

**CABINET
24 MARCH 2020**

***PART 1 – PUBLIC DOCUMENT**

TITLE OF INFORMATION REPORT: COVID-19 GOVERNANCE DECISION MAKING ARRANGEMENTS

INFORMATION REPORT OF THE SERVICE DIRECTOR LEGAL AND COMMUNITY & MONITORING OFFICER

EXECUTIVE MEMBER: THE LEADER OF THE COUNCIL: COUNCILLOR MARTIN STEARS-HANDSCOMB

COUNCIL PRIORITY: RESPOND TO CHALLENGES TO THE ENVIRONMENT

1. EXECUTIVE SUMMARY

- 1.1 To provide confirmation of the current delegations within the Constitutional for governance arrangements/ processes to cover emergencies such as COVID-19 (Coronavirus), and possible options for future arrangements.

2. RECOMMENDATIONS

- 2.1. That Cabinet notes these arrangements.

3. REASONS FOR RECOMMENDATIONS

- 3.1. For Members awareness.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. Meeting arrangements are being considered on a day/ weekly basis. However, if meetings are not possible, Members should be aware of the alternatives that can be exercised to ensure business continuity and lawful decision making.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. The Leader of the Council and Group Leaders are aware of emergency decision making provisions in the Constitution.

6. FORWARD PLAN

- 6.1 This information report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 A pneumonia of unknown cause detected in Wuhan, China was first reported to the World Health Organisation (WHO) Country Office in China on 31 December 2019. This has subsequently spread world-wide with WHO declaring it a pandemic on 11 March 2020.
- 7.2 WHO is working 24/7 to analyse data, provide advice, coordinate with partners, help countries prepare, increase supplies and manage expert networks. This information is picked up by Public Health England and local recommended responses are being issued by the government.
- 7.3 The government action plan (at the point of finalising the report) is to contain, delay, research and mitigate the disease/ transmission. Specially in respect of employment/ meetings through voluntary measures such as reduced social interaction, working from home (strongly advised for certain at-risk groups). Those displaying symptoms of the virus or with family members doing so, have been strongly advised to self-isolate.
- 7.4 Many organisations (including Local Authorities) have subsequently decided to cancel public meetings, and NHDC is keeping this situation under review daily in respect of the meetings listed.
- 7.5 The NHDC Constitution contains emergency delegations that allow the Chief Executive to make decisions on behalf of the Council.

8. RELEVANT CONSIDERATIONS

- 8.1. Under section 14.6.5 (a) (iv) of the Constitution, the Chief Executive may “*In cases of emergency* or urgency (where possible in consultation with the Leader of the Council) to carry out any Council or Executive function, power or duty”.
- 8.2. This function also rests with the Deputy Chief Executive (in the Chief Executive’s absence) as per section 14.6.6 (a) (i)(ii).
- 8.3. Meetings are being reviewed with the Leader of Council and other Group Leaders. Some meetings have already been cancelled. In the absence of legislation that prohibits local authority meetings, in the light of section 7 above, it is still likely that most (if not all) Council, Cabinet, Committee, Sub-Committee meetings, Panels and any working groups will be suspended, and the emergency delegations set out in 8.1-8.2 used.
- 8.4. If meetings must be cancelled and the emergency powers exercised, then these will be exercised in consultation with the Leader/ relevant Executive Members and where possible with the full Membership via advisory email voting provisions.
- 8.5. If meetings *must* legally be held (i.e. in the absence of prohibition of meetings or legal ability to hold these virtually) and a decision needs to be made by Full Council or Committee, then the intention is that this should be made (with agreement of the Political Groups) *with minimum Member quorum* and officer presence (the latter possibly being virtually present).

- 8.6. *Where these relate to a planning or licensing application* that is due to be determined by a Committee or Sub-committee, the applicant(s) will be asked whether they would rather delay determination to a future Committee or Sub-Committee meeting.
- 8.7. All decisions will be reported to Members as soon as reasonably possible after the decision is made.

9. LEGAL IMPLICATIONS

- 9.1. There are 3 main legal governance models under the Local Government Act 2000 and NHDC has the Executive arrangements model. Under this model, some decisions are still reserved to Full Council, Committees (and Officers) under the Local Government Act 1972 (i.e. non-Executive decisions) and relevant Regulations, as well as those that have to be taken by the Executive and/ or may be taken by the Executive (known as 'Local Choice functions').
- 9.2. Under normal circumstances, where decisions can only be made by Full Council, then the Council would be required to call that meeting and for a quorum of Members to be present to make the decision. The Local Government Act 1972 requires members to be physically present for that meeting to take place – with a quorum of a quarter of the membership. Some other decision may only be taken by Committee, and equally under normal circumstances would require a meeting to be held to come to that decision (for example Finance, Audit and Risk to consider and approve the Annual Governance Statement and the Statement of Accounts). This decision can again be made with a minimum Member quorum.
- 9.3. In terms of day to day executive authority, those with executive Leaders, such as NHDC, can rely on single member decision making without the need for Cabinet meetings. Any function may be exercised by the Leader alone, as per section 9E(2)(a) Local Government Act 2000.
- 9.4. If an emergency or urgent situation arises (such as covid-19) then the delegations set out under 8.1 or 8.2 (as applicable) are available to ensure effective business continuity for non-Executive as well as Executive decision making. Where Member email voting/ commentary provisions are applied, then as indicated in 8.4, legally these are advisory – as the officer cannot in law fetter (constrain) their discretion entirely, but that does not mean that they cannot give almost overwhelming weight to a vote of Council/ Committee Members responding remotely to a report and officers' advice.

10. FINANCIAL IMPLICATIONS

- 10.1. None - specifically identified as these powers are exercised as an emergency.

11. RISK IMPLICATIONS

- 11.1. Ensuring the Council has appropriate governance arrangements in place is an important risk mitigation measure. The Council's Constitution is a fundamental part of those governance arrangements and the powers referred to are to be exercised as an emergency response (at this stage in respect of covid-19).

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 There are no direct equality implications arising from this information report.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and “go local” requirements do not apply to this information report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 The potential delay in business and reduction in available staff due to the virus could risk a delay the delivery of staff services if meetings must be held with insufficient staff. However, delegation to officers enables as much delivery to take place as quickly as possible in the meantime (offsetting the meeting resource as against decision making by an individual following consultation).

15. APPENDICES

- 15.1 None.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

https://www.lawyersinlocalgovernment.org.uk/news_articles/llg-adso-issue-joint-press-release-to-address-the-question-of-local-authority-decision-making-and-the-democratic-process-in-light-of-the-coronavirus-pandemic-c1e3ed0a-5fff-4315-a17d-83abb48c0c80