

SOUTH HOLLAND DISTRICT COUNCIL

Report of: Mark Stinson - Assistant Director – Governance and Monitoring Officer

To: Full Council – 22 September 2021

Author: Jacqui Berridge - Lawyer

Subject: Shared Officers – Section 113 Agreement

Purpose: To consider entering into an Agreement with Breckland District Council under Section 113 of the Local Government Act 1972 to share Legal Services Officers, Procurement and Contracts Officers, and the Environmental Protection Business Support Officer

Recommendations:

- (a) That the Council agrees to enter into a Section 113 Agreement with Breckland District Council in relation to the sharing of the Legal Services Team Officers, the Procurement and Contracts Team Officers and the Environmental Protection Business Support Officer; and
- (b) That delegated authority be given to the Monitoring Officer to approve the final terms of the Agreement.

1.0 BACKGROUND

- 1.1 Section 113 of the Local Government Act 1972 allows a local authority to enter into an Agreement with another local authority for the placing at the disposal of the latter authority the services of officers employed by the former authority. The shared management Memorandum of Agreement was made under this provision (amongst others).
- 1.2 Authorities entering into such an Agreement may agree the terms of the arrangements, but under the provisions of Section 113 any officer who is the subject of an Agreement must be consulted; and for the purposes of pension payments the services rendered by the officers are deemed to be services rendered to the authority providing the officers (though this does not prevent such costs from being shared).
- 1.3 Whilst the existing shared management Memorandum of Agreement is now largely obsolete that Agreement, as amended, allowed each Council to continue to place any of the officers affected by that Agreement at the disposal of the non-employing Council on terms to be agreed, subject to a fresh Section 113 Agreement being entered into.
- 1.4 Pending decisions on future shared arrangements, both Councils signed side letters to the Memorandum of Agreement allowing the following Breckland Council (BDC) officers to continue providing support to South Holland District Council (SHDC) until such time as a new Section 113 Agreement was entered into:
 - Legal Services Manager
 - Information Governance Officer
 - Lawyer
 - Lawyer

- Procurement and Contracts Manager
- Procurement Contracts Officer
- Procurement Contracts Officer (currently vacant)
- Contracts Support Officer
- Environmental Protection Business Support Officer

1.5 This report now seeks formal approval for the required section 113 Agreement. Both Councils must agree the arrangements and a similar report was submitted to the full Council of Breckland District Council on 2 September.

2.0 **TERMS OF THE AGREEMENT**

2.1 It is proposed that the following basic principles will apply to the Agreement:

- The officers will initially be shared on a 60/40 (BDC/SHDC) basis, except for the Environmental Protection Business Support Officer, who will be engaged on SHDC work for only a limited number of hours, where hourly charges will apply;
- Both Councils will have the right to seek amendment of the percentage allocation;
- BDC will remain fully responsible for the management and performance of shared officers (including discipline, recruitment etc);
- SHDC may remove an officer at short notice if it is not satisfied with any management or performance issues, or with any proposed amended terms and conditions of employment;
- Either Council may remove one or more shared officers from the arrangement for operational reasons;
- Either side may terminate the entire Agreement upon 6 months' notice or at shorter notice if agreed by both sides.

2.2 It is recommended that authority be delegated to the Monitoring Officer to approve the final terms of the Agreement.

3.0 **OPTIONS**

3.1 That the Council agrees to enter into a Section 113 Agreement in relation to the officers detailed in this report, and that delegated authority be given to the Monitoring Officer to approve the final terms of the Agreement. This is the preferred option.

3.2 Do nothing. This is not considered appropriate. The arrangements are currently acceptable to both authorities pending clarification of the future direction of each authority.

4.0 **REASONS FOR RECOMMENDATIONS**

4.1 The Section 113 Agreement will allow some of the existing shared officer arrangements to continue whilst both Councils consider their future options.

5.0 **EXPECTED BENEFITS**

5.1 The proposed Agreement will extend some on-going shared officer arrangements and provide some certainty pending each authority finalising any future sharing arrangements.

6.0 **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; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

6.1 **Constitution & Legal**

6.1.1 Section 113 Agreements relate to staffing which is a full Council function.

6.1.2 All other legal implications are set out in the body of the report.

6.2 **Data Protection**

6.2.1 The Agreement includes data protection clauses, and a data sharing Agreement will be in place between the authorities.

6.3 **Financial**

6.3.1 Employment costs will continue to be billed and paid monthly, and ad hoc costs will be billed quarterly or as they arise.

6.4 **Risk Management**

6.4.1 Each Council will be jointly and severally liable to any third parties in respect of any legal proceedings arising directly from the Agreement, but each Council will indemnify the other against their own liability.

6.5 **Staffing**

6.5.1 There are no staffing implications arising directly out of this report.

6.6 **Stakeholders / Consultation / Timescales**

6.6.1 Section 113 of the Local Government Act 1972 requires all officers affected by proposed Section 113 arrangements to be consulted. All officers have been consulted.

7.0 **WARDS/COMMUNITIES AFFECTED**

7.1 None.

8.0 **ACRONYMS**

8.1 BDC – Breckland District Council

8.2 SHDC – South Holland District Council

Background papers:- None.

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Key Decision: No

Exempt Decision: No

This report refers to a Discretionary Service

Appendices attached to this report: None