

BRECKLAND DISTRICT COUNCIL

Report of: Sam Chapman-Allen, Deputy Leader and Executive Member for Corporate Strategy and Investment

To: Council – 13 September 2018

Author: Mark Stinson, Executive Manager for Governance

Subject: Memorandum of Agreement

Purpose: To consider proposed amendments to the legal agreement that underpins the shared management arrangements

Recommendation(s):

- 1) That the wording of the indemnity clauses contained within the Memorandum of Agreement (“the Agreement”) are redrafted to ensure clarity;
- 2) That, subject to recommendation 4 below, the Agreement be amended to ensure that where it proves impossible to share senior managers fairly in accordance with clause 8.6 of the Agreement, the councils will work together in good faith to ensure that identified posts continue to be placed at the disposal of the other council until a reasonable period has been allowed for recruitment to take place;
- 3) That, subject to recommendation 4 below, a provision be added to the Agreement requiring that, prior to one of the councils approving any changes to the terms and conditions of employment of any shared officer(s) (including but not limited to pay) that council must first consult the other council prior to approving the same;
- 4) That the Legal Team ensures that recommendations 2 and 3 above are consistent with shared officers’ contracts of employment and all relevant staffing policies and procedures; and
- 5) That the Executive Director for Strategy and Governance be granted delegated authority, in consultation with the Deputy Leader and Executive Member for Corporate Strategy and Investment, to amend the Agreement in accordance with the above recommendations.

1.0 BACKGROUND

1.1 The Memorandum of Agreement is the written contract between the two Councils which sets the framework for the shared management structure, together with the rights and responsibilities of the two councils. Whilst a review is not due, three areas have been identified for consideration.

Indemnity

1.2 The Agreement provides that, should the shared management arrangements be terminated, the costs that result are to be shared equally. The councils each indemnify the other against their half of any liabilities. This indemnity is broad to ensure it also captures any third party costs associated with the shared management team and its subsequent termination. An example might be that one council (“the commissioning council”) has commissioned external services in support of the shared management team, such as a comprehensive training package. If that training needs to be cancelled or reduced in

scope due to termination of the shared management arrangements, then the other council will have to pay half of any termination cost even though the contract with the service provider is with only the commissioning council.

- 1.3 The Indemnity provisions are a little clumsily worded, so it is proposed that they be tidied up. It is possible to limit the indemnity – e.g. to cover only certain types of cost or by limiting them to costs identified by the councils during a given period (e.g. the notice period), but it is worth noting that the original clause was drafted so as to ensure that all relevant costs arising as a result of termination are shared equally.

Allocation of shared management team on termination

- 1.4 Should the shared management arrangements be terminated at some point in the future, clause 8.6 of the Agreement requires the councils to co-operate for mutual advantage, to seek an amicable and equitable financial settlement, and to agree a fair and reasonable allocation of the shared management team between the two councils – recognising that there may need to be a transfer of managers from one council employment to the other. The clause has always been subject to the employment law rights of individual officers. An officer employed by one of the councils cannot be forced to take up employment at the other.
- 1.5 Whilst the councils may do everything they can to act fairly in this regard, certain senior managers may not be prepared to change employer. In addition, in recent years recruitment to shared posts has been undertaken exclusively by Breckland Council. This means that there is currently an imbalance in the number of officers employed by the respective councils.
- 1.6 Members may feel that some contingency provisions are necessary to ensure that, in a situation where the majority of shared managers are employed by one of the councils, or indeed where such imbalance does not exist but it nevertheless remains difficult to ensure that each council has sufficient skills in key areas, either council will if necessary continue to place identified staff at the disposal of the other. This should be for a reasonable duration beyond the end of the shared management arrangements to allow time for the other council to establish its separate senior management team.

Setting of senior management pay and conditions

- 1.7 As a matter of employment and contract law, only the employing council can set the pay and conditions of its staff. As each council will have a clear interest in the pay and conditions attaching to shared officers employed by the other council, members may wish to consider the inclusion of an informal consultation process in the Agreement, whilst recognising that the employing authority cannot fetter its discretion in determining pay and conditions of service.

2.0 OPTIONS

- 2.1 To approve in full the proposed changes to the Agreement.
- 2.2 To approve in part the proposed changes to the Agreement.
- 2.3 To consider further or alternative changes to the Agreement.
- 2.4 Not to approve any changes to the Agreement.

3.0 **REASONS FOR RECOMMENDATION(S)**

3.1 The Memorandum of Agreement sets out the legal basis of the shared management arrangements. It is important that the Agreement remains robust.

3.2 Approving the proposed amendments will bring greater certainty as to the parties' respective rights and liabilities.

4.0 **EXPECTED BENEFITS**

4.1 An updated and improved Agreement that is robust and provides greater clarity as to the parties' respective rights and liabilities.

5.0 **IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1 **Constitution & Legal**

5.2.1 The operation of the shared management structure is underpinned by a legal contractual relationship. It is in the interests of both parties to express their agreement in a formal written contract as this brings a greater degree of certainty to the arrangements. The Agreement requires Council approval at both authorities.

5.3 **Contracts**

5.3.1 The Agreement is a legally enforceable contract which sets out the various rights and liabilities of the parties.

5.4 **Corporate Priorities**

5.4.1 The Agreement underpins the shared management team which in turn helps the Council to achieve its corporate priorities.

5.5 **Risk Management**

5.5.1 A clear Agreement, updated regularly to reflect the prevailing circumstances, reduces risk to both authorities.

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 All Wards.

7.0 **ACRONYMS**

7.1 None.

Background papers:- None – but see earlier reports to Council

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Key Decision: No

Exempt Decision: No

This report refers to a Discretionary Service