



**MINUTES OF THE MEETING OF
THE CABINET**

**TUESDAY 10 MAY 2016
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

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

Other Councillors Present:

Councillor D Berry
Councillor S Currie
Councillor J Gillies
Councillor J Goodfellow
Councillor P MacKenzie
Councillor F McAllister
Councillor K McLeod
Councillor J Williamson

Council Officials Present:

Mrs A Leitch, Chief Executive
Ms M Patterson, Depute Chief Executive – Partnerships and Community Services
Mr D Small, Director of Health and Social Care
Mr J Lamond, Head of Council Resources
Ms F Robertson, Head of Education
Mrs M Ferguson, Service Manager – Legal and Procurement
Ms R Gertz, FoI and DP Compliance Officer
Ms J Mackay, Media Manager
Mr D Northcott, Team Manager – Structures, Flooding and Street Lighting

Clerk:

Mrs L Gillingwater

Apologies:

None

1. MINUTES FOR APPROVAL – CABINET 12 APRIL 2016

The minutes of the meeting of the Cabinet of 12 April 2016 were approved.

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

A report was submitted by the Depute Chief Executive (Resources and People Services) advising of the Council's compliance with the 20 working day timescale laid down by the Freedom of Information (Scotland) Act 2002, and the 40 calendar day timescale laid down by the Data Protection Act 1998 for the period from 1 October 2015 to 31 March 2016.

The Head of Council Resources, Jim Lamond, presented the report, informing Members that there had been a significant increase in the number of Fol requests compared to the previous half year. He advised that 97% of requests had been responded to within the set timescale, that 100% of environmental request responses had been completed on time and that 100% of data protection requests had met the timescale.

Renate Gertz, the Fol and DP Compliance Officer, responded to questions from Members, advising that the Council was not permitted to ask why information was being requested, and that it was Council practice to anonymise requests before issuing them to officers for a response. She pointed out that requests were scrutinised to ascertain whether exemptions applied, such as commercial sensitivity, and where this was the case the request would be refused. She offered to review the anonymity procedure, in response to a concern raised by Councillor Goodfellow in relation to housing developers.

On the issue of the cost to the Council of complying with the legislation, Mr Lamond offered to provide this information to the Cabinet on an annual basis as part of the compliance report.

Councillor Currie paid tribute to Council staff for their efforts in responding to requests. He expressed concern at the way in which some commercial organisations were exploiting the legislation for their own benefit, and asked if this issue could be looked at.

Councillor Berry welcomed the report and the Council's willingness to provide information where requested. His views were echoed by Councillor McMillan and Councillor Innes, who indicated that the public should be reassured that the Council is acting in an open and transparent manner and handling requests in a professional way.

Decision

The Cabinet agreed:

- i. to note the report and feedback from Members on the compliance statistics, and
- ii. to receive, on an annual basis, details of the costs to the Council of dealing with Freedom of Information, Data Protection and Environmental requests.

3. REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT – SOCIAL MEDIA POLICY

A report was submitted by the Depute Chief Executive (Resources and People Services) setting out the formal Council position on the use of social media within the context of the

Regulation of Investigatory Powers (Scotland) Act, and providing a clearer framework for how these areas of activity interact.

The Head of Council Resources, Jim Lamond, presented the report, advising that the Regulation of Investigatory Powers (Scotland) Act (RIPSA) Policy, approved by the Council in 2013 had not addressed particular requirements as regards the use of social media, and that this new policy would meet the requirements of the Act in that respect. He explained that, in some limited circumstances, Council staff may be required to access social media by way of covert means, and advised that this policy would provide a framework for authorising the use of such surveillance in order to ensure that the Council was operating within the law. He reported that all Scottish local authorities were required to have a RIPSA policy, and that in accordance with the existing inspection regime, he expected that their policies would also need to cover the use of social media.

Responding to questions from Councillor Currie, Mr Lamond and Renate Gertz, the Council's FoI and DP Compliance Officer, advised that such powers may be used in investigations into anti-social behaviour and environmental protection, as well as benefit fraud, although it was pointed out that benefit fraud was now largely within the remit of the Department for Work and Pensions. Mr Lamond advised that two tests were applied prior to the powers being used – necessity and proportionality. He believed that there was a low level of activity in East Lothian, hence the infrequent use of these powers. Dr Gertz further advised that the policy would only apply in three circumstances – detection and prevention of crime; public health; and public safety. She added that, where possible, there was a practice of using overt surveillance, rather than covert surveillance.

Councillor Berry asked about the use of covert identities. Dr Gertz confirmed that false identities would not be authorised for the purpose of covert surveillance. She also pointed out that the policy applied to all forms of social media.

Councillor Currie welcomed the policy and the safeguards in place to ensure that it was enacted only for specific purposes.

Councillor Akhtar highlighted the importance of reassuring the public as to why and how the policy would be used.

Councillor Innes concluded the debate by reminding Members that the Council was required to have such a policy and that it would also provide protection to Council staff.

Decision

The Cabinet agreed to approve the Social Media Policy.

4. LOCAL FLOOD RISK MANAGEMENT PLAN

A report was submitted by the Depute Chief Executive (Partnerships and Community Services) updating the Cabinet on the Flood Risk Management process and seeking approval of the Local Flood Risk Management Plan (LFRMP) for the Forth Estuary Local Plan District (FELPD), which includes proposed Flood Protection Schemes (FPS) for Musselburgh and Haddington and further flood studies in various locations in East Lothian.

The Team Manager – Structures, Flooding and Street Lighting, Dave Northcott, presented the report, advising Members of the progress made in relation to developing a LFRMP, and that the LFRMP would be published in June 2016 by the City of Edinburgh Council, as the lead authority. He drew attention to proposals in relation to various areas within East Lothian. As regards the funding of the Flood Protection Schemes, he clarified that whilst

there was a commitment from the Scottish Government to fund 80% of the cost of the schemes, confirmation of funding for individual FPSs had been delayed, and therefore, work to progress the Musselburgh and Haddington FPS would not commence until the Scottish Government's contribution had been confirmed; he anticipated that this would be confirmed at the end of May.

Referring to flood prevention in North Berwick, Councillor Goodfellow asked if this would extend to the east beach area and the sewage works. Mr Northcott explained that SEPA had not identified North Berwick as a Potential Vulnerable Area (PVA) in their Flood Risk Management Strategy; however, the LFRMP would include North Berwick in the wave modelling study carried out for the Dunbar and West Barns Flood Study.

Councillor Berry asked a number of questions in relation to flood risks in the North Berwick Coastal ward. Mr Northcott advised that SEPA's flood maps considered the impact of still water levels without wave effects. As regards Aberlady Bay, he noted that he would ask the consultants to look at the potential impact of surges on properties close to the Peffer Burn.

Councillor Currie asked if consideration had been given to flooding fields further upstream in order to prevent water from entering built-up areas. He also asked if the bridges in Musselburgh were strong enough to cope with a major flood. Mr Northcott pointed out that the option appraisal work considered Natural Flood Management (NFM). In relation to the bridge issue, he advised that Members would be briefed in due course.

Councillor MacKenzie questioned whether the Coal Authority managed its own flood risk plans. Mr Northcott confirmed that the pumping of the main workings had been raised as an issue and that the Council would identify the Coal Authority issues in any study being undertaken in the Preston/Seton/Gosford ward.

Councillor Berry asked Mr Northcott if he was satisfied that West Barns was now sufficiently protected. Mr Northcott stated that the measures put in place had prevented any further flooding, albeit there was a requirement for people to physically erect the barriers. He added that further measures that would dispense with the need for the barriers were under consideration, and that he anticipated that the study for the Dunbar and West Barns PVA would be carried out in early 2017.

In response to a question from Councillor McMillan as regards the effect of flood prevention measures on fishing in the Haddington and Lammermuir ward, Mr Northcott advised of a SEPA proposal to increase fish passage, but he did not have any further information at this time. The Haddington FPS was programmed to begin in 2020/21.

Councillor Currie expressed concern at the high number of residential and commercial properties in Musselburgh that were at risk from flooding. He highlighted the importance of the public consultation exercise and of the need to develop flood defences that would not have a detrimental impact on the community or on tourism. He hoped that funding would be made available to the Council in future years to invest in the infrastructure. His comments were supported by Councillor Williamson.

Councillor MacKenzie spoke of the risk of inland flooding should the Coal Authority cut back on pumping in the Blindwells area, and called on the Council to engage with the Coal Authority.

As regards the North Berwick area, Councillor Goodfellow welcomed the improvements to the sea wall but remained concerned about housing close to the harbour and the east beach.

Councillor Innes urged caution as regards the situation at Blindwells, stressing that there had been no suggestion of a change to the management of water in that area. He spoke of the importance of ensuring that any flood prevention measures were effective, and noted that the Council would assess risks in North Berwick, despite SEPA not including it as a vulnerable area. He welcomed the ongoing work with the Scottish Government to develop solutions to flooding across East Lothian.

Decision

The Cabinet agreed to approve the Local Flood Risk Management Plan.

Signed

Councillor Willie Innes
Council Leader and Convener of the Cabinet