stage financial implications are limited to the provision of appropriate training for members of the IDC and Appeals Panel.

6. Risk Management

The process outlined in this report and recommended for adoption are compliant with the 2015 Regulations and nationally agreed Joint Negotiating Committee for Local Authority Chief Executives and is being applied to the two other relevant statutory officers protected by the 2015 Regulations. This mitigates any risk to the council in this regard.

7. Equalities Implications

All relevant officers will be treated in accordance with the model procedure.

Appendix – Cabinet Minute Extracts from 4 February and 17 March 2020

CAB101: TREASURY MANAGEMENT STRATEGY FOR 2020/21 AND PRUDENTIAL INDICATORS FOR 2019/20 AND 2022/23

T Stankley, the Section 151 Officer presented the report which explained that the Council was required to receive and approve a Treasury Management Strategy Statement; Annual Investment Strategy; and Minimum Revenue Provision Policy Statement which covered:

- The Treasury Management Strategy
- Capital plans, including prudential indicators
- A Minimum Revenue Provision (MRP) Policy
- An Investment Strategy

The report covered the requirements of the Local Government Act 2003, the Chartered Institute of Public Finance Accountants (CIPFA) Prudential Code, the Ministry of Housing, Communities and Local Government (MHCLG) MRP Guidance, the CIPFA Treasury Management Code and the MHCLG Investment Guidance.

The Council's Treasury Advisor, Link Asset Services, provided a template document for the Treasury Management Strategy Statement, which was fully compliant with CIPFA's code and MHCLG's guidance. The Council had used this template in preparing the report.

This report looked at the period 2019-2024, which fitted with the Council's Financial Plan and Capital Programme. Officers of the council had prepared the report based on their views of forecasts for interest rates, and had used information provided by the council's Treasury Management Advisor, Link Asset Services.

Under standing order 34, Councillor Kemp asked if the KLIC loan impairment was included within the Statement of Accounts. The S151 Officer explained that the adjustment entries would be finalised in the near future and included in the final version of the Statement of Accounts for 2018/19. The Leader confirmed it would form part of the year's audit, and the Council had the building and were receiving income from it.

Under standing order 34, Councillor Morley asked members to consider the estimate of capital expenditure in 2019/2020 and the likelihood of being able to spend it within the timeframe left for the year, as the impact on the revenue budgets may be high. Councillor Long responded that this was referring to the Capital Programme, but it was normal that items would slip from the Capital Programme into future years, but it was important to ensure it was covered. He also referred to the Council's investment history and drew attention to the fact that the Council had the lowest risk profile in Norfolk, but was receiving a higher rate of return than many others. He further commented that in order to do the best for West Norfolk, getting the best out of treasury management was important.

RECOMMENDED: That Council approve:

- 1) The Treasury Management Strategy Statement 2020/2021, including treasury indicators for 2020-2024.
- 2) The Minimum Revenue Provision Policy 2020/2021
- 3) The Investment Strategy 2020/2021

Reason for the Decision

The Council must have approved a Treasury Management Strategy Statement, Minimum Revenue Provision Policy Statement and Annual Investment Strategy 2020/2021 by 31 March 2020.

CAB102: CAPITAL PROGRAMME AND RESOURCES 2019-2024

T Stankley, Section 151 Officer presented the report which:

- revised the 2019/2020 projections for spending on the capital programme
- set out an estimate of capital resources that would be available for 2019-2024
- detailed new capital bids that were recommended to be included in the capital programme for the period 2020-2024
- outlined provisional figures for capital expenditure for the period 2019-2024
- Exempt section of the report detailed proposed future corporate capital projects

Councillor Long reminded members that the Capital programme was a snapshot in time, and items were often re-phased as required. He drew attention to the re-fit programme which was included in the plan for the coming years. He took on board the points raised by Councillor Morley in the previous item.

RECOMMENDED: 1) That the amendments to capital schemes and resources for the 2019-2024 capital programme as detailed in the report be approved.
2) That new capital bids are funded from available capital resources and included in the capital programme 2019-2024 as detailed in the report.

Reason for Decision

To report amendments, re-phasing and resources to the 2019-2024 Capital Programme

CAB104: HUNSTANTON COASTAL MANAGEMENT PLAN

Councillor Devereux presented a report setting out the Hunstanton Coastal Management Plan (HCMP) which was an operational plan to determine what works were required to the Hunstanton sea defences and cliffs over the next 100 years breaking down into short medium and long term projects.

The HCMP followed the general policies laid down in the Shoreline Management Plan 4 (SMP 4) which covered the coastline between Gibraltar Point and Old Hunstanton, and the joint Environment Agency / BCKLWN Wash East Coastal Management Strategy (WECMS).

Councillor Devereux gave information on the proposals set out in the Plan with monitoring and repairs.

Councillor Middleton expressed his disappointment that so many members of the public and councillors had left the meeting when the item was demonstrating work the Council was carrying out to protect the coastline.

Councillor Long commented that it was practical work being carried out that was needed for the area, funded by the Borough along with funding from the successful bid for funding by the Regional Flood & Coastal Committee.

Councillors Morley and Parish commented that they were in support of the proposal and many had seen the detail at the Regeneration and Development Panel.

RECOMMENDED: That the Hunstanton Coastal management Plan be adopted and the financial contributions be approved.

Reason for Decision

To enable the Council to plan prepare and carry out coastal works to meet its obligations under the Shoreline Management Plan 4 (SMP4) and Wash East Coast Management Strategy (WECMS).

CAB105: EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED: That under Section 100(A)(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A to the Act.

CABINET RECOMMENDATION TO COUNCIL FROM CABINET ON 17 MARCH 2020

CAB115: CAPITAL STRATEGY 2020/21

Cabinet considered a report which set out the Capital Strategy which outlined the principles and framework that shape the Council's capital decisions. The principal aim was to deliver a programme of capital investment that contributed to the achievement of the Council's priorities and objectives as set out in the Corporate Plan. The Capital Strategy would be updated annually and will be put before Cabinet alongside the Treasury Management Strategy going forward so that it could be approved before the year to which it related began.

The Strategy defined at the highest level how the capital programme was to be formulated; it identified the issues and options that influenced capital spending, and set out how the resources and capital programme would be managed.

In response to how the Council's finances would be affected by the Corona Virus, the Chief Executive explained that the Revenue budget would be impacted considerably and investments affected, although the Government had indicated that funding would be made available. It was noted that balances would be used in the short term to ensure cash flow.

The Chair reported receipt of questions from Councillor Ryves on the item. He thanked Councillor Ryves for the questions, but reminded members that the Cabinet meeting was not a question and answer session.

RECOMMENDED: That the Capital Strategy 2020/21 as attached to the report be approved.

Reason for Decision

Not to approve these policies would contravene the requirements of both legislation and good practice. In addition, the external auditors may comment in their report to those charged with governance (ISA260).