



The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (“the Regulations”) (Regulation 9)

NOTICE OF CONSIDERATION OF A CONFIDENTIAL KEY DECISION THAT HAS NOT BEEN INCLUDED ON THE FORWARD PLAN AS SUCH

CABINET 5 JANUARY 2021

The reason why the decision is urgent and cannot reasonably be deferred is that East Suffolk Council needs to consider an exempt key decision report about approval to enter into agreements with landowners related to the Lowestoft Flood Risk Management project.

It is a key decision because the report requests approval for the delegations of decisions that will have significant financial value and duration. The ESC is the Lead Authority for the project and will both own and be responsible for the tidal flood defence assets that will be constructed as a result. The total package of funding for the project is £67M, with £43.5million having been approved by central Government towards the overall costs. However, a condition of the Government’s funding is that the works for it must be completed by March 2026. Therefore, the project has had to move at pace to meet the requirements of this funding. It is important that the project be delivered whilst enabling the Port of Lowestoft to remain fully operational, with minimal disruption to it, and the town. This means that there are strict windows of opportunity to deliver key works. With this in mind, there is a tight timetable for the programme of works which are required. Phase 1 of the project includes work on the major tidal flood walls, which are due to commence construction in March 2021. Also, before Phase 2 of the project can commence, including the construction of the tidal barrier, essential Marine ground investigations must be started in the February 2021. Again, this is a key window of opportunity, requiring the provision of a compound for the contractor, and their equipment. Specialist equipment has to be brought in at the right time and stored at the compound. The contractor must have the right staff available, at the right time, for this work. Therefore, it requires much planning and careful timing. To miss this milestone on the project plan will incur slippage in the programme and cost implications. The ESC has already entered into a number of the agreements which are needed in order to deliver Phase 1, for example, construction and professional services contracts. In order to deliver Phase 1 of the project, it is necessary for the ESC to enter into a number of additional agreements, leases, deeds and other documents. These will give the ESC the necessary rights to enter land to carry out marine investigations and works to the tidal walls.

Detailed negotiations with landowners, about these agreements, have been ongoing since July 2020. As is often the case, negotiations can only proceed as fast as the other side to those discussions will allow. However, we are looking to conclude these agreements by 8.1.21, if possible, to prevent an adverse impact on the project’s timetable, and for the marine ground investigations to commence on-time. Further agreements will also be necessary with a number of landowners to allow for the works to the tidal walls to happen, and again, we are looking to complete these by 8.1.21, if possible.

In accordance with the General Provisions (Paragraph 10) of the Local Authorities (Executives Arrangements (Meetings and Access to Information) England) Regulations 2012 (the Regulations), a key decision that has not been included on the Forward Plan can still be taken provided that:

- a) It is impractical to defer the decision until it has been included on the next Forward Plan.
- b) The Chairman of the Scrutiny Committee has been informed.
- c) The Proper Officer has made available to the public copies of the notice given to the Chairman of the Scrutiny Committee at the offices of the Council and its website.
- d) At least five clear days have elapsed since the Proper Officer complied with b) and c) above.

Where the date by which a meeting must be held makes compliance with this regulation impracticable, the meeting may only be held in private where the decision-making body has obtained agreement from the Chairman of the Scrutiny Committee that the meeting is urgent and cannot reasonably be deferred. This is also reflected in the Access to Information Rules (ATIR) which form part of the Council's Constitution.

As soon as reasonably practicable after the decision-making body has obtained agreement to hold a private meeting, it must make available at the offices of the local authority a notice setting out the reasons why the decision is urgent and cannot reasonably be deferred and publish that notice on the local authority's website.

The FP contains details of all the matters likely to be the subject of Key Decisions and confidential and exempt decisions which will be taken by the Cabinet. The FP is updated on a monthly basis or as required, ensuring that all Key Decisions and confidential/exempt decision that are due to be taken are included in the FP. The FP is published at least 28 days before the start of the period covered by the FP.

In the light of the above we wish to expedite the Cabinet process and avoid having to delay a decision until the February Cabinet.

It is deemed important that Cabinet considers this decision as soon as possible.

Regulation 10 of the Regulations (General Exception) allows for a key decision to be made if it is impracticable for notice of the intention to take a key decision under Regulation 9 to be given 28 clear days in advance of the taking of the decision.

Regulation 10 sets out the actions required to be taken in those circumstances which includes setting out the reasons for General Exception.

This Notice has not provided the relevant 28 days. However, in accordance with Regulation 5(6) of the Regulations where the Chairman of the Scrutiny Committee considers that there is urgency which dictates that this decision is urgent and cannot be reasonably deferred to allow compliance with Regulation 5 the decision may still be taken.

The Chairman of the Scrutiny Committee has been notified that the making of the key decision in private detailed below is urgent and cannot reasonably be deferred and has agreed for it to proceed.

The report contains information relating to the financial and business affairs of the Council and third parties. It is impractical to delay the decision as the Council has been made aware recently of an opportunity to purchase the freehold interest in land in Leiston. The acquisition would optimise future development options.

The reason why the matter is to be considered in private is that it includes information relating to Information Relating to an Individual and the financial or business affairs of any particular person (including the authority holding that information) (Paragraphs 1 and 3 – Schedule 12A of the Local Government Act 1972).

Hilary Slater
Head of Legal and Democratic Services (Monitoring Officer)
23 December 2020