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EXECUTIVE COMMITTEE TUESDAY, 26TH MAY, 2015

A MEETING of the EXECUTIVE COMMITTEE will be held in the COUNCIL CHAMBER, COUNCIL HEADQUARTERS, NEWTOWN ST BOSWELLS, TD6 0SA on TUESDAY, 26 MAY 2015 at 10.00 am

J. J. WILKINSON,
Clerk to the Council,
19 May 2015

BUSINESS		
1.	Apologies for Absence	
2.	Order of Business	
3.	Declarations of Interest	
4.	Early Learning and Childcare Redesign. (Pages 1 - 6) Consider report by Service Director Children & Young People. (Copy report attached.)	15 mins
5.	Schools Estates Strategy. Verbal update by Service Director Children and Young people.	5 mins
6.	Earlston Development - Complex Needs. Verbal update by Services Director Children & Young People's Services.	5 mins
7.	Presentation - Asymmetric Week - Services Director Children & Young People's Services.	20 mins
8.	Any Other Items Previously Circulated	
9.	Any Other Items which the Chairman Decides are Urgent	
Education Theme additional Membership of Committee:- Mr G. Donald, Mr J. Walsh, Mr G. Jarvie, Jeanette Aitchison (Parent Representative), Alison Ferahi (Parent Representative)		
OTHER BUSINESS		
10.	Minute. (Pages 7 - 14) Minute of Meeting of Executive Committee of 12 May 2015 to be approved and signed by the Chairman. (Copy attached).	2 mins
11.	Formalisation of Process for Appointments to Panel of Curators Ad Litem. (Pages 15 - 20)	10 mins

	Consider report by Service Director Regulatory Services. (Copy attached.)	
12.	Senior Information Risk Owner's Annual Report. (Pages 21 - 24) Consider report by Service Director Regulatory Services. (Copy attached.)	15 mins
13.	Management of the Industrial and Commercial Property Estate - Policy Update. (Pages 25 - 36) Consider joint report by Service Director Strategy & Policy and Service Director Commercial Services. (Copy attached.)	15 mins
14.	Retaining Wall Repair at A72 Neidpath Castle, Peebles. (Pages 37 - 40) Consider report by Service Director Commercial Services. (Copy attached.)	10 mins
15.	Items Likely to Be Taken in Private Before proceeding with the private business, the following motion should be approved:- “That under Section 50A(4) of the Local Government (Scotland) Act 1973 the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in the relevant paragraphs of Part 1 of Schedule 7A to the aforementioned Act.”	
16.	New Kelso High School (Pages 41 - 50) Consider report by Director Commercial Services. (Copy attached.)	15 mins
17.	Any Other Items Previously Circulated.	
18.	Any Other Items which the Chairman Decides are Urgent.	

NOTES

1. Timings given above are only indicative and not intended to inhibit Members' discussions.
2. Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.

Membership of Committee:- Councillors D Parker (Chairman), S Aitchison (Chairman - Education Business), S Bell, C Bhatia, J Brown, M J Cook, V Davidson, G Edgar, J G Mitchell, D Moffat, D Paterson, F Renton and R Smith

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EARLY LEARNING AND CHILDCARE REDESIGN

Report by Service Director Children & Young People

Executive Committee

26 May 2015

1 PURPOSE AND SUMMARY

- 1.1 This report provides the Education Executive with an update of the progress of the redesign of early learning and childcare (ELCC) provision across the Borders following the introduction of the Children & Young People (Scotland) Act 2014.**
- 1.2 Following the implementation of 600 hours of childcare for 3 and 4 year olds and eligible 2 year olds as set out in the Act, the Education Committee received an update on the work undertaken across the Early Years Service in November 2014 and a presentation was also given on Early Years Centres at the March Education Executive meeting.
- 1.3 To provide an increased level of flexibility of care and meet the needs of young children and parents, a revised model of delivery of ELCC has been developed. The model comprises a revised staffing model, proposed pilot of full year/full day care and in addition a new procurement framework for the delivery of ELCC places from private and voluntary sector providers. This new model will enhance the quality of service delivery and provide a responsive and modern service to enable our youngest children to have the best start to their learning journey.

2 RECOMMENDATIONS

- 2.1 I recommend that the Education Executive :-**
 - (a) Agrees to the next steps of the redesign of ELCC provision which includes introducing a revised staffing model following consultation with staff, development of a pilot phase of full year/full day ELCC and establishing a new procurement framework for private and voluntary sector providers with an enhanced engagement and consultation process.**

3 INTRODUCTION OF 600 HOURS OF ELCC

- 3.1 The Children and Young People (Scotland) Act 2014 and 'Early Learning and Childcare Statutory Guidance', which outlines the policy changes which are necessary to implement the provisions in the Act, set out clear direction for flexible early years provision that supports the Scottish Government's ambition to make Scotland the 'best place to grow up'. The subsequent National Practice Guidance, 'Building the Ambition' sets the context for high quality Early Learning and Childcare and has been shared with all early years practitioners working in school, private and voluntary settings. The changes agreed in the Act affect all provision where ELCC funded places are required and, in Borders, this includes nursery classes in schools, private nurseries playgroups and child-minders. The Act encourages services to be developed in partnership with families to offer flexibility.
- 3.2 Over the past year an interim model has been implemented to meet the entitlement of eligible 2yr olds and all 3 and 4 yr olds to 600 hrs of ELCC. Due to the short timescale for implementation provision has been less flexible for parents with sessions of 3hr10min each day being the norm in SBC (school) ELCC settings. This is not ideal for many parents in terms of finding paid employment to suit the hours their children are in early years funded provision.
- 3.3 The interim model has resulted in settings having a number of temporary staff in for varying lengths of time, resulting in a lack of consistency of key people for the child and an inability to provide a range of flexible models for parents. To provide a modern flexible service which meets the needs of all of our youngest children, ensuring they have the best start to their learning journey whilst meeting the needs and expectations of parents, work is underway to develop an improved model of ELCC service delivery. Development of the model has 3 parts: introduction of a revised staffing model, improving flexibility through providing full year/full day childcare and raising the quality of all provision.

4 INTRODUCTION OF REVISED STAFFING MODEL FOR ELCC

- 4.1 Over the last year, there have been engagement events with staff across all ELCC school provision to inform and engage staff on new legislation and guidance as well as to discuss changed approaches that are needed to fulfil the requirements of the Act. These meetings have included consultation on a number of aspects of the service including staffing redesign. All practitioners have had the opportunity to take part in in-service days and workshop sessions on the changes being introduced through the legislation. To further inform development of the new staffing model, a session was held with school practitioners from across learning communities to look at roles and remits and staff discussed how roles might develop in the future.
- 4.2 To enable senior managers to test out some initial conclusions from this consultation and gather further information, a new team structure is being piloted within 5 ELCC schools settings. The feedback which has been reviewed by a working group, has been positive and a proposed new staffing structure with job descriptions has been developed for wider consultation. The new structure will provide each school setting with a core team of staff, management time and access to a highly skilled and experienced team of teachers.

- 4.3 This proposed new structure will have a positive impact by recognising the professionalism of current staff by proposing a name change from Nursery Nurse to Early Years Officers and Practitioners and creating a progressive career pathway. New posts will be created at entry level: Modern Apprentice and Early Years Support Worker which will enable staff to train for further qualifications on the job. A new higher level post, Senior Early Years Officer will be based in schools where there is provision for ELCC 2 – 4 year olds and combinations of these staffing posts will make up the core staffing in all school settings. Teacher time will not be included in ELCC ratios and a new team of experienced teachers will be established to provide advice and practical support for school setting as well as private and voluntary groups. To enable senior managers in schools to build capacity, develop skills and provide support and advice to core staff teams in ELCC management time will be devolved to each school.
- Posts will be permanent which will provide stability for staff. Children and parents will benefit from a consistent staff group which will ensure strong and trusting relationships are built which are vitally important in early learning and establishing a stable staff team will enhance the quality of the ELCC service.
- 4.4 There is to be further development of the proposed model to enable schools to implement the model when changes arise within their existing staffing establishment. Following the extensive consultation programme required to implement staffing changes of this scale the timeline for full implementation of the new staffing model and increased flexibility is August 2016.
- 4.5 Alongside the implementation of the revised staffing model, it is proposed to develop a pilot model to enable delivery of full year / full day care provision within school ELCC settings. The lack of SBC full day, full year ELCC provision has become problematic in meeting the needs of all of our children, particularly those most in need of additional support. To tackle inequalities and support families to give their children the best start in life, it has become increasingly apparent that this is an essential model to be taken forward. It is envisaged that this increased flexibility will be provided across localities and there is the potential that this could be provided through the new Early Years Centres. This extension to the service will look at staffing requirements, flexibility of provision and it is intended this will enable the most vulnerable children to be supported in high quality extended full day care provision. The scope of the extended provision along with timescales are currently being developed by the Early Years Team.

5 DEVELOPMENT OF A PROCUREMENT MODEL FOR ARRANGEMENTS WITH PRIVATE AND VOLUNTARY PROVIDERS

- 5.1 As outlined in the report given to the Education Committee in November 2014, work has progressed to develop a procurement process for the commissioning of ELCC places with private and voluntary sector providers. This makes use of the Framework Agreement model with providers who meet the required criteria being accepted onto the Framework to deliver ELCC for 2 academic years with an option for this to be extended for a further year. This Procurement process will see approved providers being accepted onto the Framework Agreement and this will ensure that providers comply fully with the increased expectations of set out in national policy in recent years. This will mean there is compliance with the requirements of the new legislation including the implementation of the Getting it Right For Every Child (GIRFEC) approach as well as supporting children with additional needs.

- 5.2 This has been informed by initial consultation with Early Years Service Managers from the private and voluntary sector. The underpinning principle of the need for high quality services was emphasised and views were sought on quality indicators. A further meeting was held in April 2015 to consult with partners on the proposed format and the Profile of Education Provision (PEP) was presented, which is a key quality assurance document with the service provider outlining the service they propose to deliver.
- 5.3 Preparation work for the formal procurement process started in February 2015. The required documentation is being jointly prepared by SBC's Early Years Team in conjunction with Procurement. The aim is to complete this process by June 2015 when the Invitation to Tender will be placed on the Portal. Private and voluntary sector providers will be invited to attend information sessions in June regarding the procurement process and all interested parties will be required to submit tenders by the end of September. There will be engagement with providers around rates of payment. These discussions will be informed with national rates of payment in comparator authorities and details on what support is included in these rates. There will be negotiation on future rates and the outcome will be shared with the Executive (Education).

6 IMPLICATIONS

6.1 Financial

- (a) The Scottish Government has provided funding to enable Councils to implement the requirements of the Children & Young People (Scotland) Act 2014.
- (b) Capital Funding has also been made available from the government to expand and improve our ELCC settings and a programme of improvements is underway.

6.2 Risks and Mitigations

- (a) Introducing a revised staffing model will enable an improved quality of service with more flexibility to meet the needs of families in Scottish Borders and this will reduce the risk of being unable to provide a supportive service to the most vulnerable children in the Scottish Borders.
- (b) There are risks within the procurement processes that some providers will not reach the quality criteria required to be on the framework. The availability of provision needs to be readdressed along with work with providers to address the quality issues.
- (c) Developing full year/ full day care provision could be construed as entering into direct competition with the private and voluntary sector. A full impact analysis needs to be undertaken as part of the pilot phase to understand any implications.
- (d) Increased expectations across all provision and providers will mitigate against poor Care Inspectorate/HiME inspections

6.3 Equalities

- (a) As the review would have a focus on children from disadvantaged backgrounds: supporting parents to work; providing economic security and routes out of unemployment and poverty, including supporting parents with the cost of ELCC, the plans to introduce full year and day care provision would be beneficial to families on low incomes and those who currently receive benefits as this provision

would increase childcare options for these groups and enable them to take up job and training opportunities.

- (b) The further roll out of the Early Years centres within the most disadvantaged communities within Scottish Borders provides opportunities to work with some of the most hard to reach families. A range of services is delivered through the Centres, providing practical support and advice for vulnerable families and this includes welfare benefits. Through building capacity, the aim is to improve the living standards of these families and the life chances of the children.

6.4 **Acting Sustainably**

There will be economic benefits delivered through the review with the extension of the full year and full day care in some areas and this will mean that families will be able to take up training and job opportunities where previously this was not feasible.

6.5 **Carbon Management**

There are no significant effects on carbon emissions arising from the proposals contained in this report.

6.6 **Rural Proofing**

The plans for the pilot programme for Early Years is likely to see enhanced ELCC introduced to areas of the Borders where this has been previously unavailable.

6.7 **Changes to Scheme of Administration or Scheme of Delegation**

There are no changes to be made to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals contained in this report.

7 CONSULTATION

- 7.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR, and the Clerk to the Council have been consulted and their comments have been incorporated into the final report.

Approved by

Name Jeanette McDiarmid **Signature**
Title Deputy Chief Executive, People

Author(s)

Name	Designation and Contact Number
Yvonne McCracken	Chief Officer, Strategy & Policy Development, Children & Young People Services
Janice Chapman	Early Years Manager
Margot Black	Early Years Officer

Background Papers: Update on Early Years, Education Committee, November 2014

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Yvonne McCracken can also give information on other language translations as well as providing additional copies.

Contact us at Yvonne McCracken, Scottish Borders Council, Headquarters, Newtown St Boswells, TD6 0SA

SCOTTISH BORDERS COUNCIL
EXECUTIVE COMMITTEE

MINUTE of MEETING of the EXECUTIVE COMMITTEE held in the Council Chamber, Council Headquarters, Newtown St. Boswells on Tuesday, 12 May 2015 at 10.00 a.m.

Present:- Councillors S. Bell (Chairman – Economic Development Business), J. Mitchell (Chairman – Other Business), S. Aitchison (from para.5), J. Brown, M. J. Cook, V. Davidson (from para.3), G. Edgar, D. Moffat, D. Paterson, F. Renton, R. Smith.
Also Present:- Councillors G. Logan.
Apologies:- Councillors C. Bhatia, D. Parker.
In Attendance:- Chief Executive, Chief Financial Officer, Corporate Transformation and Services Director, Chief Officer Economic Development, Clerk to the Council, Democratic Services Officer (F. Walling).

ECONOMIC DEVELOPMENT BUSINESS

Present:- Mr J. Clark, Mr G. Henderson.

CHAIRMAN

1. Councillor Bell chaired the meeting for consideration of the economic development business. He welcomed Mr Clark and Mr Henderson to this section of the Executive meeting and asked for a round of introductions.

MINUTE

2. The Minute of 21 April 2015 had been circulated. With regard to the decision at paragraph 5 of the Minute concerning Discretionary Housing Payments, the Clerk referred to an error which had been brought to her attention and advised that the decision should be amended to read:-
 - (a) NOTED:
 - (i) the activity relating to Discretionary Housing Payments for 2014/15 and that the position would continue to be monitored on a quarterly basis; and
 - (ii) that there were 47 applications for Discretionary Housing Payments which still required a decision.
 - (b) AGREED that the Service Director Neighbourhood Services would provide Members with the final outturn position for 2014/15.

The proposed amendment to the Minute was circulated at the meeting.

DECISION

APPROVED the Minute for signature by the Chairman, subject to the above amendment.

MEMBER

Councillor Davidson joined the meeting during consideration of the following item of business.

ECONOMIC DEVELOPMENT UPDATE

3. Copies of a briefing note providing an update on recent Economic Development activity had been circulated with the agenda. The update gave a summary of figures in relation to Business Gateway activity; the Scottish Borders Business Fund; Scottish Borders Business

Loan Fund; Employer Recruitment Incentive; and Scottish Borders Council property leases. The update also covered recent developments in relation to town centre regeneration; tourism and event support; and European Funding programmes. The Chief Officer Economic Development, Bryan McGrath, highlighted the main points. With regard to leases of Council-owned property there had been 178 property enquiries received in 2014/15 which was an increase of nearly 20% on 2013/14. The current occupancy level was 91% for the portfolio of industrial units, yards and shops. Members welcomed Mr McGrath's advice that a fuller update on the Council-owned industrial and commercial property would be provided in a report to the next Executive Committee meeting, and that this would include reference to units not fit for purpose. With regard to tourism support, the final report of the Tourism Destination Audit for Midlothian and the Scottish Borders would be presented at a Joint Area Partnership meeting on 28 May 2015. Mr McGrath assured Members that, although driven by the Borders Railway Blueprint, the Destination Audit would work with VisitScotland and look at tourism impact for the whole Borders area. The east of the region would not be excluded. The importance was also recognised of using Tweedbank and the Great Tapestry development as a hub from which to provide links to other tourist destinations and attractions in the Borders.

4. The continuing support for cycling events within the Borders was noted within the update. The Chairman commented that cycle event support was a team effort including input from other Council services and that in particular the speed of response from Neighbourhood Services to clean road surfaces prior to a cycling event had been complimented. Mr Henderson welcomed the proposed cycling strategy for the Scottish Borders to address infrastructure, events, promotion, transport, tourism and cycle friendly business support. Mr McGrath advised that the intention was to report back with a succinct strategy later in the year. Discussion continued on the delay of Scottish Government plans for the launch of the European Maritime Fisheries Fund (EMFF) 2014-2020 which was referred to in the update. Concern was expressed at the delay in view of the significant streams of money involved and the projects that could be affected. Members also had views that the initiative by Marine Scotland to consider implementing local development funding on a regional basis and to extend the coastal area to include Fife with the Borders and East Lothian was misguided. Concern about this had been expressed through the Fisheries Local Action Group as this was understood to be a local fund. This could have an impact on the development of Eyemouth Harbour, with its changing dynamics. It was stressed that there was still an opportunity to feed in views on a formal and informal basis. Mr McGrath was asked to bring a report to a future meeting of the Executive with a proposal on how to move forward in respect of the EMFF 2014-2020 and the delayed implementation.

DECISION

(a) NOTED:-

- (i) the update;**
- (ii) that a report on Council-owned industrial and commercial property would be presented to the next Executive Committee meeting.**

(b) AGREED that reports be brought back to a future meeting of the Executive Committee with regard to:-

- (i) a cycling strategy for the Scottish Borders; and**
- (ii) an update in respect of the European Maritime Fisheries Fund (EMFF) 2014-2020 with an indication of the way forward for the Scottish Borders.**

MEMBER

Councillor Aitchison joined the meeting during consideration of the following item of business.

BUSINESS GATEWAY BUSINESS PLAN 2015 TO 2016

5. With reference to paragraph 8 of the Economic Development Group Minute of 15 May 2014, there had been circulated copies of a report by the Service Director Strategy and Policy setting out service performance of Business Gateway in 2014/15 and seeking approval of a refreshed Business Plan for the delivery of Business Gateway services in the Scottish Borders to 30 September 2016. The report highlighted that overall performance of the service had improved in 2014/15. This was reflected in the achievement of targets and also feedback which noted overall satisfaction with the service at 86%. Most targets had been achieved or exceeded, and those below target had improved significantly since 2013/14. The figures for the survival of start-up businesses that had been supported by Business Gateway, at 12 months and 36 months from date of commencing trading, for Scottish Borders were 96% at 12 months and 65% at 36 months. These compared favourably with the national figures of 78% at 12 months and 60% at 36 months. The refreshed Business Plan, attached as Appendix 1 to the report, set out how the Business Gateway service would develop during 2015/16. In terms of advice and information, it would offer greater breadth and depth to growing businesses in the Scottish Borders and would seek to work with more businesses across the Borders. In addition, focus would be given to the opportunities presented by the arrival of the Borders Railway and the roll out of Superfast Broadband. Advisers would work with businesses to ensure that the benefits of these opportunities were maximised. In the period up to March 2016 the Business Gateway service would continue to deliver against the national service specification. The refreshed Business Plan would, through utilising EU Funds, enhance the service delivery at the local level by aligning to the priorities in the Scottish Borders Single Outcome Agreement (SOA) and Scottish Borders Economic Strategy 2023. The report went on to summarise the Performance Improvement Plan which outlined a series of activities to be implemented during 2015/16 and further enhance the impact of the Business Gateway Service.
6. Members welcomed the positive report and applauded the innovative improvements outlined within the Business Plan. Members in particular commented favourably on the proposal to identify Council offices in satellite towns across the Scottish Borders where a Business Gateway adviser could hold regular sessions advertised to the local community. It was also noted that such was the popularity of the Scottish Borders business week of workshops held in 2014, this was to be extended to a business month in the autumn of 2015. Members also made comment on the links with higher education. Following questions about broadband connectivity it was acknowledged that there would be some areas of the Borders that would not be covered even after the roll-out of Superfast Broadband. When the situation became clear, discussions would be held to look at any assistance that could be given specifically to those areas. Discussion continued on the targets that had been set within the 2015/16 Business Plan and officers were asked whether these could be considered modest in view of the fact that several had been exceeded in 2014/15. The Principal Officer (Business) advised that the targets for 2015/16 had been agreed with the Business Gateway national team and COSLA. The demand for workshops in 2014/15 had been higher than anticipated so additional workshops had been provided. The same approach would be taken in the forthcoming year although delivery of the workshops was also dependent on staff resource. Members then made suggestions for consideration for the format of the proposed annual meeting of the Executive Committee with a range of Business Gateway customers.

DECISION

AGREED:-

- (a) to acknowledge the 2014-2015 service performance improvement and impact;**
- (b) to approve the 2015-2016 Business Plan for Business Gateway in line with the national service specification; and**
- (c) that an annual meeting be held with the Executive Committee and a range of Business Gateway customers to receive feedback on service delivery and areas for further improvement.**

ADJOURNMENT

The meeting was adjourned for ten minutes.

OTHER PUBLIC BUSINESS**CHAIRMAN**

Councillor Mitchell took the Chair for the remaining business.

STRATEGIC HOUSING INVESTMENT PLAN 2015-2020 (PROGRESS UPDATE 2014-2015)

7. With reference to paragraph 9 of the Council Minute of 30 October 2015, there had been circulated copies of a report by the Service Director Strategy and Policy advising Members of all affordable housing completions and progress made in the delivery of the Strategic Housing Investment Plan (SHIP) projects for the period 2014-2015. The report explained that the SHIP was the key document for targeting affordable housing investment in Scottish Borders. Annual updates were previously submitted to the Scottish Government in November of each year with the current SHIP 2015/20 having been submitted in October 2014. Local Authorities to date were required to produce and submit a SHIP annually to the Scottish Government but 2014 saw the Scottish Government change this requirement to bi-annually. Thus the next SHIP submission was likely to be in November 2016. The report advised Members that in 2014/15, 62 affordable houses were delivered, with 49 homes being for social rent, 3 via the Open Market Shared Equity scheme, and 10 homes for mid-market rent via Bridge Homes, the limited liability partnership established as a result of the Council's new National Housing Trust/Local Authority Variant initiative. Scottish Ministers had recently confirmed that this initiative could be extended until March 2019. Within the SHIP it was envisaged that 146 houses would be completed in 2014-2015, but due to contractor performance issues, 3 Registered Social Landlord projects totalling 87 homes would now complete in the first quarter of the current financial year and would thus be reported as completions in the 2015/16 SHIP update. This would give an anticipated outturn of 176 homes in 2015/16.
8. Members considered various aspects of the report including the location of affordable housing including the availability of land, whether targets were based on achievability or need, and the economies of scale for Registered Social Landlords building in blocks of units rather than single units. In response to a query about Affordable Housing Developer Contributions, Members were reassured that, to date and despite being time limited, all such Developer Contributions had been utilised by the Council and none had been returned. With regard to the identified slippage against the 2014/15 target and the reasons for this the Group Manager, Housing Strategy and Services, emphasised that this was within the control of the Registered Social Landlords rather than the Council but agreed to request further details. She added that over the three year period, between 2013/14 and the anticipated outturn at the end of 2015/16, the target of 103 houses per year would have been met. However it was noted that this was not consistent with the 5 year target set within the Community Planning Partnership (CPP). It was suggested that this should be discussed within the CPP in the light of the strategy, to look at the balance between the expectations and what had been achieved. On the question of the desirability of relating targets to need the Group Manager explained that although the first SHIP planning document was based on need the Plan was now required to be based on resources and the financial capacity to deliver. This was not within the Council's power to amend. However, the National Housing Trust initiative would bring further opportunities to deliver additional housing. An example of the latter was given as the development of a gap site at Innerleithen. With regard to the need for more rural housing Members were advised that the Council had delivered rural projects in the past and reference was made to the Scottish Government's Rural Funding initiative. Similarly Scottish Government had launched the Empty Homes Town Centre initiative although this was currently in abeyance due to issues with conditions imposed by the Treasury on use of the funding. The Council had attempted to identify every owner of empty property and reference was made to the Empty Homes Loan Fund. Members emphasised the importance of bringing empty properties back into use both to provide additional housing and to contribute to town centre regeneration.

**DECISION
AGREED:-**

- (a) to endorse the progress made in the delivery of affordable housing projects in 2014/15 as set out in the Strategic Housing Investment Plan; and
- (b) to note the extension to the National Housing Trust/Local Authority Variant initiative to March 2019.

MEMBER

Councillor Aitchison left the meeting during the above discussion and re-joined the meeting during the discussion on the item below.

EDINBURGH, LOTHIAN, BORDERS AND FIFE ROADS COLLABORATION PROGRAMME (ELBF PROPOSAL) AND SBC ROADS SERVICES

9. There had been circulated copies of a report by the Service Director Commercial Services seeking approval to review the operating model of the Council's wider roads services to ensure that they were best placed to maximise services to the Borders, operate effectively in the external market place and in future be capable of interfacing if required with a proposed Edinburgh, Lothians, Borders and Fife Roads Collaboration Programme (ELBF proposal) facilitated by the Improvement Service. The report set out the background to the ELBF proposal in the context of the National Roads Maintenance Review. Behind both was a national agenda in respect of the sharing of roads services to reduce costs and improve efficiency. As part of this agenda the ELBF proposal sought to set up governance arrangements to look at sharing roads services in the ELBF region. The proposal would firstly involve the creation of a limited liability partnership jointly owned by the ELBF local authorities, the structure of which was outlined in Appendix 1 to the report. Roads services under consideration for sharing would cover the following areas:- asset management; joint procurement; flood risk management; New Roads and Streetworks Act (co-ordinating roads projects); weather forecasting; traffic signal maintenance; road safety; structures (bridges etc); Street Lighting; training; and packaging of Roads Maintenance Contracts.
10. It was noted that if Scottish Borders Council and other ELBF authorities did not constructively engage in the ELBF proposal and other local authorities did not take part in similar initiatives across Scotland there was a risk that the option, within the National Roads Maintenance Review, would be pursued by the Scottish Government which would involve a re-structuring of roads authorities across Scotland. In discussing the report, Members were concerned that the proposals, including governance, were too vague and that benefits were unquantifiable. The priorities for Scottish Borders Council were that the Council must continue to have an element of control over provision of the services in question and that the Council's workforce must be protected. In particular the Council was in a unique position due to SBc Contracts, a major trading organisation that made a significant contribution to Neighbourhood Services as well as a surplus to be used to help fund other services. There was a need to understand the best business model for the Borders. It was recognised that discussions on the ELBF proposal were currently at a high level but Members emphasised the importance for the Council to continue to engage in those discussions and to ascertain the position of the other local authorities involved. An update was requested to be given to the Executive Committee before the end of the year.

ADJOURNMENT

The chairman adjourned the meeting for five minutes.

**DECISION
AGREED:-**

- (a) to review the operating model of the Council's wider roads services to ensure that they were best placed to maximise services to the Borders, operate effectively in the external market place and in future, if required, be capable of interfacing with the ELBF proposal;
- (b) that a recommendation for the most advantageous operating model for road services would be reported back to the Executive Committee by the end of 2015; and
- (c) that Scottish Borders Council would not join the ELBF proposal at this time, in light of the unquantified and unproven benefits, but would maintain ongoing discussions with the other local authorities involved, to enable the Council to continue to assess the proposal.

MEMBER

Councillor Moffat left the meeting prior to the item below.

RESPONSE TO SCOTTISH GOVERNMENT'S CONSULTATION PAPER ON A PROPOSED BILL RELATING TO BURIAL AND CREMATION AND OTHER RELATED MATTERS IN SCOTLAND

11. There had been circulated copies of a report by the Service Director Neighbourhood Services seeking approval of the response to the Scottish Government's Consultation Paper on a proposed Bill relating to burial and cremation and other related matters in Scotland. The report noted the recognition by the Scottish Government that legislation relating to burial and cremation in Scotland was in need of consolidation and modernisation. A Consultation Paper had been produced, attached as Appendix 1 to the report, which set out a range of proposals and questions. The outcomes from the replies would inform a Burial and Cremation (Scotland) Bill. Although a draft response had been submitted to Scottish Government, it had been agreed with officials from the Scottish Government that the final response could be confirmed following consideration by the Executive Committee and approval by Council on 21 May 2015. The Council's proposed Consultation Response was attached as Appendix 2 to the report. It was explained that Scottish Borders Council was a Burial Authority only as it did not operate either of the crematoria in the Scottish Borders. The Council was therefore in a better position to respond only to the burials aspect of the consultation. Members were in general agreement with the response subject to some additional comments. In particular, and with respect to the issue of the re-use of full and partially-full lairs, Members were concerned that the historic element had been missed in the consultation and that archaeological implications must be addressed before re-use of lairs was considered. The growing interest in genealogy and ancestral tourism was emphasised. After further discussion Members agreed to recommend to Council the additions/amendments below:-
- Q17 – Response amended to 'No'. This should be non-statutory guidance rather than regulated to allow the Council discretion within certain standards in how it could proceed on individual cases.
 - Q18 - Response amended to 'Yes'.
 - Q19 - Response agreed. Flexibility should be maintained to allow for different conditions on any given site e.g. depth of water table.
 - Q20 – Response agreed. Emphasise that paper records should always be made and retained as a physical record.
 - Q26 – Concern regarding practical implications of this proposal. Suggest that there be a 'cut-off' date so that just those lairs purchased after a certain date would be subject to this 25 year rule.

Q27 – Response agreed but it was essential that Historical burial lairs were maintained.
Suggest a covering letter be included with response to Scottish Government to highlight that the historical element had been missed in the consultation.

DECISION

- * **AGREED to RECOMMEND to Council APPROVAL of the response to the Consultation Paper, on a proposed Bill relating to burial and cremation and other related matters in Scotland as set out in Appendix 2 to the report, subject to the additions/amendments outlined above.**

PRIVATE BUSINESS

DECISION

AGREED under Section 50A(4) of the Local Government (Scotland) Act 1973 to exclude the public from the meeting during consideration of the business detailed in the Appendix to this Minute on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 6 of Part 1 of Schedule 7A to the Act.

SUMMARY OF PRIVATE BUSINESS

MINUTE

1. The Committee approved the private Minute of 21 April 2015.

The meeting concluded at 12.55 p.m.

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FORMALISATION OF PROCESS FOR APPOINTMENTS TO PANEL OF CURATORS AD LITEM

Report by Service Director Regulatory Services

EXECUTIVE COMMITTEE

26 May 2015

1 PURPOSE AND SUMMARY

- 1.1 This Report explains the current legal requirement placed on the Council to establish a panel of Curators ad Litem in the area and review panel membership on a regular basis and sets out a proposal to adopt a formal procedure for this going forward.**

- 1.2 In terms of The Curators ad Litem and Reporting Officers (Panel) (Scotland) 2001 Regulations, the Council currently has in place a Panel of Curators ad Litem. They have been appointed following consultation with the Sheriff Principal. The Panel requires to be reviewed and updated during the period not exceeding three years. Whilst there is no requirement in legislation to have a formal procedure in place for recruitment of appointees, in order to ensure the high quality of the Panel is maintained and to have consistent processes in place, it is proposed that it is necessary for such a policy to be developed.

- 1.3 This report sets out proposals to ensure that the process is clear and open. There has been interest in how the Council fulfils its duties under the regulations. It is proposed the Council agrees to delegate authority to the Service Director Regulatory Services to determine and administer the policy detailing such matters as the recruitment and the criteria required to be met by appointees to the panel. The Council are required to meet the fees of persons appointed as Curators from that Panel by the Courts. The Budget for this is set annually and managed by Legal and Licensing Services, albeit that the Council has no input in the individual case by case appointments made by the court

2 RECOMMENDATIONS

- 2.1 I recommend the Council delegates authority to the Service Director Regulatory Services to take forward the procedure in line with the process outlined in Appendix 1 and agrees to amend the Scheme of Delegation accordingly as by inserting the following "To determine and administer the policy regarding the recruitment and appointment and review of appointees to the Panel of Curators ad Litem."**

3 CURATORS AD LITEM AND REPORTING OFFICERS

- 3.1 In terms of the Curators ad Litem and Reporting Officers (Panel)(Scotland) Regulations 2001, the Council is required to establish a panel of persons from whom Curators and Reporting Officers may be appointed by the Court. The general duty of a Curator ad Litem is to safeguard the interests of the child. He or she will be called upon to prepare and present reports to the Sheriff Court in civil actions involving children such as adoption cases.
- 3.2 The Court also has power at Common Law to appoint a Curator ad Litem from the Panel where a person does not have legal capacity by reason of youth or mental disorder, and, in terms of the Children's Hearings (Legal Representation) (Scotland) Rules 2002, the Children's Hearing may appoint a Curator ad Litem from the Panel to act as child's legal representative.
- 3.3 The role of a Curator ad Litem in Court is quite separate and distinct from that of a solicitor in that a curator is not representing the individual and is not providing professional legal services.
- 3.4 Panel members are to be appointed for a period not exceeding three years, and persons may be reappointed. The Council have the right to terminate membership at any time where they are satisfied that the person is unable, unfit or unsuitable to continue as a member, or the Court reports to the Council that the person is unfit or unsuitable to carry out his or her functions.
- 3.6 The Council is responsible for the fees of such persons even where the Council is not otherwise a party in the action.

4 THE CURRENT PROCESS

- 4.1 In 2013, the Council reviewed the existing list of Curators ad Litem which it held. Letters were sent to those on the list, all of whom were Family Law Solicitors in the Scottish Borders, requesting, if they wished to remain appointed, that they provide an outline of their knowledge and experience of adoption law and processes. Resulting from this exercise, a number of names were removed from the then existing list. Contact was then made with the local Sheriff Clerks at Jedburgh and Selkirk Sheriff Courts respectively to ascertain their views on the proposed list. Two additional recommendations were made by them, one of whom confirmed he wished to be considered for appointment. The required consultation was then carried out on this amended list with the Sheriff Principal who confirmed her approval of the proposed list. There are currently seven Curators ad Litem on the list for the courts in the Scottish Borders. All are solicitors who hold current Practising Certificates from the Law Society of Scotland. No other checks are carried out by the Council.

- 4.2 As in previous years, the Council did not advertise for applicants for the new Panel. This is not a statutory requirement. It is at the discretion of the Council as to how they recruit and how many Panel members there should be. Following recent consultation with the Sheriff Clerks, it was ascertained that it would be useful for the future to have as wide a list as possible. Due to the size and nature of the Scottish Borders area, it becomes increasingly difficult to appoint a Curator ad Litem who is wholly independent of the parties involved in the case. This in turn has the potential to cause delays in essential reports being presented to the Court on time. It is accordingly considered necessary for the Council to invest in more robust processes for advertising for appointees to the Panel in the future.
- 4.3 The Council do not have a written policy in respect of the qualifications and experience which panel members should have. Regard was had by the officers carrying out the process for the terms of the Curriculum Vitae submitted by the applicants, with particular regard to their holding of a degree in law and a current Practising Certificate in Scotland. Regard was also had to any experience which they possessed in child welfare and dealing and child welfare issues in a Court setting.

5 GOING FORWARD

- 5.1 In order to ensure the high quality of the Panel is maintained and to ensure consistency in appointment, it is now considered necessary to have a policy in place detailing a process for identifying prospective panel members, selection criterion including both qualifications and experience requirements, together with a monitoring /review process of appointees. This will also give a transparency to the process of how the Council implements its duties under the Regulations.
- 5.2 It is proposed that the Council delegates authority to the Service Director Regulatory Services, as reflected in paragraph 6.7, to carry out the process in terms of the procedure outlined in Appendix 1 to this report.

6 IMPLICATIONS

6.1 Financial

There are no costs attached to any of the recommendations contained in this report. The Council already maintain a budget for the fees and it is reviewed as part of the budgetary process.

6.2 Risk and Mitigations

If the Council agree to amend the procedure for the appointments of such Curators it will reduce the risk of potentially adverse comment as to how it carries out a statutory duty.

6.3 Equalities

An Equalities Impact Assessment has been carried out on this proposal and it is anticipated that there are no adverse equality implications.

6.4 **Acting Sustainably**

There are no identified economic, social or environmental effects of doing or not doing what is proposed.

6.5 **Carbon Management**

There is no known impact on the Council's carbon emissions of doing or not doing what is proposed.

6.6 **Rural Proofing**

There are no rural proofing implications arising from this report.

6.7 **Changes to Scheme of Administration or Scheme of Delegation**

The Scheme of Delegation requires to be amended to in respect of this process for the Service Director Regulatory Services by inserting the following: "To determine and administer the policy regarding the recruitment and appointment and review of appointees to the Panel of Curators ad Litem"

7 CONSULTATION

- 7.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted and any comments received have been incorporated into the final report.

Approved by

Service Director Regulatory Services Signature

Author(s)

Name	Designation and Contact Number
Nuala McKinlay	Chief Legal Officer

Background Papers: Nil

Previous Minute Reference: Nil

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Contact us at Jacqueline Whitelaw, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, Tel 01835 825431, Fax 01835 825071, email eitranslationrequest@scotborders.gov.uk.

1. 16 weeks prior to the existing Curators ad Litem Panel having been in place for 3 years, the Council shall write to:
 - (a) those parties currently on the Panel,
 - (b) the Sheriff Clerks office at Jedburgh and Selkirk Sheriff Court respectively,
 - (c) Dumfries and Galloway Council, City of Edinburgh Council, East, West and Midlothian Councils, being neighbouring Local Authorities and
 - (d) the Legal Faculties serving those areas

inviting nominations for persons as potential members of the Panel.
- 2 Not less than 16 weeks prior to the existing Curators ad Litem Panel having been in place for 3 years, the Council shall publicly advertise in Council's website inviting nominations for persons as potential members of the Panel.
- 3 Applicants at paragraphs 1 and 2 above shall be given 21 days to apply by way of submission of a letter and accompanying Curriculum Vitae.
- 4 The criteria for being considered for appointment to the panel shall be that a person falls within one of the three following categories and meets the relevant requirements of same:
 - (a) Being either a Member of the Law Society of Scotland, or, of the Faculty of Advocates, together with evidence of relevant experience of court practice and procedure and of Family Law matters ; or
 - (b) Being registered with the SSSC and holding either a CQSW or DipSW qualification together with relevant experience of court practice and procedure and of Family Law matters ; or
 - (C) A person currently registered with the GTC and holding either a Bachelor of Education, or another degree and a Postgraduate Diploma in Education and together with relevant experience of court practice and procedure and of Family Law matters
- 5 The Service Director Regulatory Services shall recommend those applicants who meet the criteria to the appointment to the Panel.
- 6 8 weeks prior to the existing Curators ad litem Panel having been in place for 3 years, the Council shall submit the list of recommended applicants to the Sheriff Principal of Lothian and Borders for consultation purposes. They shall also invite the Sheriff Principal to nominate any other persons as are appropriate having regard to the criteria as potential members of the Panel.
- 7 At 6 monthly intervals, the Council shall contact the Sheriff Clerks at Jedburgh and Selkirk Sheriff Courts respectively to ascertain if the courts have considered any member of the panel to be unable, unfit or unsuitable to continue to carry out the functions of a Curator ad Litem.
- 8 Upon receipt of any such report as to the actions of a Curator ad Litem as mentioned at paragraph 7 above, the Service Director Regulatory Services shall consider the terms of the report and shall decide as to whether the Curator ad Litem shall receive a warning as to their actions or whether their appointment shall be terminated and the lists amended accordingly. It shall be at the discretion of the Service Director as to whether or not such person be re-appointed arising from any future application.

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Senior Information Risk Owner's Annual Report

Report by Service Director Regulatory Services

EXECUTIVE COMMITTEE

26 May 2015

1 PURPOSE AND SUMMARY

1.1 This report provides the Executive Committee with a summary of information governance measures taken by both the Council's Information management team and the Information Governance Group in 2014/15. The report contains:

- (a) an assessment of the Council's compliance with the Data Protection Act 1998;**
- (b) a description of the Information Governance Group's activities in 2015; and**
- (c) a self-assessment on behalf of the Group on its effectiveness in meeting its objectives.**

1.2 Following reassignment of the Information management function to Regulatory Services, the Council has commenced a programme of updating and improving records management, Freedom of Information (FOI) and Data Protection processes. The Council's Information management team has identified a number of measures intended to further improve the Council's compliance with Data Protection requirements including the introduction of new policies and procedures and the development of additional training.

1.3 In order both to support delivery of the Council's information management function, and to ensure that there is appropriate scrutiny of all proposed Data Protection and FOI measures, the Information Governance group has been revitalised. The Senior Information Risk Owner (SIRO) considers that at present the group is effectively meeting its objectives.

2 RECOMMENDATIONS

2.1 I recommend that the Executive Committee:-

- (a) notes the content of this report which addresses previous internal audit recommendations to report on compliance with the Data Protection Act as part of the Council's annual governance review and to further improve information management practices.**

3 WORK UNDERTAKEN ON BEHALF OF THE SIRO

3.1 On 1 November 2014 the Council's Information Management team was transferred to Regulatory Services and the Service Director Regulatory Services assumed the role of Senior Information Risk Owner (SIRO). Since then officers tasked with Information governance responsibilities have commenced a programme of reviewing and updating existing FOI and Data Protection guidance, and identifying additional measures intended to strengthen compliance with Data Protection requirements. While the Council already complies with such requirements, it is recognised that there remains some scope for improvement.

3.2 The Council is obliged to comply both with the eight Data protection principles set out in Schedule 1 to the Data Protection Act 1998 and with the provisions which allow individuals to make subject access requests in respect of their own personal information. With these duties in mind the Information management team has identified that further steps could be taken:

- (a) to enhance organisational measures which prevent damage to, or loss, theft or inappropriate processing of, personal information;
- (b) to introduce a standard procedure for swiftly and effectively addressing any data breaches; and
- (c) to ensure subject access requests are processed in accordance with best practice.

3.3 To this end the following actions have been taken:

- (a) A need for additional Data Protection training has been identified. This training will consist of refresher training for all staff who have completed the current e-learning module and targeted training for staff in a variety of Council services. Work has commenced to develop and roll out a training programme.
- (b) New procedures for reporting data breaches have been developed and a data breach log has been created. This log acts as a central record of any breaches which have taken place in the Council and is maintained by the Information management team.
- (c) A new subject access request procedure similar to the one in place for FOI requests has been implemented and continues to be refined. The number of subject access requests made to the Council is increasing, and the new procedure ensures that requests are processed in a uniform and appropriately formal manner.

4 THE INFORMATION GOVERNANCE GROUP

4.1 The Information Governance Group comprised of appropriate senior officers from across service departments met in the first quarter of 2015 to consider a number of Information management issues. These included a training and workforce development programme, the monitoring of third party contracts, and statistical reports on FOI requests and subject access requests. The group also approved a password policy, a protective marking policy, and a Security Incident Reporting & Management procedure.

4.2 The Information Governance group exists to support the Council's Information management functions, and to scrutinise and discuss information management processes. The SIRO considers that, having regard to the activities outlined in 4.1 above, the group is fulfilling its role. The SIRO looks forward to continuing to work with the group and acknowledges that regular meetings are key to ensuring the effective operation of information management processes. The group will meet on a quarterly basis with the next meeting taking place no later than 30 June 2015.

5 IMPLICATIONS

5.1 Financial

There are no costs attached to any of the recommendations contained in this report.

5.2 Risk and Mitigations

- (a) Failure to follow appropriate information management processes increases the likelihood of a contravention of the Council's Freedom of Information and Data Protection duties. This risk is mitigated by the work of both the Information management team and the Information Governance group in implementing the programme of Information governance measures identified in this report, and by compliance with relevant policies and procedures across all the Council services.
- (b) This report and its content addresses previous internal audit recommendations made to report on compliance with the Data Protection Act as part of the Council's annual governance review and to further improve information management practices which are designed to minimise the risks to the Council.

5.3 Equalities

It is anticipated that there will be no adverse impact relating to considerations of race, disability, gender, age, sexual orientation or religious/philosophical belief as a result of this report

5.4 Changes to Scheme of Administration or Scheme of Delegation

No changes require to be made either to the Scheme of Administration or to the Scheme of Delegation.

6 CONSULTATION

6.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted and any comments received have been incorporated into the final report.

Approved by

Brian Frater
Service Director Regulatory Services

Signature

Author(s)

Name	Designation and Contact Number
Elizabeth Knox	Solicitor ext. 6618

Background Papers: None**Previous Minute Reference: None**

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Management of the Industrial and Commercial Property Estate – Policy Update

Joint Report by Service Director Strategy & Policy and Service Director Commercial Services

EXECUTIVE COMMITTEE

26 May 2015

1 PURPOSE AND SUMMARY

- 1.1 The purpose of this report is to set out the current position with respect to the management of the Council’s industrial and commercial properties. The report highlights properties which are not considered fit to let, and proposed solutions. The report goes on to recommend a policy change to enable the sale of commercial properties at market value in special circumstances.**
- 1.2 The report sets out the background to the establishment of the Council’s commercial estate and goes on to consider occupancies and vacancies. Appendix 1 then details those properties that are either unfit or unsuitable to let for commercial purposes, the underlying reasons for this, and the future plans for them.
- 1.3 An issue has also arisen in which some commercial property sales have encountered difficulty because the higher capital value to the Council of the future rental income stream of the property is considerably in excess of its market value. The report recommends introducing greater flexibility into the existing policy to enable sales to go ahead at market value in circumstances where the economic development advantages arising through disposal are objectively considered to outweigh the financial loss to the Council. The report also notes the need to plan for the long term sustainability of the estate.

2 RECOMMENDATIONS

- 2.1 I recommend that the Executive Committee:**
 - (a) Notes the future plans for commercial buildings that are either unsuitable or unfit to let, as set out in Appendix 1.**
 - (b) Approves the proposed amendments to the 2010 Policy for the Sale of Council premises, to delegate to the Service Director Commercial Services, the Chief Financial Officer and Chief Officer Economic Development the power to authorise the sale of commercial buildings, let to existing**

tenants, at market value instead of the higher capital value of the rental income stream to the Council, where there is an over-riding economic development reason for doing so, as set out in Appendix 2.

- (c) Agrees that consideration is given to the investment needs of the industrial and commercial property estate in the annual roll forward of future Capital Programmes, particularly with regard to the application of grant funding.**

3 BACKGROUND

- 3.1 Scottish Borders Council holds a significant business property asset. The portfolio has grown from 19 industrial premises held by Borders Regional Council in 1975 to 227 industrial units at present. Since the 1980's the Council has been the main provider of factory and workshop space for rental, in terms of the number of premises and spread of location across the Scottish Borders. This provision of business space supports the development of the local economy by assisting local and incoming businesses with their accommodation needs, and encouraging business and employment growth. In addition, the Council benefits from income generated by these assets.
- 3.2 In the 1990's European funding assisted Scottish Borders Council and Scottish Borders Enterprise in the construction of new industrial premises. In the 2000's, changes in the economy with private developers becoming more active in the property development market, and changes in business requirements, led to a strategic change in direction for the Council. The Council ceased constructing new industrial premises and secured European funding to support the development of sites, where businesses could purchase serviced plots to construct their own premises.
- 3.3 Since 2008, the economic downturn has constrained growth in private sector activity. However, the recent economic recovery and the major investment in the Borders Railway is expected to increase demand for business property in the Scottish Borders, although at an unknown rate. The Council has a role in maximising this opportunity to stimulate economic growth through the use of its business property and land asset. A review of the provision of industrial units in the Scottish Borders was undertaken by the former Scrutiny Committee in 2008.

4 OCCUPANCY AND VACANCIES

- 4.1 The Council holds the most significant portfolio of business property and land across the Scottish Borders, and whilst private sector ownership may be important in terms of floor space, there are many different business owners and few developers, who are all in disparate locations. Therefore, the Council continues to have a crucial role in providing this business infrastructure support.
- 4.2 The occupancy level for industrial premises, yards and retail premises is calculated quarterly and for the last five years has remained high, at around 90%. Generally, the Council's property is in a satisfactory condition, as can be seen in the table below. However, there are a number of the 227 industrial units in the portfolio that are not currently available for lease to businesses. This is due to a number of reasons, including the property being in poor condition, the property needing major investment for refurbishment, and also some units that have been agreed for sale, or are in the process of being sold. Appendix 1 sets out the 14 properties that are in this category. It also identifies what action is planned for each unit in the future. This may involve investment, disposal or redevelopment.

Suitability	% of industrial units
A - Excellent	9%
B - Satisfactory	64%
C - General satisfactory but in need of minor improvements	27%
D - Unsatisfactory	Non-lettable stock

- 4.3 St Mary's Mill in Selkirk is a good example of a property that the Council has owned for some time, but has not been able to bring back into productive use. A number of potential users have considered the building over the last decade but the size of the floorspace, the condition of the building and issues such as asbestos have all deterred potential tenants. The asbestos issue in the building has been tackled safely by the Council, but the age and size of the building, coupled with its poor energy efficiency, means that it is a challenge for a future tenant or owner. Site clearance was not previously an option because of the flooding issues in the Ettrick Riverside area, but with the major investment in the Selkirk Flood Protection Scheme under way, there are new options for the future of the property. This requires a site assessment and feasibility work to properly determine the best option for the site. It is worth noting that St Mary's Mill will also have to comply with new regulations on energy performance resulting from the Climate Change (Scotland) Act 2009.
- 4.4 As can be seen in Appendix 1, some of the properties are due to be sold immediately, whilst others will be put on the market as local market conditions permit. Some of the units require investment, either to refurbish them to a lettable condition, or potentially to demolish some of them with a view to providing a redevelopment opportunity for the private sector. It is recommended that the buildings in Appendix 1 are dealt with as proposed. Current property policy allows the planned for actions to proceed, subject to the right market conditions prevailing and, if appropriate, capital and revenue funds being made available for refurbishment or demolition.

5 SALE OF COMMERCIAL PROPERTY

- 5.1 The Policy for the Sale of Council premises, let to commercial tenants, at commercial rents was approved by Executive on 7 October 2010 and is set out in Appendix 2. This policy was established in order to provide guidance and set strategic criteria for the sale of our commercial and industrial property to tenants. The Council needs to strike a balance between the long term viability of its portfolio and the sale of units to tenants whose business plans drive them towards owning their property.
- 5.2 The Council has traditionally sold properties to sitting tenants at market value, or at a level that would cover any outstanding loan debt on the property. However, the 2010 Policy introduced a requirement to consider the long term income generation of a property in its final sale price as well. This latter criteria has led in some cases to high valuations being calculated for the sale of some properties, with the capital value to the Council of the future rental income stream from the property exceeding market value. Officers are concerned that the current approach may, if rigidly applied, prevent the future sale of some commercial buildings to local businesses where there is an over-riding economic development case for a sale to proceed. It has also led to delays in the disposal of property which has limited alternative economic value to another tenant.
- 5.3 It is proposed to change the policy for the sale of Council premises, let to commercial tenants, to allow greater flexibility in the terms of the final sale valuation that can be approved in line with the policy. It is proposed that an additional element is added to the policy to cover special economic circumstances where there are evidenced economic development

considerations, or site or business specific considerations, which mean a valuation commensurate with meeting outstanding capital debts and future income is not appropriate in full. Where appropriate this would allow for the sale, at market value, of commercial buildings let to tenants, instead of the higher capital sum required to offset the outstanding debt and loss of rental income. This would only be appropriate where a clear economic development justification is provided by the business in question. Examples of over-riding economic development considerations include the scale of local employment involved, the impact of the business on the local economy or the potential growth enabled by the proposal. The proposed amended policy is set out in Appendix 2, with the amendments highlighted. The Appendix has also updated the policy to reflect the current Council structure.

- 5.4 In order to maximise the use of assets that are going through the sale process, Estate Management and Economic Development are now considering whether some of these units can be used by businesses for shorter periods, where the property is slow to attract a purchaser. In a similar example, the former Halyrude Primary School in Peebles currently has a new business as a tenant until a purchaser comes forward. This keeps the asset in use, produces revenue for the Council, and supports economic growth.

6 IMPLICATIONS

6.1 Financial

- (a) Capital receipts associated with industrial and commercial property are used to help support the whole Capital Programme rather than being ring-fenced individually for specific capital projects. However, if there is any outstanding loan debt against a sold property, this is deducted from the receipt before it is allocated to the Capital Programme.
- (b) Furthermore, if the sold property was generating a rental income, the capital required to replace the lost income is deducted from the sale proceeds before the latter is allocated to the capital programme. If the capital sum required to replace the lost rental income exceeds the sale price, then the Council notionally makes a loss on the sale overall. However, in some circumstances economic development considerations outweigh the reduced capital receipt and the report proposes a change in sales policy (see Appendix 2) to enable the Service Director Commercial Services, the Chief Financial Officer and the Chief Officer Economic Development to determine, under delegated authority, whether a sale on economic development grounds is justified in these circumstances.
- (c) The commercial estate generates around £1.2M per annum of rental income and has an asset value of around £10M. Thus in addition to providing key business infrastructure, the estate provides the Council with an important income stream which must be preserved where possible.
- (d) The commercial estate is affected by gradual obsolescence and the need by some tenants to buy their units outright to meet their business strategies. This requires a sales policy to ensure the Council retains an optimum portfolio of commercial properties for the benefit of the local economy and the proposed change in sales policy in this report helps support this.
- (e) The ageing nature of the commercial estate also raises the issue of how

the Council reinvests in the properties. Previously, individual buildings have received minor investment in order to make them available for letting. As noted, some properties have not been able to be let because of the major investment required to achieve that condition. In order to plan for the long term sustainability of the portfolio, it is planned to initiate formal consideration of the investment needs of the industrial and commercial property estate in the annual roll forward of future Capital Programmes, particularly with regard to the application of grant funding. It is likely that the Council will need to reinvest in its industrial and commercial properties, so making a planned provision for that investment is a prudent approach.

6.2 **Risk and Mitigations**

- (a) There is a reputational risk of having a number of properties lying in an unlettable condition. This risk is ameliorated by having a clear future plan for each property on the list, involving sale, transfer, refurbishment or redevelopment. This is outlined in Appendix 1.
- (b) There is a risk that the sale of some properties will fail because the price currently required by the Council exceeds market value. Adopting the policy change set out in Appendix 2 of this report would mitigate this risk.

6.3 **Equalities**

An Equality Impact Assessment (EIA) is not required as this report relates to the continuation of the property service to ensure that it meets best practice.

6.4 **Acting Sustainably**

The efficient use of the Council's property asset can have a positive effect on the economic, social or environmental implications. The provision of property by the Council has a positive economic impact on the Scottish Borders by helping to address the industrial property market failure that exists in the area. The potential for the reuse of some buildings, or for their transfer to community ownership could have positive community and environmental impacts.

6.5 **Carbon Management**

The Council's property asset is one of the main areas of focus in the Carbon Management Plan in view of the carbon footprint that derives from the use of our buildings. Finding ways to reduce the amount of floorspace that the Council owns has a positive impact on our carbon footprint, along with proactive actions to increase the energy efficiency of our property. The age and type of our buildings makes this challenging. Additional challenges will face the Council in future as new Energy Performance Certificate requirements come into force in later years, requiring the Council to improve the energy performance of its industrial and commercial properties.

6.6 **Rural Proofing**

Rural Proofing is required as the proposals relate to an amended Council policy or strategy. The change to the policy will not have a significant impact on our rural areas. One element of the Council's approach has been to ensure the provision of business space across the whole of the Borders, including the smaller towns and villages.

6.7 **Changes to the Scheme of Administration or Scheme of Delegation**

There are changes to be made to the scheme of delegation as set out in

7 CONSULTATION

- 7.1 The Chief Financial Officer, the Service Director Regulatory Services as Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR, and the Clerk to the Council have been consulted and their comments have been incorporated into the report.

Approved by

Service Director Strategy & Policy **Signature**

Service Director Commercial Services **Signature**

Author(s)

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Background Papers: None

Previous Minute Reference: Economic Development Group 11 September 2014

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Contact Katie Greenwood at Economic Development, Strategy & Policy, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, Tel 0300 100 1800

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Non-Lettable Buildings – Industrial units not included in the occupancy calculation

Town	Total number available to rent	Units not included	Reason for not including	Planned for:
EYEMOUTH	37 excludes 4 units			
Acredale		Units 1 & 2 Ph 1 Acredale (operating as one unit)	Former Aquamart – to be sold	Sale
Dicksons Yard		Unit 2 Dickson's Yard	Development of Harbour Road – check what recent interest?	Sale in longer term
Meeks Yard		Unit 21 Meeks Yard	CCTV located in this unit.	Community Safety Use
GALASHIELS	21 excludes 1 unit			
Langlee Centre		Unit 7 Langlee Centre	Old Gala Club relocated here so no longer a commercial unit.	Community Use
JEDBURGH	23 excludes 2 units			
		The Tollhouse	Recently used as works site hut for upgrade and improvement to rear of Bongate Mill. Needs heating but should be available shortly.	Sale
		4 Duck Row	Not in satisfactory condition for leasing plus flooding plus used as a store for community assets.	Sale
Bongate Stores		Unit 2	The sale of this unit has been approved. Negotiations are under way with the prospective purchaser.	Sale
SELKIRK	22 excludes 5 units			

Town	Total number available to rent	Units not included	Reason for not including	Planned for:
		Units 2 & 3, St Marys Mill	Not in satisfactory condition for leasing. Major refurbishment work required. Asbestos removed from various parts of building.	Potential Redevelopment Opportunity
		Venture Centre	Not in satisfactory condition for leasing.	Potential Redevelopment Opportunity
Linglie Mill		Units 2 & 6 Linglie Mill	Leaking roof – repairs are required and will be programmed as soon as resources allow.	Repair
TWEEDBANK	14 excludes 1 unit			
Ind Estate		Unit A	Used for SBC storage	Potential Redevelopment opportunity
TOTALS		14 units excluded		

Economic Development
Chief Executives

May 2015

The sale of commercial/industrial premises let to commercial tenants at commercial rents

The policy is that:-

1. The Chief Officer Economic Development decides what commercial premises, let to commercial tenants at commercial rents, is surplus to the Council's economic development needs and declares it so. Table 1 details the factors that the Chief Officer Economic Development would take into account in arriving at his recommendations.
2. The Chief Financial Officer and Service Director Commercial Services would then evaluate the commercial premises declared surplus by the Chief Officer Economic Development to determine whether to retain or sell. Retention would usually occur where the future rental income exceeds projected income/savings if the capital receipt were re-invested elsewhere or is used to reduce revenue outgoings such as loan repayments.

The Service Director Commercial Services would advise the local Members and the Executive Members for Economic Development and Finance of the recommendation.

3. If a decision is made to sell, the price would be the greater of the market value or the price needed to offset the loss of rental income or the price required to offset any outstanding loan debt and grant aid repayments etc. The capital receipt from the sale would be used to offset the loss of rental income such that the Council is not financially disadvantaged because of the sale.
4. There may be special circumstances where there are evidenced wider economic development considerations, or site or business specific considerations. If the Service Director Commercial Services, the Chief Financial Officer and the Chief Officer Economic Development agree that these are over-riding economic development considerations for selling at market value as opposed to a greater price needed to offset the loss of rental income, then the sale may proceed at market value. Examples of over-riding economic development considerations include the scale of local employment involved, the impact of the business on the local economy or the potential growth enabled by the proposal. The budgetary implications will be addressed as part of the revenue and capital budget processes.

In taking forward the sale of individual premises, first opportunity to purchase would be given to the sitting tenant and if the latter did not wish to buy, the premises would be put on the open market for sale, subject to the lease. For blocks of neighbouring properties, the usual practice would be to sell them together as a single lot, either jointly to the sitting tenants or if they were not interested in buying, on the open market subject to the existing leases. This would be subject to the Criteria and Principles in Table 1.

For sales with a capital market value in excess of £0.5M or a market rental value in excess of £50,000 per annum the Service Director Commercial Services would seek Executive approval, otherwise, he would progress the sales through to conclusion in consultation with the Chief Financial Officer and the Chief Legal Officer (in line with his existing delegated powers).

The exceptions to the above are where the sitting tenant has a legally enforceable option to purchase in which case the premises would be sold to the tenant on the basis prescribed in the option.

Table 1	
Criteria	Principles
<p>The following criteria should be used to assess whether a particular premises could be sold or not:-</p> <ul style="list-style-type: none"> • The need to retain a viable commercial estate to support the economic development needs of the Scottish Borders. • The importance of the individual premises from a strategic perspective such as its future redevelopment prospects, appropriateness of location for business use, access constraints, higher alternative use value such as housing etc. • The age, suitability and condition of the premises and likely future maintenance burden, including the need for major repairs and upgrading over the premise's estimated remaining life. • Generally only premises would be considered for sale that has no outstanding disproportionate loan debt or obligation to repay substantial EU, or other significant grants, if sold. • The length of occupation of the existing tenant or total period as a Council tenant would be considered where sitting tenants apply to buy. Usually the tenant would need to have been a Council tenant for at least 5 years. • The linkage to and/or enabling of other Council priorities and/or Community Planning Partner's priorities. 	<ul style="list-style-type: none"> • Generally, only premises older than 20 years old should be considered for sale. • Individual premises should be considered for sale first. • If a terraced block of 2 or more properties is considered then all units should ideally be sold together. • Shared forecourts or communal space or utility services, not publicly adoptable, must be included in the sale. • Where communal landscaping exists, maintenance responsibility or a share of the costs must be passed on to the purchaser. • If the purchaser / ex-tenant wish to sell within 5 years of the date of entry in the disposition, the Council retains the option to buy back the premises at market value. • If the purchaser / ex-tenant wish to sell the premises / site for an alternative use the Council shall retain a right to receive at least 50% of any increased value resulting from the alternative use. • Empty premises which have been difficult to let and do not conflict with the above criteria should also be considered for sale.

The list of premises that could be considered for sale would be reviewed no less than annually.

**REPORT ON RETAINING WALL REPAIR AT A72 NEIDPATH
CASTLE, PEEBLES**

Report by Service Director Commercial Services

EXECUTIVE COMMITTEE

26 May 2015

1 PURPOSE AND SUMMARY

- 1.1 **To advise on the position regarding the section of roadside retaining/parapet wall which has developed a significant lean at Neidpath Castle, Peebles**
- 1.2 To request that the necessary repairs works be funded from the allocation set aside for emergency and unplanned works in the current year's Capital Programme.

2 RECOMMENDATIONS

- 2.1 **I recommend that the Committee agrees that the construction work associated with the rebuilding of the wall failure on the A72 at Neidpath Castle be funded from the allocation of Emergency and Unplanned work in the current financial year's Capital Programme**

3 BACKGROUND

- 3.1 On 4 February 2015, officers of Asset Management were alerted that a section of the retaining/parapet wall adjacent to the A72 at Neidpath Castle had a significant lean to the vertical.
- 3.2 The initial on site assessment concluded that the wall was in imminent danger of collapse and that this would have an impact on the adjacent carriageway, which although minimal, required the westbound lane of the A72 to be closed off on the grounds of safety. Temporary traffic lights have therefore been in position to keep traffic off the westbound lane of the A72 since that time.



4 PROPOSALS

- 4.1 During February a structural engineer from the Council carried out a more detailed assessment of the location. During this assessment no instability of the slope below the wall was observed and the appearance of the wall lean indicated that it was as a result of a structural wall failure as opposed to a slope failure. This observation was further supported in the report prepared by Consultant AECOM which was carried out for the council in February 2011.
- 4.2 This site assessment has allowed a mass concrete retaining structure with a masonry faced parapet wall to be designed for the repair. It is anticipated that the majority of the facing stone can be recovered from the existing wall when it is taken down. The section of wall requiring repair extends to 55 linear metres.
- 4.3 The existing road at the location of the wall repair has limited width with one point only being 5.6 metres wide. It is therefore anticipated that there will be a need to implement restrictions on heavy goods vehicles during the initial stages of the wall repair.

- 4.4 The opportunity to visually assess the remainder of the wall has also been taken and three isolated sections have been identified which will be taken down and rebuilt at the same time as the repair to the leaning section.

5 IMPLICATIONS

5.1 Financial

- (a) It is estimated the cost of the construction works to be undertaken by SBc Contracts will be £150,000. This figure is made up of £115,000 for the wall repair and £35,000 for the take down and rebuild of the additional three identified sections.

- (b) Design and estimating work has proceeded based on the importance of the A72 as the main East/West link in Tweeddale. There are two funding options for the work:

1 – fund from the Emergency and Unplanned Work budget in the Capital Programme

2 – fund from the Road Asset Management Block Fund in the Capital Programme

The Road Asset Management Block Fund is for planned road maintenance works designed to preserve the life of the asset in the most cost effective way. The allocation within this block for dealing with Walls & Structures has already been set at £72k and to meet the needs of the repair at Neidpath would mean that funding would need to be vired from other block allocations. In spending all the Walls & Structures allocation at Neidpath, already identified works to other walls and structures would have to be deferred to future years programmes.

Since the need for spend is the result of an emergency occurrence, that was unplanned, it is most appropriate that it is funded from this capital budget allocation. At 1 April 2015, the budget has £281k in reserve.

5.2 Risk and Mitigations

There are temporary traffic restrictions in place in order to maintain service to through traffic on the A72. Regular checks are carried out to ensure that any disruption to traffic flow is kept to a minimum.

5.3 Equalities

An Equalities Impact Assessment has been carried out on this proposal and it is anticipated that there are no adverse equality implications.

5.4 Acting Sustainably

There are no significant economic, social or environmental issues associated with this report.

5.5 Carbon Management

There are no significant impacts on the Council's carbon emissions that are additional to current operation.

5.6 Rural Proofing

There are no equality impacts resulting from this report.

5.7 Changes to Scheme of Administration or Scheme of Delegation

There are no changes which are required to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals in this report.

6 CONSULTATION

6.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Service Director Strategy and Policy, the Chief Officer Audit and Risk, the Chief Officer HR, the Clerk to the Council, and the Depute Chief Executive Place, have been consulted and any comments received have been incorporated into the final report.

6.2 The local member Councillors, Bhatia, Archibald, Cockburn, Garvie, Logan and Bell, and the Community Councils at Manor Lyne & Stobo and Peebles, have been kept fully up to date on progress.

Approved by

Andrew Drummond-Hunt
Service Director Commercial Services

Signature

Author(s)

Name	Designation and Contact Number
David Richardson	Asset Manager

Background Papers: Retaining Wall Repair at A72 Neidpath Castle, Peebles – 3 October 2011

Previous Minute Reference: None

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

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