

AGENDA

CABINET

THURSDAY, 19 JULY 2018

2.00 PM

**COUNCIL CHAMBER, FENLAND HALL,
COUNTY ROAD, MARCH**

Committee Officer: Linda Albon
Tel: 01354 622229
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- 1 To receive apologies for absence
- 2 Previous Minutes (Pages 1 - 4)

To confirm and sign the minutes of 14 June
- 3 To report additional items for consideration which the Chairman deems urgent by virtue of the special circumstances to be now specified
- 4 To receive members' declaration of any interests under the Local Code of Conduct or any interest under the Code of Conduct on Planning Matters in respect of any item to be discussed at the meeting
- 5 Housing Enforcement Policy (Pages 5 - 60)

To consider approval of a Housing Enforcement Policy with a view to recommending formal adoption at Full Council
- 6 Corporate Enforcement Policy (Pages 61 - 90)

To consider approval of a Corporate Enforcement Policy with a view to recommending formal adoption at Full Council

7 Economic Development (Pages 91 - 108)

- This report provides an update to Cabinet on Economic Development activity in Fenland and requests endorsement to enter into a shared Economic Development service arrangement with the Borough Council of King's Lynn & West Norfolk (BCKLWN).
- The report explains that the Council was previously engaged with Opportunity Peterborough (OP) who supported FDC's internal Economic Development resources.
- It is considered an appropriate time to move forward with FDC's ambitions to secure more and higher skilled job opportunities attract new business to the area and expand the existing support provided to Fenland businesses.
- Fenland shares a great deal in common with BCKLWN and a shared service would support an economic geography with a combined population of over 250,000, a combined Gross Value Added (GVA) of £5.1 billion and over 10,500 existing businesses.
- The shared service will provide additional resources to meet gaps in FDC's existing Economic Development service and strengthen its business engagement activities and aftercare support. It will also support additional work required to attract and secure inward investment.

8 Parish Street Lighting (Pages 109 - 120)

To consider and agree the proposal for future management, repairs & maintenance, and funding for Parish street lighting

9 Statement of Community Involvement (Pages 121 - 142)

To adopt the attached Statement of Community Involvement

10 Capital Programme Update (Pages 143 - 148)

To consider the updated capital programme and variations in resources since February 2018

11 Cabinet Draft Forward Plan (Pages 149 - 150)

Draft Forward Plan for Information Purposes

12 Items which the Chairman has under item 3 deemed urgent

Wednesday, 11 July 2018

Members: Councillor C Seaton (Chairman), Councillor D Oliver (Vice-Chairman), Councillor M Buckton, Councillor M Cornwell, Councillor A Hay, Councillor D Laws, Councillor D Mason and Councillor P Murphy

CABINET

14 JUNE 2018 - 4.00PM



PRESENT: Councillor C J Seaton(Chairman), Councillor D C Oliver(Vice-Chairman), Councillor M Buckton, Councillor M Cornwell, Councillor Mrs A Hay, Councillor Mrs D Laws, Councillor D Mason, Councillor P Murphy.

APOLOGIES: None

CAB1/18 PREVIOUS MINUTES

The minutes of the meeting of the 17 May 2018 were confirmed and signed.

CAB2/18 ANNUAL REPORT OF THE COUNCIL 2017/18

Members considered the Annual Report of the Council for 2017/18 which was presented by Councillor Seaton, which describes the performance of the Council over the last year, linked to key priorities set out in the Council's Business Plan.

Members made comments as follows.

- Councillor Cornwell commented the Council's Golden Age project is specifically aimed at the over 60's however any family member who may have relatives or caring responsibilities for residents over 60's are welcome to attend events. Events are run twice a year; two in the towns and two in the villages which reach a wide catchment area of residents on an annual basis.
- Councillor Buckton requested that more information be included in the Annual Report next year in regards to supporting young people.
- Councillor Cornwell commented that the Council supports young people across a range of different services and we see this at the Pride in Fenland awards and leisure and sports development projects.
- Councillor Mrs Hay asked why leisure income exceeded expectations whilst the number of paid customers has reduced.
- Richard Cassidy explained that the number of paid customers is the number of customers visiting the centres but the majority of income is derived from the Members signed up to direct debits which had increased in 2017.

Cabinet AGREED to approve the Annual Report of the Council for 2017/18.

CAB3/18 DRAFT 6 MONTH CABINET FORWARD PLAN

Councillor Seaton presented the draft forward plan for information.

CAB4/18 PROPOSED DISPOSAL OF PROPERTY ASSETS REPORT

Councillor Seaton stated that Members will note that Agenda Item 8 has a confidential appendices

at Agenda Item 9, and it was proposed and agreed to consider both items together . The Leader confirmed that Cabinet would remain in open session and requested that if a Member has a question relating to the confidential information that they leave it until the end of the item and indicate before asking the question so that the press and public could be excluded.

Members considered the proposed disposal of property assets report presented by Councillor Mason.

- Councillor Cornwell asked when discussions are held with Ward Councillors, will the Ward Councillor be given the opportunity to explain in detail their ward knowledge to help with decision making.
- Councillor Mason stated that it is very important for Ward Councillors to be involved with any discussion on disposal proposals and he would welcome that. There has been a discussion about supposed values of assets being disclosed, at a recent meeting and Councillor Mason stated that there is a register of desktop valuations which he is party to and he is more than happy to share that information with anybody who comes forward with legitimate reasons and will talk to any ward Member who is involved with disposal of assets on his/her particular ward. There will not be a general list of valuations circulated and this is for confidentiality reasons to protect the interests of the Council.
- Councillor Hay asked for clarification and an explanation on section 1.2 , where it states that a previous approach was set aside in favour of a more straightforward disposal strategy. Councillor Mason agreed it was an ambiguous statement and asked for Officer clarification.
- The Chief Executive stated that at that particular time an array of political decisions were taken and different options were presented and the decision had been made that the focus should be disposing of the assets that the Council had. The Chief Executive added that the previous political Leadership had also said that an approach could be considered and adopted to look at investing in assets that could generate income. The report that Cabinet are considering today is for approval of disposal of certain assets which would fall in line with the previous approach and a report will be brought back to Cabinet in July which sets out the potential for the redevelopment of a property that could have the potential to become an income source for the Council in the future.
- Councillor Mrs Hay asked at what stage is the decision made with regard to investing the income generated from disposal of an asset.
- Brendan Arnold stated that the capital programme which was agreed at Council in February depends on the generation of the level of capital receipts in order to sustain the ongoing programme. The three year programme including the current year we will need to generate £600,000 of capital receipts to sustain the agreed programme.

Cabinet Agreed the recommendations outlined in the report including an additional recommendation as follows:

- **To delegate to the Corporate Director of Growth and Infrastructure and the Corporate Director of Finance in consultation with the Portfolio Holders for Economy and Finance, to update the category assets fall within line with any changes or feedback received.**

(Members resolved to exclude the public from the meeting for this item of business on the grounds that it involved the disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972)

16.30pm

Chairman

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Agenda Item No:	5	
Committee:	Cabinet	
Date:	19th July	
Report Title:	Housing Enforcement Policy	

Cover sheet:

1 Purpose / Summary

- To consider approval of a Housing Enforcement Policy with a view to recommending formal adoption at Full Council

2 Key issues

- A member Task & Finish group met in 2017/18 to look at issues affecting the private rented sector.
- The findings from that task group and improvement action plan were approved by Cabinet on the 22nd March 2018.
- The task group felt it was important to set out, through a clear policy, the approach the Council will take to enforcement in order to improve the management and condition of the housing stock.
- The policy sets out a balanced approach to enforcement, following the principles set out in the Council's overarching Corporate Enforcement Policy. We mainly work informally and collaboratively with business and the community to ensure standards. We will only take a direct enforcement approach when there are either significant or immediate risks found or where we are not confident that informal approaches are working.
- The policy aims to ensure that only those landlords who fail to maintain reasonable standards or respond to the Council's regulatory approaches are penalised.
- The Housing Enforcement policy will apply district wide.
- Key features of the policy are:
 - The setting out of the Council's approach to using legislative powers relating to the management and condition of housing stock.
 - Provisions for recovering costs relating to enforcement and regulatory advice wherever possible. This includes introducing

- charging for non-statutory housing inspections and enforcement costs where a notice needs to be served.
 - The introduction of monetary and civil penalties in relation to carbon monoxide regulations and contravening certain offences under the Housing Act 2004.
 - The use of Rent Repayment Orders where Landlords have committed certain Housing offences.
- The draft policy was consulted on between 23rd April 2018 and 17th June 2018.
- A survey monkey questionnaire was drafted to capture feedback and wide promotion was undertaken.
- Along with that the policy was taken to Overview & Scrutiny on the 30th May to enable the committee to inform the policy development.
- As a result of that the proposed policy has been changed. The proposed changes are set out in Appendix A to the report as tracked changes.
- A community impact assessment for the policy is set out in Appendix B

3 Recommendations

It is recommended that Cabinet:

- Approves the Council Housing Enforcement Policy set out in Appendix A.
- That the policy is referred to Council for adoption

Wards Affected	All
Forward Plan Reference	
Portfolio Holder(s)	Councillor Dee Laws
Report Originator(s)	Dan Horn - Head of Housing & Community Support
Contact Officer(s)	Dan Horn as above Sarah Gove - Housing & Communities Manager Richard Cassidy - Corporate Director
Background Paper(s)	Cabinet 22nd March 2018 - Report of the Private Sector Housing Task and Finish Group. Cabinet 19th April 2018 - Draft Policy endorsed to go to consultation

4 Background

- 4.1 A member task and finish group was formed in 2017/18 to explore issues within the private rented sector. This was following a proposal to consider a selective licensing scheme for Wisbech. The member task and finish group considered the findings along with new powers from government to help tackle issues within the private rented sector.

5 Considerations

- 5.1 The Council has been successful in bidding for additional enforcement resource under the Controlling Migration Fund. This bid has enabled two Private Sector Housing Officers to begin conducting street by street property inspections in Wisbech town properties, identifying and tackling faults and failings in private rented homes.
- 5.2 In order to provide a transparent and consistent approach to enforcement, a Housing Enforcement Policy has been drafted which sets out the Council's approach to using relevant legislative powers and follows the principles of good regulation detailed in the Council's overarching Corporate Enforcement Policy. It is intended that the Housing Enforcement Policy will apply district wide, although the main regulatory focus is currently within Wisbech.
- 5.3 The Housing Enforcement Policy incorporates a number of new powers that allow Local Authorities to recover the costs of regulation and enforcement from those Landlords who do not maintain acceptable property or management standards. This helps ensure that those landlords who do comply with the law and the wider Council Tax payer do not have to meet all the costs of Housing regulation.
- 5.4 One particular power, introduced by the Housing & Planning Act 2016, are Civil Penalties which allow Local Authorities to issue penalties of up to £30,000 as an alternative to prosecution for certain specified offences.
- 5.5 There is no prescribed model by which the civil penalty structure can be set, therefore officers have looked at various schemes that have been approved by other Local Authorities and felt an approach developed by Amber Valley Council represented the most structured and easily understandable methodology. The Amber Valley scheme is based upon the existing criminal fine structure already used within the judicial system for related housing offences. This ensures that the Civil Penalty is based upon similar culpability and harm factors which are used to set out the relative seriousness of existing criminal sanctions.
- 5.6 Civil Penalties are subject to an internal appeal; this is a process whereby the owner / agent can make representations which will then be considered by a senior officer. The recipient of the civil penalty then also has an opportunity to subsequently refer the matter to the First Tier Tribunal (Property Section) which is part of HM Courts & Tribunals Service.
- 5.7 Other key features of the Housing Enforcement Policy include:
- The introduction of monetary penalties for breaches of the Smoke & Carbon Monoxide Regulations 2015, which concerns the provision and maintenance of smoke and carbon monoxide alarms in rented premises.

- Making a charge for notices and recovering expenses for re-inspection of premises along with charging for non-statutory housing inspections.
- Applying for Rent Repayment Orders where the landlord has been convicted of a relevant housing offence and it is considered in the public interest to apply for an order.

5.8 It should be noted that the Government has proposed that it will be extending the mandatory licensing of Houses in Multiple Occupation scheme, to be less than the 3 storey threshold that currently exists. This legislation comes into effect from October 2018. The implementation will include setting a licensing fee based on full cost recovery in accordance with guidance that will be issued (Guidance was released 20th June and is being assessed).

6 Consultation

- 6.1 The Council consulted on the policy with stakeholders between 23 April 2018 and 17 June 2018.
- 6.2 A survey monkey questionnaire was developed to capture feedback.
- 6.3 A letter was sent to 216 known landlords
- 6.4 Officers have been promoting the policy consultation in their day to day engagement with landlords, agents and tenants
- 6.5 Notification of the consultation to National Landlords Association and the Association of Residential Lettings Agents (ARLA) was given
- 6.6 There was a media release along with promotion through our social media platforms.
- 6.7 The policy was promoted for feedback at a landlord event in June 2018

7 Consultation feedback

- 7.1 9 responses to the survey were received. Please see Appendix B.
- 7.2 There was support for the approach the Council proposes to take with the policy.
- 7.3 The table below lists the following comments that were received.

Comment	Response
If you do not communicate to the property owner, it could be that the owner is unaware of a situation so by not communicating it, it would actually be very poor of the local authority.	Agreed
Enforcement officers believe they are above everyone else, they must be clear to people when they are going to take legal action.	All enforcement code is undertaken in accordance with the Corporate Enforcement Policy on the basis of Prevention

	Intervention and Enforcement
<p>Don't make it any more difficult for landlords. Policies, red tape, Licenses, bureaucracy make it more difficult. This leads to shortage of housing, higher rents, overcrowding. Here's a challenge for you: My Policy on Policies... Policies to be written on one side of A4 paper, minimum font 10 point. If more than one page, only the first page will be read, others will be discarded.</p>	<p>The policy essentially collates the powers and duties that the Council has responsibility for in relation to house condition enforcement. It was felt important by the Member Working Task Group that for openness, transparency and awareness the Council should do this.</p>
<p>In the case of owner occupiers, what would happen in the case of a spiteful neighbour causing trouble? This could put undue stress on the owner thinking that there may be more serious implications than there actually are.</p>	<p>The approach to evidence gathering would bring out this issue if it was happening.</p>
<p>16.2 Housing act Notice £240. 4 hours of an officers time at 60 per hour seems expensive ...surely this is an administrative matter once a problem has been found by an officer.</p>	<p>The hourly rate includes salary and associated corporate support costs.</p>
<p>17.1 Private Sector Housing Team will charge for inspections that are non-statutory. Why are they concerning themselves with non-statutory matters.</p>	<p>The team do receive requests for support from Landlords and Agents to assist them in meeting their duties. Just like with a pre-planning application it is felt a charge for this service should be made.</p>
<p>Paragraph - 26.2 (draft number) Re – the exceptions to the expectation that tenants will contact the landlord before contacting FDC – where a tenant is old and frail or otherwise vulnerable or where there are pre-school children in the household. Why? It seems terribly unfair in a day where nearly everyone has a telephone of access to a pad or pen to write a letter ...this is rather against the old and frail if they can</p>	<p>Agreed. Now para 28.2 and these 2 bullet points have been deleted and other bullet points amended to explain further.</p>

contact FDC they can contact their landlord... same with young parents , more likely to have a computer / phone etc.	
If you bring in Selective Licensing it will push the rogue landlords into the villages and March	Selective Licensing is not currently an option under consideration.

7.4 Other feedback received during the consultation included:

- A process chart for Civil Penalties to ensure openness and transparency to landlords that may become subject to a civil penalty process. This has been added as an Appendix to the policy.
- Cambridgeshire County Council (CCC) has the delegated authority to enforce private rented properties that do not have an Energy Performance Certificate. However they recognise District Council has more contact with these properties through our core regulatory work and are therefore far better placed to use these enforcement powers. CCC now have member approval to delegate this power to a district council the district council able to retain any fines recovered under fixed penalty notices. Therefore the Council propose to train our regulatory officers to undertake this function accordingly and reflect in the policy.
- An additional enforcement power to fine landlords who do not register with one of the 3 national redress schemes (to place the deposit):
 - Local authorities can impose a fine of up to £5,000 where a lettings agent or property manager who should have joined a scheme has not done so.
 - The authority must give written notice of their intention to impose a penalty setting out the reasons and the amount of the penalty. The lettings agent or property manager will have 28 days to make written representations or objections to the authority, starting from the day after the date the notice of intent was sent.
 - At the end of the 28 day period the enforcement authority must decide, having taken into account any representations received, whether to impose the fine and, if so, must issue a final notice to the lettings agent or property manager giving at least 28 days for payment to be made
- Amendments to the HMO section to reflect recent changes which extends HMO licensing and also links to HMO regulations.
- A new section on banning orders which is a recent new power available to the Council which will help prevent any serious offenders from being able to be a landlord.

7.5 Overview and scrutiny considered the draft policy on the 30th May. The committee were also made aware of the proposed additions set out in para 7.4. The table below sets out some points made.

Comment	Response
Reference Council's Prevention Intervention and Enforcement in Policy	Corporate Enforcement Policy referenced in para 1.2 and now expanded to include reference to this
An index and table of contents	This will be placed in the published website version
Amber Valley experience of using Civil Penalties	The policy has been in place since September and 1 notice has been served since then. That notice was complied with therefore no Civil Penalties has been issued.
Vulnerable tenants and Pre School Children should not be criteria in para 26.2	Agreed. Now para 28.2 and these 2 bullet points have been deleted and other bullet points amended to explain further.
Putting all communication in writing seems outdated	The Council needs to ensure that there is a comprehensive evidence audit trail to ensure it meets required standards. This is in accordance with Corporate Enforcement Policy and it is a legal requirement in the Landlord and Tenant Act 1985 (section 11)
Paragraph 19.5 – Can the Council impose the fine of £5,000 or should it go to Magistrates Court	We could go to the Magistrates court but the Council has the power to deal with it internally. The fine would therefore remain with the Council and not go to the Courts.
Balance needed between imposing fines on landlords and ensuring the issues are rectified	Agreed...and the fine structure within the policy ensures this is the desired outcome e.g the costs of a smoke detector is less than the fine for not having one.
How the hourly rate was calculated	The hourly rate includes salary and associated corporate support costs.
Why are Registered Providers (RP) not covered by the policy	They are included in the policy as set out in Section 24. The section has been strengthened to emphasise the council will use powers against RP if felt deemed necessary.
Para 22.4 (now 24.2) relating to registered providers improvement work programmes – would the same be offered to Private Landlords with large portfolios	Yes the same would be considered by Officers on a case by case basis for Private Landlords and para 2.5 has been amended to reflect this.

7.6 The proposed amendments reflecting the changes proposed as set out paragraphs 7.1 - 7.5 are marked as track changes in the policy as an Appendix A to the report.

8 Financial Impact

8.1 The policy sets out the current powers and duties Councils' have for regulating house condition and management.

8.2 There are no additional financial impacts from what was set out in the budget.

8.3 The policy does set out charging for advice previously given by the Council for nothing

8.4 The Policy also places a structure for how the Council will utilise new powers that if a landlord is prosecuted can see the penalty charges being retained by the Council rather than the Courts.

8.5 Extending HMO licensing will be subject to a new fee setting process on the basis of full cost recovery.

8.6 No assessment can be made to the likelihood of additional income from any of these new potential income sources.

9 Community Impact

A Community Impact Assessment is set out in Appendix B to this report.

Appendix A: Housing Enforcement Policy



Appendix A

1 Introduction

- 1.1 The aim of this policy is to allow the consistent and fair enforcement of housing legislation to raise standards in the private housing sector.
- 1.2 The policy is based around the Regulators' Code which this Authority has adopted. The general principles of good enforcement, which are set out in the council's Corporate Enforcement Policy including Prevention Intervention and ~~are~~ Enforcement are to be adhered to by the council in its housing enforcement activities and when carrying out enforcement we will have regard to all legal requirements which may apply to our actions.
- 1.3 All enforcement decisions and actions will be made having due regard to the provisions of equal rights and anti-discrimination legislation. Local Authorities have extensive powers to intervene where they consider housing conditions are unacceptable. The options are mostly contained in the Housing Act 1985, the Housing Grants, Construction and Regeneration Act 1996 and the Housing Act 2004. These interventions include:
 - enforcement activity (e.g. serving notices on owners to defer action, repair, demolish or prohibit the use of dwellings);
 - slum clearance;
 - compulsory purchase order (e.g. for empty homes);
 - renewal areas;
 - works in default;
 - disabled facilities grants; and
 - private sector renewal grants.
- 1.4 Enforcement of housing standards is an integral part of meeting the council's statutory duties in relation to Private Sector Housing. This policy applies to Housing Associations (Registered Providers) as well as private sector landlords.
- 1.5 This policy sets out to ensure the Council undertakes its housing enforcement role in a consistent, practical, open and transparent manner. When an officer is dealing with a property which is below acceptable standards, this housing enforcement policy will be followed.
- 1.6 The policy takes into account the Code of Practice for Crown Prosecutors.
- 1.7 This policy sets out the current regulatory legislation that the Council has at its disposal to use. It may be other legislation or regulation will come into operation before this policy is updated and the Council reserves the right to do so if the legislation allows.
- 1.8 The fees and charges laid out in the policy will be reviewed on an annual basis as part of the fees and charges setting Council process.

2 What to expect from the Private Sector Housing Team

2.1 Landlords

- 2.2 We will advise you of the legislation and help you understand how you can comply with it.
- 2.3 We will advise you as to what action you need to take to comply with the legislation and ask you to respond with your proposal of how you intend to comply within a reasonable

timescale. Where a landlord demonstrates there is a planned improvement programme Officers will give consideration to this.

- 2.4 If we are satisfied with your proposal we will work with you to comply within agreed timescales.
- 2.5 If we are not satisfied with your proposal or how the work is progressing we will initiate formal action by either the service of a notice, carrying out works in default and/or prosecution; either via the criminal or civil route.
- 2.6 In making the decision to prosecute we will have regard to how serious the offence is, the benefit of prosecution and whether some other action would be better.
- 2.7 A charge will be made for the service of a notice.

2.8 Tenants

- 2.9 We will expect you to advise your landlord, in writing, of the issues within your property before contacting us.
- 2.10 We will advise you as to what action we can take and advise you of the expected timescales.
- 2.11 We will expect you to cooperate with the landlord to get the works carried out and to advise us of any action taken by the landlord.
- 2.12 Engagement with the Private Sector Housing team is to ensure house condition improvement only and is not intended to increase priority on the housing register

2.13 Owners

- 2.14 We will expect owners to maintain the properties they live in.
- 2.15 Enforcement action will be considered if there is a serious risk to a person's health and/or the property is causing a statutory nuisance to neighbouring properties.
- 2.16 Where there are safeguarding concerns, or where it is considered enforcement is not appropriate, the council will consider alternative interventions.

2.17 Owners of Empty Homes

- 2.18 We will work with owners of empty homes to bring empty homes back into use. Incentives may be available to owners to make their empty homes available to the council in discharging their statutory Homelessness duties.
- 2.19 Where properties remain empty for a period of 2 years or more, Enforcement action (Compulsory Purchase Order, Empty Dwelling Management Order, and Enforced Sale) will be considered if an owner does not cooperate and the empty property has an impact on the neighbourhood.

3 Legislation

- 3.1 The Housing Act 2004, ("the Act"), together with Regulations made under it, prescribes the Housing Health and Safety Rating System as the means by which Local Authorities assess housing conditions and decide on action to deal with poor housing.
- 3.2 It is a risk assessment system of the likely effect of housing conditions on the health of occupiers. 29 potential hazards are assessed and scored for their severity.
- 3.3 The scores for each hazard are ranked in Bands. Hazards falling into Bands A to C are more serious, and are classed as Category 1. Less serious hazards fall into Bands D to J, and are classed a Category 2. The council must take appropriate action in respect of a Category 1 hazard, and may do so in relation to Category 2 hazards.

- 3.4 A 'Category 1 hazard' arises when a hazard reaches a score of 1000 or more under the Housing Health and Safety Rating System. A 'Category 2 hazard' arises when a hazard reaches a score of 999 or less under the Housing Health and Safety Rating System.
- 3.5 The score is based on the risk to the potential occupant who is most vulnerable to that hazard. However, in determining what action to take, the council will not only take account of the score, but also whether the council has a duty or discretion to act, the views of occupiers, the risk to the current and likely future occupiers and visitors and the presence of other significant hazards in the property.
- 3.6 The Housing and Planning Act 2016 confers additional enforcement powers as described in this Policy.

4 Statutory Action

- 4.1 The Housing Act 2004 is the principal Act covering statutory action. If a Category 1 hazard is identified, the council has a duty to require the owner to remedy the defect. The council has discretionary powers to deal with Category 2 hazards and the most appropriate course of action will be decided on a case-by-case basis. Where an improvement notice is served, the council will require sufficient works to abate the hazard for five years.
- 4.2 It is for the council to determine the most appropriate course of action in relation to the hazard in all circumstances. Consideration is to be given to all relevant factors of the case, to published guidance from central government & professional organisations and to the views of owners and tenants, before formal action is taken.
- 4.3 There are a number of different notices available to the council which requires a person, business or organisation to comply with specific requirements relating to Category 1 and 2 hazards:

5 Hazard Awareness Notice

- 5.1 Hazard Awareness Notice relating to Category 1 Hazards; section 28
- 5.2 Hazard Awareness Notice relating to Category 2 Hazards; section 29
- 5.3 This is used where a hazard has been identified but it is not necessarily serious enough to take more formal action. It is a way of drawing attention to the need for remedial action. This notice should not be used if the situation is considered serious enough for follow up inspections to be made. This notice is not registered as a land charge and has no appeal procedure.

6 Improvement Notice

- 6.1 Improvement Notices relating to Category 1 Hazards; section 11
- 6.2 Improvement Notices relating to Category 2 Hazards; section 12
- 6.3 An improvement notice will provide the most appropriate action for most Category 1 hazards where reasonable remedial works can be carried out to reduce the hazard sufficiently.

7 Prohibition Order

- 7.1 Prohibition Orders relating to Category 1 Hazards; section 20
- 7.2 Prohibition Orders relating to Category 2 Hazards; section 21
- 7.3 A prohibition order may be appropriate where conditions present a risk but remedial action is unreasonable or impractical e.g. where there is inadequate natural light to a room or no protected means of escape in case of fire. The order may prohibit the use of part or all of a premises for some or all purposes. It may also be used to limit the number of persons occupying the dwelling or prohibit the use of the dwelling by specific groups. In an HMO it can be used to prohibit the use of specified dwelling units.

8 Suspended Notices & Suspended Prohibition Orders

- 8.1 Suspension of Improvement Notice; section 14
- 8.2 Suspension of Prohibition Order; section 23
- 8.3 These may be suspended where enforcement action can safely be postponed until a specified event or time. This can be a period of time or a change in occupancy. Current occupation and wishes may be taken into account. These may also be used where there is programmed maintenance. The suspensions must be reviewed at least every 12 months. The advantage of suspending a notice is that there is a record of the Local Housing Authority's involvement and the situation must then be reviewed. It is also recorded as a land charge.

9 Emergency Remedial Action, Section 40

- 9.1 When the council is satisfied that a Category 1 hazard exists on any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers or visitors and no Management Order is in force under Chapter 1 or 2 of Part 4 of the Act. Emergency Remedial Action may be taken by the Authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats. The action will be whatever remedial action the council considers necessary to remove an imminent risk of serious harm.
- 9.2 This is likely where the council considers it is immediately necessary to remove the imminent risk of serious harm, there is no confidence in the integrity of any offer made by the owner to immediately address the hazard, and the imminent risk of serious harm can be adequately addressed through remedial action to negate the need to use an Emergency Prohibition Order. If this action is taken, a notice will be served within 7 days of taking the Emergency Remedial Action, detailing the premises, the hazard, the deficiency, the nature of the remedial action, the date action taken, and the rights of appeal.

10 Emergency Prohibition Orders, s.43

- 10.1 When the council is satisfied that a Category 1 hazard exists on any residential premises and is further satisfied that the hazard involves an imminent risk of serious harm to the health and safety of any occupiers of those or any other residential premises and no Management Order is in force under Chapter 1 or 2 of Part 4 of the Act, action may be taken by the Authority in respect of one or more Category 1 hazards on the same premises or in the same building containing one or more flats. The order specifies prohibitions(s) on the use of part or all of the premises with immediate effect.

10.2 This is likely where the imminent risk of serious harm cannot be adequately addressed through the use of emergency remedial action for whatever reason. Where this action is taken the council will, if necessary, take all reasonable steps to help the occupants find other accommodation when the tenants are not able to make their own arrangements.

11 Demolition Order, S.46 (Housing act 2004), Part 9 (Housing Act 1985)

11.1 When the council is satisfied that a Category 1 hazard exists in a dwelling or HMO which is not a flat, and a Management Order is not in force, or in the case of a building containing one or more flats where the council is satisfied that a Category 1 hazard exists in one or more of the flats contained in the building or in any common parts of the building, and the circumstances of the case are circumstances specified or described in an Order made by the Secretary of State. At the time of writing this policy, no such order has been made.

12 Clearance Areas, s.47 (Housing Act 2004), Part 9 (Housing Act 1985)

12.1 This may be declared when the council is satisfied that each of the residential buildings in the area contains a Category 1 hazard and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area, or when the council is satisfied that the residential buildings in an area are dangerous or harmful to the health or safety of the inhabitants of the area as a result of their bad arrangement or the narrowness or bad arrangement of the street and that the other buildings (if any) in the area are dangerous or harmful to the health or safety of the inhabitants of the area.

13 Statement of Reasons

13.1 All Notices and Orders will have a Statement of Reason attached to them as appropriate. The Statement should include why one type of enforcement was taken over another. A copy of the Statement must accompany the Notice or Order. Before formal enforcement action is taken regarding a fire hazard in a House of Multiple Occupation, the council will consult with the Fire Authority regarding works required to abate the hazard.

14 Rights of appeal

14.1 There is a right of appeal against most notices, orders or decisions made by the council. Where there is an appeal, the appropriate authority may confirm, quash, vary or suspend any notice, order or decision.

15 Vacated Premises

15.1 In cases where properties are subject to a statutory notice and the property is subsequently vacated, all Notices or Orders will be reviewed to consider whether the notices or orders may be varied, suspended or revoked. The council will seek to deter

landlords from undertaking retaliatory eviction and will not consider that removal of a tenant achieves compliance with any Notice served, except in overcrowding situations where it was a specific requirement of the notice.

16 Charging for Notices and Recovery of Costs

- 16.1 Local Authorities can make a charge as a means of recovering expenses incurred in:
- serving an Improvement Notice,
 - making a Prohibition Order,
 - serving a Hazard Awareness Notice,
 - taking Emergency Remedial Action,
 - making an Emergency Prohibition Order
 - or making a Demolition Order under the Housing Act 2004.
- 16.2 These costs are in relation to re-inspection of premises, the subsequent consideration of action to be taken and the service of Notices etc. No maximum charge has been set by a Government in England. In Fenland the standard charge for a Housing Act Notice will be £240 for each Notice or Order made. This charge has been calculated using an officer's hourly rate of £60. The hourly rate includes salary and associated corporate support costs.
- 16.3 In accordance with Sections 49 and 50 of the Housing Act 2004, the council will exercise the right to charge and recover the reasonable expenses incurred in taking enforcement action when serving the following notices:
- an improvement notice;
 - a hazard awareness notice;
 - a prohibition order;
 - a suspended improvement notice or suspended prohibition order;
 - emergency remedial action notices;
 - making an emergency prohibition order; and
 - making a demolition order
- 16.4 Costs will only be waived in exceptional circumstances such as deficiencies caused by tenant neglect and owner occupied premises and only at the discretion of the Council
- 16.5 From the time the notice charge is issued to the landlord for payment a legal charge will be registered against the property which is a local land charge. The charge will remain on the property until the sum is repaid in full.
- 16.6 When enforcement costs exceed £500 (as a result of multiple notices having been served), the council will normally exercise its rights and remedies under the Law of Property Act 1925 (c.20) which includes by deed having powers of sale and lease, or accepting surrenders of leases and of appointing a receiver to recover costs.
- 16.7 When enforcement costs do not exceed £500, the council will seek to recover enforcement costs through the small claims court and will use court remedies such as the use of the court bailiff to recover enforcement costs.
- 16.8 The council will make a charge to cover the cost of carrying out a review of Suspended Improvement Notices or Suspended Prohibition Orders, and for serving a copy of the

council's decision on a review and that charge will also be registered as a charge against the property.

- 16.9 All enforcement costs incurred and recovered will be based upon the activities listed within section 49 of the Housing Act 2004, and will be charged at an hourly rate. The hourly rate will be based on the actual cost incurred to the council of performing the chargeable activity.
- 16.10 Works in Default of a Statutory Notice
- 16.11 The council will consider undertaking Works in Default of a statutory notice, either with or without agreement, subject to the following conditions:
- 16.12 The person responsible for undertaking the works has not complied with the enforcement notice to which the works relate; and
- 16.13 Works in default powers are provided by the specific legislation being used in relation to the case; and
- 16.14 The council will register a charge against the premises for the costs incurred in undertaking the works.
- 16.15 In the majority of cases the council will seek to recover the costs incurred in undertaking works.

17 Non-Statutory Inspection Charges

- 17.1 The Private Sector Housing team will charge for inspections that are non-statutory. These include inspections relating to fitness of dwellings for the purposes of immigration requests and requests for advice from stakeholders in relation to duties under the Housing Act 2004. The cost for this service will be charged at £60 per hour and part of in line with officers' hourly rate. The hourly rate includes salary and associated corporate support costs.

18 Right to Rent Legislation

- 18.1 Under the Right to Rent, introduced in the Immigration Act 2014, private landlords, including those who sub-let or take in lodgers, must check the right of prospective tenants to be in the country to avoid being issued with a penalty of up to £3000 per tenant. Enforcement rests with the Home Office.

19 Energy Efficiency Standards

The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007

- 19.1 Cambridgeshire County Council (CCC) has ratified their decision to delegate their enforcement powers of this legislation to all local district authorities within Cambridgeshire as local Private Sector Housing Officers are better placed to engage with landlords and to assess such breaches more effectively. This means if on engagement with a landlord or agent it is determined there is no Energy Performance Certificate (EPC) then the Council can serve a fixed penalty notice. CCC has confirmed that FDC can keep any income from the fixed penalty notice.

- ~~18.4~~19.2 Once the delegated powers have been formally transferred, Fenland District Council's Private Sector Housing team will adopt the formal assessment and procedures as set out in Appendix 1

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19.3 The fine structure and guidance of legislation for landlords is set out in the guidance link below.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/671018/A_guide_to_energy_performance_certificates_for_the_marketing_sale_and_let_of_dwelling.pdf

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Minimum Efficiency Standards for Domestic Premises (Regulations 2015)

19.4 The above legislation came into force in April 2016; however it has subsequently been amended and since April 2018 the enforcing Weights & Measures authorities can serve penalty notices in certain circumstances where a landlord rents a property with a low (below F) energy efficiency rating.

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19.5 Cambridgeshire County Council has ratified their decision to delegate their enforcement powers of this legislation to all local district authorities within Cambridgeshire as local Private Sector Housing Officers are better placed to engage with landlords and to assess such breaches more effectively.

19.6 Once the delegated powers have been formally transferred, Fenland District Council's Private Sector Housing team will adopt the formal assessment and procedures as set out in the guidance document at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/713159/Domestic_Private_Rented_Landlord_Guidance_-_June_18.pdf

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4920 Issuing Monetary and Civil Penalties

Smoke & Carbon Monoxide Regulations 2015

49.420.1 These regulations were introduced to ensure that private sector landlords install and maintain at least one smoke alarm on every storey of their rented properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire or wood burning stove).

49.220.2 It also makes it the landlords' responsibility to ensure that the alarms are in working order at the start of each new tenancy. In addition, the regulations amend the conditions which must be included in a licence under Part 2 or 3 of the Housing Act 2004 ("the 2004 Act") in respect of smoke and carbon monoxide alarms.

49.320.3 The enforcement authorities (local authorities) are required to issue a remedial notice where they have reasonable grounds to believe a landlord has not complied with one or more of the requirements of the regulations.

49.420.4 The landlord must comply with the notice within 28 days. If they do not, the local authority must carry out the remedial action (where the occupier consents) to ensure the requirements in the regulations are met and can issue a civil penalty of up to £5,000. Penalty charges for non-compliance are as follows:

First Offence	£1,500	Reduced to £750 if paid within 14 days
Second Offence	£3,000	No reduction for early payment
Additional Offences	£5,000	No reduction for early payment

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~~19.5~~20.5 In determining the level of the fixed penalty notice the Council has considered the likely costs it will incur and the amount required sufficient to provide a deterrent to non-compliance. Increasing the fine for a second or third offence reflects the seriousness of the offence and is designed to deter repeat offending.

~~19.6~~20.6 While these charges are set as standard, a landlord may seek to review a penalty charge notice within 28 days by service of notice on the Council. A senior officer not directly involved in the service of the original notice, usually the Housing & Communities Manager will carry out this review. The reviewing officer will consider the representations made by the landlord and decide whether to confirm, vary or withdraw the penalty charge notice.

20.7 In doing so the reviewing officer will have regard to the amount required for the Council to recover its costs and that the Council has considered and agreed a level of fine that it considers is sufficient to provide a deterrent to non-compliance. After reviewing the fixed penalty notice the reviewing officer will inform the landlord by service of notice of their decision. The 50% reduction for a first offence will apply to any revised charge set should payment be within 14 days of service of the revised notice.

~~19.7~~20.8 The Landlord or Agent can appeal to the Residential Property Tribunal. The whole process is set out in Appendix 2

Civil Penalties

~~19.8~~20.9 The Housing & Planning Act 2016 introduces a range of measures to crack down on rogue landlords including the power for Councils to issue Civil Penalties of up to £30,000 as an alternative to prosecution for certain specified offences.

~~19.9~~20.10 This power came in to force on 6 April 2017 and was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

~~19.10~~20.11 Income received from a Civil Penalty can be retained by the local housing authority provided that it is used to further the local housing authority’s statutory functions in relation to their enforcement activities covering the private rented sector.

~~19.11~~20.12 A civil penalty may be imposed as an alternative to prosecution for the following offences under the Housing Act 2004:

- Failure to comply with an Improvement Notice (section 30)
- Offences in relation to licensing of Houses in Multiple Occupation (section 72)
- Offences in relation to licensing of houses under Part 3 of the Act (section 95)
- Offences of contravention of an overcrowding notice (section 139)
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (section 234)

~~19.12~~20.13 The amount of penalty is to be determined by the Council in each case. In determining an appropriate level of penalty, the Private Sector Housing Enforcement Team will have regard to statutory guidance given in the DCLG publication ‘Civil Penalties under the Housing and Planning Act 2016’.

~~19.13~~20.14 Only one penalty can be imposed in respect of the same offence and a civil penalty can only be imposed as an alternative to prosecution. However, a civil penalty can be issued as an alternative to prosecution for each separate breach of the House in Multiple Occupation management regulations. Section 234(3) of the Housing Act 2004 provides that a person commits an offence if he fails to comply with a regulation.

Therefore, each failure to comply with the regulations constitutes a separate offence for which a civil penalty can be imposed.

~~19.14~~20.15 The same criminal standard of proof is required for a civil penalty as for prosecution. This means that before taking formal action, the Council must satisfy itself that if the case were to be prosecuted in a magistrates' court, there would be a realistic prospect of conviction.

20.16 In order to achieve a conviction in the magistrates' court, the Council must be able to demonstrate beyond reasonable doubt that the offence has been committed. Therefore in doing this Officers will follow the Corporate Enforcement Policy and the Code of Practice for Crown prosecutors

~~19.15~~

~~19.16~~20.17 Determining the Sanction

~~19.17~~20.18 The following principles will apply to each case to be considered in relation to a Civil Penalty;

- Each case will be considered on its own merits
- There must be sufficient, reliable evidence to justify the action taken
- The action taken must be in the public interest
- Any mitigating circumstances will be considered
- The decision to prosecute an individual is a serious step and has serious implications for all involved. Decisions to prosecute should always be fair and consistent.

~~19.18~~20.19 Factors to be taken into consideration when Determining the Penalty

~~19.19~~20.20 In accordance with the statutory guidance, the Council will consider the following factors to help ensure that the civil penalty is set at an appropriate level:

- Severity of the offence. The more serious the offence, the higher the penalty should be.
- Culpability and track record of the offender. A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.
- The harm caused to the tenant. This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when imposing a civil penalty.

~~19.20~~20.21 A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

~~19.21~~20.22 The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

~~19.22~~20.23 While the fact that someone has received, a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that:

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- the local housing authority is proactive in levying civil penalties where the need to do so exists and
- that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

~~19.23~~20.24 The guiding principle should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

~~19.24~~20.25 **Penalties Structure:**

- For the purpose of the offence the following three steps below shall be used to determine the level of fine to issue.

Step One:

- A decision shall be made, by first considering the culpability factors below.

Serious breach of legislation	Very High
History of failing to comply with legislation	High
An act or omission that a reasonable person would not commit	Medium
Effort was made to comply but was insufficient	Medium
Minor failings due to an isolated incident	Low

- The harm factors should then be considered and given a category below. Consideration to be given to the likelihood of actual harm occurring due to the breach, and the severity of that harm.

Serious adverse effect on individual or high risk of adverse effect	Cat 1
Adverse effects, lesser than above. Medium risk of adverse effect, or low risk but of serious effect. Tenant seriously misled.	Cat 2
Low risk of an adverse effect.	Cat 3

Step Two:

- The Standard Scale (Criminal Justice Act 1982) has been used as reference and converted below to provide a point scale within the range of the civil penalty.
- 1. £1-£500
- 2. £501 - £1000
- 3. £ 1001-£2500
- 4. £2501 - £7000
- 5. £7001 – 17000
- 6. £17001-£30000

~~19.25~~20.26 The table below indicates the level at which the fine should be imposed by considering culpability and harm

Culpability	Harm Cat 1	Harm Cat 2	Harm Cat 3
Very High	6	5	4
High	5	4	3
Medium	4	3	2
Low	3	2	1

~~19.26~~20.27 The following factors shall be considered, along with any other relevant information, which may be used to justify an upward or downward adjustment.

- Factors increasing seriousness
- Statutory aggravating factors

~~19.27~~20.28 Previous convictions, having regard to

- the nature of the offences to which the conviction relates and its relevance to the current offence; and
- the time that has been elapsed since the conviction
- Offence committed whilst on bail
- Other aggravating factors include (this is not an exhaustive list):
 - Motivated by financial gain
 - Deliberate concealment of illegal nature of activity
 - Established evidence of wider/community impact
 - Obstruction of justice
 - Record of providing substandard accommodation
 - Refusal of free advice
- Factors reducing seriousness or reflecting personal mitigation (this is not an exhaustive list):
 - No previous convictions or no relevant/recent convictions
 - Steps voluntarily taken to remedy problem
 - High level of co-operation with the investigation, beyond that which will always be expected
 - Good record of maintaining property/member of Accreditation scheme
 - Self-reporting, co-operation and acceptance of responsibility
 - Good character

~~19.28~~20.29 The Council shall submit a request to the offender, to provide any financial information that they feel shall influence their ability to pay a high fine. This will be taken into consideration if it appears reliable. If no information is provided then the Council will consider any information known to them regarding the offender, consider this when making a decision regarding the level of fine.

~~19.29~~20.30 The Council will issue the person deemed to have committed a relevant offence a notice of its proposal ('notice of intent') to impose a financial penalty. This will set out;

- The amount of the proposed financial penalty;
- The reasons for proposing to impose the penalty;
- Information about the right of the landlord to make representations.

~~19.30~~20.31 The notice of intent must be given no later than 6 months after the Council has sufficient evidence of the conduct to which the penalty relates, or at any time when the conduct is continuing.

~~19.34~~20.32 A person who is given a notice of intent may make written representations to the Council about the intention to impose a financial penalty within 28 days from the when the notice was given.

~~19.32~~20.33 Where written representations are made, a senior officer not previously involved with the case will consider the appeal. This will usually be the Head of Housing and Community ~~Support~~**Enforcement** or another relevant officer at this level within the Council's structure. The decision of the senior officer will set out their reasons for making their decision clearly and the following options will be available to them;

- Withdraw a notice of intent or final notice; or
- Reduce the amount specified in a notice of intent or final notice
- Uphold the original decision to issue the notice of intent

~~19.33~~20.34 At the end of the 28-day period, the Council will decide whether to impose a penalty and, if so, will set the amount of the penalty. If the decision is made to impose a financial penalty, we will give the person a final notice requiring that the penalty is paid within 28 days. The final notice will include the following information;

- The amount of the financial penalty;
- The reasons for imposing the penalty;
- Information about how to pay the penalty;
- The period for payment of the penalty (28 days);
- Information about rights of appeal; and
- The consequences of failure to comply with the notice.

~~19.34~~20.35 A person who receives a final notice may appeal, within 28 days to the First-tier Tribunal (Property Chamber) against:

- The decision to impose a penalty; or
- The amount of the penalty.

20.36 In these circumstances, the final notice is suspended until the appeal is determined or withdrawn.

~~19.35~~20.37 See Appendix 3 for a flow chart of the Civil Penalty Process.

2021 **Rent Repayment Orders**

~~20.4~~21.1 A Rent Repayment Order is defined in section 40(2) of the Housing and Planning Act 2016 as an order requiring the landlord under a tenancy of housing to :

- repay an amount of rent paid by a tenant, or
- pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

20-221.2 The reference to universal credit or a relevant award of universal credit includes housing benefit under Part 7 of the Social Security Contributions and Benefits Act 1992 pending its abolition. The Council as the local housing authority has a duty under section 48 of the Housing and Planning Act 2016 to consider applying to the First-tier Tribunal ('the Tribunal') for a Rent Repayment Order in cases where an offence from the list below has been committed.

20-321.3 Offences for which a Rent Repayment Order can be obtained:-

- Failure to comply with an Improvement Notice, contrary to section 30(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Failure to comply with a Prohibition Order etc., contrary to section 32(1) of the Housing Act 2004 (served under the Housing Act 2004)
- Being a person having control of or managing a house in multiple occupation (HMO) which is required to be licensed under Part 2 of the Housing Act 2004 but which is not so licensed, contrary to section 72(1) of the Housing Act 2004
- Being a person having control of or managing a house which is required to be licensed under Part 3 of the Housing Act 2004 but is not so licensed, contrary to section 95(1) of the Housing Act 2004 Using violence to secure entry to a property, contrary to Section 6(1) of the Criminal Law Act 1977
- Illegal eviction or harassment of the occupiers of a property, contrary to section 1(2), (3) or (3A) of the Protection from Eviction Act 1977
- Breach of a banning order made under section 21 of the Housing and Planning Act 2016 (not yet in force but scheduled to be 1 October 2017)

20-421.4 The offences under the Housing Act 2004 must relate to hazards within occupied premises and not common parts only. The offence must have been committed on or after 6th April 2017. A RRO can be applied for whether or not the landlord has been convicted.

20-521.5 Where there has been a conviction, a certificate of conviction will suffice to establish commission of the specified offence. In the absence of a conviction, the Tribunal will need to be satisfied beyond reasonable doubt that the landlord committed the specified offence. Officers shall have regard to the Crown Prosecution Service Code for Crown Prosecutors (see [Code for Crown Prosecutors](#)) in order to establish whether there is likely to be sufficient evidence to secure a conviction and therefore to establish the necessary burden of proof to the Tribunal.

20-621.6 In deciding whether to apply for a RRO, the Council must under section 41(4) of that Act have regard to any guidance issued by the Secretary of State (see the DCLG document 'Rent Repayment orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities' - [Rent Repayment Orders Guidance](#)).

20-721.7 Council officers may offer advice to tenants who are eligible to claim a RRO in respect of rent paid themselves but in such cases, the tenant will usually be referred direct to the Citizen's Advice Bureau or other appropriate bodies for further support.

20-821.8 Council officers are granted powers and duties to deliver proportionate and targeted enforcement. It is vital that regulatory resource is used consistently and to best effect by ensuring that resources are targeted on addressing the highest risks. The use of RRO's is only to be used where considered appropriate.

20-921.9 The objective of an application for a Rent Repayment Order is not only to issue a punishment as a consequence of non-compliance with the law, but also to deter the offender and others in a similar position from repeat offences.

20-1021.10 If a conviction for the offence has been obtained then it is normally expected that a Rent Repayment Order will be pursued where the Council have paid housing benefit, or

the housing element of Universal Credit. The Tribunal must, in these cases, order that the maximum amount (12 months) of rent be repaid in these circumstances

~~20.11~~21.11 The matrix below should be followed to help determine whether to pursue a RRO and the amount of rent to reclaim:

1.	Has the offender been prosecuted and convicted of a relevant offence in Court?	If yes, make an RRO application. If no go to step 2.
2.	Has evidence been obtained from Academy / Benefits to confirm that Housing Benefit has been paid by AVBC over the 12 months?	If no – no case for RRO. If yes, proceed to step 3.
3.	Does the LA have sufficient evidence to prove 'beyond reasonable doubt' that a relevant offence has been committed? Is the evidence reliable? Is there no credible defence?	If no – case closed, do not pursue. If yes, proceed to step 4.
4.	Is it in the public interest to proceed to apply for an RRO? (consider the level of harm that has been caused)	If no – case closed, do not pursue. If yes, proceed to step5.
5.	Is pursuing an RRO proportionate to the offence?	If no – case closed, do not pursue. If yes, proceed to step 6.
6.	Does the offender have any previous convictions?	If yes – proceed to RRO. If no, proceed to step 7.
7.	Where no previous offence – is the issuing of a RRO likely to deter from future offences?	If yes – proceed to RRO. If no, consider closing and not pursuing.
8.	RRO Would the issuing of a RRO cause substantial hardship to the offender, and are there mitigating circumstances to suggest the LA should not proceed?	If Yes, complete notes to justify reason not to pursue. If no, proceed to RRO application
9.	Are there any other factors that would indicate the Council should not proceed with the issuing of the RRO	If Yes, complete notes to justify reason not to pursue. If no, proceed to RRO application

~~20.12~~21.12 If the conclusion is yes to pursue RRO, then the amount to be reclaimed should be determined by considering the factors in the table below.

~~20.13~~21.13 If the offender has already been convicted of the offence, then the amount shall automatically be determined as 12 months rental income.

~~20.14~~21.14 If no conviction has been obtained, but the decision has been made to pursue RRO, the factors in the table below should be considered to determine a sum.

~~20.15~~21.15 The amount of rent to be repaid cannot exceed the amount actually collected. Where the tenant is in receipt of Universal Credit, the formula provided in the DCLG guidance in relation to RRO's shall be followed.

~~20.16~~21.16 Factors to influence amount of RRO

1.	Punishment of the offender – the RRO should have a real economic impact on the offender and demonstrate consequences of non- compliance with their responsibilities. Consider the conduct of landlord and tenant, financial circumstances of landlord and whether landlord has previous convictions
2.	Deter the offender from repeating the offence – level of RRO must be high enough to deter offender from repeating
3.	Dissuade others from committing similar offences – RRO will be in the public domain. Robust and proportionate use is likely to help others comply with their responsibilities.
4.	Remove any financial benefits that the offender may have obtained as a result of the offence – landlord should be losing the benefits that he has accrued whilst not complying with their responsibilities
5.	Is there any other factors the Council considers should be taken into account.

~~20.17~~21.17 Consideration of the above points will determine whether the full amount of rent should be reclaimed or whether there are mitigating circumstances, this will depend on the severity of the offence and whether this justifies 12 months of non-payment of rent.

~~20.18~~21.18 If there are mitigating circumstances, then a deduction should be applied from the full 12 months. The amount payable under a RRO is recoverable as a debt.

22 Banning Order Offences

22.1 The local Authority may apply to the First Tier Tribunal for a Banning Order against a landlord who it has prosecuted for a banning order offence as described in The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.

22.2 A banning order is an order issued by the First-tier Property Tribunal that bans a landlord from:

- Letting housing in England;
- Engaging in English letting agency work;
- Engaging in English property management work; or
- Doing two or more of those things.

22.3 Breach of a banning order is a criminal offence.

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Determining the sanction

22.4 Local housing authorities are expected to develop and document their own policy on when to pursue a banning order and should decide which option it wishes to pursue on a case-by-case basis in line with that policy. Our expectation is that a local housing authority will pursue a banning order for the most serious offenders.

22.5 Fenland District Council will consider applying for a Banning Order where the landlord has received a Civil Penalty where the severity of harm is assessed as Category 2 and the culpability is above High (see table Civil penalties section).

22.6 The government has issued guidance which details the specific process for making a Banning Order. Fenland District Council will adopt this guidance which can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/697643/Banning_order_guidance.pdf

21

22.23 Owner Occupiers

22.423.1 Other than in exceptional circumstances, the council expects owner-occupiers, including long leaseholders, to take their own action to remedy hazards at their own properties the Council will decide whether there are exceptional circumstances in a particular case to justify intervention.

22.223.2 Occasions will arise whereby Category 1 hazards are identified in owner occupied properties where the owner is not eligible for financial assistance, is unwilling to use financial assistance, or where no financial assistance is available from the council. The duty to take action, as required under Section 5 of the Housing Act 2004 still applies.

22.323.3 However it would not generally be in the public interest to enforce compliance unless the hazard in question was adversely affecting an adjoining property or was endangering the health and safety of the public or visitors to the property (such as Postal Service workers).

22.423.4 Where it appears that there would otherwise be little prospect of such a hazard being remedied within the forthcoming 12 months (for example through a grant to install central heating / insulation to remedy the hazard of excess cold) then the hazard will be brought to the attention of the owner by the service of a Hazard Awareness Notice. No charge would generally be made for the service of such a notice. This fulfils the council's duty under section 5 of the Housing Act 2004 but has no subsequent enforcement consequences.

22.523.5 In some exceptional cases, in line with the guidance given by the HHSRS Enforcement Guidance, it will be necessary to serve an Improvement Notice or Suspended Improvement Notice in respect of hazards in owner occupied properties. No charge would generally be made for the service of such a notice and the Service will work with the owner to offer advice and assistance in complying with the requirements of the notice. Other examples of exceptional cases where the council may take enforcement action include:

- Vulnerable elderly people who are judged not-capable of making informed decisions about their own welfare.
- Vulnerable individuals who require the intervention of the council to ensure their welfare is best protected.
- Hazards that might cause harm to persons other than the occupants.
- Serious risk of life-threatening harm such as electrocution or fire.

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- Any other exceptional case determined by the Housing & Communities Manager or equivalent officer

2324 Housing Associations/Registered Providers (RP)

~~23.1 RP exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant representatives) and their performance is scrutinised by the Homes England. RPs normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service failure.~~

~~23.2 On this basis the council will not normally take formal action against an RP unless:~~

- ~~• They are satisfied that the problem in question has been properly reported to the RP; and~~
- ~~• The RP has then failed to take appropriate action within a reasonable timescale, taking into account its published or other realistic response targets.~~

24.1 If the council determines that it is appropriate to take action it will then normally notify the RP that a complaint has been received and/or a hazard identified and seek the RPs comments and proposals. However the Council will if deemed necessary utilise all powers available under this policy if it is felt needed to get resolution to an issue within an RP property.

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~~23.3 Only in cases where it judges that an unsatisfactory response has been received will the council take further action, and will then determine which of the available enforcement options is the most appropriate, taking into account the facts of the case.~~

24.2 Where we have identified hazards and the Registered Provider has a programme of works to improve or make their stock decent, the officer will take into account the programme when determining the most appropriate course of action, and will liaise with the RP over any works necessary to deal with category 1 and 2 hazards in advance of the planned improvements. In particular, with the Space and Crowding hazard, account will be taken of the availability of suitable alternative accommodation and the priority given to the allocation of alternative accommodation for tenants living in overcrowded conditions which are the subject of a Category 1 or high Category 2 hazard.

~~23.4~~

2425 Management Orders

24.25.1 If a property should be licensed, but for whatever reason(s) there is no reasonable prospect of granting a licence, the council must introduce a Management Order. The council also has a duty to make an Order where the health and safety condition as described in the Section 104 of the Act is met. Similarly, the council can also decide to take over the management of some empty properties in order to bring them back into use and those properties where it is decided the council should intervene for anti-social behaviour reasons.

24.25.2 Management Orders effectively mean that the council (or its Agent) takes over the running of the property as if it were the landlord, including collecting rents, forming tenancies, carrying out repairs and other management matters; the duties vary between the different orders that can be made. This does not affect the ownership of the property;

the owner retains certain rights depending on the type of order including receipt of surplus rental income. Relevant costs are recoverable.

24.325.3 Schedule 3 of the Housing and Planning Act 2016 amends the Housing Act 2004 to allow interim and final management orders to be made in cases where a banning order has been made.

24.425.4 An Interim Management Order (IMO) lasts for no longer than 12 months and will be made on a property if it is a licensable HMO but does not have a licence. The council must make an IMO if they do not anticipate that the HMO will be licensed in the near future or because the council has revoked the license. The expiry date of the IMO will be determined when it is made.

24.525.5 Final Management Order (FMO) lasts for no longer than 5 years and must be made on expiry of the IMO where a licence cannot be granted. When a FMO expires a new one may be made if necessary.

24.625.6 A Special Interim Management Order (SIMO) is an Order authorised after a successful application to a Residential Property Tribunal (RPT) where circumstances fall within a category of circumstances prescribed by the national authority and it is necessary to protect the health, safety and welfare of occupants, visitors or neighbours. A FMO can follow a SIMO to protect persons on a long term basis as described in the Order.

24.725.7 An Interim Empty Dwelling Management Order (interim EDMO) is an Order authorised after a successful application to a RPT. The dwelling must have been wholly unoccupied for at least two years and there is no reasonable prospect that the dwelling will become occupied in the near future. An interim EDMO enables the council to take steps to ensure, with the consent of the proprietor, an empty dwelling becomes occupied. An interim EDMO lasts no longer than 12 months.

24.825.8 A Final Empty Dwelling Management Order (Final EDMO) may replace an Interim EDMO if the council feels that unless a Final EDMO is in place the dwelling will become or remain empty. Where the dwelling is already unoccupied the council must have taken all appropriate steps under the interim EDMO with a view to ensuring the dwelling becomes occupied. A final EDMO lasts for 7 years; once a Final EDMO expires a new one may be made if necessary. Orders can be varied or revoked in accordance with the provisions of Part 4 of the Act.

24.925.9 The council is under a duty to issue Interim and Final Management Orders where necessary. Officers will instigate this action where necessary but as a last resort.

2526 Additional Enforcement Powers

25.426.1 The following tools are also available where the Housing Act 2004 measures are not appropriate, or do not sufficiently deal with the problem.

25.226.2 Environmental Protection Act 1990 Section 80 – Notices can be served if the officer is of the opinion that there is a statutory nuisance at the premises. The premises must be deemed prejudicial to health or a nuisance.

25.326.3 Building Act 1984 Section 59/60- Used to deal with defective drainage issues in existing buildings.

25.426.4 Building Act 1984 Section 64/65- Used where sanitary conveniences are insufficient or in need of replacement and are considered prejudicial to health or a nuisance.

~~25.5~~26.5 Building Act 1984 Section 76- Used where the property is so defective so as to be prejudicial to health. This notice notifies the person responsible of the local authority's intention to remedy the problem (similar to work in default)

~~25.6~~26.6 Public Health Act 1936 Section 45- Used where there are defective sanitary conveniences due to their repair and/or cleansing ability. They must be in such a state as to be prejudicial to health or a nuisance

~~25.7~~26.7 Public Health Act 1936 Section 83- Used where a property is in such a state as to be in a filthy or unwholesome condition or verminous.

~~25.8~~26.8 Public Health Act 1961 Section 17- Where any drain, private sewer, water closet, waste pipe or soil pipe has not been maintained and can be repaired for less than £250.

~~25.9~~26.9 Local Government (Miscellaneous Provisions) Act 1976 Section 33- Used where services such as the water supply are due to be, or have been, cut off to a domestic property.

~~25.10~~26.10 Local Government (Miscellaneous Provisions) Act 1982 Section 29 (Notice of Intended Entry)- Used to prevent unauthorised access (for example broken windows, doors etc.) to get the owner to secure the premises.

~~25.11~~26.11 Prevention of Damage by Pests Act 1949 Section 4- Used where there is evidence of or harbourage of rats or mice at a property.

~~25.12~~26.12 Housing Act 1985 (As Amended)- Some provisions within the 1985 Act have not been revoked and may be appropriate to use in some circumstances. In particular the overcrowding provisions are still available and can be used where the 2004 Act is not sufficient. The other provisions relate to houses in multiple occupation (HMO) and the Housing (Management of Houses in Multiple Occupation) Regulations 1990. These have been revoked with regards to all types of HMO, except certain converted blocks of flats. These regulations can be used to deal with disrepair and management issues of this type of HMO only.

~~25.13~~26.13 The Management Of Houses In Multiple Occupation (England) Regulations 2006. These regulations have been introduced to deal with all other types of HMO other than those mentioned in above. Therefore, all licensable HMOs, smaller HMOs and flats in multiple occupation are covered by these regulations. Only self-contained flats are exempt as they fall under the regulations mentioned above. The regulations cover the management and repair of the HMO. There are no notice provisions with these regulations therefore if a decision is made to take action under these regulations; the Officer must go straight to prosecution.

~~25.14~~26.14 The following legislation is also used as part of the day-to-day collection of information, preparing cases for prosecution and gathering evidence.

- Local Government (Miscellaneous Provisions) Act 1976 Section 16- Used to formally request information about a premises or a person.
- Police and Criminal Evidence Act 1984, Criminal Procedures and Investigation Act 1996, Regulation Of Investigatory Powers Act 2000, Investigatory Powers Act 2016 – used in relation to interviews under caution, prosecution and gathering evidence.

~~25.15~~26.15 Where housing or other related legislation is introduced which is enforced by the Council and permits the imposition of any monetary penalty or penalty charge the Council will seek to fully implement any duty or power conferred upon it.

~~26~~27 **Powers of entry and power to require Information**

~~26.4~~27.1 Councils have the power of entry to properties at any reasonable time to carry out its duties under Section 239 of the Housing Act 2004 provided that the officer has:

- Written authority from an appropriate officer stating the particular purpose for which entry is authorised.
- Given 24 hours' notice to the owner (if known) and the occupier (if any) of the premises they intend to enter.

~~26.2~~27.2 No notice is required where entry is to ascertain whether an offence has been committed under:

- sections 72 (offences in relation to licensing of HMOs),
- 95 (offences in relation to licensing of houses) or
- 234(3) (offences in relation to HMO management regulations).
- If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry then a warrant may be granted by a Justice of the Peace on written application. A warrant under this section includes power to enter by force, if necessary.

~~26.3~~27.3 Councils also have powers under Section 235 of the Housing Act 2004 to require documentation to be produced in connection with:

- Any purpose connected with the exercise of its functions under Parts 1-4 of the Housing Act 2004.
- Investigating whether any offence has been committed under Parts 1-4 of the Housing Act 2004.

~~26.4~~27.4 Councils also have powers under Section 237 of the Housing Act 2004 to use the information obtained above and Housing Benefit and Council Tax information obtained by the council to carry out its functions in relation to these parts of the Act.

~~27~~28 What is expected of tenants

~~27.4~~28.1 Before considering taking any action in respect of a tenanted property the tenant(s) will normally be required to contact their landlord about the problems first. This applies to all tenants. Legislation covering landlord and tenant issues require that tenants notify their landlords of any problems with the property. This is because landlords can only carry out their obligations under the legislation once they have been made aware of the problem. Wherever possible this communication should be done in writing as the documentary evidence will be required by the housing enforcement officers at a later date.

~~27.2~~28.2 In certain situations tenants will not be required to write to their landlord first, e.g.:

- where the matter appears to present an imminent risk to the health and safety of the occupants;
- where there is a history of harassment/threatened illegal eviction/poor management practice;
- ~~where the tenant is old and frail or otherwise vulnerable, e.g. where there are pre-school children in the household;~~
- ~~where the tenant's first language is not English and this is likely to cause them difficulty;~~

- where the tenant could not for some other reason be expected to contact their landlord/managing agent; e.g hospital leaver whose property is in poor condition and cannot be discharged

~~27.3~~28.3 Tenants are responsible for keeping Officers informed of any contact they have had with their landlord (or the landlord's agent or builder, etc.) which may affect the action the council is taking or considering taking.

28.29 Licensing of houses in multiple occupation

~~28.4~~29.1 Under the Housing Act 2004 certain types of House in Multiple Occupation (HMO) will require a license to operate. An HMO is a building occupied by more than two households as defined in Part 2 of the Housing Act 2004.

~~28.2~~29.2 Certain HMO's, as determined by legislation, must be licensed. Regulations and guidance published by the Department of Communities and Local Government will be followed in the administration of the council's HMO Licensing duties and enforcement of satisfactory conditions and standards.

~~28.3~~29.3 Local Authorities have discretionary powers to licence other HMO's which fall outside the mandatory requirement and other types of residential properties in certain circumstances.

29.4 However Fenland District Council has not adopted any licensing scheme ~~other than the national Mandatory scheme for HMO's of 3 or more storey.~~

~~28.4~~29.5 ~~The Council currently charges £300 for a Mandatory HMO Licence, with a renewal cost of £100~~

~~28.5~~ ~~The Council currently charges £300 for a 3 storey 5 year HMO licence and £100 for a renewal after 5 years.~~

~~28.6~~29.6 There are only 13 currently in the district and the fee charge is based on historical advice that is now outdated and not based on full cost recovery.

~~29.7~~ ~~The government has announced they will be extending the mandatory scheme to less than 3 storeys.. The government has introduced new legislation to remove the '3 storey' element of the current Mandatory Licensing Scheme. Therefore any HMO housing 5 persons, forming 2 households or more, irrespective of how many storeys there are, will require to be licenced from 1st October 2018.~~ The Council will be setting a new license fee to coincide with this legislative change based on full cost recovery and guidance

29.8 ~~All HMO's which fall under the definition of s.254 of the Housing Act 2004, irrespective as to whether they require a licence, must comply with the national HMO regulations (Statutory Instruments 2006 372/3).~~

~~28.7~~

~~28.8~~29.9 Following licensing, HMOs will be prioritised for assessment under the HHSRS. The owner must deal with all Category 1 hazards within a suitable timescale. If they do not, then the council is expected to use their enforcement powers to improve the property. Applicants will be informed of this requirement when the licence is issued and information made available to help them identify and deal with Category One Hazards.

~~28.9~~29.10 The council will consider service of a Temporary Exemption Notice (TEN) where a landlord is, or shortly will be, taking steps to make an HMO non- licensable. A TEN can only be granted for a maximum period of three months. A second three-month TEN can be served in exceptional circumstances. Where a licensable HMO is not licensed, the landlord cannot serve notice to quit until the HMO is licensed.

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~~28.10~~29.11 Where a landlord fails to licence an HMO, the council can consider taking a prosecution case to the Residential Property Tribunal (RPT). The RPT will replace the courts in judging cases relating to some offences and appeals under the Act.

~~28.11~~29.12 On conviction for failure to licence, the RPT has the power to make a Rent Repayment Order requiring that up to 12 months' rent is repaid to the tenant or to the council where a tenant is on housing benefits.

~~28.12~~29.13 The licensee has a right of appeal to the RPT against refusal to licence, licensing conditions and the maximum number of occupiers or households specified on the licence.

~~28.13~~29.14 Where there is no prospect of an HMO being licensed, the act requires that the council use its interim management powers. This enables the council to take over the management of an HMO and become responsible for running the property and collecting rent for up to a year. In extreme cases this can be extended to five years, with the council also having the power to grant tenancies.

~~28.14~~29.15 If the council finds that there has been a change of circumstances in an HMO since it was licensed, it has the power to vary the licence. If there is a serious breach or there are repeated breaches of the license conditions or the licensee or manager are no longer fit and proper persons, the licence can be revoked.

~~28.15~~29.16 The licence can also be revoked if the property is no longer a licensable HMO or if the condition of the property means it would not be licensable were an application to be made at the later time.

29.30 Monitoring and review

~~29.1~~30.1 In accordance with the Regulators' Compliance Code, the council will keep its regulatory activities and interventions under review, with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose.

30.31 Contacts

~~30.1~~31.1 If you have any comments or queries in relation to this policy, please contact:

- The Housing & Communities Manager at the following address: Fenland Hall, March, Cambs, PE15 8NQ or by telephone: 01354 654321 or by email at privatesectorhousing@fenland.gov.uk

Appendix 1

**The Energy Performance of Buildings
(Certificates and Inspections) (England
and Wales) Regulations 2007**

Process Flow Chart

Officer requests a copy of an Energy Performance Certificate, Inspection Report or Advisory Report

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Where a breach occurs, the Local Authority can serve a Penalty Charge Notice within **6 months** of the breach

Charges are fixed dependant on type of breach. See **table below**

The recipient must pay or request a review within **28 days** of the notice being served

The Local Authority can extend this period at their discretion, or revoke the notice if so wishes

Where the recipient can demonstrate that:

- (a) he took all reasonable steps and exercised all due diligence to avoid breaching the duty;
- or (b) regulation 42 applies

authority must withdraw a penalty charge notice

If the recipient requests a review of the Penalty Charge Notice, the Local Authority must consider any representations made by the recipient and all other circumstances of the case & decide whether to confirm or withdraw the notice and notify the recipient of their decision in writing.

If after the review the recipient does not agree with the Local Authority's decision, an appeal can be made, within **28 days**, to the County Court

The court will either **uphold** or **quash** the Penalty Charge Notice

If the decision of the court is to quash the notice, the Local Authority must **repay**, to the recipient, any monies received for payment of the Penalty Charge Notice

Appendix 2

Smoke & Carbon Monoxide Regulations Enforcement Process

Process Flow Chart

APPENDIX 2

Where the Local Authority are satisfied a breach has occurred they can serve a Remedial Notice within 21 days of the date of the breach

Landlord must take remedial action within 28 days of the notice being served

Landlord may make written representation against the Notice, to the local authority, within 28 days of Remedial Notice being served

Where the local authority is satisfied that the landlord has not rectified the breach, or has not made reasonable progress, it must arrange the work to be carried out within 28 days

Where a breach of the Remedial Notice occurs the Local Authority may impose a Penalty Charge Notice of upto £5k, within 6 weeks of the breach

Landlord can request a review of the Penalty Charge Notice

Upon request for a review the local authority can either confirm, vary or withdraw the Penalty Charge Notice

The landlord may appeal the Local Authority's decision by applying to the First Tier Tribunal

Appendix 3

CIVIL PENALTIES PROCEDURE

HOUSING & PLANNING

ACT 2016

S.249A

Housing Act offence committed

Stage 1
PSH Officer to serve a **Notice of Intent**
On Relevant Person

Stage 2
Relevant Person has the right to make
Representation to FDC within 28 days

Stage 2A
At any stage, FDC can **withdraw**, or **amend**
the financial penalty

Stage 3
After 28 days PSH Officer to serve **Final**
Notice

Relevant person may **appeal** to the First Tier Property
Tribunal within **28 days** of final notice

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

INTRODUCTION

From 1st April 2011, the Equality Act 2010 introduced a new legal duty on all public authorities.

The three arms of the act focus on the need for public authorities to have ‘due regard’ to the need to:

- **Eliminate unlawful discrimination**, harassment, victimisation and any other conduct prohibited by the Act:
- **advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
- **foster good relations** between people who share a protected characteristic and people who do not share it.

The protected groups (previously known as equality strands) are as follows:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Gender
- Sexual orientation
- Marriage and civil partnerships (eliminate unlawful discrimination only)

The duty means that – as previously – we should analyse the effect of existing and new policies and practices on equality. However it does not specify how we should do this.

The equality analysis should be proportionate and relevant – not just a tick box exercise. In some cases the written record will be a quick set of bullet points or notes under each heading. Others will need a more detailed explanation. However, legal cases on the meaning of the previous general equality duty make it clear that we must carry out the analysis **before making the relevant policy decision**. This has not changed.

A meaningful equality analysis will help the Council make the best decisions or formulate a policy which best meets our customers needs.

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

A SIMPLE GUIDE TO ASSESSING EQUALITY

What is Equality Impact Assessment (EqIA)?

- EqIA is the act of systematically assessing the likely (or actual) effects of policies or services on people based on the protected characteristics as defined in the Equality Act 2010:
 - Age
 - Disability
 - Gender reassignment
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Gender
 - Sexual orientation
 - Marriage and civil partnerships

- This means looking at the three arms of the Equality Act, as set out in the table below, in relation to a policy or service, before a decision is made.

	Eliminating unlawful discrimination, harassment and victimisation	Advancing equality of opportunity between different groups	Fostering good relations between different groups
Disability			
Age			
Pregnancy and maternity			
Race			
Religion or belief			
Sex			
Gender reassignment			
Sexual orientation			
Marriage and civil partnerships			

- It includes looking for opportunities to promote equality, as well as removing or reducing negative or adverse impacts.

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

Why is it important?

- Assessing equality helps us understand the needs of our customers, makes sure our decisions meet those needs, and are also cost effective
- As a public authority we also have a **legal** duty to show “*due regard*” for equality in decision making and the way services are provided
- To be able to show “*due regard*”, we need to show that consideration of equality took place **prior** to a decision being taken; that equality issues were considered, and that this consideration was rigorous, open minded, and involved thinking about the three arms of the Equality Act as part of this process, and that potential adverse impacts were either removed or reduced.
- Documenting our equality analysis helps the Council show it has had “*due regard*” for equality if decisions are challenged. If “*due regard*” for equality can not be shown, decisions may be overturned at judicial review. This could result in lost time, money and negative publicity.
- The sooner equality is considered in a process; the more efficiently that process can be carried out.

How can equality be assessed?

1. Gather information This can be consulting with relevant groups, using a previous EqIA as a starting point, consultations carried out by other services, details of the service ‘hard to reach groups’, customer satisfaction surveys, MOASIC data, consider relevance to equality

2. Assess impact Could different groups be affected differently? Is this difference positive or negative? Consider the three arms of the Equality Act in relation to all the protected groups as per the table.
NOTE: The quality of the assessment will depend on the quality of the information gathered

3. Take action This could be to reduce negative or increase positive impact. Produce an action plan where appropriate; make actions SMART. Unlawful discrimination **MUST** be actioned immediately

4. Summarise your findings on the EqIA form. Where it is clear from initial information gathering that a policy will not have any effect on equality, this may simply be a sentence recording this; the greater the relevance to equality. the greater the level of detail required. Publish your findings

5. Monitor the on-going effects of the policy on equality. This is usually in the form of the annual review carried out in October of each year, to fit in with the service planning cycle. The Equality Act is a **continuing** duty!

Appendix B - Assessing Equality – The Equality Act 2010 – Housing
Standards

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

Equality Analysis Record

Equality Impact Assessment

Title of service or policy	Housing Enforcement
Name of team	Housing and Community Support – Private Sector Housing
Date of assessment	May 2018

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An Equality Impact Assessment is a process of systematically reviewing a new or existing policy or service to identify what impact or likely impact it will have on different groups within the community. The primary concern is to identify any discriminatory or negative consequences for a particular group or sector of the community. Equality impact Assessments (EIAs) can be carried out in relation to service delivery as well as employment policies and strategies.

1.	Identify the aims of the policy or service and how it is implemented.
----	--

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

	Key questions	Answers / Notes
1.1	Briefly describe purpose of the service/policy including:	<p>The aim of the Housing Standards Team is to improve property conditions by removing significant housing related hazards.</p> <p>The Enforcement Policy states how Housing Services will enforce legislation under the Housing Act 2004 and is used in all aspects of the teams enforcement work.</p> <p>The outcome of the policy is for Housing Services to have a consistent, open and justifiable policy for enforcing its duties and powers, many of which come under the Housing Act 2004 and other relevant legislation.</p> <p>The policy also shows how we will have a reasonable approach to enforcement and use our powers in a proportionate manner.</p> <p>The Housing Standards Team has four main areas of work all designed to fulfil our statutory obligations and improve property conditions:</p> <ul style="list-style-type: none"> • Reactive work – responding to service requests and property condition complaints; • Licensing of Houses in Multiple Occupation (HMOs); • Programmed inspections of non-licensable HMOs and other high risk properties. <p>The outcome of the work carried out by the Housing Standards Team is to improve property conditions, reduce significant hazards, improve well being through housing and fulfil the council's statutory functions.</p>
1.2	Provide brief details of the scope of the policy or service being reviewed.	<p>The Housing Enforcement policy is required in order for Housing Services to adequately fulfil its statutory duties.</p> <p>It is essential that Housing Services has an enforcement policy to enable the service</p>

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

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		<p>to adequately fulfil its requirements under the legislation and to provide openness and transparency to the public on how we work and how we will go about our duties.</p> <p>Our enforcement policy covers what enforcement action will be taken, how we will work with people, how we assess properties and how we will be open, clear, accessible and approachable.</p> <p>The enforcement policy covers our main areas of work which can be divided into two areas, reactive and proactive as described in the table below.</p> <div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="text-align: center;"> <p>Reactive work</p> <p><u>Service requests</u></p> <p>↓ ↓</p> <p>Investigation Action</p> </div> <div style="text-align: center;"> <p>Proactive work</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p><u>HMO Licensing</u></p> <p>↓</p> <p>Investigating potentially licensable properties</p> </div> <div style="text-align: center;"> <p>↓</p> <p>Processing licence; applying conditions fit & proper person check; Inspection</p> </div> <div style="text-align: center;"> <p><u>Programmed Inspections</u></p> <p>↓ ↓</p> <p>Investigation Action Formal Informal</p> </div> </div> </div> </div>	
<p>1.3</p>	<p>Do the aims of this policy link to or conflict with any other policies of the Council?</p>	<p>The policy links in with the council’s Business Plan, Statutory Housing work, Community Safety and The Council’s Health & Wellbeing Strategy</p>	
<p>3. Assessment</p>	<p>Based upon any data you have analysed, or the results of consultation or research, use the spaces below to list how the service or policy:</p>		

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

of impact	<ul style="list-style-type: none"> • Meets any particular needs of each of the eleven equalities groups or helps promote equality in some way. • Could have a negative or adverse impact for each of the eleven equalities groups 			
3		Examples of what the service has done to promote equality	Examples of potential negative or adverse impact and what steps have been or could be taken to address this	
3.1	Gender – identify the impact/potential impact of the policy on women, men and transgender people	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards gender.</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of gender.</p>	<p>There are not considered to be any adverse impact regarding gender.</p> <p>When officers carry out overcrowding visits there is a need to identify people’s gender.</p> <p>.</p>	
3.2	Disability - identify the impact/potential impact of the policy on disabled people (ensure consideration of a range of impairments including both physical and mental impairments)	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards disability</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a person disabilities.</p>	<p>When communicating on Enforcement issues there is the potential that a person has not understood what is expected of them or the consequences of not complying with what has been required, as a result of their disability.</p> <p>It is important to make sure that people have understood what is required of them and the consequences for not taking action and that assistance can be provided where appropriate.</p>	
3.3				

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Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 52</p>	<p>Age – identify the impact/potential impact of the policy on different age groups</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to age</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons age.</p> <p>We always offer home visits and make hard copies of information available on request.</p> <p>However, within the legislation vulnerability is considered based on the age of the most vulnerable group. This is a statutory requirement and is not influenced by our policies or procedures.</p>	<p>A lot of housing services information is available via the internet and although most age groups have access to the internet and email some of the older generation may not have the confidence or ability to access the internet.</p> <p>Where possible we always provide hard copies of documents on request and give verbal advice in person or over the phone.</p>	
<p>3.4</p>	<p>Race – identify the impact/potential impact on different black and minority ethnic groups</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to race</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons race.</p> <p>We offer translation services in a variety of languages.</p>	<p>Information gathered during routine inspections indicates that migrant workers are potentially vulnerable to poor housing conditions and this policy supports redress of those issues.</p>	

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

		All officers are aware and can access a phone service to provide verbal translation. We also provide a translation booklet which offers translations in the 5 key languages identified in the area and we enclose this with all letters/schedules of work where appropriate.	
3.5	Sexual orientation - identify the impact/potential impact of the policy on lesbians, gay, bisexual & heterosexual people	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to sexual orientation</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons sexual orientation.</p>	<p>LGBT community may experience harassment and 'hate crime' and be reluctant to come forward with complaints about their property conditions.</p> <p>When officer's carryout overcrowding assessments there is a need to find out the occupants of the property and the occupancy of individual rooms.</p> <p>Lack of knowledge or understanding or assumptions about sexual orientation may cause embarrassment leading to people being reluctant to access the service.</p> <p>Training and development of the team to be aware of sensitivities in this area can help ensure all residents who have concerns with housing standards can come forward to the council.</p>
3.6	Religion/belief – identify the impact/potential impact of the policy on people of different religious/faith groups and also	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to</p>	No specific issues identified

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

	<p>upon those with no religion.</p>	<p>religion and belief</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons religion or belief.</p> <p>We show respect and flexibility for religious beliefs and festivals and try and be aware of cultural differences.</p>		
<p>3.7</p> <p>Page 54</p>	<p>Socio-economically disadvantaged – identify the impact on people who are disadvantaged due to factors like family background, educational attainment, neighbourhood, employment status can influence life chances</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to socio-economic</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons socio-economically circumstances</p> <p>We assist people where possible with completing any forms they need and explain things avoiding technical jargon.</p> <p>We are also in the process of having our letter templates plain English checked and we have built up a variety of contacts in various organisations to enable us to signpost users to other service providers.</p>	<p>These residents may be less of aware of the services we offer and how to approach us for information and guidance.</p> <p>Mandatory HMO licensing includes a cost to landlords. Feedback from Landlords engagement meetings indicated that fees may be passed on to tenants. This could have an affect on rental increases to people on low income.</p> <p>In liaising with other Councils who have licensing schemes , we have not had evidence that rental process increase due to this.</p> <p>Under the legislation LAs are permitted to cover their costs through a licensing fee. Fenland are unable to subsidise this mandatory service and must carry out detailed cost analysis to ensure minimum charges are applied in order to cover costs.</p>	

Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

<p>3.8</p>	<p>Gender reassignment</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to gender re-assignment</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons gender reassignment</p>	<p>No issues identified</p>
<p>3.9</p>	<p>Pregnancy & Maternity</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to pregnancy and maternity</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons pregnancy and maternity circumstances</p>	<p>No issues identified</p>
<p>3.10</p>	<p>Marriage & Civil partnerships</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to marriage and civil partnership</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons marriage and civil partnership circumstances</p>	<p>No issues identified</p>
<p>3.11</p>	<p>Human Rights</p>	<p>Action taken to remove risk to health,</p>	<p>No issues identified , although the work</p>

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Appendix B - Assessing Equality – The Equality Act 2010 – Housing Standards

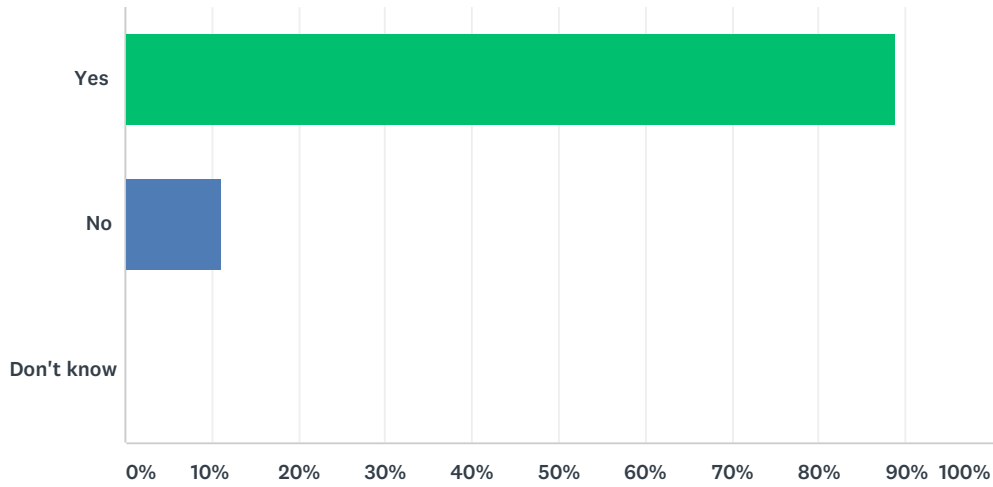
		<p>safety and welfare.</p> <p>The policy has no impact with regards to human rights</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons human rights</p>	<p>of Operation pheasant has supported many residents into the national referral mechanism who may have had their rights compromised though modern day slavery and exploitation.</p>
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No major change needed **Y** Adjust the policy **N** Adverse impact but continue **N/A** Stop and remove / reconsider policy **N**

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Q1 Should there be a written policy explaining the Council's approach to housing related enforcement?

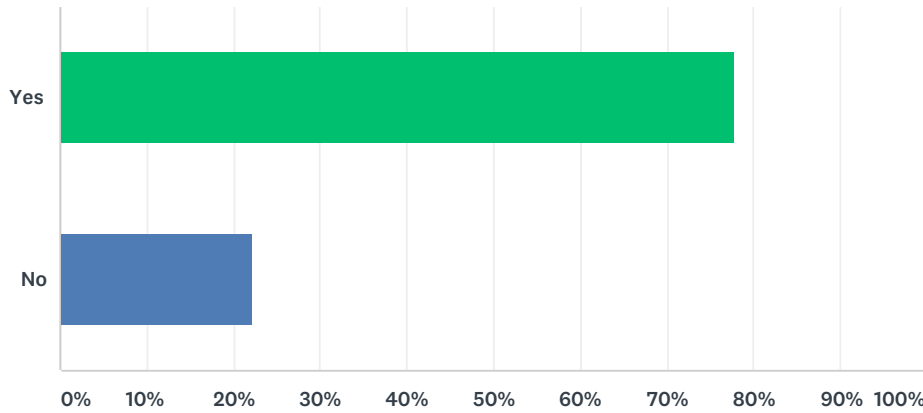
Answered: 9 Skipped: 0



ANSWER CHOICES	RESPONSES
Yes	88.89% 8
No	11.11% 1
Don't know	0.00% 0
TOTAL	9

Q2 Our Policy explains our different enforcement options. Are they clear to you?

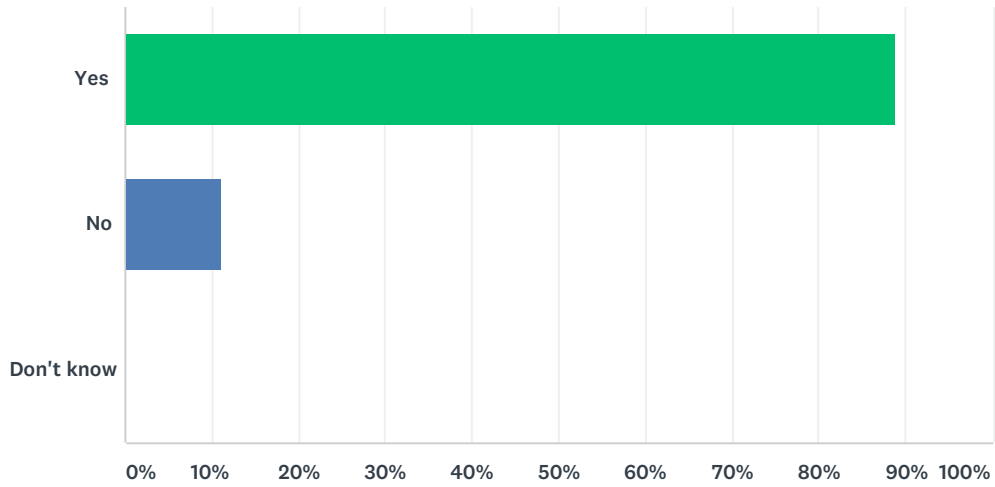
Answered: 9 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	77.78%	7
No	22.22%	2
TOTAL		9

Q3 Do you agree that housing enforcement should be done appropriately to address how serious the problem is?

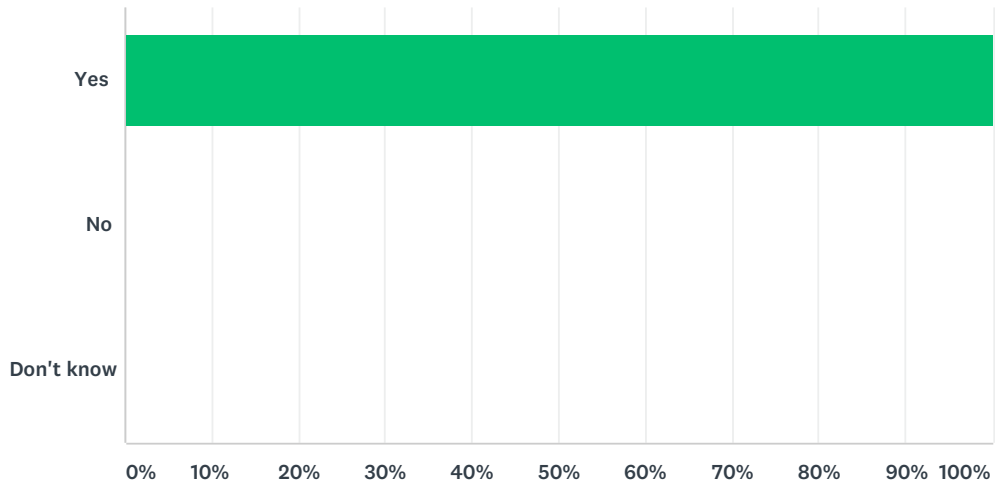
Answered: 9 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	88.89%	8
No	11.11%	1
Don't know	0.00%	0
TOTAL		9

Q4 Is it helpful to know when legal action may be taken?

Answered: 9 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	100.00%	9
No	0.00%	0
Don't know	0.00%	0
TOTAL		9

Agenda Item No:	6	
Committee:	Cabinet	
Date:	July 19th 2018	
Report Title:	Corporate Enforcement Policy	

Cover sheet:

1 Purpose / Summary

- To consider approval of a Corporate Enforcement Policy with a view to recommending formal adoption at Full Council

2 Key issues

- Enforcement work is undertaken in many service areas within the Council which has to be carried out in a consistent manner and in the context of a defined policy. This is important because enforcement by the Council is often co-ordinated across more than one service area and increasingly involves partner agencies, such as the police.
- The impact of enforcement can be very significant on the individual or business concerned and so has to be carefully considered. It is also necessary to manage the expectations of customers who may feel the Council should take enforcement action at once, when other more effective solutions may be more appropriate.
- The policy needs to be clear about the approach the Council will take and that the “enforcement mix” follows a positive Prevention, Intervention and Enforcement pattern to ensure compliance by helping and encouraging business and the wider community to understand and meet their regulatory duties. We mainly work informally and collaboratively with business and the community to ensure standards. We will only take a direct enforcement approach when there are either significant or immediate risks found or where we are not confident that informal approaches are working.
- Full Council approved the current CEP in February 2014 (minute number 59/13 refers). The reason for updating the policy was to reflect the new “Regulators’ Code”. The Regulators’ Code provides a principle based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities.
- Since that time further changes in the approach Councils can take to enforcement have developed. The key changes in the policy are:
 - Minor wording changes to better explain the policy and how it will be used
 - Updating the policy to reflect that the Council may charge for some notices to be issued for example the emerging Housing Enforcement Policy is one area where charging for notices is proposed.
 - The Council may undertake a civil penalty prosecution route rather than through the Courts where legislation allows.

- The policy is attached as Appendix A, showing the changes from the previous version. A community impact assessment is also attached at Appendix B
- The Council commenced consultation on the policy from the 23rd April 2018 ending 17th June 2018.
- The policy consultation is being promoted in various ways including the Councils' website, social media and word of mouth.
- A letter was sent directly to 1797 businesses.
- A survey was developed for completion. 6 surveys were completed and the results show that the majority were in favour of the approach proposed. The survey responses are shown at Appendix C
- The table below shows the comments received and the proposed response.

Comment	Response
Of course - everything should be communicated	Noted
A recent complaint I have made about planning focuses on the inability to stick to timescales. If deadlines are set, then they should be used and not waived without substantial reason.	At times timescale may be altered if it is felt proportionate to getting a resolution to the problem being addressed. The Corporate Enforcement Policy allows such an approach to assist Officers with Prevention , Intervention and Enforcement work.

- Overview and Scrutiny committee at its meeting of the 30th May 2018 considered the draft policy. The table below shows the comments received and the proposed response.

Comment	Response
Para 2.2 – printed formats should be available	Agreed and amendment made to say they will be available on request.
Para 5.4 – “any other justifiable reason” is too broad	Amended to link with justifiable breach of a statutory notice
The formatting	The formatting is not correct due to wanting to show track changes. The final policy once approved will be designed and formatted for publishing on the website and hard copy to be made available on request.
Add in Public Spaces Protection Orders to 3.1	Agreed and added to 3.1
3.1 – why are locations not specified	By not being specified this will allow the Council to amend

	locations where parking controls apply without having to amend the policy.
5.5 Formal Caution wording should be changed	The wording links back to guidance set by the Home Office
5.4 missing the word “or” - Where, in addition to prosecution, measures need to be taken to remedy conditions that are serious or deteriorating	Amended

- There are no additional financial costs to the Council from implementing these changes to the existing policy.

3 Recommendations

It is recommended that Cabinet:

- Approves the Council's Corporate Enforcement Policy set out in Appendix A.
- That the policy is referred to Council for adoption.

Wards Affected	All
Forward Plan Reference	
Portfolio Holder(s)	Councillor Anne Hay - Portfolio holder for finance (policy and resources)
Report Originator(s)	Dan Horn - Head of Housing & Community Support
Contact Officer(s)	Dan Horn - as above Annabel Tighe - Environmental Health Manager Richard Cassidy - Corporate Director
Background Paper(s)	Full Council - February 2014 Cabinet - November 2013

Appendix A

Corporate Enforcement Policy

Draft 2018



[Appendix A](#)

1. INTRODUCTION

1.1 The purpose of this policy is to set out Fenland District Council's intended approach to bring about compliance with the regulatory requirements it enforces. It is not intended to be, and should not be considered to be, legal advice to third parties or a definitive guide to the law.

1.2 Effective and well-targeted enforcement is essential in promoting fairness and protection from harm and Fenland District Council will adopt a positive Prevention, Intervention and Enforcement approach to ensure compliance by helping and encouraging Business and the wider community to understand and meet their regulatory duties and by responding proportionately to regulatory issues that we identify.

1.3 As an integral part of this policy we will work with individuals, businesses and our communities throughout Fenland for the benefit of residents and the Fenland economy. The Council recognises that enforcement can be successful only if the policy has the support of both our local communities and local businesses. This policy is an update from when the Council first adopted it in 2014

1.4 The Council also recognises that we need to work in partnership with other agencies in providing enforcement services. For example, Fenland District Council works closely with the Police and others in the development of neighbourhood policing to build safer, stronger communities.

1.5 The Corporate Enforcement Policy is at the core of our approach to enforcement. It incorporates best practice and sets common principles that we will follow. This Enforcement Policy describes the range of enforcement activities we use and how we intend to comply with the Regulators' Code. The Regulators' Code ('the Code') provides a flexible, principles based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities.

1.6 The Council must have regard to the Code when developing policies and operational procedures that guide our regulatory activities. The Council must equally have regard to the Code when setting standards or giving guidance which will guide the regulatory activities of other regulators. If the Council concludes, on the basis of material evidence, that a specific provision of the Code is either not applicable or is outweighed by another relevant consideration, the Council is not bound to follow that provision, but should record that decision and the reasons for it.

1.7 To ensure consistent performance across a broad range of activities and duties, we will produce from time to time, supplementary operational policy documents that give details of our range of services, the standards of service our customers can expect and the criteria we will use when deciding on how we will deal with infringements.

2. A BALANCED APPROACH TO ENFORCEMENT

2.1 The main purpose of local government enforcement work is to protect the public, the environment, consumers and legitimate businesses by making sure that legal requirements are met complied with and that everyone acts/operates within the law. It does not just mean simply taking formal action, such as prosecution, but includes a wide range of actions and measures to make sure that things are as they should be. This includes and amongst other things, giving help or advice. We will generally endeavour to support both businesses and individuals to meet their legal obligations before considering any kind of enforcement action; but all relevant factors will be taken into account before determining whether the Council can

[Appendix A](#)

~~give an opportunity for the business / individual to address the concern before formal enforcement action is taken.both mitigating and aggravating before coming to a reasoned decision upon the most appropriate course of action in any given case.~~

2.2 We recognise that most business owners, their employees and the public want to comply with the law and thereby operate legitimately and responsibly. We will help and advise wherever possible but will take firm action against those who ignore legal requirements or act irresponsibly.

To achieve this we will:

Make available information and advice on the law in electronic ~~and printed formats~~ [formats and printed formats on request](#).

Publicise enforcement campaigns, especially for new initiatives and new or changed laws

Make promotional visits to increase awareness to groups within our communities and to business forums.

Work with our partner agencies where appropriate to co-ordinate enforcement activities for the benefit of our communities and where a more effective resolution can be achieved.

Carry out inspections.

Investigate complaints.

Examine goods, documents or notices.

Take samples or make test purchases.

Talk to witnesses and obtain witness statements, where appropriate.

Conduct interviews to investigate offences and obtain, [as best we can](#), the [relevant](#) facts.

2.3 So we can see things from the point of view of a customer or ordinary member of the public, we may carry out informal visits ~~but~~ [and](#) not introduce ourselves as Council officers.

There is a range of actions [available to us and that](#) we ~~can~~ [may](#) take where we find ~~problems,problems,~~ [_regulatory](#) breaches or contraventions:

Give verbal or written guidance.

Give written instruction.

Send a cautionary letter or notice.

Issue Fixed Penalty Notices.

Serve formal Statutory Notices [including making a charge to do so](#).

Take samples and seize goods or documents.

Carry out a formal interview under caution.

Issue a formal caution.

Suspend or revoke a license or permit

Take out an injunction.

Appendix A

Prosecute offenders through the judicial system or other methods such as Civil Penalties if legislation allows e.g- 'A local authority may impose a Civil Penalty (up to a maximum of £30,000.00) upon a landlord or his/her agent as an alternative to prosecution for specified offences under the housing Act 2004 for each individual breach, provided the criminal standard of proof is satisfied

Issue legal proceedings (civil or criminal)

The Council may make a charge for some of these services should it be lawful to do so, for example, charging to serve a notice.

2.4 The Council will take an evidence based approach to determining the priority risks in our areas of responsibility and will allocate resources where they would be most effective in addressing those priority risks. The Council will consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action. In carrying out our responsibilities we will follow all relevant and up to date guidance and legislation.

2.5 Guiding Principles:

Regulators' Code <https://www.gov.uk/government/publications/regulators-code> -Fenland District Council has adopted the Code which has been laid before Parliament in accordance with the Legislative and Regulatory Reform Act 2006. The Council is committed to its aims and will abide by the following principles when considering and undertaking enforcement.

Openness -We will provide accessible information and advice on the legislation we enforce, wherever possible in plain language and in languages understood by those affected. We will be open about how we work and why it may be necessary to take enforcement action.

Helpfulness -We believe that prevention is better than cure and we will actively work to advise and assist to achieve compliance with the law. Our staff will be courteous and efficient, identify themselves by name where appropriate, and carry an identity card with a photograph. We will offer a contact point, telephone number and email address for further help.

Clarity -We will work with our customers to help them meet their legal obligations without incurring unnecessary expense. Advice will be put clearly and simply, confirmed in writing on request, explaining what is necessary, why and when, together with the implications of non-compliance. Legal requirements will be clearly distinguished from best practice advice.

Consistency -We will carry out our duties in fair and consistent ways. We have arrangements in place to promote consistency, including liaison with other Local Authorities and agencies e.g. The Police, Health & Safety Executive, parish councils, etc., particularly where we may share an enforcement role.

Suitable Action -Every case is unique and must be considered on its own facts and merits. When making decisions on the actions we will take, we will always take account of our service standards (see section 4).

Human Rights -We will have regard to fairness and individuals' human rights in all of our enforcement work through conforming to the European Convention on Human Rights (as implemented by the Human Rights Act 1998).

Equal Opportunities and Diversity -We believe in openness and equality in the way we provide services and that every individual is entitled to dignity and respect. When making enforcement decisions we aim to ensure that there will be no discrimination against any individual on the basis of culture, ethnic or national origins, gender, disability, age, sexual orientation, political or religious beliefs, socio-economic status, or previous criminal conviction or caution which is not relevant to the current issue.

[Appendix A](#)

3.1 The policy is relevant to services in the following service areas [\(this should not be considered to an exhaustive list\)](#):

Hackney Carriage and Private Hire Vehicle Driver and Operator Licensing, Licensing Act 2003, Public Entertainment, Sex Establishments, House to House and Street Collecting Licensing, Gaming Act and Scrap Metal Dealing.

Revenue recovery and the investigation of Housing Benefit, Council Tax and Business Rates fraud.

Planning Development Control and Building Control

Environmental Services, Environmental Protection, Anti-social Behaviour, Food and Safety, [Public Space Protection Orders](#) and Port Health. ~~Including the Clean Neighbourhoods and Environment Act and the use of Dog Control Orders.~~

Private Sector Housing Conditions.

Off street parking at specified locations

Any other service, which carries out enforcement duties.

3.2 Certain services require detailed specific enforcement policies and when this is the case these policies will follow and complement the principles and practice of ~~the~~ [this](#) Corporate Enforcement Policy. Therefore, detailed policies must be read in conjunction with this policy.

4. SERVICE STANDARDS

4.1 If officers find breaches of the law they have to choose the most appropriate method of achieving compliance from the range of possible actions available to them.

4.2 Action taken will be proportionate to the risk to people and property caused by the breach and as far as the law allows will take account of the circumstances of the case and the attitude of the alleged offender.

4.3 Emphasis will be given to informal enforcement actions that support the achievement of the Council's long term objectives.

4.4 Before we take formal enforcement action, there will be an opportunity to discuss the circumstances of a case, unless immediate or emergency action is required (e.g. to prevent destruction of evidence, or where there is an imminent risk to health and safety, damage to property or the environment or in some situations when an officer has reason to issue a fixed penalty notice.)~~).~~

4.5 Where immediate action is considered necessary, an explanation of why such action is required will, where possible, be given at that time. However, in certain cases, where emergency action is deemed necessary, no notice is required to be given in law. Nevertheless, we will endeavour to give notice, if possible, in such cases.

4.6 Where there are rights of appeal against formal action, advice on how to appeal will be clearly set out in writing at the time the action is taken.

4.7 All communications will be clear and in plain English and will distinguish between practical advice, best practice and legal requirements. Appropriate translated material will be provided

where necessary and practical help provided for people with impaired hearing, vision or other impairment.

4.8 Enforcement action may be taken by the Council alone or in conjunction with other agencies such as the Police, Department of Works and Pension, Inland Revenue, and County Council.

5. FORMAL ENFORCEMENT ACTION

This part of our Enforcement Policy sets out how we will deal with any alleged breach of law, which the Council is empowered, or duty bound to enforce:

5.1 Verbal Warnings and Advice

The Council may seek to resolve matters informally whenever possible. Accordingly, advice and/or verbal warnings may ~~usually~~ be sufficient in the majority of cases as a means of resolving minor offences and technical infringements that are capable of being sorted out immediately and are unlikely to be repeated. Failure by alleged offenders to act on verbal warnings or advice may result in more serious enforcement action being taken against them.

5.2 Written Warnings and Advice

Where the issue demands a more formal approach than verbal advice, written guidance clearly identifying the infringement involved and ~~giving advice~~ ~~advising~~ on how to put it right ~~and along with~~ a deadline by which to do it, will be provided. Failure to comply with written warnings or advice ~~could may~~ result in more serious enforcement action being taken. The circumstances of each case and the implications of infringements will be taken into account.

5.3 Fixed Penalty Notices (FPNs)

5.3.1 FPNs are a means to impose an immediate financial penalty on an offender for certain criminal offences. The Council will use FPNs wherever a local or district-wide need is identified to deal with ~~minor enviro-crime~~ offences such as a breach of a declared public space protection order, (for example for dog fouling), littering, fly tipping, street drinking workplace smoking and off street parking at specified locations.

5.3.2 We will carry out campaigns and produce information about the use of FPNs.

5.4 Formal Statutory Notices

Notices may be served to require offenders to stop illegal activities immediately and to give them a reasonable time to remedy a breach. Any time allowed to put things right will be reasonable ~~within the eircumstances~~ ~~circumstances~~, ~~but will-~~ ~~take~~ ~~taking~~ into account the implications of the contravention. The Council may charge for notices which will be set out in the policy concerned and updated through annual fees and charges process.

Statutory Notices may be issued where:

- There is a statutory duty to do so;
- There are significant contraventions of legislation;
- There is a lack of confidence in the individual or management of a business to respond to an informal approach or this approach has previously failed;
- There is a history of non-compliance;

Appendix A

- Standards are generally poor with little management awareness of statutory requirements;
- The consequences of non-compliance could be potentially serious to public health, or cause public nuisance, or be irreversible;
- Where, in addition to prosecution, measures need to be taken to remedy conditions that are serious ~~or~~ deteriorating;

~~. (add): Any other justifiable breach to which the statutory notice appliesreason~~

~~or~~

- ~~Failure to comply with a statutory notice will usually result in prosecution and/or we may carry out any works in default and recovery our cost of doing so.~~

5.5 Formal Caution

A formal caution will only be considered ~~when once all~~ the evidential requirements necessary to bring a prosecution ~~are have~~ been met, but the circumstances surrounding the infringement are such that a more lenient approach to prosecution is appropriate. Any formal caution will follow the criteria laid down in relevant Home Office Guidelines. If a decision to offer a formal caution is rejected by the alleged offender, then a prosecution will normally follow.

5.6 Prosecution

5.6.1 Before a prosecution is considered the Council will have regard to The Code for Crown Prosecutors (a document issued by the Director of Public Prosecutions giving guidance to prosecutors)

~~. <https://www.cps.gov.uk/publication/code-crown-prosecutors>~~

The decision to prosecute or to recommend an out-of court disposal is a serious step that affects suspects, victims, witnesses and the public at large and must be undertaken with the utmost care. It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible.

Prosecutors should not start or continue a prosecution which would be regarded by the courts as oppressive or unfair and an abuse of the court's process.

Prosecutors must only start or continue a prosecution when the case has passed two stages: (i) the evidential stage; ~~followed by~~ and (ii) the public interest stage.

- The Evidential Stage

Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

- The Public Interest Stage

In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.

A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour.

When deciding the public interest, prosecutors should consider each of the following questions so as to identify and determine the relevant public interest factors tending for and against prosecution (these questions are not exhaustive).

[Appendix A](#)

a) How serious is the offence committed? b) What is the level of culpability of the suspect? c) What are the circumstances of and the harm caused to the victim? d) Was the suspect under the age of 18 at the time of the offence? e) What is the impact on the community? f) Is prosecution a proportionate response?

g) Do sources of information require protecting?

5.6.2 Before making a decision whether or not to prosecute, consideration will also be given to:

How well prosecution supports the achievement of corporate aims or the delivery of corporate priorities

Action taken by other enforcement agencies in relation to the same facts to avoid duplication

The likelihood of the alleged offender being able to establish a statutory defence

The ~~probable~~ potential public benefit of a prosecution and the importance of the case -e.g. the possibility of establishing legal precedent

Cost effectiveness of prosecution -a need to balance likely overall cost against the “value” of the likely outcome

[NEW 5.7 Through the Courts or Civil Penalty Prosecution](#)

Depending on the offence and the policy and legislation with which the Council is legislating prosecution will either be through the Courts or through a Civil Penalty action. A civil penalty or civil fine is a financial penalty imposed by a government agency for wrongdoing against a policy or regulation within legislation. The civil fine or penalty is not considered to be a criminal punishment, because it is primarily sought in order to compensate the state for harm done to it, rather than to punish the wrongful conduct. As such, a civil penalty, in itself, will not carry jail time or other legal penalties. The use of Civil Penalties and fines will be set out in the relevant policy.

5.87 Injunctive Action

Injunctive action may be considered where an alleged offender persistently acts in a way that ~~acts against the collective~~ contravenes the interests of the public or where formal undertakings are ignored.

In cases involving the use or threat of violence, we will consider in appropriate circumstances applying for an urgent injunction without giving the relevant individual prior notice.

5.98 Works in Default

Some legislation gives power to the Council to carry out works itself to achieve compliance, e.g. with a Statutory Notice. These powers will be used in situations where it is clear that the works required will not be carried out within a reasonable or statutory time frame, even if reasonable additional time has been allowed, taking account of all the circumstances of each individual case. Any time frame will always be in terms of at least the minimum required by law. The Council will always seek to recover all costs reasonably incurred in carrying out works in default.

5.105.9 Anti-social Behaviour

In relation to anti social behaviour the Council acts through the Fenland Community Safety Partnership and its partnership members. Our work here embodies the Prevention Intervention Enforcement approach and uses a range of measures in the context of the Government’s policy.

5.110 No Action

Appendix A

In exceptional circumstances, contraventions may not warrant any action. This can be where, for example, the cost of action taken by the offender to comply outweighs the detrimental impact of the contravention upon the community; or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention upon the community. A decision of 'no action' may also be taken where formal enforcement is inappropriate in the circumstances, such as where a business has ceased to trade or the offender is elderly and frail and formal action could seriously damage their well being. A decision to take no action will take into account the implications of the contravention. Usually a decision to take no action will only be made where the breach is not a serious one.

5.1~~21~~ Referral to another Agency

Subject to the provisions of Data Protection and Human Rights laws and legislation information ~~on~~ in respect of infringements will be passed to other interested enforcement agencies in appropriate circumstances.

5.1~~32~~ Naming Offenders

The names and trading addresses of businesses or individuals who act in ways that represent significant risk ~~of~~ or detriment to communities, particularly the young and vulnerable, may be published. Offenders may also be named if it is felt that by doing so could act as a deterrent within the community to offences of a similar nature. This action will ordinarily be taken in circumstances where:

It is in the public interest to do so

There is no risk of prejudicing legal proceedings or other formal enforcement action

To do so does not breach Human Rights or Data Protection law or the Children and Young Persons Act 1933.

Following a successful prosecution.

Where legislation prescribes that we do

6. MANAGEMENT SYSTEMS

6.1 Staff competency and the consistency of enforcement will be reviewed by each service where appropriate.

6.2 The Council will maintain management systems to monitor the quality and nature of enforcement activities undertaken, so as to ensure, as far as is reasonably practicable, a uniform and consistent approach.

6.3 Where local or national co-ordinating bodies exist, the Council will ensure that wherever possible its enforcement practices are consistent with best practice identified.

6.4 A review of enforcement activities may involve any of the following (this list is not exhaustive):

· A high level review of enforcement standards by members of the Council; · Quality Assurance systems; · Monitoring visits by line managers; · Shadowing visits by colleagues; · Monitoring of correspondence and statutory notices; · Peer review exercises; · Internal training sessions and workshops on enforcement issues; · Customer satisfaction surveys; · Business focus groups.

7. TRAINING AND APPOINTMENT OF OFFICERS

7.1 The Council will ensure that their-our officers have the necessary knowledge and skills to support those they-we regulate, to ensure a proportionate and effective approach including having an understanding of those they-we regulate that enables them-us to choose proportionate and effective approaches. The Council will also ensure that their-our officers understand the statutory principles of good regulation and of the Regulators Code, and how they deliver its activities in accordance with them.

[Appendix A](#)

7.2 All officers will be formally authorised ~~by the relevant Council~~ to exercise specified powers ~~under relevant statutes in accordance with the constitution.~~

7.3 The level of authorisation for each officer will be determined by their qualifications, experience and competence having regard to any relevant national guidelines.

7.4 Authorisation will be in writing and in a warrant card form, which will be shown on request. A copy of an officer's authorisation will be held in their personal file.

7.5 The Council supports the principle of continuing professional development through the annual appraisal and one to one meetings and will ensure that all officers are given additional in-post training to maintain up to date knowledge and skills.

8. APPEALS & COMPLAINTS

8.4 The Council will have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback, including, for example, through customer satisfaction surveys of those ~~they~~ we regulate.

8.1 The Council will provide an impartial and clearly explained route to appeal against a decision or a failure to act in accordance with this Code. Individual officers of the Council who took the decision or action against which the appeal is being made ~~should~~ will not be involved in considering the appeal. ~~This route to appeal should be publicised to those who are regulated.~~

8.2 The Council will provide a timely explanation in writing of any right to representation or right to appeal. This explanation ~~should~~ will be in plain language and include practical information on the process involved.

8.3 The Council will make available to those ~~they~~ we regulate, ~~a~~ clearly explained complaints procedures, allowing them to easily make a complaint about the conduct of the Council.

8.5 The Council also has its own complaints procedure and further information about this can be obtained from the leaflet entitled:

“What to do if you feel that the Council has provided an unsatisfactory service”

This leaflet is available at all Fenland @ Your Service Shops, and on the Council's website and business reception.

INTRODUCTION

From 1st April 2011, the Equality Act 2010 introduced a new legal duty on all public authorities.

The three arms of the act focus on the need for public authorities to have ‘due regard’ to the need to:

- **Eliminate unlawful discrimination**, harassment, victimisation and any other conduct prohibited by the Act:
- **advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
- **foster good relations** between people who share a protected characteristic and people who do not share it.

The protected groups (previously known as equality strands) are as follows:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Gender
- Sexual orientation
- Marriage and civil partnerships (eliminate unlawful discrimination only)

The duty means that – as previously – we should analyse the effect of existing and new policies and practices on equality. However it does not specify how we should do this.

The equality analysis should be proportionate and relevant – not just a tick box exercise. In some cases the written record will be a quick set of bullet points or notes under each heading. Others will need a more detailed explanation. However, legal cases on the meaning of the previous general equality duty make it clear that we must carry out the analysis **before making the relevant policy decision**. This has not changed.

A meaningful equality analysis will help the Council make the best decisions or formulate a policy which best meets our customers needs.

A SIMPLE GUIDE TO ASSESSING EQUALITY

What is Equality Impact Assessment (EqIA)?

- EqIA is the act of systematically assessing the likely (or actual) effects of policies or services on people based on the protected characteristics as defined in the Equality Act 2010:
 - Age
 - Disability
 - Gender reassignment
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Gender
 - Sexual orientation
 - Marriage and civil partnerships

- This means looking at the three arms of the Equality Act, as set out in the table below, in relation to a policy or service, before a decision is made.

	Eliminating unlawful discrimination, harassment and victimisation	Advancing equality of opportunity between different groups	Fostering good relations between different groups
Disability			
Age			
Pregnancy and maternity			
Race			
Religion or belief			
Sex			
Gender reassignment			
Sexual orientation			
Marriage and civil partnerships			

- It includes looking for opportunities to promote equality, as well as removing or reducing negative or adverse impacts.

Why is it important?

- Assessing equality helps us understand the needs of our customers, makes sure our decisions meet those needs, and are also cost effective
- As a public authority we also have a **legal** duty to show “*due regard*” for equality in decision making and the way services are provided
- To be able to show “*due regard*”, we need to show that consideration of equality took place **prior** to a decision being taken; that equality issues were considered, and that this consideration was rigorous, open minded, and involved thinking about the three arms of the Equality Act as part of this process, and that potential adverse impacts were either removed or reduced.
- Documenting our equality analysis helps the Council show it has had “*due regard*” for equality if decisions are challenged. If “*due regard*” for equality can not be shown, decisions may be overturned at judicial review. This could result in lost time, money and negative publicity.
- The sooner equality is considered in a process; the more efficiently that process can be carried out.

How can equality be assessed?

1. Gather information This can be consulting with relevant groups, using a previous EqIA as a starting point, consultations carried out by other services, details of the service ‘hard to reach groups’, customer satisfaction surveys, MOASIC data, consider relevance to equality

2. Assess impact Could different groups be affected differently? Is this difference positive or negative? Consider the three arms of the Equality Act in relation to all the protected groups as per the table.
NOTE: The quality of the assessment will depend on the quality of the information gathered

3. Take action This could be to reduce negative or increase positive impact. Produce an action plan where appropriate; make actions SMART. Unlawful discrimination **MUST** be actioned immediately

4. Summarise your findings on the EqIA form. Where it is clear from initial information gathering that a policy will not have any effect on equality, this may simply be a sentence recording this; the greater the relevance to equality, the greater the level of detail required. Publish your findings

5. Monitor the on-going effects of the policy on equality. This is usually in the form of the annual review carried out in October of each year, to fit in with the service planning cycle. The Equality Act is a **continuing** duty!

Equality Analysis Record

Equality Impact Assessment

Title of service or policy	Corporate Enforcement Policy
Name of directorate and service	Council - wide
Name and role of officers completing the EIA	Dan Horn
Date of assessment	May 2018

An Equality Impact Assessment is a process of systematically reviewing a new or existing policy or service to identify what impact or likely impact it will have on different groups within the community. The primary concern is to identify any discriminatory or negative consequences for a particular group or sector of the community. Equality impact Assessments (EIAs) can be carried out in relation to service delivery as well as employment policies and strategies.

Appendix B - Assessing Equality – The Equality Act [Year] 2010 – Corporate Enforcement Policy

1.	Identify the aims of the policy or service and how it is implemented.	
	Key questions	Answers / Notes
1.1	Briefly describe purpose of the service/policy including:	<p>Enforcement work is undertaken in many service areas within the Council which has to be carried out in a consistent manner and in the context of a defined policy. This is important because enforcement by the Council is often co-ordinated across more than one service area and increasingly involves partner agencies, such as the police.</p> <p>The impact of enforcement can be very significant on the individual or business concerned and so has to be carefully considered. It is also necessary to manage the expectations of customers who may feel the Council should take enforcement action at once, when other more effective solutions may be more appropriate.</p> <p>The policy needs to be clear about the approach the Council will take and that the “enforcement mix” follows a positive Prevention, Intervention and Enforcement pattern to ensure compliance by helping and encouraging business and the wider community to understand and meet their regulatory duties.</p> <p style="text-align: center;">o</p>
1.2	Provide brief details of the scope of the policy or service being reviewed.	<p>Full Council approved the current CEP in February 2014 (minute number 59/13 refers). The reason for updating the policy was to reflect the new “Regulators’ Code”. The Regulators’ Code provides a principle based framework for regulatory delivery that supports and enables regulators to design their service and enforcement policies in a manner that best suits the needs of businesses and other regulated entities. Since that time further changes in the approach Councils can take to enforcement have developed. The key changes in the policy are:</p>

Appendix B - Assessing Equality – The Equality Act [Year] 2010 – Corporate Enforcement Policy

		<ul style="list-style-type: none"> ○ Minor wording changes to better explain the policy and how it will be used ○ Updating the policy to reflect that the Council may charge for some notices to be issued for example the emerging Housing Enforcement Policy is one area where charging for notices is proposed. ○ The Council may undertake a civil penalty prosecution route rather than through the Courts where legislation allows. 	
Page 80	1.3	Do the aims of this policy link to or conflict with any other policies of the Council?	The policy links in with the Council’s Business Plan, Regulatory work, Community Safety and The Council’s Health & Wellbeing Strategy. It is an overarching policy to show transparency to businesses and residents our approach to enforcement. individual service areas through service plans, policy work and customer service excellence accreditation work.
3. Assessment of impact		Based upon any data you have analysed, or the results of consultation or research, use the spaces below to list how the service or policy:	
		<ul style="list-style-type: none"> ● Meets any particular needs of each of the eleven equalities groups or helps promote equality in some way. ● Could have a negative or adverse impact for each of the eleven equalities groups 	
3		Examples of what the service has done to promote equality	Examples of potential negative or adverse impact and what steps have been or could be taken to address this
3.1	Gender – identify the	Action taken to remove risk to health, safety and welfare.	There are not considered to be any adverse impact regarding gender.

Appendix B - Assessing Equality – The Equality Act [Year]
 2010 – Corporate Enforcement Policy

	impact/potential impact of the policy on women, men and transgender people	<p>The policy has no impact with regards gender.</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of gender.</p>	.
3.2	Disability - identify the impact/potential impact of the policy on disabled people (ensure consideration of a range of impairments including both physical and mental impairments)	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards disability</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a person disabilities.</p>	<p>When communicating on Enforcement issues there is the potential that a person has not understood what is expected of them or the consequences of not complying with what has been required, as a result of their disability.</p> <p>It is important to make sure that people have understood what is required of them and the consequences for not taking action and that assistance can be provided where appropriate.</p>
3.3	Age – identify the impact/potential impact of the policy on different age groups	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to age</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons age.</p>	<p>Through channel shift a lot of information is available via the internet and although most age groups have access to the internet and email some of the older generation may not have the confidence or ability to access the internet.</p> <p>Where possible we always provide hard copies of documents on request and give verbal advice in person or over the</p>

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Appendix B - Assessing Equality – The Equality Act [Year]
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		<p>Hard copies of information can be made available on request.</p> <p>Individual teams work around customer service excellence will look at accessibility of information to various groups linked to the protected characteristics</p>	<p>phone.</p> <p>Residents who struggle to access services on the internet can receive support at the Council's 4 fenland at your service shops.</p>	
<p>3.4</p> <p>Page 82</p>	<p>Race – identify the impact/potential impact on different black and minority ethnic groups</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to race</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons race.</p> <p>We offer translation services in a variety of languages.</p> <p>All officers are aware and can access a phone service to provide verbal translation. We also provide a translation booklet which offers translations in the 5 key languages identified in the area and we enclose this with all letters/schedules of work where appropriate.</p>	<p>Individual team impact assessments look at this issue as part of Customer Service Excellence</p>	

Appendix B - Assessing Equality – The Equality Act [Year]
 2010 – Corporate Enforcement Policy

<p>3.5</p>	<p>Sexual orientation - identify the impact/potential impact of the policy on lesbians, gay, bisexual & heterosexual people</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to sexual orientation</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons sexual orientation.</p>	<p>LGBT community may experience harassment and 'hate crime' and be reluctant to come forward with complaints about their property conditions.</p> <p>Lack of knowledge or understanding or assumptions about sexual orientation may cause embarrassment leading to people being reluctant to access Council regulatory services</p> <p>Training and development of the team to be aware of sensitivities in this area are looked at in relation to appraisals and corporate equality training as well as any special team requirements</p>	
<p>3.6</p>	<p>Religion/belief – identify the impact/potential impact of the policy on people of different religious/faith groups and also upon those with no religion.</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to religion and belief</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons religion or belief.</p> <p>We show respect and flexibility for religious beliefs and festivals and try and</p>	<p>No specific issues identified</p>	

Appendix B - Assessing Equality – The Equality Act [Year] 2010 – Corporate Enforcement Policy

Page 84	<p>3.7</p> <p>Socio-economically disadvantaged – identify the impact on people who are disadvantaged due to factors like family background, educational attainment, neighbourhood, employment status can influence life chances</p>	<p>be aware of cultural differences.</p> <p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to socio-economic</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons socio-economically circumstances</p> <p>We assist people where possible with completing any forms they need and explain things avoiding technical jargon.</p>	<p>These residents may be less of aware of the services we offer and how to approach us for information and guidance.</p> <p>Through the corporate customer service excellence accreditation each regulatory team looks at ensuring services are responsive to customer needs</p>	
	<p>3.8</p> <p>Gender reassignment</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to gender re-assignment</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons gender reassignment</p>	<p>No issues identified</p>	
	<p>3.9</p> <p>Pregnancy & Maternity</p>	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to pregnancy and maternity</p>	<p>No issues identified</p>	

Appendix B - Assessing Equality – The Equality Act [Year] 2010 – Corporate Enforcement Policy

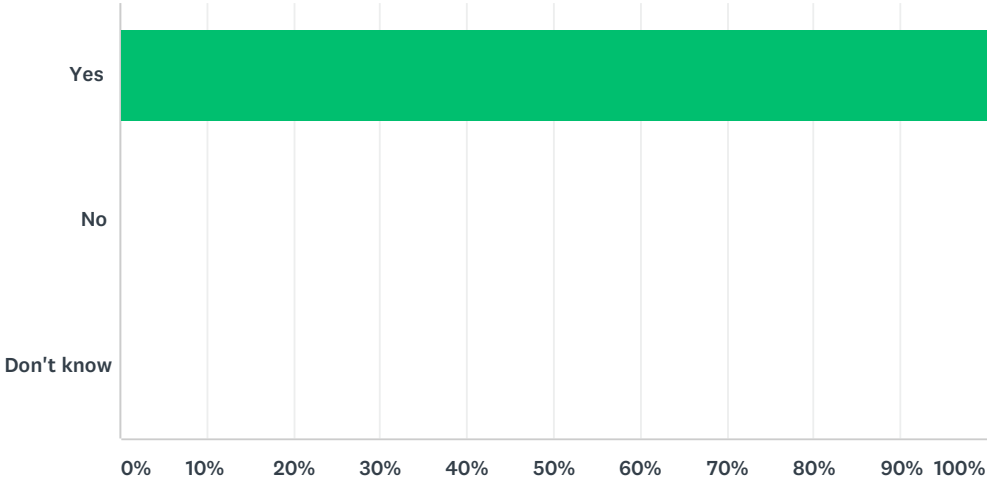
		Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons pregnancy and maternity circumstances	
3.10	Marriage & Civil partnerships	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to marriage and civil partnership</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons marriage and civil partnership circumstances</p>	No issues identified
3.11	Human Rights	<p>Action taken to remove risk to health, safety and welfare.</p> <p>The policy has no impact with regards to human rights</p> <p>Our services are based on guidance, legislation and written policy and are provided to all regardless of a persons human rights</p>	No issues identified

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Y No major change needed
 N Adjust the policy
 N/A Adverse impact but continue
 N reconsider policy
 Stop and remove /

Q1 Should there be a written policy explaining the Council's approach to enforcement?

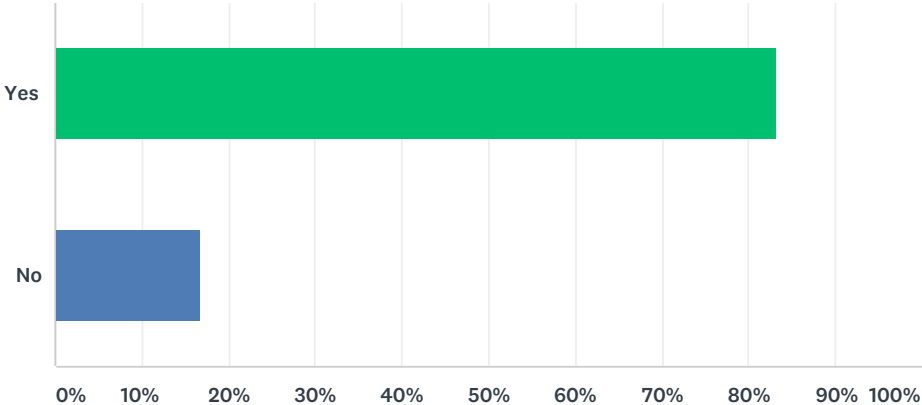
Answered: 6 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	100.00%	6
No	0.00%	0
Don't know	0.00%	0
TOTAL		6

Q2 Our Policy explains our different enforcement options. Are they clear to you?

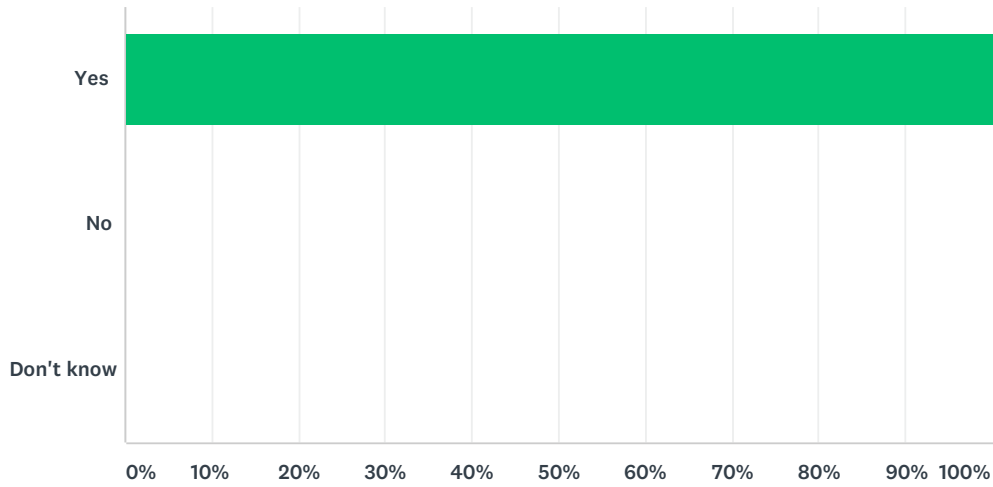
Answered: 6 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	83.33%	5
No	16.67%	1
TOTAL		6

Q3 Do you agree that enforcement should be used appropriately to address how serious the problem is?

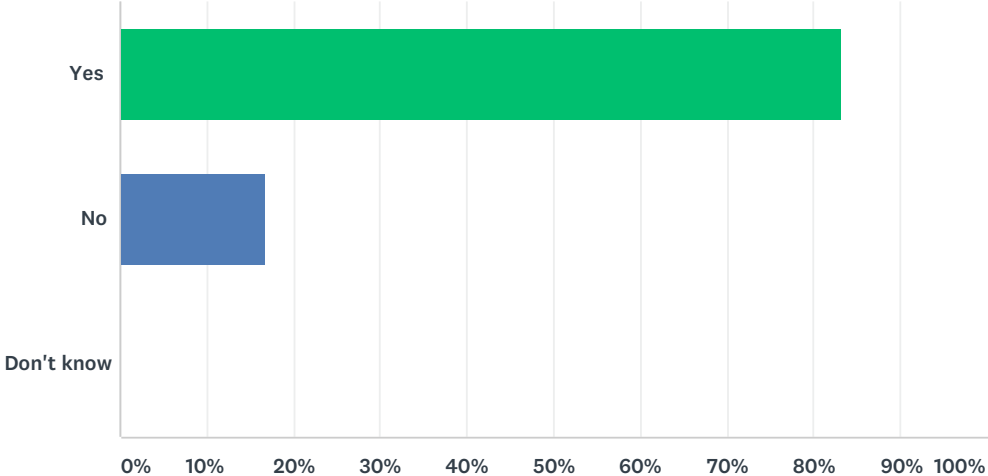
Answered: 6 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	100.00%	6
No	0.00%	0
Don't know	0.00%	0
TOTAL		6

Q4 Is it helpful to know when legal action may be taken?

Answered: 6 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	83.33%	5
No	16.67%	1
Don't know	0.00%	0
TOTAL		6

Agenda Item No:	7	
Committee:	CABINET	
Date:	19 JULY 2018	
Report Title:	Economic Development Update	

Cover sheet:

1. Purpose / Summary

- This report provides an update to Cabinet on Economic Development activity in Fenland and requests endorsement to enter into a shared Economic Development service arrangement with the Borough Council of King's Lynn & West Norfolk (BCKLWN).
- The report explains that the Council was previously engaged with Opportunity Peterborough (OP) who supported FDC's internal Economic Development resources.
- It is considered an appropriate time to move forward with FDC's ambitions to secure more and higher skilled job opportunities attract new business to the area and expand the existing support provided to Fenland businesses.
- Fenland shares a great deal in common with BCKLWN and a shared service would support an economic geography with a combined population of over 250,000, a combined Gross Value Added (GVA) of £5.1billion and over 10,500 existing businesses.
- The shared service will provide additional resources to meet gaps in FDC's existing Economic Development service and strengthen its business engagement activities and aftercare support. It will also support additional work required to attract and secure inward investment.

2. Key issues

- The Service Level Agreement with OP expired on 30 June 2018 and a review of potential future options and arrangements has been undertaken. Following that review, it was concluded that an Economic Development shared service with BCKLWN would be a preferred option.
- The shared service proposal would create a team of 6 (5.3 Full Time Equivalent (FTE)), significantly increasing access to resources and skills across the shared geography for significantly less than the cost than creating a similar 'standalone' service.
- The proposals will cost FDC approximately £43,000 p.a. but will provide a greatly enhanced and more proactive Economic Development Team. A financial provision to fund the £43,000 has already been included within the 2018/19 annual budget.
- The shared service would operate initially for a period 3 years with an annual break clause providing an opportunity to terminate or extend the arrangements if both parties agree that they remain effective and beneficial.

- It will be necessary to restructure FDC’s existing staffing establishment. This will include deleting the existing Economic Development Manager (currently vacant) and Economic Development Officer posts and the creation of two new FDC-employed posts: an FDC Account Manager 1FTE role and a Project Enabler (Intelligence) 1FTE role.
- The existing Economic Development Officer is employed 0.5 FTE for the Economic Development Team and 0.5 FTE working for the Leisure Services Team as a Tourism Officer.
- The proposals will therefore place the Economic Development Officer at risk of redundancy, although the proposed structure includes new full time roles.

3. Recommendations

- Cabinet Members are hereby requested to agree to the following recommendations:
 - To approve the proposal for Fenland District Council to enter into a shared Economic Development Service with the Borough Council of King’s Lynn & West Norfolk and in accordance with the provisions of Section 113 (of the Local Government Act 1972), to make such recommendations to full Council.
 - To delegate authority to the Chief Executive, the Director of Growth & Infrastructure and the Director of Finance in consultation with the Leader and the Portfolio Holder for Growth and Portfolio Holder for Finance to finalise the agreement for an Economic Development shared service.

Wards Affected	All
Forward Plan Reference	
Portfolio Holder(s)	Cllr Chris Seaton – Leader Cllr David Mason –Portfolio Holder for Growth Cllr Mrs Ann Hay – Finance Portfolio Holder
Report Originator(s)	Gary Garford – Corporate Director (Growth & Infrastructure) Peter Carpenter - Corporate Director (Finance) Justin Wingfield – Head of Business & Economy
Contact Officer(s)	Paul Medd – Chief Executive Gary Garford – Corporate Director (Growth & Infrastructure) Peter Carpenter - Corporate Director (Finance) Justin Wingfield – Head of Business & Economy
Background Paper(s)	

Report:

1. Background

- 1.1 The economic prosperity of the District remains a key cornerstone to delivering Fenland's growth aspirations. As a pro-growth authority, FDC has a significant pipeline of projects and future growth activity which is predicated on unlocking substantial housing growth already committed within our adopted Local Plan, allied to potential additional 12,000 new homes as part of the Wisbech Garden Town project, and securing investment into much needed and significantly improved road, rail and digital infrastructure.
- 1.2 To ensure that Fenland is an attractive place for people to live & work and to underpin sustainable growth, a proactive Economic Development service is essential to ensure that new businesses are attracted into the area and that effective support is provided to enable our existing businesses to grow. All of this contributes towards creating higher skilled and better paid employment opportunities, with a significant proportion of that wage growth, expenditure and additional Business Rate revenue being spent and generated within the district, directly contributing towards the economic prosperity cycle.
- 1.3 This report seeks to build upon the success of the Economic Development Team and to take a leap forward in proactively seizing opportunities to build economic prosperity through the creation of a shared Economic Development service between Fenland District Council (FDC) and the Borough Council of King's Lynn and West Norfolk (BCKLWN) to support an economic geography with a combined population of 251,800¹, combined Gross Value Added (GVA) of £5.1 billion² and over 10,500³ businesses.
- 1.4 Business growth and inward investment not only bring investment, jobs and skills benefits to the Fenland area but also the potential benefit of increase income directly to FDC via increased Council Tax revenue and NNDR income. As an example the following NNDR Fenland element can be achieved – Medium factory (£100,000), Warehouse (£75,000), retail (£50,000 - £350,000). This would be a welcome revenue income in these difficult public financial times.

2. Current Position

- 2.1 The Council's Business & Economy Team comprises the Valuation & Estates, Business Premises and Economic Development (ED) Teams. This report focuses on proposed changes which will affect the Economic Development Team only.
- 2.2 The Economic Development function was previously delivered in conjunction with Opportunity Peterborough (OP) by virtue of an annually renewable Service Level Agreement (SLA). The SLA expired on the 30 June 2018. The SLA had been in place for just over two years and it was considered timely to review the future arrangements regarding the delivery of the Economic Development within Fenland.
- 2.3 The current ED structure is shown at **Appendix 1** and comprises the vacant Economic Development Manager post – 1 FTE and the Economic Development Officer post – of which 0.5 FTE is attributed to Economic Development and 0.5 to tourism. Both posts are overseen by the Head of Business & Economy.
- 2.4 The OP SLA has helped to establish, rationalise and improve how resources are deployed to satisfy the ever-changing and ever-growing demands upon the service, although it is recognised that there are limitations on existing resources, not least

¹ ONS/NOMIS (2016)

² ONS/NOMIS (2016)

³ ONS/NOMIS – UK Business Counts 2017

because FDC's vacant ED Manager post (1 FTE) funded a matrix of different skills at OP which equated to only 0.6 FTE and created a total provision of just 1.1 FTE.

- 2.5 In the last 12 months it has become increasingly apparent that ED has grown in importance, particularly as Members recognise that with a reduction in core Council funding - investment; commercialisation and revenue creation (particularly Business rates growth & retention) are key tools to creating a sustainably funded Council. The creation of the Combined Authority, the emergence of a 'Business Board' from the GCGP LEP and the aspirational growth fuelled by the bold vision of FDC has resulted in a need to also review the scale and capacity of existing Economic Development Team to ensure it is able to meet the present and future need in Fenland.

3. Shared Service Proposal

- 3.1 In June 2017 Officers began to assess the various options for ED along with a review of additional resources likely to be required (which would apply to all options). The options and assessment were as follows:
- a) Continue with OP
 - b) Bring the service 'in-house'
 - c) Enter into a shared arrangement with another Local Authority
- 3.2 The shared arrangement option offered a more flexible and diverse approach, gave better staff cover and utilised both Council's skills and experience.
- 3.3 In July 2017, FDC Officers approached colleagues at the Borough Council of King's Lynn and West Norfolk (BCKLWN) to discuss the possibility of exploring and establishing a shared service between the two Councils. Following the initial engagement, Officers developed a proposal for a Shared Economic Development Service which would respond to the needs and seek to address existing shortfalls in provision for each Council. The proposal would enable both Council's to jointly deliver a shared Economic Development Service across the entire geography, sharing wider skills and resources at a significantly lesser cost than resourcing a single authority establishment.
- 3.4 It is important to underline that both parties share a series of commonalities and synergies between the economies of the two districts and the priorities of both Councils'. **Appendix 2** illustrates the significance of key socio-economic indicators that the combined geography includes. In addition, the two Councils were members of the Greater Cambridge Greater Peterborough LEP and are members of the emerging Combined Authority 'Business Board', which provides further common ground.
- 3.5 In preparing the proposal, the first things considered were the functions (scope) that the shared service would perform based on FDC's needs and aspirations and BCKLWN's existing gaps in provision. The structure of the proposed shared service was then built around these requirements, which include:
- Business engagement, support & relationship management;
 - Inward investment, including digital marketing and LEP/Business Board liaison;
 - Aftercare programme, business closure & redundancy/redeployment assistance;
 - Funding support for businesses – signposting, pro-active support;
 - Project pipeline – developing projects that enable / unlock business and economic growth (possibility to include infrastructure, regeneration and housing, if needed / desired);
 - Business networking & event management.
- 3.6 The structure of the shared service is crucial to meeting the demands and needs of the Economic Development service and providing sufficient resources to address demand

and proactively pursue opportunities. The proposed structure includes new roles for Inward Investment & Intelligence (including funding), supported by additional Administrative support providing improved social media and networking support and will comprise six posts (existing and new posts) equating to 5.3 FTE and the proposed structure is attached at **Appendix 3**

- 3.7 The day-to-day shared service delivery will be overseen by the Head of Shared Service who is employed by BCKLWN and is highly respected and vastly experienced - also being responsible for Heritage & Tourism services within BCKLWN. FDC's Head of Business & Economy will provide strategic direction and client side management for FDC, ensuring that FDC's demands are met and aspirations are acted upon. The key responsibilities of each shared service post will be developed into full Job Descriptions and Person Specifications and agreed/approved by FDC's Staff Committee which will be scheduled within the next two months.
- 3.8 The shared service would operate initially for a period 3 years with an annual break clause, to provide the parties with an opportunity to terminate, but would provide the opportunity to extend the arrangements if both parties agree that they remain effective and beneficial. It is intended that a minimum of 3 years is adopted to ensure that relationships can be established and to allow time for such new arrangements to 'bed in'.
- 3.9 To ensure the shared service remains agile but with clear connectivity to the respective partner's geography, the proposal includes a combination of FDC & BCKLWN based staff and mobile staff that share / move between both locations. It is proposed that staff will be accommodated within existing office accommodation at no additional cost to either partner and facilities exist for permanent and 'touch down' office accommodation.
- 3.10 BCKLWN's ED Team make much greater use of cloud based technologies that enables file sharing, editing and commenting from anywhere with Wi-fi / data connectivity. The use of cloud-based applications will further underpin agile and flexible working practices. At this time FDC would need to expand its mobile operating practices to align with the established BCKLWN system, although it is expected that this could be easily achieved at a reasonable cost (the costs of which are to be confirmed).
- 3.11 An appropriate and proportionate performance management framework, with suitable indicators/reporting will be established, which seeks to reflect the best practice and ensures that stakeholders understand the nature of reporting and the often 'slow burn' nature of Economic Development outcomes, but also demonstrates the value of the shared service to the respective partners.

4. Benefits of the Shared Service

The shared service will deliver the following benefits to Fenland:

- Provide a dedicated FDC-employed, full time Account Manager to build strong relationships and increase business engagement activity with potentially c.200-225 employers across Fenland, with particular focus our major employers;
- Build upon existing success and compliment this with access to dedicated support and expertise from a successful Economic Development Team at BCKLWN;
- Provides a dedicated resource to prepare funding bids for FDC projects and offer grant advice to support local businesses access business grants, including bid auditing, which will represent a significant improvement over the signposting support currently offered;
- Provides a dedicated resource to undertake pro-active and targeted digital marketing to promote the area for inward investment (97% of all enquiries start online) and will be complimentary towards other business support services within FDC, Business Premises, Licencing, Planning, etc;

- Offers the opportunities to seek support and develop business cases for the LEP and Combined Authority for key initiatives, including infrastructure and skills, which are identified as critical issues for the businesses;
- Stronger voice in dealings with the LEP/‘Business Board’, as it will represent an area with approximately double the number of businesses and GVA;
- Provides strength to lobby for improvements and investment from the Combined Authority and central Government on collective issues and barriers affecting the shared geography;
- Stronger evidence base and rationale (approx. double the GVA and business base) when bidding for external funding.
- The outcomes this should lead to include expanding business growth, increased inward investment, more jobs and enhanced skills, increased local spend and NNDR business rate income for the Council.

5. FDC Staffing Considerations

- 5.1 As outlined above and in **Appendix 1 & 3**, the shared service proposal will seek to restructure FDC’s existing staffing establishment. This will include deleting the existing Economic Development Manager (currently vacant) and Economic Development Officer posts and the creation of two new FDC-employed posts: an FDC Account Manager 1FTE role and a Project Enabler (Intelligence) 1FTE role.
- 5.2 The existing Economic Development Officer is employed 0.5 FTE for the Economic Development Team and 0.5 FTE working for the Leisure Services Team as a Tourism Officer. The proposals will therefore place the Economic Development Officer at risk of redundancy, although the proposed structure includes the creation of new full time roles. It is understood that Leisure Services are also considering possible changes around Tourism resources but that will be dealt with separately.
- 5.3 It is proposed that the creation and deletion of FDC posts related to the shared service proposal will be agreed/approved by FDC’s Staff Committee which will take place within the next two months.

6. Member Engagement

- 6.1 As part of the process to bring the shared service proposal forward, the proposition was presented to an All Member Seminar on 29 March 2018 and the proposals have been considered by the Overview & Scrutiny Panel at their meeting on the 2 May 2018. The Overview & Scrutiny Panel provided constructive feedback regarding the need to ensure a robust series of justifiable and evidence-based performance indicators. Such indicators need to ensure that the investment made and resources deployed are being used effectively and are positively influencing outcomes and outputs.
- 6.2 The Overview & Scrutiny Panel are keen to review such performance measures once they are established to ensure their effectiveness. The panel also went on to recognise some observations that Fenland District Council have not been as effective as some other Local Authorities with respect to assisting local businesses to access grant funding. Officers recognise that existing resources are spread very thinly and that the proposed shared service seeks to create a role that is responsible for identifying and sharing grant opportunities and assisting local businesses through the application process.
- 6.3 In addition to the helpful advice and recommendations made by the Overview and Scrutiny Panel, the Chairman of the Panel has been invited to meet with the Portfolio Holder for Growth and senior Officers to discuss establishing an appropriate set of performance measures that can be suitably scrutinised and reflect the demands and needs of the service and Fenland.

6.4 Following the deferment of this matter from May's Cabinet and Council Members raised comments and observations with the Portfolio Holder for Growth which Officers were asked to respond to. The questions and responses are included as **Appendix 4** – ED Shared Service Update No.1. In addition to the initial comments and questions further clarification around the proposals was requested by the Portfolio Holder for Growth and an additional note was prepared - ED Shared Service Update No.2 and is included as **Appendix 5**.

7. Financial Considerations

7.1 The shared service proposal will result in an additional annual cost of approximately £43,000 p.a. for FDC and a similar level of investment will be required by BCKLWN. This investment will increase FDC's existing staffing establishment from 1.5FTE to 2FTE and enabling access to a combined team of 5.3 FTE. The shared service will require a balancing payment to be made to ensure the shared service is funded on an equal 50:50 basis.

7.2 The additional resourcing of £43,000 has already been allocated within the approved Council budget for 2018/19 and therefore does not need to be identified from elsewhere.

7.3 There will be a requirement to invest in some limited ICT hardware and software to enable FDC-employed officers to access the established cloud-based systems currently utilised by BCKLWN, the costs are to be confirmed but will be met from existing revenue budget provision.

8. Next Steps & Recommendations

8.1 As the SLA with Opportunity Peterborough expired on 30 June 2018, Officers consider that the proposed shared service between FDC & BCKLWN would create a service that is best placed to meet the growth needs and support the economic prosperity of the respective Districts, whilst pooling resources and expertise with BCKLWN will enable Fenland to create an economic area comparable to Peterborough or Cambridge in terms of GVA, population and numbers of businesses.

8.2 It is considered that the additional £43,000 p.a. required to fund FDC's contribution can be recovered many times over, from the economic activity it stimulates and supports within Fenland and across the combined geography. Working with OP has proven how authorities' representing different areas can work together and avoid competition with each other. Recognising that both parties to this shared service proposal have much more in common than what separates them, growth stimulated anywhere within the wider geography will create economic prosperity both Districts can enjoy – after all, businesses do not stop at administrative boundaries.

8.3 The proposal for an initial 3 year arrangement will allow sufficient time to establish the possible and build on existing work, but along with the annual break clause, will provide the parties with sufficient comfort that they can go their own way if necessary, which it is anticipated, will not be necessary.

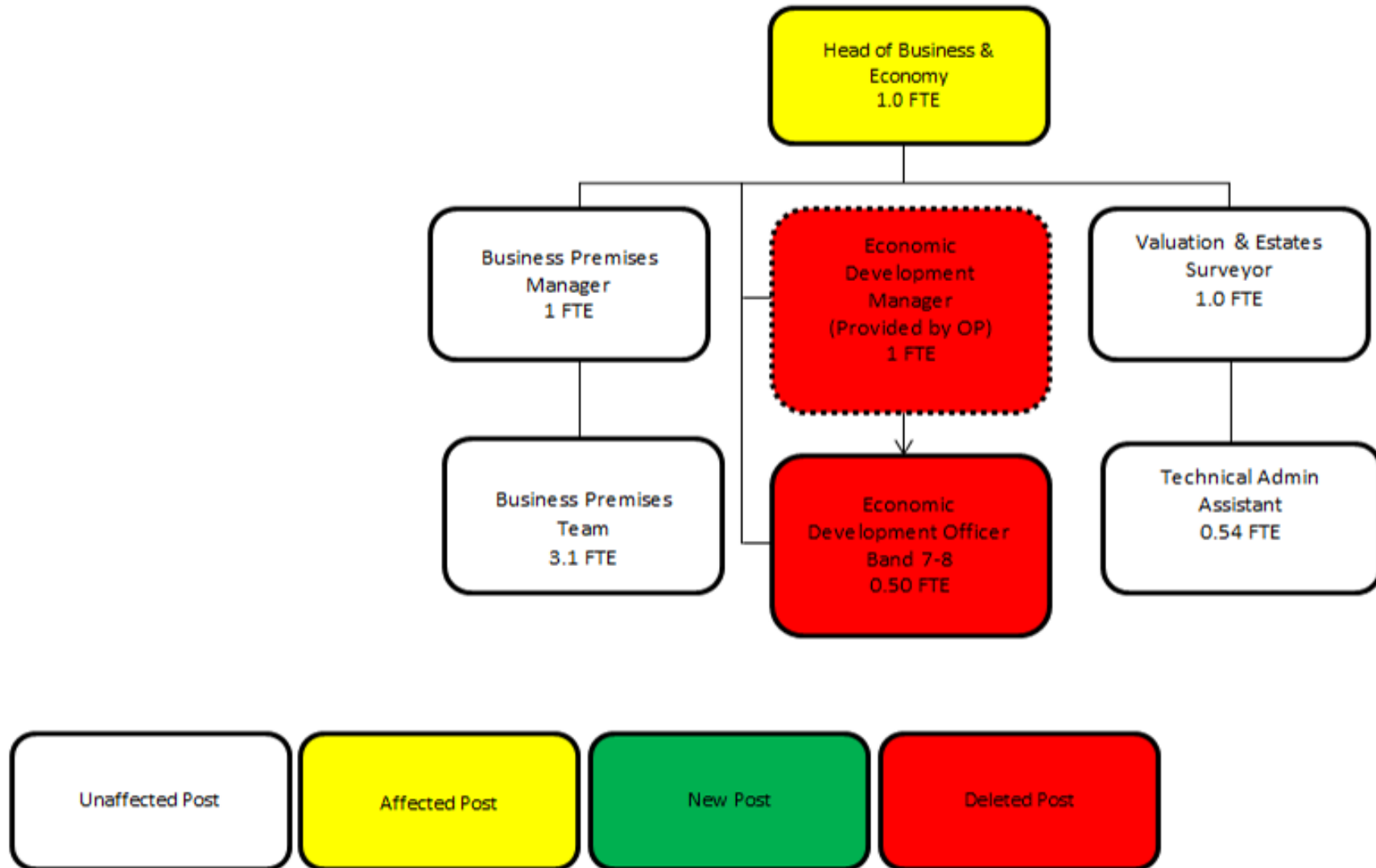
8.4 As the proposal seeks to create a shared service with two Local Authorities working together, such arrangements are subject to Section 113 of the Local Government Act 1972 and require full Council approval.

8.5 Cabinet Members are hereby requested to agree to the following recommendations:

- To approve the proposal for Fenland District Council to enter into a shared Economic Development Service with the Borough Council of King's Lynn & West Norfolk and in accordance with the provisions of Section 113 (of the Local Government Act 1972), to make such recommendations to full Council.
- To delegate authority to the Chief Executive, the Director of Growth & Infrastructure and the Director of Finance in consultation with the Leader and the Portfolio Holder for

Growth and Portfolio Holder for Finance to finalise the agreement for an Economic Development shared service.

Appendix 1 – Existing Economic Development Structure



Appendix 2 – Key socio-economic indicators

Gross Added Value (GVA) (Income approach) – ONS 2016

The GVA of Fenland's economy is £2.23 billion and West Norfolk's is £2.87 billion giving a combined figure of £5.10 billion for the economic geography covered by the two local authorities.

Table 1 shows that the combined GVA of Fenland and West Norfolk is similar to Cambridge's and Peterborough's, higher than Norwich's and one fifth of the Cambridgeshire and Peterborough Combined Authority's GVA.

Table 1

West Norfolk + Fenland	Peterborough	Cambridge	Norwich	CA
£5.10bn	£5.38bn	£5.91bn	£3.9bn	£24.21bn

Number of businesses – UK Business Counts 2017

The number of businesses (local units) in Fenland is 4,140 whereas West Norfolk has 6,415 businesses, giving a combined 10,555 across the two economies.

In terms of number of businesses (local units), West Norfolk is similar to Cambridge and Norwich and the combined areas of West Norfolk and Fenland count for a quarter of all businesses within the Combined Authority (Table 2).

Table 2

West Norfolk + Fenland	Peterborough	Cambridge	Norwich	CA
10,555	8,400	6,670	6,200	41,650

In terms of economic sectors, the two economies are very similar with agri-food, manufacturing and transport & distribution being the main contributors to the overall GVA.

Population – ONS 2016

West Norfolk – 151,600

Fenland – 100,200

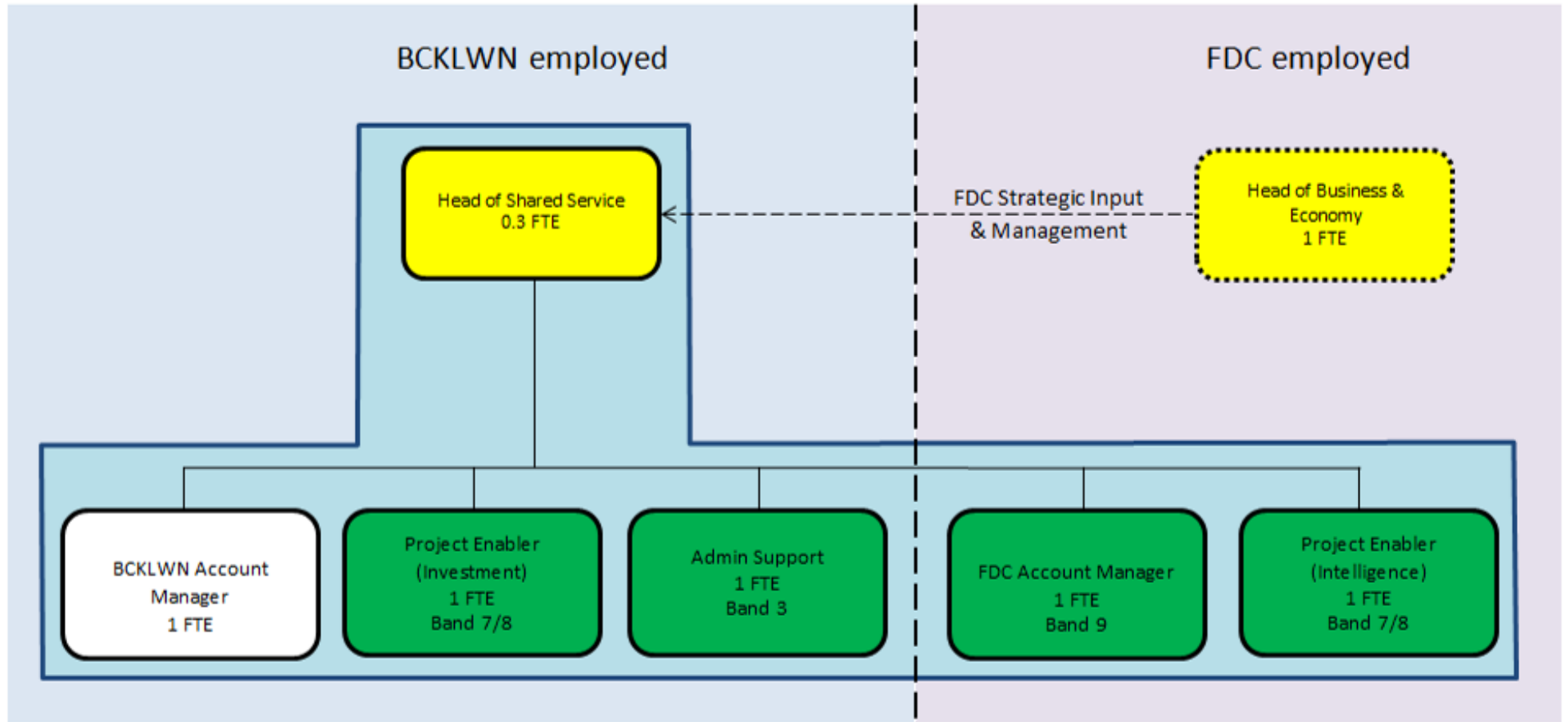
Combined – 251,800

The combined population of West Norfolk and Fenland is approximately the same with the combined population of Cambridge and Peterborough and represents one third of the population of the Combined Authority (Table 3).

Table 3

West Norfolk + Fenland	Peterborough	Cambridge	Norwich	CA
251,800	156,407	108,113	141,000	849,000

Appendix 3 – Shared Economic Development Team Structure



Appendix 4 – ED Shared Service Update no.1

Economic Development - Shared Service Update No.1

25 June 2018

This update has been prepared in response to questions raised by Members following the deferment of the original Cabinet and Council decision in May 2018.

Here follows the summary questions from Members and responses prepared by Officers:

1. Concern about the £43,000 additional revenue funding.

The current ED service has been reduced over the years as part of the Council's response to the Government's austerity programme. Given the importance of the Economic Growth priority within the Council's business plan and the Government's proposed introduction of local business rate retention as a vital future revenue stream for the Council an increase in resource is proposed, which is common to all the proposed options in the report.

The BCKLWN option provided an effective proposition that increases our existing staff establishment from 1.5 to 2 FTE and enabled access to a combined team of 5.3 FTE for the additional cost of £43000.

This additional cost was recognised in our forward revenue budget setting earlier in the year and has been included in our currently agreed base budget from 2028/19.

2. Benefits unclear.

The initial idea for reviewing the team emanated from the earlier O and S meeting involving the GCGP LEP where it was highlighted that FDC could better engage with local business and also help with grant identification and applications for known funding from the LEP (now the CPCA Business Board).

Officers explored best practice and determined that BCKLWN had a good track record in these areas so was a suitable organisation to partner with.

As outlined in the report the shared service will deliver the following benefits to Fenland:

- Provide a dedicated full time Account Manager to build strong relationships and increase business engagement activity with potentially c.200-225 employers across Fenland, with particular focus on establishing a 'relationship management' approach with our major employers. Build upon existing success and compliment this with access to dedicated support and expertise from a successful Economic Development Team at BCKLWN.
- Provides a dedicated resource to prepare funding bids for FDC projects and offer grant advice to support local businesses access grants, including bid auditing, which will represent a significant improvement over the signposting support currently offered.
- Provides a dedicated resource to undertake pro-active and targeted digital marketing to promote the area for inward investment (97% of all enquiries start online) and will be complimentary towards other business support services within FDC, Business Premises, Licencing, Planning, etc.
- Offers the opportunities to seek support and develop business cases for the Business Board and Combined Authority for key initiatives, including infrastructure

and skills, which are identified as critical issues for the businesses, along with Market Town masterplans under the Growing Fenland banner.

- Stronger voice in dealings with the Business Board and CPCA, as it will represent an area with approximately double the number of businesses and GVA, comparable with the economic area of Peterborough and representing over 250,000 people and over 10,500 businesses (significantly more than those represented by either Cambridge or Peterborough).
- Provides strength to lobby for improvements and investment from the Government on collective issues and barriers affecting the shared geography;
- The objectives of this proposal include expanding business growth, increased inward investment, more jobs and enhanced skills, increased local spend and NNDR business rate income for the Council.

There is not only investment, jobs and skills benefits to the Fenland area following business growth and inward investment but also the potential benefit of increased inward investment can increase income directly to FDC via NNDR income.

As examples the following NNDR Fenland element can be achieved – Medium factory (£100,000), Warehouse (£75,000), retail (£50,000 - £350,000). This would be a welcome annual revenue income in these difficult public financial times and would compensate for the additional staff investment.

3. Have we considered other Councils, including East Cambs?

Several options were considered, however it was seen as important to share a service with a similar economic and social area, for which BCKLWN was the most aligned in terms of its agri-food based economy and its challenges around connectivity, deprivation and migrant working etc.

The District in South Cambridgeshire looks towards Cambridge and has a different economy, plus it was felt important to share with an adjacent Authority. The City Councils have a different focus on the economy that is not necessarily aligned to the rural district.

A key driver was that Fenlands economy in the main looks east and west not south toward Cambridge, which leads to the fundamental connectivity driver for the District of an upgrade A47 economic corridor. The dualling of the A47 from Peterborough to Fenland and King's Lynn and onto the East coast would transform the economic fortunes of the area.

This was another reason that increased close working with BCKLWN has benefits as both authorities are key advocates on the A47 Alliance promoting improvements to the A47 corridor.

This essential highway connectivity is complemented by the additional rail connectivity proposals southwards provided by the Wisbech to Cambridge train line along with the Fenland railway station improvement programme.

In terms of East Cambs DC, they have confirmed a limited Economic Development capacity or specialism and are unable to offer the matrix approach proposed by BCKLWN.

Seeking to create a shared service with BCKLWN does not preclude working with other Council partners to further exploit opportunities. It is also vital to recognise that businesses do not see administrative boundaries as barriers to trade and growth.

The shared service aims to establish a robust and effective resource working for the benefit of both Fenland & BCKLWN at a localised level and the Eastern region at a macro level.

4. PCC Shared Planning not working.

The shared Planning service with Peterborough City Council consists of 2 officers; Shared of Head of Planning and Technical Team Manager. This enabled the Council to make £137,000 of savings per annum. The Planning Team are exceeding national performance targets for the determination of planning applications. The Leader and Portfolio Holder have requested that we invite the Planning Advisory Service to the Council to review the Planning Service. This will take place in summer 2018 with a resulting action plan to deliver any suggested improvements. Members are encouraged to participate in this review.

5. Proposals linked to a suggested Waste to Energy plant (incinerator) in Wisbech.

The proposal for partnering with BCKLWN has no links whatsoever with the suggested Waste to Energy plant (incinerator) in Wisbech. It is understood in the past that a Waste to Energy plant was proposed for King's Lynn and promoted by Norfolk County Council but vehemently objected to by BCKLWN. Any such proposals for a Wisbech plant would be considered by CCC as Waste Authority and would involve extensive stakeholder (including FDC) and community consultation.

Appendix 5 – ED Shared Service Update no.2

Economic Development - Shared Service Update No.2

10 July 2018

This update has been prepared in response to a request from Members for additional information regarding the proposed shared service arrangement with the Borough Council of King's Lynn & West Norfolk.

Here follows a summary of information prepared by Officers:

Aims

- As you will all appreciate Economic Development (ED) is essential to support the prosperity & growth of the District. This is evident from our pro-growth Business Plan 2018-21;
- Placing reliance upon ED, Members were keen that sufficient resources were committed to underpin such growth and take a more proactive approach to existing business engagement and inward investment. Under the previous Leadership, Senior Members endorsed a review of the existing Economic Development arrangements;
- The purpose of the Cabinet report and the recommendations I intend to make to Council are as a result of a review of the options for increasing the effectiveness of the Council's Economic Development activity in delivering our Economy priority.

Background

- As you will be aware, over the last two years Economic Development in Fenland has been supplemented by a Service Level Agreement with Opportunity Peterborough (OP) which only provided an additional **0.6 FTE** to Fenland's existing **0.5 FTE** employed staffing (**Total 1.1FTE**);
- The OP agreement was via a 'commissioned service' (i.e. a contracted service) approach rather than as a shared service and it provided a matrix of support;
- The OP relationship was only ever intended to be a short term solution following the departure of the previous FDC Economic Development Manager;
- A review of the arrangements with OP and potential alternative options commenced in July 2017, with the aim of providing a seamless transition to coincide with the expiry of the OP agreement on 30 June 2018.

Proposal

- Members recognised that to do more it was essential that sufficient resources were made available to deliver the ambitious growth plans and the intended proactive approach.
- Reflecting upon this Member-led approach, Officers were requested to shape a delivery structure that meets the needs of Member objectives;
- Officers researched and considered the most practical options available, also taking into account our financial constraints:
 - Continue with OP;
 - Bring the service in-house;
 - Enter into a shared arrangement with another LA.
- The review concluded (and the report details this) that the most effective and cost-efficient solution would be to enter into a true **shared service arrangement** with the Borough Council of King's Lynn & West Norfolk;

- The shared service with BCKLWN would enable the pooling of existing resources and the investment into additional shared resources which could be used to a far greater effect, in total creating a combined team of **5.3FTE**.
- Under the proposal the day-to-day shared service delivery will be overseen by the Head of Shared Service (employed by BCKLWN), with FDC's Head of Business & Economy providing strategic direction and client-side management for FDC.

Finance

- The review identified that in order to deliver an effective service additional resources would be required and in turn, sufficient funding in order to pay for the service;
- The existing establishment cost of the Economic Development Service to FDC is **£69,820**, per annum which comprises:- 1FTE Economic Development Manager post (£47,000 p.a. – which previously funded OP); and 0.5FTE Economic Development Officer (Tourism) post (Economic Development funded - £22,820);
- The shared service proposal will result in an additional annual cost of approximately **£43,000** p.a. for FDC and this has already been approved and included within the budget provision;
- The shared service will create and enable access to **a combined team of 5.3 FTE** covering the combined geography and will allow for agile working and cloud based file sharing and storage;
- The proposal will require a total financial commitment for staffing establishment of **£112,820** (£69,820 existing + £43,000 additional), which **will fund 2 no directly employed FDC staff members** and will contribute towards the cost of **access to 3no. BCKLWN employed staff members**.
- The BCKLWN has also decided that ED in its area needs further investment, so it has taken this shared service opportunity as the springboard to launch such and commit to a similar additional amount of investment (£51,000) to FDC investment (£43,000).
- **The estimated cost a total shared ED team will equate to approx. £230,000, which is fit for purpose to deliver our combined ED ask.**

Structure	Employed	FDC Cost	BCKLWN Structure
Existing FDC establishment	1.5FTE (FDC-employed)	£69,820	Existing establishment 1.5 FTE – Head of Service (0.5) plus Account Manager
Proposed FDC establishment	2.0FTE (FDC-employed)	£89,000 (approx.)	Proposed 3.0 FTE (KLWN employed)
Access to shared service establishment	5.3FTE (2.0FTE FDC)	£112,820 (inc. FDC contribution to BCKLWN – employed shared establishment)	

- **The shared service proposals results in 2 FDC employed staff based at FH and access to 3 KLWN employed staff along with guidance from a qualified ED Head of Service. All staff will be mobile and work as a when specific activities dictate.**
- The other alternative to the shared service would be to employ a FDC in-house ED team. This would need further thought but indicatively would consist of 3 ED FTEs and an admin support FTE. The estimated costs would be **£180,000**.
- This option would not necessarily give the breadth of skills available from the shared service option and would increase our costs by **£67,000** above the current £112,820.

Notes

- Members will be aware that FDC has been on a transformative journey, particularly as a result of the austerity and there has been a continued effort to reduce operational costs and provide high quality front-line services;
- In this instance Senior Members feel that the right option is to increase the establishment and costs by a modest amount to maximise the effectiveness of the ED service;
- FDC currently have shared service arrangements with other Council's and shared staff working in Planning, Payroll, Internal Audit, Health & Safety, Anglia Revenues Partnership and CNC Building Control;
- A shared service with BCKLWN also includes sufficiently flexibility for both parties to terminate or extend as necessary and FDC will not be locked into a long term arrangement which might adversely impact its service delivery.
- In terms of performance measures, I would suggest that these are jointly developed with input from the Chairman of O and S going forward.

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Agenda Item No:	8	
Committee:	Cabinet	
Date:	19 July 2018	
Report Title:	Parish Street Lighting	

Cover sheet:

1 Purpose / Summary

To consider and agree the proposal for future management, repairs & maintenance, and funding for Parish street lighting.

2 Key issues

- Repairs and maintenance (R&M) and energy for District and Parish lights are currently managed and funded by FDC
- A new R&M schedule of rates contract was awarded with effect of 2 July 2018
- Members previously proposed that Parish owned street lighting repairs & maintenance and energy are funded in future by the respective Parish Council.
- A proposed Service Level Agreement outlines the service to be provided and costs recovered as from July 2018.
- It includes professional management, customer interface, and a one-off inventory and condition survey covered by FDC free of charge.
- The proposal has been shared with Parish Councils who were requested to respond with their intentions by 22 June 2018.
- Four positive responses have been received to date. Other Parishes indicated they were unable to respond by the deadline or requested a meeting with FDC, which was arranged for 4 July 2018.
- An updated position will be presented at the Cabinet meeting.
- In light of limited responses it is suggested that a revised PC commitment cut-off date and management date of 1 August 2018 is adopted.

3 Recommendations

- Cabinet endorse the proposal to provide street lighting services to the Parish Councils that agree to the arrangements as outlined in this report and the proposed Service Level Agreement with effect from 1 August 2018.
- Parish R&M and energy costs are funded in future by the respective Parish Council from 1 August 2018.
- Authority to implement the proposals with the Parish Councils is delegated to the Portfolio Holder for Finance and the Corporate Director Growth and Infrastructure.

Wards Affected	All
Forward Plan Reference	
Portfolio Holder(s)	Cllr Anne Hay - Finance Portfolio Holder
Report Originator(s)	Trevor Watson Head of Assets and Projects Gary Garford Corporate Director Growth and Infrastructure
Contact Officer(s)	Trevor Watson Head of Assets and Projects Gary Garford Corporate Director Growth and Infrastructure
Background Paper(s)	

Report:

4 Background / introduction

- 4.1 Historically District and Parish street lights have been managed as one, with repairs and maintenance and energy provision supplied in conjunction with Cambridgeshire County Council (CCC) highway lighting. From 2011 to 2017 this was provided by Balfour Beatty providing a comprehensive service which benefited from being delivered in association with their PFI contract with CCC.
- 4.2 Repairs and maintenance (R&M) and energy costs for Parish lighting are currently funded by FDC, other than for replacement lights or significant repairs which are funded by the respective Parish Council.
- 4.3 FDC decided in 2017 that the arrangement with Balfour Beatty no longer offered the required benefits in terms of level of service or cost and decided to seek an alternative arrangement.
- 4.4 A proposal was established in consultation with the Leader of the Council, the appropriate Portfolio Holder, and other appropriate Cabinet Members for future street lighting service provision.
- 4.5 The proposal provides a 'one stop shop' for street lighting R&M and energy provision managed by FDC, with R&M and energy costs recharged back to the respective Parish Councils. The overall management of the contract and an initial inventory and condition survey are to be funded by FDC.

5 Considerations

- 5.1 Following a competitive tendering exercise the street lighting R&M contract has been awarded to Cable Test Ltd for 3 years commencing 2nd July 2018 with the contract extendable for a 2 further years. Parish estimates have been prepared based on tendered rates and 2017/18 fault report trends. Actual costs will be applied at the end of each financial year and an appropriate adjustment carried forward to the next years charge.
- 5.2 The contract excludes bulk street light replacements which it is proposed will be provided via an appropriate contract once participating Parishes are known and condition surveys complete. This will allow for a separate tender for such work to achieve best value for the various partner Councils.
- 5.3 It is proposed that energy will continue to be procured from CCC initially but alternative suppliers will be assessed once an accurate inventory of lighting equipment is in place.
- 5.4 All Parish Councils have been provided with an individual estimate for 2018/19 street lighting service and a proposed Service Level Agreement (SLA) and asked if they wish to have their lights managed by FDC or wish to assume full responsibility themselves. See Appendix A
- 5.5 The R&M contract and future service delivery is based on a standard lighting specification for replacement works, and to achieve the most cost effective service, reliability and service response standards all participating Parish Councils will be agreeing to work with the established standards and equipment by signing the SLA.
- 5.6 This proposal is separate to the FDC 'offer' of September 2015 relating to the replacement of category 1 and 2 defective street lights. The Cat 1 replacement programme has been undertaken by FDC and is complete. The financial contribution towards Parish Cat 2 replacements remains in place but all Parish Councils wishing to accept the FDC management proposal must work within the standard specification and the SLA.

- 5.7 It is highly advisable that those outside the arrangement should equally comply with the established standard, as should they decide to join the scheme at a later date the equipment will be to the required specification for the FDC contract. If not the equipment would have to be brought in line (at the PC's cost) with the FDC specification prior to joining the scheme. It is also worth noting that all procurement, insurance and legal duties will be assumed by the Parish Council.
- 5.8 Parish Councils were asked to respond to the proposal by 22 June 2018 but at the time of preparing this report the following responses had been received: - Newton PC, Gorefield PC, Christchurch PC and Tydd St Giles PC have agreed to join the FDC contract.
- 5.9 A number of other PC's have requested a further meeting with FDC, which was scheduled for 4th July and have indicated they are unable to respond within the requested time frame. The outcome of such a meeting will be reported to the Cabinet meeting.

6 Finance

- 6.1 FDC has funded Parish lighting since 1974. However, in the current financial climate when year on year savings are required to be made this position of funding third party assets is no longer justifiable.
- 6.2 The recovery of Parish R&M and energy costs will help contribute to future year budgetary challenges, both in terms of income, reliability through standardisation of suitable quality equipment, and energy efficiency through the installation of LED luminaires.
- 6.3 The financial revenue summary assuming all Parishes participate is as follows;

	2018/19	2019/20
	£	£
Costs		
Repair & Maintenance costs (All)	36,165	37,000
Energy Costs (All)	63,096	65,000
Cyclic Activities (All) - transferred to reserve until required	25,000	25,000
Significant repairs (FDC only)	13,000	13,000
Inventory (District/Parish/Clarion)	80,777	-
Total estimated cost	<u>218,038</u>	<u>140,000</u>
Income		
Parishes (includes R&M, Energy and Cyclic)	59,888	60,000
Clarion (includes R&M, Energy, Inventory & Cyclic)	11,032	11,200
Total estimated income	<u>70,920</u>	<u>71,200</u>
Net Service cost	<u>147,118</u>	<u>68,800</u>
Budget		
R&M - general	43,200	43,200
R&M - replacements	13,000	13,000
R&M - Reserve	38,684	-
Energy	65,950	67,600
Total Budget	<u>160,834</u>	<u>123,800</u>

Saving (-)

-13,716

-55,000

6.4 The estimated budget saving, based on 100% Parish take up and full year costs, equates to £13,716 in the current year and £55,000 in future years.

7 Conclusions

7.1 The proposal represents a market tested 'one stop 'shop' for street lighting R&M with costs passed on at tendered rates. It also includes professional management, customer interface, and a one-off inventory and condition survey covered by FDC free of charge.

7.2 Alternatively Parishes may prefer to assume all management, operational, and legal responsibility themselves.

Street Lighting – Parish Council Service Level Agreement

Parties to the Agreement: Fenland District Council (FDC) and (enter name) Parish Council

Purpose: To set out the levels of service, apportionment of costs, charging mechanisms, and responsibilities for the provision of Parish Council street lighting repairs and maintenance, energy, and management

Period: July 2018 to July 2021 (tba)

Scope: Service covers day to day maintenance and management of Parish Street lighting, including repairs and energy costs. Further services available by specific agreement include ad-hoc individual replacements. The service excludes bulk replacements and lighting improvement schemes. Mechanisms are included within the agreement to provide the excluded items by separate arrangement.

Number of (enter name) Parish Council street lighting units covered by the agreement = (enter number)

Level of Service

1. Included services

- Development and maintenance of street lighting asset inventory
- Appropriate identification plate with service contact details on each street light
- Receipt of service requests by e-mail and on-line reporting
- Receipt of 24 hr emergency service requests
- Ordering/prioritisation of service visits by appropriate contractor
- Routine fault repairs
- Specify and provide quotations for significant repairs (see Significant repairs below)
- Emergency response to make safe apparatus
- Liaison with Distribution Network Operator for existing apparatus faults
- 3yrly structural testing (columns over 25yrs old)
- 6yrly electrical testing (with lens clean for LED luminaires)
- Bowl clean (non-LED lanterns) during fault rectification
- Energy, including data calculation and usage
- CDM (Construction Design and Management) Regulations, Electrical and other appropriate Regulations compliance
- Procurement in accordance with FDC Code of Procurement
- Liaison with local highway authority street works teams in respect of road opening notices and licences for compliance with NRSWA 1991 (Part N) and Section 171 licence in accordance with Highway Act 1980.
- Provision of electrical duty holder on behalf of Parish
- Provision of site specific utility records

2. Significant repairs not covered by 'routine faults' (subject to Parish advanced agreement and additional to Parish estimate) such as;
 - replacement columns or luminaires,
 - pole and wall brackets and outreach bracket arms,
 - street light relocation
 - rewiring or significant internal electrical faults
 - electric supply (DNO) issues including shrouding overhead lines
 - provision of new power supply
 - Major fault investigation
 - Cable tracing
 - Column/Pole Bracket painting to include anti-climbing
 - Ad-hoc interim (non-scheduled) testing i.e. for unadopted apparatus
 - Feeder Pillar replacement
 - Temporary Portable Traffic Signal Equipment for traffic sensitive locations
 - Removal or trimming trees
3. Excluded services
 - Lighting improvements/upgrades
 - Lighting designs
 - Replacement of defective or damaged street lights (bulk replacements)
 - Scouting for lighting faults
 - Provision of wide scale utility records
 - License for installation of new apparatus within the highway (Section 50 of NRSWA 1991)
4. Service Reporting
 - Service reports can be made e-mail or web direct to FDC
 - Reporting for emergencies available 24/7
5. Communication
 - 6mthly financial and performance reports
 - Provide details of emergency actions within 10 working days.
6. Response times
 - Contractor will undertake scheduled maintenance visits every 4 weeks in spring/summer and every 2 weeks in Autumn/Winter with additional visits being required as and when necessary for minor/major faults and emergencies.
 - The overarching response times are as follows;
 - Minor Faults – Non-Emergency attendance within 14-28 days, for rectification of faults during programmed maintenance visit

- Major Faults – Urgent attendance within 24 hours to undertake safety works undertaken during attendance with rectification of fault during programmed maintenance visit
- Emergency - Attendance within 3 hours, safety works undertaken during attendance with rectification of fault during programmed maintenance visit
- Minor faults will be collated by the FDC Assets and Projects Team and passed to the contractor for rectification during the next programmed maintenance visit.

7. Apportionment of costs

- The repairs and maintenance contract is based on a 'schedule of rates' approach and therefore cost apportionment will be based on 'actual' costs appropriate to the individual Parish. An allowance will also be made for reoccurring costs which do not fall due every year such as electrical and structural testing.
- The estimated for 2018/19 will be based on recorded activity levels prior to the agreement with an adjustment for 'actual' costs applied at the end of the financial year. No allowance is included for significant or excluded works.
- Energy costs will be charged at a 'cost per street light' rate calculated on an equal basis from the total energy cost across all managed street lighting assets
- Once a fully detailed inventory is available 'actual' energy costs will be applied if possible for each Parish. This will enable the energy efficiency benefits from the investment in LED replacement lights to be reflected in energy charges. Timing will be subject to negotiations with energy providers.
- FDC management and administration provided FOC, other than 'excluded works' which will attract appropriate professional fees as set out elsewhere in this agreement

8. Charging mechanisms

- Invoices to be raised annually by FDC at the beginning of each financial year
- Parish fees will be based on estimated costs from previous service levels with an appropriate adjustment at year end based on actual costs carried forward to the next accounting period as credit or debit
- Tendered rates will apply where available where provided by the term contractor within the contract. Cost price will be recharged where procured by an alternative provider.
- Estimated energy costs will be included where actual charges are not available. An appropriate adjustment will be made for actual costs in the period following
- Alternative charging arrangements will apply for 'excluded services' which will include associated professional fees as set out in 'Additional works' below.

- Payment to be made with 30days of receipt of invoice
- Payment by BACS
- Contract rates will be adjusted annually by the Consumer Price Index (CPI)

9. Additional works

- Services within the 'excluded services' list can be provided at additional cost.
- Separately procured works will be recharged at invoiced cost plus 15% to cover professional and administrative fees. Should the Parish decide not to proceed, FDC will recharge professional fees appropriate to the abortive work undertaken.
- FDC Assets & Projects team can be engaged to undertake additional design, tender, project management commissions supplementary to this agreement
- Fees and quotations to be project specific and provided on request
- FDC propose to put in place a contract for future bulk replacement of defective lighting units. The Parish may access street lighting replacements to the standard specification via the contract at tendered prices plus professional and administrative fees of 15%.

10. Miscellaneous

- i) Uncharted street lights
 - From time to time uncharged street lights will be discovered. Investigations into the history and ownership will be undertaken by FDC to include location, historic records, CCC/Balfour Beatty records, adjacent development sites, other relevant factors
 - The hierarchy of ownership will generally follow the following principal;
 - Highway lights – CCC/Balfour Beatty
 - Unadopted development sites – developer/residents
 - Footway lights – District within Chatteris, March, Wisbech, Whittlesey, and respective Parish Council within Parish areas
 - All 'new' District and Parish lights will be added to the inventory and ongoing R&M and energy costs apportioned accordingly, including structural and electrical testing
- ii) Removal of street lights
 - In certain circumstances existing street lights may no longer be appropriate in their current location. Parishes may wish in such circumstances to remove rather than repair or replace. FDC can provide guidance in such circumstances
 - Removal would be dealt with under section 2 of this agreement, 'significant repairs' undertaken only subject to Parish agreement in advance

11. Contact details

- E-Mail
 - assets&projects@fenland.gov.uk

- On-line
 - <http://www.fenland.gov.uk/streetlights>
- Telephone
 - FDC main switchboard 01354 654321

Parish Council obligations

The Parish Council will;

- Delegate all responsibility for day to day management of its street lighting maintenance and management to FDC
- Retain funding agreement for identified 'significant repairs'
- Provide timely responses to identified 'significant repairs' (target within 10 working days)
- Agree to FDC undertaking works in the event of an emergency to address all safety issues.
- Direct all enquiries or service reports to FDC and not contact the contractor directly
- In the event of a major/significant fault occurring or a lighting asset being involved in a road traffic collision, the asset shall in the first instance be made safe by the contractor. Following site attendance the Parish will be advised of the repair or replacement cost using where possible the schedule of prices. A quotation shall be produced for any works which fall outside of the schedule of rate works items.
- Not instruct other service providers directly to undertake works without consultation with FDC and not depart from the FDC standard specification as contained within the R&M contract. Where a Parish instructs the term contractor or other contractors to undertake works without appropriate consultation and agreement, FDC will consider the SLA null and void and consider implementation of the termination clause.
- Be responsible for insuring their street lighting assets

Termination

In the event of either party wishing to terminate the agreement 6months written notice will be provided. All costs and fees will be due for the period of the notice.

The responsible Authority will assume full responsibility for their assets on the date of termination, including all safety, financial and other obligations.

Disputes

In the first instance issues and concerns which the Parish does not feel have been adequately addressed at a service level should be referred to the Head of Assets and Projects to address.

If the Parish remains dissatisfied the issue can be escalated to the Corporate Director for Growth and Infrastructure.

In the event of an issue still remaining unresolved the matter will be referred to the responsible Portfolio Holder for adjudication.

Consents

Parish to authorise FDC and their contractor ICP (independent connection provider) to act on behalf of the Parish. Parish to also authorise FDC to enter into an appropriate 'Asset Owner' agreement with UKPN on their behalf.

Signed Agreement

..... (enter name) Parish Council agrees to the terms and conditions of the **Street Lighting – Parish Council Service Level Agreement**

Signed for Parish Council.....

Date.....

Signed for Fenland District Council

Date

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Agenda Item No:	9	
Committee:	Cabinet	
Date:	19 July 2018	
Report Title:	Statement of Community Involvement	

1 Purpose / Summary

To adopt the attached Statement of Community Involvement.

2 Key issues

The current adopted Statement of Community Involvement (SCI) was adopted on 20th June 2013; it is therefore now necessary for the Council to review, and if necessary amend, its SCI.

Two recent legislative changes have also prompted the need for the SCI to be updated and republished.

This report sets out the legislative changes that have taken place, and a summary of the impacts on and amendments made to the SCI in order to bring it up to date.

The SCI is a key document that sets out the Council's approach to consultation on the Local Plan, consideration of planning applications and Neighbourhood Planning.

The Planning Committee considered this document on 20th June 2018 and recommend adoption by Cabinet.

3 Recommendations

- That Cabinet adopt the Statement of Community Involvement as attached.

Wards Affected	All
Forward Plan Reference	N/A
Portfolio Holder(s)	Councillor Dee Laws, Portfolio Holder for Planning
Report Originator(s)	Carol Pilson, Corporate Director Nick Harding, Head of Planning Richard Kay,
Contact Officer(s)	Carol Pilson, Corporate Director Nick Harding, Head of Planning Richard Kay, Head of Sustainable Growth Strategy
Background Paper(s)	

Agenda Item No:	11	
Committee:	Planning Committee	
Date:	20 June 2018	
Report Title:	Statement of Community Involvement	

1 Purpose / Summary

The purpose of this report is to seek any comments on the attached draft Statement of Community Involvement (SCI) prior to it being considered by Cabinet for adoption.

2 Key issues

The current adopted Statement of Community Involvement (SCI) was adopted on 20th June 2013; it is therefore now necessary for the Council to review, and if necessary amend, its SCI.

Two recent legislative changes have also prompted the need for the SCI to be updated and republished.

This report sets out the legislative changes that have taken place, and a summary of the impacts on and amendments made to the SCI in order to bring it up to date.

The SCI is a key document that sets out the Council's approach to consultation on the Local Plan, consideration of planning applications and Neighbourhood Planning.

3 Recommendations

- That Planning Committee endorse the Statement of Community Involvement as attached at Appendix A, and recommend that Cabinet adopts it.

Wards Affected	All
Forward Plan Reference	
Portfolio Holder(s)	Cllr P Murphy - Environment
Report Originator(s)	Richard Kay
Contact Officer(s)	Richard Kay
Background Paper(s)	

4 Background on the Statement of Community Involvement

- 4.1 It is a statutory requirement (see section 18 of the Planning and Compulsory Purchase Act 2004 (as amended)) for the Council to set out how it will consult the public on planning matters, in a 'Statement of Community Involvement' (SCI). The current SCI was adopted on 20 June 2013, it, therefore, is now in need of a review and update, especially following two recent legislative updates.
- 4.2 First, Section 6 of the Neighbourhood Planning Act 2017 amended Section 18 of the Planning and Compulsory Purchase Act 2004 (statement of community involvement) by inserting a subsection (2B), which states that a "statement of community involvement must set out the local planning authority's policies for giving advice or assistance" in relation to Neighbourhood Planning. This requirement comes into force on 31 July 2018, by virtue of the Neighbourhood Planning Act 2017 (Commencement No. 3) Regulations 2018.
- 4.3 Second, Section 12 of the Neighbourhood Planning Act 2017 also amended section 17 of the Planning and Compulsory Purchase Act 2004 (local development documents) by inserting a subsection (6A), which enables the Secretary of State to require a local planning authority to review a local development document at such times as may be prescribed. If he does prescribe as such, the newly inserted subsection (6B) states that a local planning authority, when reviewing such a prescribed local development document, "must consider whether to revise the document following each review, and if they decide not to do so, they must publish their reasons for considering that no revisions are necessary."
- 4.4 The above subsection (6B) was followed up by Regulation 4 of the Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2017 which inserted a new Regulation 10A into the Town and Country Planning (Local Planning) (England) Regulations 2012.
- 4.5 Regulation 10A (which came into force on 6 April 2018) requires, inter alia, a local planning authority to review an SCI "every five years, starting from the date of adoption of the statement of community involvement". As subsection (6B) explains above, whilst such a review does not necessarily mean 'amend and adopt' every five years (it could mean 'review, but decide it remains fit for purpose'), the general government expectation is that the SCI is refreshed and adopted every five years.

5 Considerations

- 5.1 For Fenland, its last SCI was adopted on 20 June 2013. As such, it must 'review' its SCI by 19 June 2018, and determine whether to amend it. That legally required 'review' has been undertaken by officers, and for reasons set out below, a refreshed SCI (as attached) is recommended to be adopted. If Cabinet decide not to revise and adopt the SCI, it must, by virtue of subsection (6B) referred above, publish its reasons for considering no revision is necessary.
- 5.2 As described above, there is a legal requirement to review the SCI every five years. Officers have undertaken that review, prior to the expiration of the five year period (19 June 2018), and are recommending that a revised SCI be prepared and adopted. The reasoning why a revised SCI is necessary is because:
- (a) numerous legislative changes since the last SCI was adopted on 20 June 2013 means the present SCI is somewhat out of date;
 - (b) upcoming legislative requirement, from 31 July 2018, require an SCI to include neighbourhood planning advice. Whilst the present 2013 SCI includes some advice on neighbourhood planning, it again is dated and in need of a refresh.

- 2.4 The review of the current SCI has also provided a timely opportunity to reconsider the consultation commitments included within the 2013 version. It is important to remember that once adopted, the local planning authority must follow what it says in the SCI. If it did not do so (whether that be for plan making, determining planning applications or neighbourhood planning matters), it would be open to legal challenge. It is essential, therefore, that we get it right, neither committing ourselves to doing too much (and not being able to meet such commitments) or too little (and not meet Member / public expectations of involvement).
- 2.5 Subject to any views of Planning Committee, if Cabinet are supportive of the attached SCI, then it is free to adopt it and it will come into force with immediate effect (subject to any call-in). There are no further regulatory stages (such as public consultation or independent examination) required.

6 Effect on corporate objectives

- 6.1 Community participation in the functions of the Council is an important corporate objective. The SCI assists in helping communities understand the planning system and how to get involved.

7 Community impact

- 7.1 The purpose of the SCI is to set out how Fenland Council will involve the community in planning for the future of the district, and how neighbourhood planning will be supported. Overall, the publication of this refreshed document has a positive community impact, as it helps communities shape the environment in which they live.

8 Conclusions

- 8.1 Following a review, and a subsequent refresh to reflect recent legislative changes, the document, as attached, will be recommended to Cabinet for adoption. However, Planning Committee's views are sought first, so as to inform Cabinet's decision. On adoption, the 2013 version of the SCI will be deleted.

Statement of Community Involvement (SCI)

A guide as to how we will:

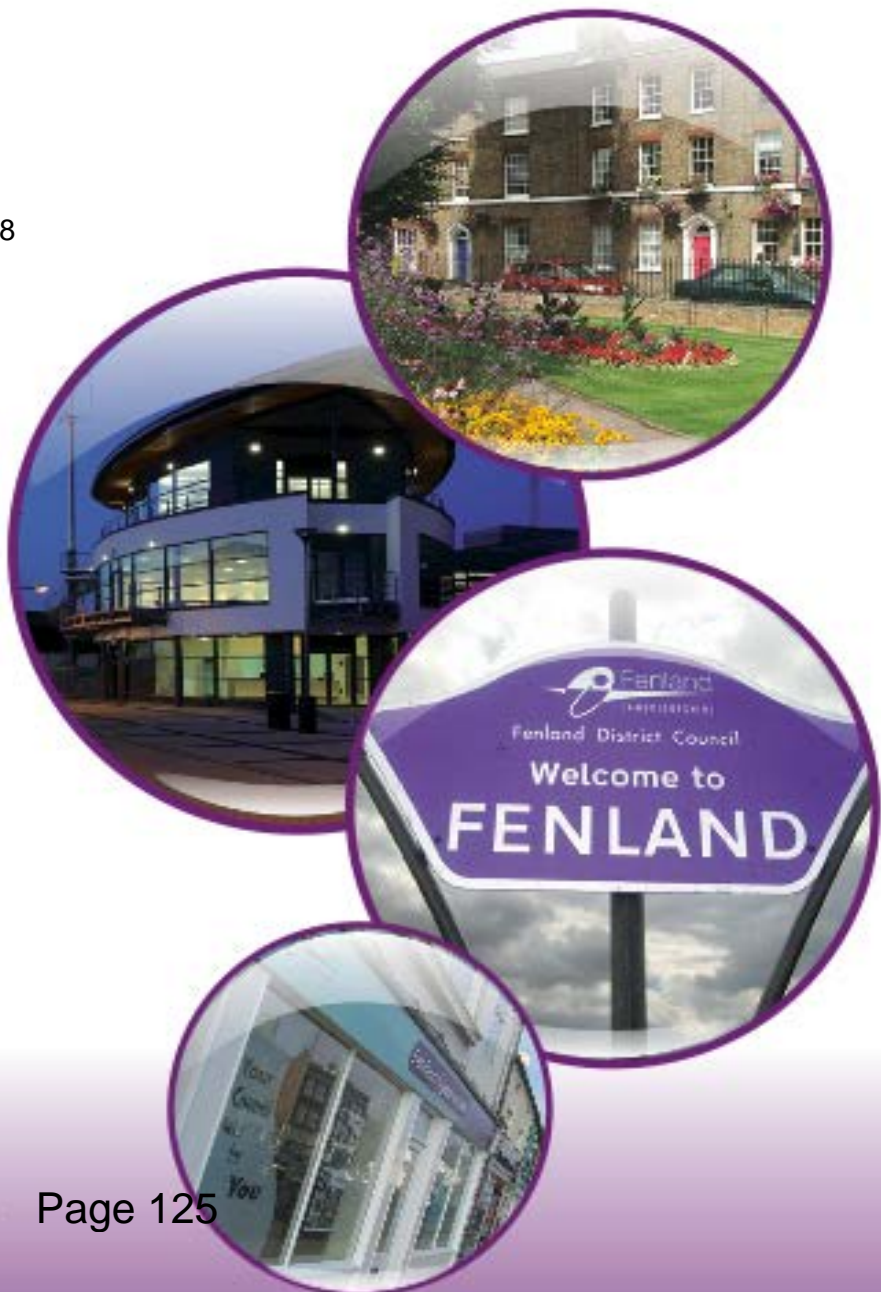
- *consult you on Planning Applications;*
- *consult you on emerging Planning Policy; and*
- *assist you with Neighbourhood Planning*

July 2018

This document was adopted on 19 July 2018

DRAFT VERSION

This document is a draft version of the SCI, for consideration by Planning Committee (20 June 2018) and Cabinet (19 July 2018).



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Part 1: Introduction

Introduction

This Statement of Community Involvement (SCI) sets out how Fenland District Council ('the Council') will involve and consult with the public and wider stakeholders when planning for the future of the district. Whilst government sets out minimum requirements for public consultation on planning matters, this SCI sets out the Council's additional local commitments to consultation.

This SCI covers:

- Consultation arrangement in respect of Planning Applications;
- Consultation arrangements in respect of planning policy matters (such as a new Local Plan); and
- Arrangements for community involvement in, and the requirements of, the Neighbourhood Planning process, including how the Council will assist in the preparation of neighbourhood planning matters.

The commitments set out in this document are binding on the Council, unless national legislation states otherwise.

What is planning?

Most new buildings, certain changes to existing buildings (including their use) or significant changes to the local environment need consent – known as planning permission.

Fenland District Council, as your local planning authority, is responsible for deciding whether a development - anything from an extension on a house to a new shopping centre – should go ahead. In determining planning applications, regard must be had to the planning policies which have been adopted for the area (for example, a Local Plan, a Neighbourhood Plan or a Supplementary Planning Document).

How to get involved

There are a number of ways that you can get involved in the planning decisions affecting you and your community. The main ways that you can get involved are:

- Having your say during public consultation periods for planning policy documents (such as a Local Plan);
- Having your say on planning applications affecting your community;
- Reporting planning control breaches (such as a neighbour building a large extension to their home without planning consent);
- Commenting on appeals relating to applications that have been refused by the Council; and
- Preparing your own plans and policies for your local area under the Neighbourhood Planning rules.

Please note that this SCI was written based on the Council's understanding of national legislation that existed as at July 2018. Should national legislation change, there may be elements in this SCI which no longer apply. The Council will endeavour to update this SCI as soon as possible after significant national legislation change.

Part 2: Consultation Commitments on Planning Applications

Step 1: The Pre-Application Stage

What needs planning permission?

Most kinds of development require planning permission; however, there are a number of circumstances where certain types of development are automatically permitted. The Town and Country Planning (General Permitted Development) Order 2015 (as amended) contains a number of 'blanket permissions' for a variety of different works.

If your proposed development falls within what is termed 'permitted development' you will not need to apply for formal planning permission to carry out the works. Permitted development rights are often subject to compliance with standard conditions. It is the owner/developer's responsibility to check and comply with these conditions.

Some developments are subject to a system of 'prior approval' of details. Prior approval means that the proposed development is 'in principle' permitted development. The Council can consider whether prior approval of certain details is required in advance of a formal decision being issued. Following an application, if no information is requested by the Council within fixed timescales, the application is approved. For certain types of prior approval, the Council will notify occupiers of neighbouring properties and allow them to submit comments.

The Council's pre-application advice service

Pre-application is the phase before a developer formally submits a planning application. Discussions with the Council at this stage are recommended as they can ensure that future development enhances the built and natural environment whilst potentially speeding up the formal planning application process. Further information relating to the pre-application stage is available on the Council's website: <http://www.fenland.gov.uk/planningpreapplication>.

Developer pre-application consultation with the community

Section 122 of the Localism Act 2011¹ introduced a duty for developers to consult local communities before submitting planning applications for certain developments. This duty came into force on 17th December 2013². However, it is the Council's understanding that only certain wind turbine developments are, as yet, classed by government as falling under this duty. Government retains the ability to introduce other types of development to fall under the duty, should it decide to do so in the future.

However, even if not compulsory for all other types of development, pre application consultation will enable communities to raise issues with and make suggestions to the developer. This might reduce local opposition, increase the chances of a timely and positive decision from the planning authority and improve the resulting quality of development.

¹ <http://www.legislation.gov.uk/ukpga/2011/20/section/122/enacted>

² <http://www.legislation.gov.uk/uksi/2013/2931/made>

Step 2: Planning Application Process

Community consultation on planning applications

The Planning and Compulsory Purchase Act 2004 requires that at any time before a decision is made on a planning application, stakeholders and the local community should have the opportunity to comment on any aspect of the proposal. The level and extent of consultation will vary depending on the size, scale, location and nature of the proposed development.

Consultation on planning applications will take place with both statutory and non-statutory consultees. Who is consulted on each individual application will depend on the nature of the proposal and its location. All consultees have 21 days from the issue of the consultation notice to make comments on the application (extended as appropriate where the period extends over public or bank holidays). However, some bodies such as Natural England will be allowed a longer period of time to comment where this is prescribed by legislation. The minimum statutory requirements are set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

How the Council consults on planning applications is set out below:

Development type/size	Fenland District Council consultation commitments
<ul style="list-style-type: none"> • Major developments (residential sites of either 10 dwellings or more, or 0.5 hectares or more, or commercial developments of 1000 sq. meters or more in floor space or one hectare or more); • Applications subject to Environmental Impact Assessment (EIA); • Work affecting listed buildings or conservation areas; • Applications affecting public rights of way, bridleways or byways. 	Newspaper notice, site notice and neighbour letters
<ul style="list-style-type: none"> • All other developments 	Neighbour letters and sometimes site notice where neighbours cannot all be identified

Planning applications can be viewed online using the Council's Public Access system, available on our website. Using the system, it is possible to search for, view and comment on planning applications. It is also possible to track the progress of an application using the system.

Once a valid application has been received, we aim to provide a decision within 13 weeks if it is a major planning application or within 8 weeks if it is an application for minor or other development. Applications for development subject to an Environmental Impact Assessment have a longer time within which we aim to provide a decision at 16 weeks. We will determine planning applications as soon as is possible after the 21 day consultation period has ended.

All comments on planning applications must be submitted in writing (letters, faxes and emails) to the Council within the specified 21 day consultation period. All such communications received are placed on the planning file which is available for public inspection. They cannot be treated as confidential.

Consultation on amended planning applications

Sometimes the applicant will make a change to the development proposal to overcome particular issues. We will consult on these changes as set out below:

Level of change	Re-consultation
Where the change is insignificant and would not impact on neighbours	No re-consultation will be undertaken
Where the change significantly alters the appearance or layout of the proposal and would be of interest to neighbours/ community groups	Notification letter sent giving a minimum 14 days for comment. A revised site notice and press article will be displayed for significant alterations, or for major/ EIA/ conservation area/ listed building/ right of way applications.

Occasionally developers may wish to make amendments to a development that has already been granted planning permission. Where the proposed change is minor and classed as a 'non-material amendment', no consultation will be undertaken. Where the amendments are more significant and are classed as a 'material amendment', re-consultation will take place, as set out under consultation commitments above. Applications to delete or vary a condition attached to the permission will also be re-consulted on as set out under the consultation commitments.

Who makes the decision on planning applications?

The Council receives approximately 1,200 planning and related applications a year. The decision on the majority of these applications is delegated to Officers in accordance with the details set out in the District Council's Scheme of Delegation and its Standing Orders. Generally speaking, the more minor a proposal, the more likely it is delegated to Officers to approve or refuse the application.

The Planning Committee is, at the time of adopting this SCI, is constituted at 15 councillors. The councillors have the task of considering planning applications against wider public interests and must make their decision purely on planning grounds. Generally speaking, the Committee determines applications for large developments or developments that do not accord with the Local Plan. There are opportunities for objectors, applicants and others to speak at the Committee meeting before a decision is made.

The planning officer's report, setting out all the planning issues and representations made, is made available a week before the Committee meeting and in the vast majority of cases will make a recommendation to Planning Committee stating whether or not an application should be approved, having been considered against the Local Plan and any material considerations.

Reporting on decisions

The results of consultation on planning applications will be taken into account during the decision making process. Progress of planning applications, and the decisions made, can be tracked on the 'Public Access' system on the planning pages on the Council's website.

Step 3: Appeals

Planning appeals

If the person who applied for planning permission does not like the decision that the Council has made on their application (e.g. planning permission refused, or onerous condition applied to a planning permission), they may lodge an appeal with the Planning Inspectorate. No one else has the right to appeal the decision (for example, you cannot appeal a decision if your neighbour gets approval for an extension you objected to).

When a decision has been appealed against, the Council informs all parties who objected during the application stage that an appeal has been lodged. All copies of letters and comments received during the original application stage are forwarded to the Planning Inspectorate.

If an application is then approved by the Planning Inspectorate, the only recourse available to third parties would be to apply for judicial review of the decision. This is an extremely rare event.

Step 4: Enforcement

Community involvement in planning enforcement

Planning Enforcement (also known as Planning Compliance) describes the processes involved in ensuring that people comply with planning law and the requirements of a planning permission. The process involves little public consultation, as many investigations are confidential. The majority of cases come about from referral by members of the public, councillors or planning officers. Whilst there is no public consultation on a compliance case, the Council will ensure that the complainant is informed of the outcome of our investigations.

A complaint can be made in respect of a development or advertisement that is occurring without planning permission; without complying with conditions that have been attached to a permission; or that is not in accordance with an approved plan. There is an electronic form on the district council's website for reporting what you think is a planning breach, alternatively please call the Planning and Compliance Team on 01354 654321.

If, following investigation, it is necessary to serve a formal notice (e.g. Stop Notice, Enforcement Notice or Breach of Condition Notice) it will be placed on the enforcement register of notices. This register can be viewed on request.

Part 3: Consultation Commitments on Planning Policy

Introduction to Planning Policy

The National Planning Policy Framework (NPPF) explains that the Local Plan (sometimes referred to as a 'Development Plan Document' or, in the future, it may be referred to as a 'Strategic Plan') is a plan for the future development of the local area, drawn up by the Local Planning Authority in consultation with the local community.

The primary purpose of a Local Plan is to:

- set the vision for how the local area will grow and change;
- set policies for use by developers when preparing their proposals; and
- be the key reference tool by decision makers when determining applications for planning permission.

The Local Plan deals with planning issues across the whole Council area, and makes the big decisions on the location of housing, employment and roads, for example.

At the time of writing, Fenland's latest adopted Local Plan is dated May 2014.

Should any joint plan be undertaken which covers the Fenland District Council area, then the provisions of this Statement of Community Involvement will equally apply to a joint plan as to the district wide Local Plan.

There are other planning policy related documents which the Council produces (or local communities, in the case of Neighbourhood Plans), with the main ones as explained below:

- The **Local Development Scheme (LDS)**, will, when a new Local Plan is to be produced, set out the timetable for its production.
- **Policies Map:** This is a map on an Ordnance Survey base for the whole of a local planning authority's area which shows where policies in the Local Plan and any Neighbourhood Plans apply. The Policies Map includes inset maps for particular areas to show information at a larger scale. The Policies Map is updated each time that a Local Plan (including a Minerals and Waste Plan produced by Cambridgeshire County Council) or Neighbourhood Plan is adopted.
- **Supplementary Planning Documents (SPDs):** These can cover a wide range of issues on which the planning authority wishes to provide guidance to supplement the policies and proposals in its Local Plan. They do not form part of the statutory development plan and are not subject to independent examination. The district council can decide to produce an SPD on any appropriate subject whenever the need arises.
- **Neighbourhood Plans:** Parish and Town Councils can now prepare Neighbourhood Plans (NPs), putting in place policies to guide the future development of the area. Any NP must be in general conformity with 'strategic policies' in the Local Plan and with national policy. It is up to local Parish and Town Councils to decide if it wants to produce a Neighbourhood Plan. Any NP, if adopted, has the same status as a Local Plan.
- **Statement of Community Involvement (SCI)**, i.e. this document.
- **Authority's Monitoring Report (AMR):** This is a report which must be produced by the local planning authority (on an annual basis) to explain how the LDS is being implemented and the extent to which policies in the Local Plan are being achieved.

Who will we consult on an emerging Local Plan?

When producing a Local Plan there are a number of groups that the Council must consult with. These are identified as ‘specific consultation bodies’ and include:

- Parish Councils;
- Neighbouring authorities; and
- Relevant government agencies.

In addition, there are also a number of ‘general consultation bodies’ who the Council may consult with if it is considered relevant to the document that is being prepared. These include:

- Voluntary bodies, some or all of whose activities benefit any part of the district council’s area;
- Voluntary bodies which represent the interests of :
 - Different racial, ethnic or national groups in the district council’s area
 - Different religious groups in the district council’s area
 - Disabled people in the district council’s area
 - People carrying on business in the district council’s area

There are also people and organisations that the Council considers it important to consult with, for example, residents, land owners, businesses, planning consultants, solicitors etc. Where requests have been made we will also consult directly with these people and organisations.

Although those identified above will be specifically contacted during the preparation of Local Plan documents, any individual, business, organisation or group is welcome to submit comments during consultation periods.

When we will consult

There are a number of stages in the plan preparation process where it is possible for the public, businesses and the consultation bodies identified above to become involved and make comments. The main stages of preparation and consultation are set out below.

<p>Public participation (Regulation 18)</p>	<p>During the first stage of public involvement the Council will, as a minimum, contact the ‘specific’ and ‘general’ consultation bodies as appropriate to inform them of the commencement of the plan preparation process, and invite representations on the scope and content of the plan. There will be a minimum period of 6 weeks for comments to be made. Following this first stage of consultation, the Council may undertake one or more further 6 week consultations on either more detailed options for the content of the plan or on a revised draft of the Plan. This will inform later stages of the plan preparation.</p>
<p>Pre-submission publication (Regulation 19)</p>	<p>Following the consideration of all comments received at the above stage, a draft plan will be produced, known as the pre-submission or proposed-submission document. On publication of this document, all of the specific and general consultation bodies and any members of the public, businesses, land owners etc who made comments at the previous stage of consultation will (unless we are advised otherwise, and subject to any legal requirements arising from the General Data Protection Regulations) be notified that the pre-submission documents are available for inspection. A statement of representation procedure will be available alongside the notification of pre-submission documents. In addition, any individual, business or organisation can submit comments during the consultation period, even if they did not make comments at the</p>

	earlier stage. All comments must be received within the stated consultation period, which will be a minimum of 6 weeks.
Submission (Regulation 22)	The Council submits the Local Plan to the Secretary of State together with the representations received at the Regulation 19 stage. This is not a stage for further public comments to be made.
Independent Examination Hearing	The submitted document, and the representations received, will be considered by a Planning Inspector at an independent examination. Those individuals and organisations who have made representations may be invited by the inspector to submit a written statement during the examination. Individuals and organisations who made an objection to the document and have requested to speak at the examination will be contacted by the Inspector to be informed of the procedure for being heard.
Inspector's Report	The Council will notify all those who have requested to be notified, as soon as reasonably practicable following the receipt of the Inspector's Report. The report will also be made available on the Council's website.
Adoption of the DPD (Local Plan)	<p>Assuming that the Inspector concludes that the document is sound, either with or without modifications, the Council will consider whether to adopt the Local Plan. On adoption, the Council will prepare a statement setting out the date of adoption, the modifications (if any) and where and when the adopted documents can be inspected. The opportunity to apply for judicial review will also be explained.</p> <p>The adoption documents will be made available on the Council's website, and also at the locations where the submission documents were made available. The adoption statement will also be sent to any person who has requested to be notified, and (unless we are advised otherwise, and subject to any legal requirements arising from the General Data Protection Regulations) to all those who made representations on the Regulation 19 document.</p>

How we will consult

At the commencement of consultation periods, the identified specific and general consultation bodies that we have to consult with, as well as any individuals, organisations or bodies who have requested to be notified or whom we think might be interested (subject to any legal requirements arising from the General Data Protection Regulations), will be contacted directly either in writing or via email.

All consultation and submission documents will be made available on our website (www.fenland.gov.uk) and paper or electronic copies will be available to view at the main Council office. If appropriate, additional paper copies of some of the documents may be made available to view at other locations. In addition to this, we may, if appropriate and cost effective, use other methods of consultation such as press releases, community events and meetings.

During all consultations it will be possible to make comments in writing, or electronically via email or, if available, an online consultation portal. Verbal comments will not be recorded.

Consultation Arrangement for Supplementary Planning Documents

Supplementary Planning Documents (SPDs) can be produced to supplement and add further detail to policies within the Local Plan. They may provide further guidance for development on specific sites or issues such as design.

When preparing an SPD, any individual, business or organisation can take part in the public consultation stage(s). If the Council believes that there are specific individuals, businesses or organisations that will have a particular interest in an SPD, they will be invited to make comments (subject to any legal requirements arising from the General Data Protection Regulations).

We will invite comments on the draft version of any SPD that is produced. The consultation period will be a minimum of 4 weeks.

At the commencement of the consultation period, the draft SPD will be made available on the Council's website and at the Council main office. If appropriate, additional paper copies of documents may be made available to view at other locations.

During all consultations it will be possible to make comments in writing, or electronically via email.

Following its adoption, the SPD will be made available on our website and at the Council main office.

Part 4: Neighbourhood Planning

Introduction

Neighbourhood Planning was introduced through the Localism Act in 2011. It enables parish councils and (for those locations where a parish council does not exist) communities to develop a planning strategy for their local area to be used in making decisions on relevant planning applications.

By virtue of Section 18 of the Planning and Compulsory Purchase Act 2004, subsection 2(B), this SCI must set out the Council's policies for giving advice or assistance on Neighbourhood Planning. For the purpose of this SCI, reference is made to a 'neighbourhood plan', though if a parish or town council is interested in preparing a considerably rarer 'neighbourhood development order' then the provisions set out in this SCI for neighbourhood plans equally apply.

A neighbourhood plan can include policies on the development and use of land, however they cannot be used to propose a lower level of housing growth than that proposed within local authority planning policies.

Importantly neighbourhood plans are required to meet a number of 'basic conditions', which are that the plan must:

- Have appropriate regard to national policy and advice contained in guidance issued by the Secretary of State;
- Contribute to the achievement of sustainable development;
- Be in general conformity with the strategic policies contained in the development plan for the area; and
- Not breach, and be otherwise compatible with, EU and Human Rights obligations.

This Part 4 of the SCI has been produced to set out the key stages in undertaking a neighbourhood plan and to clarify what can be expected from the Council at each stage. More detailed independent advice on neighbourhood planning is available via the internet, such as <https://neighbourhoodplanning.org/>.

Formal stages of neighbourhood planning

When preparing a neighbourhood plan there are a number of formal stages that are required by legislation to be undertaken. These stages are set out below and indicate what you should do and what you can expect from the Council at each stage.

Stage 1: Neighbourhood Area Designation

In order to produce a neighbourhood plan, the applicable area must be formally designated as a 'Neighbourhood Area'. A Neighbourhood Area is the geographic area that your plan will cover.

A Neighbourhood Area normally matches the boundary of the applicable parish area. However, it could be just part of a parish area or it could cover more than one parish area, but, if it does so, it should be supported by all parish councils. If more than one parish council is proposing a joint plan we would suggest making a joint application with one parish taking the lead as the 'qualifying body'.

An application for designation as a Neighbourhood Area will need to confirm that the organisation making the application is the parish or town council, stating why the proposed area is appropriate, and must be accompanied by a map clearly showing the area being applied for (FDC can provide a PDF map if needed). An application form is available on the website <http://www.fenland.gov.uk/neighbourhood-planning>.

When submitted, the Council will validate the application by checking that all of the necessary information is provided. If the application is not valid you will be contacted by a planning officer to discuss the reasons and offer advice on the next steps.

Once validated, if the application is made by a Town or Parish Council for the whole of their area, no consultation is required and the Council must designate the area.

If the application is not for the whole of a Town or Parish Council's area, or is for more than one parish area, the Council will publicise notice of the application, and consult on the application for a period of 6 weeks.

Representations will be considered by the Council and a decision will be made on whether to approve the Neighbourhood Area.

With all applications, the Council will also decide whether to also designate the area as a Business Area: this will only be the case where the area is wholly or predominantly business in nature.

What you can expect from the District Council in Stage 1

We will aim to validate your application or notify you of any problems within 10 working days.

Where an application is by a Town or Parish Council for the whole of their area the Council must designate the area. The Council will aim to do this within 5 working days of the application being validated.

If consultation is required, we will publish your application on the District Council's website and advertise as necessary in at least one of the following (provided one of these exist): local library; community centre; parish/town council building and/or local notice board, for the consultation period with details of how long the consultation will run and how to make representations.

We will make a decision, in accordance with the Council's constitution, on whether the area should be designated:-

- Where an area falls within the areas of two or more local planning authorities – 20 weeks from first being publicised;
- For all other areas – 13 weeks from first being publicised.

If these timescales are missed, the default decision is that the area applied for is designated.

We will publicise the decision on whether or not to designate the neighbourhood area on our website.

Stage 2: Produce your neighbourhood plan

There is no 'one size fits all' approach to producing a neighbourhood plan. Each plan will be produced according to the intended content and the nature of the area. It is important to be realistic about the amount of resources and time you can put into the plan.

Effective consultation and engagement is particularly important as it is the community who will ultimately vote on whether the plan should be adopted by Fenland District Council (see Stage 6).

The Council sets out below how it will assist at this stage, as a minimum.

This list is not exhaustive, however assistance will be limited to resources available at a given time, and so it is recommended that you should develop a clear project plan to plan for when you anticipate needing assistance from the Council. It is important to note that the District Council's duty to support does not extend to financial assistance i.e the Council does not have any funds available to pass to the Parish Council in order for the Parish Council to do any of the work.

When you are reasonably certain about the policies your plan will contain, the District Council will help you screen your plan for any environmental impacts. If your plan changes significantly between the screening and the formal submission, it may need to be screened again.

What you can expect from the District Council in Stage 2

Advice on matters relating to the neighbourhood plan will be given upon request, but may be capped at four officer working days in total for this stage (unless we agree to extend the number of days). Such advice may include:

- an initial meeting (requests for meetings may be limited to one)
- Advising on potential topics for your plan
- Making data available or advising where to find useful data to provide evidence for your plan;
- Providing advice on the legal requirements for your plan;
- Assisting with preparing any necessary environmental reports;
- Advising on organisations that may be able to help with the production of your plan;
- Advising on ways to engage your community;
- Reviewing a draft of your plan and feeding back comments; and
- Providing up to 5 copies of Ordnance Survey base maps of the neighbourhood area, and printing of up to 20 copies of a draft Neighbourhood Plan

Timescales for a response to any request will vary depending on the nature of the request, but every effort will be made to respond at the earliest opportunity.

We will aim to provide an informal view of whether the plan is likely to meet the basic conditions within 20 working days of receiving a request. This will require a mature draft of the plan being provided prior to the pre-submission consultation.

Stage 3: Pre-submission Consultation

Regulations require that your proposed plan undergoes a 6 week consultation prior to submitting it (see Stage 4) to the District Council. This requirement, which is the Parish or Town Council's responsibility to undertake, includes:

- Publicising the plan so that it is brought to the attention of people who live, work, or own a business in the neighbourhood area;
- Notifying a number of bodies such as the Highways Agency, Natural England, English Heritage and the Environment Agency;
- Notifying service providers that operate in the area such as utility providers, a Primary Care Trust, and Network Rail;
- Notifying local organisations that represent racial, religious, national, business, and disability groups;
- Notifying voluntary bodies that operate in your neighbourhood area;
- Notifying parish councils within the neighbourhood area; and
- Sending your plan to the District Council.

Prior to publicising your plan, it is recommended that you contact the Council who will advise on who (subject to any legal requirements arising from the General Data Protection Regulations) you should be notifying and can advise on how to publicise your plan in your neighbourhood area.

You will need to plan the consultation and make sure that your plan can be viewed by the community and other organisations, both in electronic format and in hard copy. You will also need to consider how you will bring the proposed plan to the attention of the community using means such as mail drops, posters, press adverts, etc.

Once the 6 week consultation period is complete you will need to review the comments and collate them into a consultation statement, including a response to the key issues being raised. This will demonstrate what changes, if any, will be made to the plan. You will then need to amend the plan to be ready to submit to the Council. If significant changes are made, it is recommended that you repeat this Stage 3 six week consultation.

What you can expect from the District Council in Stage 3

Assist with identifying the organisations that should be contacted as part of the pre-submission consultation and advise on how to publicise the proposed plan to the community. This will be provided within 10 working days of a request in the run up to the consultation.

If asked by you to do so, publish a notice of your plan on the District Council's website and place copies of the proposed plan at the Council office and other relevant locations such as libraries for the public to view for the consultation period.

Provide a response to the proposed neighbourhood plan, including a view on whether it is considered to meet the basic conditions.

Stage 4: Submission and publication of the plan

When you have taken account of the comments made to the pre-submission consultation (and made any amendments to your plan as you think necessary) you will need to formally submit your plan to the Council. At this point you cannot make any further changes to the plan and you hand over control of the plan to the Council.

Your plan must be accompanied by a number of other documents, specifically:

- A map or statement clearly identifying the area to which the plan relates;
- A consultation statement which clearly documents the pre-submission consultation, including who was consulted on the plan and how they were consulted, a summary of the main issues raised, and information on how the representations have informed the content of the plan. The consultation statement may also demonstrate what previous consultation has been undertaken throughout the production of the plan.
- A basic conditions statement to demonstrate how the plan meets the basic conditions and how the plan has been produced in line with legislative requirements.
- An environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004; or where it is considered that the plan proposal will not have significant environmental effects (and, accordingly, does not require an environmental assessment), a statement of reasons for determination.

When your plan is submitted, the Strategic Planning Team will check your submission to ensure that it contains all of the necessary information to be published and will notify you of whether or not it is valid.

If the submission is valid, your plan and the accompanying documents will be published as soon as possible for 6 weeks (i.e this is a second 6 week consultation, in addition to the 6 week consultation at Stage 3) on the Council's website and in hard copy at an appropriate Council location. The Council will also publicise the consultation as necessary, including information about where to view the plan, how to make comments on it and when comments must be received by.

Following the consultation, the Council will gather the representations made on the plan and send them, along with the neighbourhood plan and accompanying documents, for examination.

What you can expect from the District Council in Stage 4

We will help you, capped at four officer working days in total (unless we agree to extend the number of days), to consider any representations received at Stage 3, and help you determine what appropriate action should be undertaken with them (eg amend policy wording) prior to you submitting the plan.

Once submitted, we will aim to confirm whether your submitted plan is valid within 10 working days of submission.

If valid, we will arrange for publication of the plan on the District Council's website, have hard copies placed at an appropriate District and Parish Council location, publicise the consultation as necessary and notify the consultation bodies as required, including those who submitted comments at pre-submission stage (subject to any legal requirements arising from the General Data Protection Regulations).

We will provide a formal response to the submitted plan, including a view on whether it is considered to meet the basic conditions.

We will cover all costs associated with meeting minimum requirements for the publication of the plan. We will consider helping with any additional costs, such as printing posters or leaflets, if the parish or town council asks us to.

Stage 5: Independent examination

During the publication stage the Council will commence appointment of a suitably qualified individual to undertake the independent examination. This appointment will be made in conjunction with the Parish Council submitting the plan.

After the publication, the neighbourhood plan, accompanying documents and representations made on the published plan will be sent to the examiner. Examinations are normally conducted by written representations, but the examiner may decide to hold a public hearing to discuss any points as needed. The examiner will only consider whether the plan meets the basic conditions.

Following the examination, the examiner will provide a report that sets out a recommendation on the plan. The possible recommendations are:

- The plan meets the basic conditions and should proceed to referendum;
- Modifications are needed for the plan to meet the basic conditions before the plan should proceed to referendum; or
- The plan does not meet the basic conditions and no modifications can be made so that it will – as such it should not proceed.

The examiner can also make recommendations as to any changes to the referendum area, though this will be an unusual recommendation.

The Council will make a decision on the plan based on the examiner's report and publish the Council's decision statement and the examiner's report.

What you can expect from the District Council in Stage 5

We will appoint the examiner in consultation with the Parish Council.

We will manage and fund the process of the examination and act as key contact for the examiner.

We will publish the examiner's report and the Council's decision on whether the plan will proceed to referendum.

We will print and pay for up to 20 copies of the final Plan, in colour, including maps.

Stage 6: Referendum and Adoption

Upon receiving the examiner's report approving the plan to proceed to referendum and the Council's formal decision to proceed (only in exceptional circumstances would the Council not agree to proceed), the Council will arrange for a referendum to take place in the neighbourhood area.

The referendum will allow for the residents of the neighbourhood area to decide on whether or not the plan should be used in making planning decisions in the neighbourhood area, with a simple 'yes' or 'no' vote. The Council will arrange and pay for the referendum to be held.

If the plan gains more than 50% of votes for 'yes' then the Council will adopt the plan at the earliest possible opportunity, making the neighbourhood plan part of the development plan for the area. It will then be used in conjunction with the Local Plan (and any other material considerations) in making decisions on planning applications.

What you can expect from the District Council in Stage 6


We will arrange and pay for the referendum.

We will publish the results of the referendum.

We will adopt the plan at the next suitable Full Council meeting

We will use the plan in making decisions on relevant planning applications in the neighbourhood area.

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Agenda Item No:	10	
Committee:	Cabinet	
Date:	19 July 2018	
Report Title:	Capital Programme Update	

Cover sheet:

1 Purpose

- To consider the updated capital programme and variations in resources since February 2018.

2 Key issues

- Updated capital programme and resources statement for 2018-21 is presented.
- The programme agreed in February 2018 has been updated and re-profiled to ensure expenditure is consistent with current resource forecasts.
- Subject to the realisation of £0.836m of capital receipts by 2020/21, the updated programme detailed at Appendix A is fully funded.
- A broader update of the capital programme and available resources will be undertaken during the autumn of 2018 as part of the budget setting process for 2019/20.

3 Recommendations

- It is recommended that the updated capital programme and funding schedule at Appendix A is approved.

Wards Affected	All
Portfolio Holder(s)	Cllr Chris Seaton, Leader Cllr Anne Hay, Portfolio Holder, Finance
Report Originator(s)	Peter Carpenter, Interim Chief Finance Officer Mark Saunders, Chief Accountant
Contact Officer(s)	Peter Carpenter, Interim Chief Finance Officer Mark Saunders, Chief Accountant
Background Paper(s)	2018/21 Capital Programme working papers

Report:

4 Introduction

- 4.1 The Council's 2018-21 capital programme was approved by Cabinet and Council in February 2018, with the capital outturn for 2017/18 being reported to Cabinet on 17 May 2018.
- 4.2 This report addresses amendments to the programme since February, including re-profiling schemes from 2017/18 and a re-assessment of resources available in the period 2018-21.
- 4.3 A broader update of the capital programme and available resources will be undertaken during the autumn of 2018 as part of the budget setting process for 2019/20.

5 Updated Capital Programme

- 5.1 The updated programme detailed at Appendix A is fully funded subject to the realisation of £836,000 of capital receipts by 2020/21.
- 5.2 The main changes to the programme since February 2018 is an acceleration of the vehicle replacement programme with spending budgeted for 2019/20 due to happen in this financial year. Re-profiling adjustments consistent with the variations reported to Council and Cabinet as part of the outturn report on 17 May 2018 have also been reflected.
- 5.3 The anticipated expenditure funded from disabled facilities grants has increased to take account of the confirmed allocation from government and a brought-forward underspend from the prior year. A scheme to develop the Skate Park at Wisbech using section 106 monies has also been added to the capital programme for the 2018/19 financial year.
- 5.4 Should resources from external funding and/or capital receipts not generate the level of receipts forecast, or there is a delay in disposal of assets, then the capital programme will need re-visiting to ensure funding is sufficient to meet proposed expenditure. Reviews of the programme and resources available are carried out regularly during the year.
- 5.5 No further new schemes have been included in the programme, however there are a number of essential projects currently being assessed by Officers which may result in new schemes being put forward for member's consideration during the next financial year. These include maintenance and improvement of assets as detailed in the Asset Management Plan 2017-20 presented to Council on 15 December 2016.
- 5.6 Cabinet and Council approved the use of prudential borrowing to fund the capital programme in each of the next three financial years, totalling £1.887m over the three-year period.
- 5.7 Members are also reminded of the impact on the revenue account of using uncommitted capital resources. Whilst they remain uncommitted, the resources are invested and generate revenue income to the general fund. Consequently, for every £1m spent the revenue account loses around £6,000 per annum at current interest rates. At the interest rates projected over the Medium Term Financial Strategy (1 – 1.5%), the reduction in investment interest is between £10,000 - £15,000 per annum for every £1m of capital resources spent.

CAPITAL PROGRAMME AND FUNDING 2018- 2021

	2018/19 £000	2019/20 £000	2020/21 £000
CURRENT FORECAST EXPENDITURE	3,852	2,201	1,195
FORECAST RESOURCES AVAILABLE			
Capital Grants	1,106	973	950
Usable Capital Receipts - In Year	311	300	225
Usable Capital Receipts - B/fwd	6	0	0
Reserves used in year to fund Capital	994	64	0
Section 106's	96	0	0
Finance Leases	336	0	0
Borrowing	1,003	864	20
Total Forecast Resources	3,852	2,201	1,195

CAPITAL PROGRAMME SUMMARY 2018 - 2021

	2018/19 £000	2019/20 £000	2020/21 £000	Total Cost £000	FDC Funding £000	External Funding £000	External Funders and FDC Reserves/S106
Leisure Centres							
1 Essential Buildings Safety Improvements	6			6	6		
2 Condition Survey Improvemets	150	32		182	182		£182K R&M Reserve
Regeneration Programmes							
3 Fenland Renaissance and Place Shaping	30			30	30		
4 Heritage Lottery Fund - Match Funding bid	50	100		150	150		
5 Heritage Lottery Fund - 24 High Street, Wisbech	129	29		158	158		£50K Conservation Reserve
Cemetries							
6 Rebuild Front Wall - Manea Churchyard	15			15	15		
Car Parks							
7 March and Wisbech - Surface, Drainage and Landscaping	200	150		350	350		
Parks and Open Spaces							
8 West End Park - Replace Skate Park Ramps	120			120	90	30	£30K WREN
9 Wisbech Park - Resite Zip Wire, Multi Play Module		40		40	40		
10 Refurbish Wall, The Pound, Whittlesey		20		20	20		
11 Wisbech Skate Park	75			75		75	£75k Clarion S106 Monies
Highways							
12 Street Light Improvements - FDC	241	260		501	501		£47k Invest to Save Reserve
13 Street Light Improvements - Parishes (Categories 1 & 2)	163			163	163		£163k Capital Reserve
14 Street Name Plates/District Facilities Signage	9			9	9		
Port							
15 Mooring & Fuelling Facilities, Sutton Bridge	130			130	130		
16 Suspended Quay - Structural Repairs/Fender Piles	135			135	135		
17 Boats/Vessels - Replacement Deck, Hull and Engines	42	30		72	72		
18 Replacement and Review of Navigation Aids	53			53	53		
Vehicles and Plant							
19 Vehicles	506	170	170	846	846		£336k Finance Lease Facility
Office Accommodation							
20 Fenland Hall - Passenger Lift Replacement	22			22	22		
21 The Base - CCTV	20			20	20		
Sub-Total	2,096	831	170	3,097	2,992	105	

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APPENDIX A

	2018/19 £000	2019/20 £000	2020/21 £000	Total Cost £000	FDC Funding £000	External Funding £000	External Funders and FDC Reserves/S106
B/FWD	2,096	831	170	3,097	2,992	105	
ICT System Replacement Programme & Upgrades							
22 Replacement & Upgrade Programme	121	75	75	271	271		
Improvement of Assets							
23 Sewage Treatment Works Refurbishment	292			292	292		
24 Energy Plan - Invest to Save Projects	7			7	7		
25 Eastwood Chatteris - Car Park Improvements		65		65	65		
26 Lattersey Nature Reserve - Capping Layer		40		40	40		
27 March SWMP - Eastwood Cemetery Flood Prevention		70		70	47	23	£23k Grants/Levy
Economic Estates							
28 Longhill, March - Drainage	40			40	40		
29 Staton Road, Whittlesey - Carriageway Resurfacing		40		40	40		£12k Station Road Reserve
Community Safety							
30 Control, Recording and Matrix Replacement to Analogue		110		110	110		
31 Camera Replacements		20		20	20		£20k CCTV Reserve
Community Fund							
32 March Athletics Club	8			8	8		
33 Estover Playing Field Sports Provision, March	100			100	100		£100k Management of Change Reserve
Rural Community Fund							
34 Coates Athletic Football Club - Changing Facilities	14			14	14		
35 Friday Bridge Play/Skate Park & MUGA	98			98	77	21	£21K S106 Monies
Private Sector Housing Support							
36 Private Sector Renewal Grants	40	40	40	120		120	£120k Govt Grant
37 Disabled Facilities Grants	1,036	910	910	2,856		2,856	£2856K Govt Grant
Total - Current Approved Programme	3,852	2,201	1,195	7,248	4,123	3,125	

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**DRAFT 6 MONTH CABINET FORWARD PLAN –
Updated 10 July 2018**

(For any queries, please refer to the published forward plan)

CABINET

CABINET DATE	ITEMS	LEAD PORTFOLIO HOLDER
16 Aug 2018 (to be confirmed)	1. Property Acquisition, Wisbech (confidential item) 2. Cabinet Draft Forward Plan	Cllr Mason/ Cllr Mrs Hay/ Cllr Oliver Cllr Seaton
13 Sep 2018	3. Cabinet Draft Forward Plan	Cllr Seaton
18 Oct 2018	1. Cabinet Draft Forward Plan	Cllr Seaton
15 Nov 2018	1. Cabinet Draft Forward Plan	Cllr Seaton
13 Dec 2018	1. Draft Business Plan 2. Draft Budget and Mid Term Financial Strategy 3. Local Council Tax Support Scheme Review 2017/18 4. Treasury Management Strategy Statement & Annual Investment Strategy Mid Year Review 2018/19 5. Cabinet Draft Forward Plan	Cllr Seaton Cllr Mrs Hay Cllr Mrs Hay Cllr Mrs Hay Cllr Seaton
17 Jan 2019	1. Cabinet Draft Forward Plan	Cllr Seaton

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