



MINUTES OF THE MEETING OF THE CABINET

**TUESDAY 27 SEPTEMBER 2022
VIA A DIGITAL MEETING FACILITY**

Cabinet Members Present:

Councillor S Akhtar
Councillor N Hampshire (Convener)
Councillor J McMillan

Councillor A Forrest
Councillor C McGinn

Other Councillors Present:

Councillor R Bennet
Councillor L Jardine
Councillor G McGuire
Councillor C Yorkston

Councillor C Cassini
Councillor C McFarlane
Councillor S McIntosh

Council Officials Present:

Mrs M Patterson, Chief Executive
Ms L Brown, Executive Director for Education and Children's Services
Ms S Fortune, Executive Director for Council Resources
Mr D Proudfoot, Executive Director for Place
Ms M Ferguson, Head of Corporate Support
Ms N McDowell, Head of Education
M S Saunders, Head of Communities
Ms M Sullivan, Head of Development
Mr D Henderson, Interim Head of Finance
Mr C Grilli, Service Manager – Governance
Mr D Stainbank, Service Manager – Internal Audit
Mr P Vestri, Service Manager – Improvement, Policy & Communications
Mr P Ritchie, Service Manager – People & Council Support
Ms A Glancy, Service Manager – Corporate Accounting
Mr I Lennox, Team Manager – Assets and Regulatory
Ms Z Rathe, Team Manager – Information Governance
Mrs L Gillingwater, Team Manager, Democratic and Licensing

Clerk:

Ms F Currie

Apologies:

Councillor F Dugdale

Declarations of Interest:

None

The Convener reminded Members that this meeting would consider the substantive business postponed from the meeting on 13th September.

1. MINUTES FOR APPROVAL – CABINET 14 JUNE 2022

The minutes of the meeting of the Cabinet of 14 June 2022 were approved.

2. QUARTER 1 FINANCIAL REVIEW 2022/23

A report was submitted by the Executive Director for Council Resources providing an update on the in-year financial position at the end of June 2022.

The Interim Head of Finance, David Henderson, presented the report. He gave a detailed summary of the financial performance for Quarter 1 of the current financial year and the impacts of inflationary pressures such as gas and electricity and the uncertainty over the pay settlement. He advised that at the end of June, the Council was reporting a £869,000 overspend in the General Services revenue financial position. He highlighted the reported positions for key service areas at the end of Quarter 1 and the intervention measures agreed by the Council Management Team. He also confirmed that future financial review reports would be presented to Council for scrutiny until the current challenges abated and the financial position improved.

Responding to questions, Mr Henderson acknowledged that the increased costs of materials and supplies would impact the delivery of the Council's programme of works and capital projects and that the Council awaited updates from the UK and Scottish Governments on further changes to economic policy. In the meantime, officers had agreed a change to financial reporting with future updates being presented to full Council rather than Cabinet.

Mr Henderson also updated Members on the staff pay award, outlining the elements of the award and the funding challenges, and confirming that further updates expected from CoSLA and the Scottish Government. On the issue of increasing utility costs, he advised that assumptions around these were being built into financial planning going forward and that the Council was seeking clarity on what help would be available once the current assistance expired.

Councillor Forrest said the report made interesting reading and he thanked Mr Henderson and his team for its preparation. He welcomed the work to engage with tenants and local residents to highlight the support available to them and he offered his particular thanks to the staff in the Rent Income and Financial Inclusion Teams.

Councillor McMillan said the report outlined the tough times ahead and the need for all councillors to work together; and he welcomed the setting up of the cross-party working group. He also acknowledged the work of staff to assist the most vulnerable residents. He added that, with such an uncertain future, regular updates on the financial position would be very important. Reflecting on the experience of the pandemic, he was confident that colleagues would work together to do their best for local communities.

Councillor McGinn remarked that global events were now impacting local communities who had already had significant difficulties to deal with. He noted that some services were still operating below levels of staffing usually seen but, despite this, staff were performing tremendously well. He hoped that this current crisis would not result in further set-backs following the efforts to maintain services during the pandemic.

Councillor Akhtar commented that this was a deeply concerning report which demonstrated that the pressures facing the Council were more intense than ever before. She emphasised the importance of delivering the pay award for staff and welcomed the ongoing work to support constituents and help them maximise their income during these difficult times. She added that, looking behind the figures, there was a huge amount of the work taking place in areas such as health and social care to improve outcomes for local residents. She concluded that this report showed what a huge challenge the Council was facing and she wanted to pay tribute to staff and to let them know how much their hard work was appreciated.

The Convener thanked officers for a comprehensive report which he said outlined the very difficult financial position facing the Council this year; not least to deliver efficiency savings within the context of significantly increasing costs. Referring to utility costs in particular, he stated that the Council would not be able to deliver services and required savings, as well as managing these increasing costs, without additional help from Government. The pay award was presenting similar funding challenges. He also reflected on the recent UK Government mini-budget and its impacts on money markets, interest rates and borrowing costs; all of which he said would place further pressure on Council finances in the absence of any additional support from the Scottish Government.

Decision

The Cabinet agreed to:

- i. Note the financial performance at the end of Quarter 1 in 2022/23 against the approved budgets.
- ii. Note the impact of inflationary pressures, particularly gas and electricity and the uncertainty over the pay settlement.
- iii. Note the additional funding received from the Scottish Government to meet specific policy initiatives.
- iv. Note the range of intervention measures approved by the Council Management Team set out in paragraph 3.20.
- v. Note that future financial review reports will go to Council for scrutiny until the financial position improves.

3. FREEDOM OF INFORMATION (SCOTLAND) ACT 2022 AND DATA PROTECTION ACT 2018, COMPLIANCE STATISTICS 2021

A report was submitted by the Executive Director for Council Resources reporting on the Council's compliance with the 20 working day timescale laid down by the Freedom of Information (Scotland) Act 2002 for the calendar year 2021 (i.e.: from 1 January 2021 to 31 December 2021); and the Council's compliance with the timescale laid down by the Data Protection Act 2018 (GDPR) for the calendar year 2021 (i.e.: from 1 January 2021 to 31 December 2021).

The Team Manager – Information Governance, Zarya Rathe, presented the report. She highlighted a slight decrease in the number of FOI requests from 2020 to 2021 – attributed to the ongoing pandemic - but advised that, overall, there continued to be an upward trend in the number and complexity of requests since the legislation came into force in 2002. She also provided a breakdown of the statistics relating to responses to FOI and EIR requests and subject access requests under the Data Protection Act 2018.

Responding to questions, Ms Rathe advised that the legislation did allow for the Council to charge for Environmental Information Regulation requests, however this policy was currently under review. She confirmed that cost figures were currently being compiled for 2020/21 and these would be circulated shortly. She outlined the background to costs associated with FOI requests and the criteria for classing repeated contacts as vexatious requests. She reminded Members of the Publication Scheme which was required under the legislation and which allowed the Council to put information into the public domain which may be the subject of FOI requests and to direct correspondents to the Publication Scheme or other areas of the Council's website.

The Convener thanked Ms Rathe for a very useful report and encouraged the publication of as much information as possible in an effort to reduce the number of requests and the consequent additional burden on officers.

Decision

The Cabinet agreed to note the report and for Members to provide feedback on the compliance statistics.

4. REFRESHED WHISTLEBLOWING POLICY

A report was submitted by the Service Manager – Internal Audit informing Cabinet of the revisions to the East Lothian Council Whistleblowing Policy, following consultation with Council management and Trade Unions, and requesting that the refreshed Policy be approved for adoption across the Council.

The Service Manager – Internal Audit, Duncan Stainbank, presented the report. He advised Members that the policy had previously been reviewed on a regular basis but, following the review in 2021, a broader refresh of the policy format had been undertaken. In addition, amendments had been made to the wording to reflect recent changes to legislation and he outlined some of the key changes.

Responding to questions, Mr Stainbank explained that where an allegation resulted in an investigation, a report was submitted to the Chief Executive. The number of investigations completed and any significant outcomes were also included in the Internal Audit annual report to the Audit & Governance Committee. Mr Stainbank confirmed that once the refreshed policy was approved a communication would be issued to all staff to make them aware of the changes.

Decision

The Cabinet agreed, by roll call vote, to approve the refreshed Whistleblowing Policy for implementation across the Council.

5. ANNUAL PENSIONS REPORT 2021/22

A report was submitted by the Executive Director for Council Resources summarising the early retirement activity within the financial year 2021/22, in accordance with External Audit requirements and Council Policy; and seeking approval for an amendment to the Council's Pension Discretion Policy in relation to Shared Cost AVCs.

The Service Manager – People & Council Support, Paul Ritchie, presented the report. He provided a summary of the Council's retirement activity in the financial year 2021/22, its

liability to pay pension costs in the future and the proposed amendment to the Council's Pensions Discretion Policy.

The Convener thanked officers for the update and emphasised the importance of this information and of ensuring that staff were kept informed of their options.

Decision

The Cabinet agreed, by roll call vote, to:

- i. note the content of the report with regard to the pension activity in respect of early retirements in the financial year 2021/22
- ii. approve the amendment to the Council's Pension Discretion Policy to allow for Shared Cost AVCs

6. AMENDMENT TO HOME WORK POLICY – HOME WORKING ALLOWANCE

A report was submitted by the Executive Director for Council Resources seeking amendment to the Home Working Policy to increase the level of Home Working Allowance.

The Head of Corporate Support, Morag Ferguson, presented the report. She reminded Members of the introduction of the Home Working Policy in June 2021 and the annual allowance paid to home workers. While the uptake of the Policy had been steady it had plateaued recently and anecdotal evidence suggested this might be due, in some cases, to the impact of increased utility costs. She outlined the proposed increase in the allowance from £156 per annum to £312 and that this would be paid for through the asset rationalisation programme.

Responding to a question from the Convener, Ms Ferguson advised that if the Council were to pay staff more than the maximum tax-free allowance set out by HMRC it could result in employees being drawn into the tax self-assessment scheme. She acknowledged that the HMRC allowance had not been reviewed for a number of years and it could be argued that it no longer reflected the full costs associated with working from home. While the decision was out of the Council's hands, she said it continued to press CoSLA to request a review by HMRC.

Decision

The Cabinet agreed, by roll call vote, the amendment to the Home Working Policy to increase the level of the Home Working Allowance from £156 per annum to £312 per annum, being the maximum tax free allowance set by HMRC.

7. REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 (RIPSA) POLICY

A report was submitted by the Executive Director for Council Resources informing Cabinet that following an overall positive routine inspection and associated recommendations by the Investigatory Powers Commissioner, the Council's Corporate Policy regarding compliance with the Regulation of Investigatory Powers (Scotland) Act 2000 ('RIPSA') had been reviewed and updated.

Ms Rathe, presented the report outlining the background to RIPSAs, the results of the recent inspection and the policy review. She summarised the key changes which had resulted from the combining of two existing RIPSAs and Surveillance through Social Media policies.

Responding to a question from Councillor Akhtar, Ms Rathe advised that as the designated RIPSAs 'Gatekeeper' she was responsible for promoting best practice and overseeing staff training on the policies. She explained that the Council had undertaken a refresh of the guidance for officers, had extended training for key staff and was currently developing an eLearning module for wider staff. She also outlined the quality assurance process for RIPSAs applications.

Councillor Forrest commended a very self-explanatory report and policy; particularly given the increasing reliance on social media.

Councillor McGinn echoed his colleague's remarks adding that the rights of individuals should never be taken for granted. It was important to have a robust system in place to protect individuals' rights when accessing social media and that such policies were revisited regularly.

Decision

The Cabinet agreed, by roll call vote, to approve the Council's updated RIPSAs Policy.

8. NEW LICENSING FEE STRUCTURE FOR LICENSING OF SHORT TERM LETS

A report was submitted by the Executive Director for Council Resources providing Cabinet with details of the proposed licence fee structure for a licence for Short Term Lets under the new licensing regime for such activities which comes into force from 1 October 2022.

The Service Manager – Governance, Carlo Grilli, presented the report. He outlined the background to the new licensing arrangements for short term lets which would take effect from 1 October 2022 and how the proposed fee had been calculated. He advised that the regime would operate on a cost-neutral basis and it was estimated that the Council could receive up to 300 applications in the coming months.

Responding to questions, Mr Grilli confirmed that the initial proposal was for a 3 year licence cycle and inspections would only be undertaken where complaints were received or a review of the licence was considered necessary. However, the new arrangements would be kept under review and could be amended depending on their performance during the initial period. Mr Grilli advised that a wider review of licensing fees was underway and recommendations would be brought forward in the next financial year. Initially, a report would be presented for discussion at the Licensing Sub Committee, with a final decision being taken by Cabinet.

In response to a question on the short term let control areas, the Head of Development, Michaela Sullivan, informed Members that initial studies and consultations had taken place and the planning service was currently reviewing this information and gathering additional data. She indicated that it may be summer 2023 before a report would be brought to Cabinet.

Councillor McMillan commended the professionalism of officers in the licensing team in undertaking the implementation of this new licensing regime. However, he thought it was unfortunate that local authorities had not had more time to consider how best to implement the new legislation or to consider alternative options. He agreed that the impact of these new arrangements and the implications for planning issues would have to be kept under review.

The Convener remarked on the evolution of short term lets in East Lothian and that these had been operating throughout the county before the recent changes to the law. While he agreed that the new arrangements may not be ideal, it was necessary to take action to ensure the safety of tenants and to protect property owners. He welcomed the report as a useful starting point from which to develop this new policy.

Decision

The Cabinet agreed, by roll call vote, to fix the licence fee for licences to be issued under the Order at the levels proposed in the report.

9. VARIOUS ROADS EAST LOTHIAN, INTRODUCTION AND AMENDMENTS TO TRAFFIC REGULATION ORDERS 2022

A report was submitted by the Executive Director for Place seeking Cabinet approval to start the statutory procedures necessary to introduce and amend various Traffic Regulation Orders (TROs) to prohibit waiting, loading and unloading, and to promote a new one way street.

The Team Manager – Assets and Regulatory, Ian Lennox, presented the report, advising Members of further changes required to existing TROs and the introduction of new TROs, as set out in appendix A to the report. He also outlined a proposal to make Beveridge Row, Belhaven, one way southbound, as set out in appendix B.

Responding to a question from the Convener, Mr Lennox confirmed that all those who had submitted responses to the consultation on changes to Beveridge Row had received written replies. He added that further planned works would include improvements to the junction with Edinburgh Road.

Decision

The Cabinet agreed, by roll call vote, to approve the initiation of the statutory procedure necessary to introduce and amend Traffic Regulation Orders in accordance with 'The Local Authorities (Procedures) (Scotland) Regulations 1999 and such introduction and amendments that were in force in respect of locations and proposals listed in the appendices to the report.

10. NATIONAL PUBLIC HOLIDAY FOR HM THE QUEEN'S FUNERAL

A report was submitted by the Executive Director for Council Resources seeking approval to re-arrange the pre-existing public holiday scheduled for 19th September 2022 to Monday 24th October 2022, in light of the national holiday granted on 19th September to mark the State Funeral of HM The Queen.

Ms Ferguson presented the report. She outlined the background to the proposed change in public holidays, the impact on the in-service training day for schools scheduled for 24th October, arrangements for employees not due to work on 24th October and the costs associated with granting an additional public holiday. She also confirmed that the Trade Unions had been consulted on the proposals and had indicated their support.

Councillor McMillan welcomed the proposals set out in the report while noting the sad events which had brought them about. He reminded those present that a Service of Thanksgiving

for the life of HM The Queen would take place at St Marys in Haddington on Friday 30th September at 6pm, to which all were welcome.

Decision

The Cabinet agreed, by roll call vote:

- i. To approve the designation of the public holiday scheduled for 19th September 2022 as an additional national public holiday to mark the day of HM The Queen’s State Funeral and to re-arrange the pre-existing public holiday from 19th September 2022 to 24th October 2022.
- ii. That those employees required to work on either or both of those days are compensated in line with normal public holiday arrangements, and those not scheduled to work are given the equivalent time off on a pro rata basis.

Signed

Councillor Norman Hampshire
Council Leader and Convener of Cabinet