



**MINUTES OF THE MEETING OF
THE CABINET**

**TUESDAY 11 JUNE 2013
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor S Akhtar
Councillor T Day
Councillor D Grant
Councillor N Hampshire
Councillor W Innes (Convener)
Councillor J McMillan
Councillor M Veitch

Other Councillors Present:

Councillor D Berry
Councillor S Brown
Councillor J Caldwell
Councillor S Currie
Councillor J Gillies
Councillor J Goodfellow
Councillor P MacKenzie
Councillor F McAllister
Councillor K McLeod
Councillor J McNeil

Council Officials Present:

Mrs A Leitch, Chief Executive
Ms M Patterson, Executive Director (Services for Communities)
Mr S Baxter, Senior Area Officer West (Transportation)
Ms J Caughey, Corporate Procurement Manager
Mr K Christie, Revenues Manager
Mr P Forsyth, Senior Area Officer East (Transportation)
Dr R Gertz, Data Protection, Freedom of Information & Surveillance Law Compliance Officer
Mr I Glen, Policy & Projects Manager (Planning)
Mrs K MacNeill, Corporate Legal Adviser
Mr H Mark, Debt Management and Business Rates Team Leader
Mr S Pryde, Principal Amenity Officer
Mr D Russell, Corporate Communications Manager
Mr P Vestri, Corporate Policy & Improvement Manager

Clerk:

Mrs L Gillingwater

Apologies:

None

Visitors:

None

1. SUMMARY OF CONTRACTS AWARDED BY EAST LOTHIAN COUNCIL, 2-29 MAY 2013

A report was submitted by the Executive Director (Support Services) advising Members of all contracts awarded by the Council from 2-29 May 2013, with a value of over £150,000.

Decision

The Cabinet agreed to note the award of contracts with a value of over £150,000 from 2-29 May 2013, as listed in Appendix 1 to the report.

2. UPDATE ON COMMUNITY BENEFITS IN PROCUREMENT

A report was submitted by the Executive Director (Support Services) updating Cabinet on the outcomes achieved by including Community Benefits clauses in contracts, and advising on changes to how this is being implemented in practice.

The Corporate Procurement Manager, Julie Caughey, presented the report, drawing Members' attention to the nature of benefits offered by contractors to date. She also highlighted a change to the operation of the initiative.

The report was welcomed by a number of Members, particularly in relation to the creation of apprenticeships, work experience placements for young people and employability assistance. The change in the Community Benefits scheme was also commended.

Councillor Innes advised that extending this scheme was also being considered, and noted that funds had been identified to assist local companies to compete more effectively for contracts. He added that Councillor McMillan was exploring a range of options as regards the employability of young people, such as the co-ordination of apprenticeships.

Decision

The Cabinet agreed:

- i. to note the outcomes achieved and activities achieved and in progress as a result of incorporating community benefits into Council contracts;
- ii. to note the changes to the practical implementation of these clauses;
- iii. to endorse the continuation of the Community Benefits in Procurement initiative.

3. INFORMATION AND RECORDS MANAGEMENT POLICY

A report was submitted by the Executive Director (Support Services) seeking Cabinet approval of the Information and Records Management Policy.

The Corporate Legal Adviser, Kirstie MacNeill, presented the report, advising of the need for all public bodies to put in place a Records Management Plan (RMP) and that this policy would create the framework for the management of the Council's records.

Councillor Berry asked if the records management systems currently used throughout the Council were fit for purpose. Mrs McNeill reported that the Records Manager was in the process of meeting service managers to look at how records were currently stored and that a retention schedule was being developed. She added that the RMP would cover a five-year period and would be scrutinised by the Keeper of the Records. She also confirmed that the RMP would cover Council business undertaken by Elected Members and any sub-contractors carrying out work on behalf of the Council.

In response to a question from Councillor McMillan in relation to the backing-up of records, Mrs McNeill advised that she was not in a position to comment on this from an IT perspective, but that all managers were required to put in place business continuity arrangements and that the management of vital records would be incorporated into the business continuity process.

Decision

The Cabinet agreed to approve the Information and Records Management Policy and adopt it as Council policy.

4. CHARGING POLICY FOR DATA PROTECTION, FREEDOM OF INFORMATION, AND ENVIRONMENTAL INFORMATION

A report was submitted by the Executive Director (Support Services) seeking approval for the Charging Policy for Data Protection, Freedom of Information, and Environmental Information.

The Corporate Legal Adviser, Kirstie MacNeill, presented the report, explaining the reasons for the proposal to introduce charges for providing information in relation to Data Protection, Freedom of Information and Environmental Information.

Remarking that the Council had to demonstrate the need to implement charges, Councillor Currie asked if information was available with regard to the costs to the Council of processing requests. Mrs MacNeill advised that an evaluation of the costs had not been undertaken and that the charging proposal had been based on anecdotal evidence provided by Council officers. She offered to have a sampling exercise carried out in order to provide an example of the costs involved. Dr Gertz added that there could be no challenge to the decision to introduce charges as charging was permitted under the relevant Acts. She also pointed out that a calculation of the costs for one particular request had come to £1100.

Councillor Goodfellow asked if the charges would apply to Elected Members. Mrs MacNeill confirmed that where requests were submitted through the Freedom of Information process charges would apply, but reminded Members that they could ask officers directly for information at any time without incurring charges.

Councillor Berry expressed concern at the way in which charges would be calculated. He also asked how the aggregation of costs would be decided where two or more related requests were received within a period of 60 consecutive working days. Mrs MacNeill advised that the decision would be taken centrally, by Dr Gertz, as would decisions on fees being waived.

The Chief Executive noted that all Freedom of Information requests were published on the Council website. She added that as the process for storing and retrieving data improves, the time and effort taken to provide responses to requests would reduce.

In response to a question from Councillor McNeil concerning the number of Freedom of Information requests submitted, including by Members, Mrs MacNeill advised that

approximately 1000 requests were received annually, with only a small number submitted by Members.

Decision

The Cabinet agreed to approve the Charging Policy for Data Protection, Freedom of Information, and Environmental Information.

5. FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 AND DATA PROTECTION ACT 1998 – COMPLIANCE STATISTICS

A report was submitted by the Executive Director (Support Services) reporting on the Council's compliance with the 20 working day timescale laid down by the Freedom of Information (Scotland) Act 2002 for the period 1 October 2012 to 31 March 2013, and reporting on the compliance with the 40 calendar day timescale laid down by the Data Protection Act 1998 for the period 1 January 2012 to 31 March 2013.

The Corporate Legal Adviser, Kirstie MacNeill, presented the report, drawing Members' attention to the Council's performance in relation to compliance with Freedom of Information and Data Protection requests.

Responding to a question by Councillor McLeod, it was suggested that annual reports on compliance may be presented to the PPRC in future.

Decision

The Cabinet agreed to note that, following on from the results of the inspection carried out by the Scottish Information Commissioner in December 2012, it was recognised that there was a need for a formal reporting procedure for compliance with statutory timescales for reasons of openness and transparency, and to note the content of the report accordingly.

6. ACQUISITION OF LAND FOR THE PROVISION OF NEW BURIAL AND ALLOTMENT GROUND

A report was submitted by the Executive Director (Services for Communities) seeking Cabinet approval for the acquisition and development of land as new burial space for East Lothian.

The Principal Amenity Officer, Stuart Pryde, presented the report, informing Members that the Council has a statutory responsibility to provide burial space. He advised that a public consultation exercise had been undertaken 2010, the outcome of which was that communities had expressed a preference for burial space to be provided at a local level wherever possible, or on a cluster basis if space could not be provided locally. Mr Pryde drew Members' attention to the cemetery provision in a number of areas, noting in particular the difficulty in identifying local burial space in the Musselburgh and Prestonpans areas. He also proposed securing land adjacent to burial ground, which could be used as allotments.

In response to a question from Councillor Currie, Mr Pryde confirmed that should the recommendations of the report be approved by Cabinet, the proposals would form the basis of the Council's Burial Strategy. He highlighted the urgency in providing additional burial space in Dunbar, Tranent and Prestonpans, hence this report coming forward in advance of the Strategy. He added that a report on burial charges would be presented to Cabinet at a later date.

Councillor Berry asked if the proposed allotment space may be reassigned as burial space at a later date. Mr Pryde advised that this was not the intention at this time. He explained that the proposals in the report would provide for 30-50 years of cemetery space whilst maintaining the allocated allotment space. He offered to provide Members with a longer term vision for cemetery space.

Councillor McAllister asked if the development of a crematorium would have an impact on cemetery provision. Mr Pryde indicated that there had been a gradual shift from cemetery burials to cremations and woodland burials in recent years. He informed Members that the Council was currently involved in discussions with potential crematorium providers with a view to developing a crematorium in East Lothian.

In relation to small, rural communities, Mr Pryde explained that in developing burial ground proposals, economy of scale and the potential demand, as well as availability of suitable land, were taken into consideration and that it would not always be possible to provide burial sites at a local level. He commented that where there was a custom and practice to use cemeteries in neighbouring communities, this would be continued.

Councillor Berry raised concerns in relation to road safety at some cemeteries. Mr Pryde mentioned that this issue was considered as part of the land acquisition process and that should Members have issues about specific sites, he would take these into account.

Councillor Hampshire welcomed the report, but expressed concern at the cemetery capacity in Dunbar. He proposed that the Council should progress the proposals in relation to burial space where there was an urgent need, and to give further consideration to the provision of future burial space for the Musselburgh and Prestonpans communities. He also called for a separate report on allotment provision to be presented a future Cabinet meeting. Mr Pryde pointed out that in terms of the detailed layout of burial sites, these would be subject to consultation and planning permission.

Councillor Currie spoke in support of Councillor Hampshire's suggestion. He also believed that the proposed site at Dolphinstone would not serve the Musselburgh and Prestonpans communities well and asked if alternative sites could be explored.

Councillor Veitch urged officers to investigate the viability of extending the cemetery at Prestonkirk in East Linton, given that there was a likelihood of significant archaeological remains within that site. He commended the efforts of officers and Dunbar Golf Club in identifying a solution for a cemetery extension in Dunbar.

As regards allotment provision, Councillor McAllister pointed out that demand for allotments in East Lothian far exceeded the supply. He called for an allotment policy that would meet this demand in a sustainable way, and supported the proposal for a further report on this issue.

Councillor Innes proposed that the Council should proceed with the purchase of land where there was an urgent requirement to provide additional burial ground and that alternative sites for burial space in Musselburgh and Prestonpans should be considered and reported back to Cabinet. He also suggested that a further report on allotment provision should be presented to Cabinet at a later date.

Decision

The Cabinet agreed:

- i. to approve the acquisition of land for development of extensions at a number of sites, including Deerpark at Dunbar and Tranent, with negotiations to purchase those sites

to commence as soon as possible, together with detailed archaeological and ground water investigation works;

- ii. to receive a further report on possible options to meet cemetery provision requirements for Prestonpans and Musselburgh before making a decision on the proposals for a joint facility at Dolphinstone; and
- iii. to receive a further separate report on the provision of allotment ground in East Lothian.

7. PROPOSED MODIFICATION TO PLANNING GUIDANCE FOR THE LOCATION AND DESIGN OF WIND TURBINES IN THE LOWLAND AREAS OF EAST Lothian – CONSULTATION RESPONSE ON ENVIRONMENTAL REPORT

A report was submitted by the Executive Director (Services for Communities) advising Cabinet on the consultation response to the Environmental Report for the proposed modification to the Council's *Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian*, December 2010; recommending the response that Cabinet should make to each representation; and recommending that the proposed modification to this planning guidance, with minor amendment, should be adopted as Council planning policy.

The Policy & Projects Manager (Planning), Ian Glen, presented the report, providing Members with background information and noting that the level of response to the consultation had been disappointing. He drew Members' attention to the responses received, noting the absence of responses from the renewables industry.

Councillor Veitch welcomed the report and commended the previous Administration for commencing this piece of work. He expressed his disappointment that there had been no response to the consultation from the renewables industry.

Councillor Hampshire warned that unless the Reporters took cognisance of the guidance in relation to East Lothian, confidence in the planning system would be undermined.

Councillor Berry urged Members to lobby their representatives at the Scottish Parliament about this issue.

Decision

The Cabinet agreed:

- i. to approve the recommended response to each of the representations received on either the Environmental Report that accompanies the proposed modification to the Council's *Planning Guidance for the Location and Design of Wind Turbines in the Lowland Areas of East Lothian*, or on the proposed modification itself, all as detailed in Appendix 1 to the report; and
- ii. to adopt the proposed modification, as amended, as policy guidance that would constitute a material consideration in the determination of planning applications for wind turbines in lowland East Lothian.

8. SCOTLAND'S THIRD NATIONAL PLANNING FRAMEWORK (NPF3) – MAIN ISSUES REPORT

A report was submitted by the Executive Director (Services for Communities) advising that the Scottish Government had published for consultation the first formal stage (Main Issues Report) in the preparation of its third National Planning Framework (NPF3), and providing a summary of its main provisions. The consultation period would end on 23 July 2013.

The Policy & Projects Manager (Planning), Ian Glen, presented the report, highlighting in particular the proposals in relation to the future use of Cockenzie Power Station, the view of the Scottish Government as regards Torness Power Station, the demand for additional housing land in South East Scotland, and transport infrastructure.

Councillor Veitch welcomed the report, but expressed his disappointment that there would be no new-build nuclear energy facilities in Scotland despite the Council's request that Torness be designated as a national development safeguarded for future capacity. He also voiced his concern that there were no proposals to dual the A1 between Innerwick and the English border. He advised that the Administration intended to convene a Scottish A1 action group to co-ordinate efforts in relation to improvements to the A1.

Councillor Hampshire reported that he had questioned Scottish Government officers as regards the exclusion of the A1 improvements, given that the dualling of this road to the English border would have a significant economic impact on the east of Scotland and central belt. He had been advised that this project was not included in the Scottish Government's capital programme. He called for Members to continue to lobby the Scottish Government on this matter.

Councillor MacKenzie welcomed the Main Issues Report (MIR), particularly in relation to the proposal for port-related development at Cockenzie and the vision for Scotland as a low carbon, natural, sustainable and connected place.

Councillor Currie welcomed the proposal for no new nuclear energy developments in Scotland, but pointed out that the working life of Torness Power Station may be extended. He recognised the importance of dualling the A1 and urged the Council to take this forward during the consultation process.

Councillor Berry spoke of the need for the Council to be more ambitious for East Lothian. He suggested that the rail connection between Berwick-upon-Tweed and East Lothian should be a higher priority than the dualling of the A1, and that the Council should support the use of Cockenzie as a ferry port.

Councillor McMillan highlighted the importance of dualling the A1 to the English border from an economic development point of view. He called on Members of all groups to work together to promote East Lothian and make a case to the Scottish Government for improvements to the infrastructure.

Responding to comments made by Councillor Currie, Councillor Veitch noted that the Administration was engaging with the Scottish Government in a constructive way, but reiterated the view that there was a strong case for the A1 upgrade to be included within the National Planning Framework. He added that the consultant's report on the proposals for railway stations at East Linton and Reston would be launched during the week beginning 24 June.

Decision

The Cabinet agreed:

- i. to note the publication of NPF3's Main Issues Report and the summary of its content; and
- ii. to delegate to the Executive Director (Services for Communities) in consultation with the Spokespersons for Environment, Transportation & Roads and Economic Development & Tourism, the preparation of the Council's formal response to the consultation.

9. POLICY ON ROUNDABOUT SPONSORSHIP

A report was submitted by the Executive Director (Services for Communities) informing Cabinet of the development of a policy on Roundabout Sponsorship.

The Transportation Senior Area Officer West, Stuart Baxter, presented the report, drawing attention to the proposed signage and advising that this policy would assist in promoting and encouraging local businesses in East Lothian.

Councillor Innes commented that roundabout sponsorship was an excellent way of using and maintaining the county's roundabouts.

Decision

The Cabinet agreed to approve the adoption of the policy on Roundabout Sponsorship.

10. ROADS (SCOTLAND) ACT 1984 – STOPPING UP OF C130 DRIVE ARCH, WHITTINGEHAME

A report was submitted by the Executive Director (Services for Communities) seeking Cabinet approval to instigate the necessary procedures and approvals to stop up a section of the C130 – Drive Arch, Whittingehame.

The Transportation Area Officer East, Peter Forsyth, presented the report, informing Members that the B6370 had been closed at the Drive Arch for the past 18 months due to a collapsed wall. He pointed out that responsibility for the maintenance of boundary walls sat with the landowner. In this particular case, the landowner had accepted ownership of the wall but would not accept the maintenance costs. Mr Forsyth estimated that the wall would cost £50,000 to repair. He noted that the landowner had agreed to the road being stopped up, and Members were advised of the process to be undertaken in this regard.

In response to a question from Councillor Hampshire, Mr Forsyth confirmed that on stopping up a road the Council's liability would be removed. He explained that there would remain a right of access for pedestrians and cyclists, so the road would still require to be maintained. However, the landowner could challenge this and apply for a change of use for the road through the planning process. In relation to the Drive Arch, he advised that this was a private bridge but was inspected by the Council. As part of the stopping up order, the Council would not be in a position to force the landowner to repair the bridge.

Councillor Berry asked if enforcement options had been considered. Mr Forsyth reported that the Council had served a notice on the landowner and had been in dialogue with him; however, the landowner continued to refuse to accept the maintenance costs. He advised that enforcement would involve legal proceedings and if the Council was to lose the case it may be liable for other road and wall repairs, which was a significant risk to the Council.

Mr Forsyth informed Members that the Council had offered to pay 50% of the repair costs, but the landowner had declined this offer, believing that maintenance costs were the responsibility of the Council.

Responding to comments made by Councillor McAllister as regards public access, the Corporate Legal Adviser, Kirstie MacNeill, noted that the landowner had responsibility for maintaining the right of access in terms of the Land Reform Act and court action could be pursued if he was not meeting his responsibilities.

Councillor Innes proposed an amendment to the recommendation to allow for further consideration of this issue and to delegate authority to the Chief Executive, in consultation with the Council Leader and Depute Leader, to take a decision on the matter.

Decision

The Cabinet agreed:

- i. to delegate authority to the Chief Executive, in consultation with the Council Leader and Depute Leader, to consider further the options available to the Council in relation to maintenance of the wall adjacent to the C130 Drive Arch, Whittingehame, and the proposal to stop up that road; and
- ii. to delegate authority to the Chief Executive, in consultation with the Council Leader and Depute Leader, to take a decision the most appropriate course of action.

11. PUBLIC MINUTE OF THE MEETING OF THE LICENSING SUB-COMMITTEE HELD ON 9 MAY 2013

The public minute of the meeting of the Licensing Sub-Committee held on 9 May 2013 was approved.

SUMMARY OF PROCEEDINGS – EXEMPT INFORMATION

The Cabinet unanimously agreed to exclude the public from the following business containing exempt information by virtue of Paragraph 6 (information concerning the financial or business affairs of any particular person other than the Authority) of Schedule 7A to the Local Government (Scotland) Act 1973.

Sub-Committee Minutes

The private minute of the meeting of the Licensing Sub-Committee held on 9 May 2013 was approved.

The private minute of the meeting of the Tenancy Sub-Committee held on 16 May 2013 was approved.