



# Agenda

## Council

Date:	Monday, 20 July 2020 19:00.
Venue:	Remote Meeting Via Zoom
	<p>Mayor: Councillor Angela Jacques Deputy Mayor: Councillor Richard Redcliffe</p> <p>Acting Leader: Councillor Karen Buckley</p> <p>Councillors Ben Aitken, Frank Andrews, Peter Anthony, Tim Armit, Mark Bamforth, Brenda Blackshaw, Paula Brearley, Julie Brickles, Alan Clayton, Delma Collins, Peter Collins, Chris Dixon, Sue Fazackerley MBE, Trevor Fiddler, Ellie Gaunt, Brian Gill, Shirley Green, Noreen Griffiths, Peter Hardy, Will Harris, Gavin Harrison, Paul Hayhurst, Karen Henshaw JP, Paul Hodgson, John Kirkham, Matthew Lee, Cheryl Little, Roger Lloyd, Michelle Morris, Kiran Mulholland, Ed Nash, Sally Nash-Walker, Jayne Nixon, Linda Nulty, Liz Oades, David O'Rourke, Bobby Rigby, Michael Sayward, Vince Settle, Elaine Silverwood, John Singleton JP, Roger Small, Heather Speak, Ray Thomas, Tommy Threlfall, Stan Trudgill, Viv Willder, Michael Withers.</p>

### PLEASE NOTE:

This meeting is being held remotely via Zoom and will be live streamed.  
For public access to observe the meeting please use the link below.

<https://www.youtube.com/watch?v=7axOyZAA20w>

	PROCEDURAL ITEMS:	PAGE
1	<b>Declarations of Interest:</b> Declarations of interest, and the responsibility for declaring the same, are matters for elected members. Members are able to obtain advice, in writing, in advance of meetings. This should only be sought via the Council's Monitoring Officer. However, it should be noted that no advice on interests sought less than one working day prior to any meeting will be provided.	1
2	<b>Confirmation of Minutes:</b> To confirm the minutes, as previously circulated, of the meetings held on <a href="#">4 March 2020</a> , <a href="#">9 March 2020</a> and <a href="#">18 March 2020</a> as correct records.	1
	<b>ANNOUNCEMENTS:</b>	
3	<b>Mayor's Announcements</b>	1
4	<b>Chief Executive's Communications</b>	1
	<b>REPRESENTATIONS:</b>	

5	<b>Questions from Members of the Council</b>	<b>3</b>
6	<b>Questions from Members of the Public</b> For procedure to ask a question at a Council meeting see <a href="#">Public Speaking at Council Meetings</a> .	<b>4</b>
	<b>DECISION ITEMS:</b>	
7	<b>Notice of Motion – Response to Coronavirus Pandemic</b>	<b>5 - 6</b>
8	<b>Standing Orders for Remote Council and Committee Meetings</b>	<b>7 - 21</b>
9	<b>Appointment of Leader and Deputy Leader</b>	<b>22 - 23</b>
10	<b>Confirmation of Mayor, Committee Appointments and Working Groups</b>	<b>24 - 30</b>
11	<b>Standards Framework: Independent Persons</b>	<b>31 - 32</b>
12	<b>Pavement Licences</b>	<b>33 - 49</b>
13	<b>A Lancashire Combined Authority</b>	<b>50 - 56</b>
14	<b>Regulation of Investigatory Powers Act (RIPA) Policy</b>	<b>57 - 79</b>
15	<b>Planning Appeals Protocol</b>	<b>80 - 87</b>
16	<b>Outside Bodies - Updates</b>	<b>88 - 89</b>

Contact: Katharine McDonnell - Telephone: (01253) 658423 – Email: [democracy@fylde.gov.uk](mailto:democracy@fylde.gov.uk)

The code of conduct for members can be found in the council's constitution at

<http://fylde.cmis.uk.com/fylde/DocumentsandInformation/PublicDocumentsandInformation.aspx>

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## REPRESENTATIONS

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	COUNCIL	20 JULY 2020	5
<b>QUESTIONS FROM MEMBERS OF THE COUNCIL</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

No questions have been received from Members of the Council before the requisite deadline, as outlined in Procedural Standing Orders for Council and Committees of Part 4 of the Council's Constitution, and before the statutory deadline for publication of the agenda.

If any questions are received before the constitutional deadline, as outlined above, they will be circulated prior to the meeting for members' information, under separate cover.

Any questions will be heard during the Council meeting on 20 July 2020 and a response will be given by the Acting Leader of the Council or any other member nominated by her.

## REPRESENTATIONS

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	COUNCIL	20 JULY 2020	6
<b>QUESTIONS FROM MEMBERS OF THE PUBLIC</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

As outlined in Article 15 – Public Speaking at meetings of the Council and its Committees any resident of the Councils district may, subject to various provisions of the article, ask a question at an ordinary meeting of the council.

No questions have been received from members of the public before the requisite deadline, as outlined in Article 15, before the statutory deadline for publication of the agenda.

If any questions are received before the constitutional deadline, which is, for the purpose of this meeting, 4.30pm on Tuesday 14 July 2020, they will be circulated prior to the meeting for members' information, under separate cover.

Any question(s) will be heard during the Council meeting on 20 July 2020 and a response will be given by the Acting Leader of the Council or any other member nominated by her.

## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	COUNCIL	20 JULY 2020	7
<b>NOTICE OF MOTION – RESPONSE TO CORONAVIRUS PANDEMIC</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

Notice of motion is a procedure that allows members of the council to ask the council to discuss any matter for which the Council has a responsibility or which affects the Fylde area. Any member of the council can give written notice to the Director of Resources of a motion that they wish to move. The Director will publish the motion on the council's website and arrange for it to be placed on the agenda of the next available ordinary council meeting. The motion will be debated at council subject to it being moved and seconded.

### RECOMMENDATION

To consider the Notice of Motion received on 1 July 2020.

### SUMMARY OF PREVIOUS DECISIONS

There have been no previous decisions on this item.

### CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	✓
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	✓
Working with all partners ( <b>Vibrant Economy</b> )	✓
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	✓
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	✓

## The Motion

1. The following Notice of Motion has been received:

“IN RESPONSE TO THE CORONAVIRUS PANDEMIC THIS COUNCIL:

1. Recognises and offers thanks to all council staff for their continued hard work and dedication during uniquely difficult times in handling additional workloads and adapting to rapidly changing legislation whilst maintaining essential services near to normal levels - a remarkable achievement under the circumstances.
2. Recognises and offers thanks for the ongoing hard work to all key workers who live, work, operate or volunteer in Fylde, especially those in the NHS, medical or care industries who have been on the frontline providing direct treatment and care, those working in education and essential retail, and also the funeral services for continuing to do their best to handle matters in a respectful manner in very difficult conditions.
3. Thanks all our residents who are playing their part in complying with government guidelines, our businesses who are adapting to new guidance as they gradually re-open safely and all those who are informally providing vital help to vulnerable family, friends and neighbours or volunteering in the community.
4. Remembers those who are or have been ill, or who have family and friends affected by coronavirus, or have lost loved ones during this very difficult time when restrictions are in place which limits family and friends from coming together to support each other.”

The Notice of Motion was given by Councillor Karen Buckley.

## Standing Orders

2. Part 4 (Rules of Procedure), Standing Order 10 (Motions) of the council Constitution details the procedural requirements of handling a Notice of Motion.

IMPLICATIONS	
Finance	None arising directly from this report.
Legal	None arising directly from this report.
Community Safety	None arising directly from this report.
Human Rights and Equalities	None arising directly from this report.
Sustainability and Environmental Impact	None arising directly from this report.
Health & Safety and Risk Management	None arising directly from this report.

LEAD AUTHOR	CONTACT DETAILS	DATE
Tracy Manning	<a href="mailto:tracy.manning@fylde.gov.uk">tracy.manning@fylde.gov.uk</a> Tel 01253 658521	1 July 2020

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Notification from Councillor Buckley	1/7/2020	<a href="#">Notice of motion</a>
Council Constitution	2020	<a href="#">Constitution</a>

## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	COUNCIL	20 JULY 2020	8
<b>STANDING ORDERS FOR REMOTE COUNCIL AND COMMITTEE MEETINGS</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

In common with other councils, the council is presently holding its council and committee meetings by remote access. The report sets out the standing orders that have been applied to remote meetings and invites the council to confirm them as part of its constitution.

### RECOMMENDATION

Confirm the attached Rules of Procedure for Remote Meetings as part 4A of the council's constitution.

### SUMMARY OF PREVIOUS DECISIONS

None

### CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	✓
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	✓
Working with all partners ( <b>Vibrant Economy</b> )	✓
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	✓
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	✓

### REPORT

- From March this year, emergency regulations<sup>1</sup> aimed at combatting the spread of coronavirus made it unlawful for council and committee meetings to be held in the normal way. Those regulations have now been repealed, but government [guidance](#) makes it clear that at present face to face council and committee meetings should still not be held. The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 ("the Flexibility Regulations") have been made to allow councils to continue to hold council and committee meetings by remote videoconferencing platforms.

<sup>1</sup> The Health Protection (Coronavirus, Restrictions) (England and Wales) Regulations 2020

2. The Flexibility Regulations<sup>2</sup> allow a local authority to make standing orders and rules about remote attendance at meetings of that authority. Advice from LLG (Lawyers in Local Government) is that standing orders for remote access could become effective without a formal resolution, but that they should be confirmed by the council at the earliest opportunity. Accordingly, standing orders governing remote access meetings were distributed to all members of the council and applied from 6 May, but are now presented for confirmation.
3. The standing orders will remain in force so long as the Flexibility Regulations are in force. However, they will only apply to meetings held by remote access. In other words, when it becomes legal and practicable for meetings to be held in the traditional way, any meetings held face-to-face would be subject to the regular standing orders, and not the remote ones.
4. The remote standing orders are attached, and the council is invited to confirm them. Areas of the standing orders where there have been material changes to from the regular standing orders are highlighted. The philosophy has been to allow committee and council meetings to proceed as much as possible as they do in normal circumstances, allowing for the constraints of remote access. Some parts of the existing orders have been omitted, for example, the parts requiring reporting by outside body representatives, clearance of the meeting room and the existing procedure allowing remote access by exception.

IMPLICATIONS	
Finance	There are no financial implications arising directly from this report.
Legal	Covered in the report
Community Safety	No implications
Human Rights and Equalities	The Flexibility regulations make it possible for meetings to be accessible to a wider range of members while they remain in force
Sustainability and Environmental Impact	No implications
Health & Safety and Risk Management	Holding meetings by videoconference is presently the only way of complying with government guidance aimed at curtailing the spread of the coronavirus.

LEAD AUTHOR	CONTACT DETAILS	DATE
Ian Curtis	<a href="mailto:ian.curtis@fyle.gov.uk">ian.curtis@fyle.gov.uk</a> ; 01253 658506	12 June 2020

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Rules of Procedure for Remote Meetings	May 6 2020	<a href="http://www.fylde.gov.uk">www.fylde.gov.uk</a>

Attached documents  
Rules of Procedure for Remote Meetings

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<sup>2</sup> Regulation 5(6)



## PART 4A – RULES OF PROCEDURE FOR REMOTE MEETINGS

Effective from 6 May 2020 until such time as the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations cease to be in force

### Standing Orders of Fylde Borough Council

The Council has made the following Standing Orders in pursuance of its powers under regulation 5(6) of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020, and any other relevant legislation:

#### 1 APPLICATION OF RULES

- 1.1 While the regulations are in force, these rules apply instead of the Council's standing orders to meetings held by remote attendance. They must be read alongside the regulations.
- 1.2 All these rules apply to council meetings.
- 1.3 Only some of these rules apply to committee and sub-committee meetings. These are shown in italics.
- 1.4 For the avoidance of doubt when a Procedure Rule states that a request should be made in writing then this includes a request submitted by electronic means.

#### 2 REMOTE ATTENDANCE

##### 2.1 *Accessing the meeting by remote attendance*

- (a) All meetings will be held using such [videoconferencing](#) platform as is specified from time to time by the Chief Executive ("the VCP").
- (b) A member attends a meeting by accessing it through the link provided in any invitation to the meeting, or otherwise accessing it through The VCP.

##### 2.2 *Early arrival*

*Members should access the meeting at least ten minutes before it is due to start, to enable officers to try to resolve any technical issues that might hinder the member's participating in the meeting.*

##### 2.3 *Camera and microphone settings*

- (a) Members must keep their microphone muted unless they have been invited to speak by the Mayor or Chairman.
- (b) Members must always keep their camera on during the meeting.
- (c) Members must, as far as possible, locate their device so that no other person is visible in the frame.

##### 2.3 *Meeting host*

- (a) The host facilitates and administers the technical aspects of the meeting on behalf of the Mayor or Chairman. The host may, in particular:
  - (i) Unmute and mute a member's microphone

(ii) *Introduce and remove meeting participants other than members (for example, public speakers).*

(b) *The host will ensure that members of the public accessing the meeting through The VCP are not visible to on screen and have their microphones muted unless participating in a meeting as, for example, public speakers.*

(c) *The host will disable the chat function except where it is specifically allowed under these rules.*

(d) *The host will disable screen sharing except for officers making presentations*

## **2.4 Catching the chairman's eye**

*Members should "catch the chairman's eye" by using the 'raise hand' function in the VCP, which will automatically give the Chairman a list of members seeking to contribute to the meeting.*

## **3 DEFINITIONS**

In these rules,

- (i) 'chairman' means the person presiding at a meeting. This includes the vice-chairman, or any other person presiding at a meeting in the absence of the chairman.
- (ii) where the context permits, "Mayor" includes the Deputy Mayor, or any other person presiding at a council meeting in the absence of the Mayor.
- (iii) "special meeting" means a meeting of the council other than an ordinary meeting
- (iv) Reference to "the regulations" or to a specific regulation refer to the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020
- (v) References to a member or other person being present at a meeting are references to being present by remote attendance as defined in the regulations

## **4 MEETINGS OF THE COUNCIL**

### **4.3 Ordinary Meetings**

Ordinary meetings will:

- (i) elect a person to preside if the Mayor and Deputy Mayor are not present;
- (ii) receive any declarations of interest from members;
- (iii) approve the minutes of the last meeting;
- (iv) deal with any questions from members of the council submitted under rule 9;
- (v) deal with any written questions from members of the public submitted under Article 15;
- (vi) deal with any business from the last Council meeting;
- (vii) consider any recommendations and/or reports from committees;
- (viii) consider notices of motion in the order in which they have been received; and
- (ix) consider any other business specified in the summons to the meeting.

### **4.4 Special Meetings**

- (a) Special meetings can be called in five ways:
  - (i) by the Mayor at any time;

- (ii) by a resolution of the Council;
- (iii) by the Chief Executive after consultation with the Leader of the Council;
- (iv) by any five members of the Council if they have followed the procedure in 4.4(b);
- (v) by the Council's Monitoring Officer.

(b) If five or more members want to call a special meeting, they must each send an email request for a special meeting to the Mayor via the monitoring officer. If the Mayor refuses to call a meeting or fails to call a meeting within seven days of receiving the fifth request, the five members may call a special meeting themselves.

## 5 TIME AND PLACE OF MEETINGS

The Chief Executive will fix the time and place of meetings.

## 6 NOTICE OF AND SUMMONS TO MEETINGS

*The Chief Executive will give notice of the time and place of any meeting as permitted by the regulations. At least five clear working days before a meeting, the Chief Executive will send a summons as required by law to every member of the Council or the relevant committee or sub-committee at their home address, or other nominated address, which includes electronic address (in accordance with Local Government (Electronic Communications) (England) Order 2015).*

## 7 CHAIRMAN OF MEETING

- 7.1 The Mayor shall preside at all council meetings.
- 7.2 If the Mayor is absent from a council meeting, then the Deputy Mayor, if present, shall preside.
- 7.3 If both the Mayor and Deputy Mayor are absent from a council meeting, the council will elect another member to preside. In such cases the Chief Executive (or his representative) shall conduct the meeting until such time as the member to preside at the meeting has been chosen.
- 7.4 *If the chairman is absent from a meeting of a committee or sub-committee, the vice-chairman shall preside.*
- 7.5 *If both the chairman and vice-chairman are absent from a meeting of a committee or sub-committee, the committee or sub-committee will elect another member to preside. In such cases the Chief Executive (or his representative) shall conduct the meeting until such time as the member to preside at the meeting has been chosen.*
- 7.6 *The meeting host assists the chairman or Mayor by facilitating and administering the technical aspects of the meeting.*

## 8 QUORUM AND TECHNICAL PROBLEMS

- 8.1 If the Mayor believes that there are fewer than thirteen members accessing the meeting, or that a significant number of members of the public who wish to access the meeting are unable to do so because of a technical issue, the Mayor will adjourn the meeting. The remaining business will be considered at a time and date fixed by the Mayor. If she does not fix a date, the remaining business will be considered at the next ordinary meeting.
- 8.2 If, notwithstanding the meeting still being quorate, the Mayor believes that a number of members are unable to access the meeting because of a technical problem that it would be unreasonable to expect those members to be able to resolve, the Mayor may (but need not) adjourn the meeting

so that the technical problem can be investigated and (if capable of speedy resolution) resolved. The Mayor will resume the meeting immediately she is satisfied that the technical problem has been resolved, or is incapable of speedy resolution.

## **9 QUESTIONS FROM MEMBERS OF THE COUNCIL<sup>1</sup>**

- 9.1 A councillor may, subject to 9.2, ask a question of the Leader of the Council or the chairman of a committee at an ordinary meeting of the council.
- 9.2 Questions may only be asked under 9.1 if:
- (i) The councillor who wants to ask the question has sent it by email to the Director of Resources before 4.30 p.m. on the fourth working day before the meeting (this means that if the meeting is to be held on a Monday, the question must be sent before 4.30pm on the Tuesday before) and has identified who he wants to answer it;
  - (ii) The question is relevant to the terms of reference of the committee whose chairman is to answer it, or is to be answered by the leader of the council;
  - (iii) The question will take no longer than two minutes to ask; and
  - (iv) At the time the question is given to the Director of Resources, no more than four questions to be asked under this rule at the meeting concerned have previously been given to her
- 9.3 The member who is to answer the question will be given at least 24 hours' notice of it.
- 9.4 The question must be answered at the meeting by the member to whom it is directed, unless:
- (i) the member is not attending the meeting, or
  - (ii) the question is directed to the leader of the council,
- in either of which cases, the leader of the council may nominate any other member to answer, so long as that member has consented before the meeting.
- 9.5 The councillor who has asked the question may then ask one supplementary question, which must arise out of the answer given to the original question and take no longer than two minutes to ask, and the member who answered the original question must answer the supplementary question.
- 9.6 No debate will be allowed arising out of a question asked or answer given under this rule.
- 9.7 No councillor may ask more than one question under this rule (excluding supplementary questions under 9.5) at any meeting.

## **10 VARIATION OF ORDER OF BUSINESS**

Business at an ordinary or special meeting shall be considered in the order in which it is set out on the summons for the meeting, but may be varied:

- (a) by the Mayor at his/her discretion;
- (b) by a proposition (which need not be in writing) which is duly moved, seconded, put without discussion and carried by the Council.

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<sup>1</sup> For clarity members of the public are able, under the procedure rules, to address Council and its committees. The specific arrangements and protocol governing this can be found in Part 2, Article 15 of this Constitution.

## 11 MOTIONS

### 11.1 Notice of Motion

(a) Purpose and limitations

Notice of motion is a procedure that allows members of the council to ask the council to discuss any matter for which the Council has a responsibility, or which affects the Fylde area.

(b) Giving notice

Any member of the council can give notice by email to the Director of Resources (or a member of the Governance Team in his/her absence) of a motion they wish to move.

The Director will publish the motion on the council's website and arrange for it to be placed on the agenda of the next available ordinary council meeting. The "next available" meeting means the first meeting falling more than eight working days after the written notice has been given. Motions will be listed on the agenda in the order in which notice was received.

(c) At the council meeting

The motion will be debated at council subject to it being moved as set out in this rule and seconded. Only the member who gave written notice of a motion under this rule may move it at the council meeting, unless the council indicates its assent to another member moving it in their place.

### 11.2 Procedural Motions

The following motions may be moved at any council meeting without notice:

- (i) to appoint a chairman of the meeting at which the motion is moved;
- (ii) to amend the minutes;
- (iii) to change the order of business in the agenda;
- (iv) to refer something to an appropriate body or individual;
- (v) to appoint a committee or member arising from an item on the agenda;
- (vi) to receive reports or adoption of recommendations of committees or officers and any resolutions following from them;
- (vii) to withdraw a motion;
- (viii) to amend a motion;
- (ix) to proceed to the next business;
- (x) that the question be now put;
- (xi) to adjourn a debate;
- (xii) to adjourn a meeting;
- (xiii) to suspend a council procedure rule;
- (xiv) to exclude the public and press in accordance with the Access to Information Procedure Rules;

- (xv) to not hear further a member named under rule 17.1 or to exclude them from the meeting under rule 17.2; and
- (xvi) to give the consent of the Council where its consent is required by this Constitution.

## **12 RULES OF DEBATE**

### **12.1 Purpose of rules**

The purpose of the rules of debate is to make sure that the council makes informed decisions after giving adequate consideration to any alternative choices. They set out how a member can make a proposal for the council to vote on and how the council should discuss the proposal.

### **12.2 Moving a motion**

The member who wants to make a proposal must tell the council meeting what he is proposing and explain why he is proposing it. Unless it is a notice of motion under rule 11.1, the Mayor will require the proposal to be given to him using the chat function before it is discussed, consistent with paragraph 12.7(b) below.

### **12.3 Seconding a motion**

Before a proposal can be discussed by the council meeting, it needs to be seconded by another member. The member who seconds the proposal can speak when he seconds it or can elect to speak later in the debate instead.

### **12.4 Discussing a motion**

When a proposal has been moved and seconded it is called a motion and the council meeting must discuss it and vote on it, subject to the rules on closure motions.

### **12.5 Speaking about a motion**

Every member may speak once on any motion for up to ten minutes, when invited to do so by the Mayor.

### **12.6 Right of reply**

The member who proposed the motion can speak again on it the end of the debate, immediately before the Mayor asks members to vote on it.

### **12.7 Amending a motion**

- (a) When speaking on a motion, a member may propose an amendment to it. An amendment is a proposal to change the motion that is being discussed by taking words out of it or adding words to it or both, as long as the effect of the amendment could not be achieved by defeating the motion.
- (b) Before a proposal to amend a motion can be discussed by the council meeting, it needs to be seconded by another member. The member who seconds the proposal can speak when he seconds it or can elect to speak later in the debate instead.
- (c) When a proposal to amend a motion has been moved and seconded it is called an amendment and the council meeting must discuss it and vote on it, subject to the rules on closure motions.
- (d) Every member may speak once on any amendment for up to five minutes, when invited to do so by the Mayor.
- (e) The member who proposed the original motion has the right to speak last in the debate about any amendment to it, immediately before the Mayor asks members to vote on the amendment.

- (f) If an amendment is carried, the Mayor will read out the amended motion, which thus replaces the original motion. Members can then continue to debate the motion and may propose further amendments, which will be dealt with under this rule. After any debate and if there are no further amendments, the Mayor will put the substantive motion as amended to the vote.
- (g) When a member has proposed an amendment to a motion, no-one can propose another amendment until the amendment that has been proposed has been voted on (or has failed because it has not been seconded), although the Mayor may in his/her sole discretion accept notice of further amendment(s).
- (h) All amendments should be emailed to officers prior to the [Council] meeting. If this is not possible, the Mayor will require the amendment to be given to him using the chat function before it is discussed so that it can be read aloud, thus providing clarity to all members.

#### **12.8 When a member may speak again**

A member who has spoken on a motion or an amendment may not speak again on the motion or amendment he has spoken on, except;

- (a) to move a further amendment if the motion has been amended since he/she last spoke;
- (b) in exercise of a right of reply;
- (c) on a point of order; and
- (d) by way of personal explanation.

#### **12.9 Alteration or withdrawal of motion or amendment**

- (a) A member who has proposed a motion or amendment may only alter or withdraw it if his seconder and the meeting agrees (the meeting's consent to be signified by a vote, but without discussion) and any alteration is one that could have been made as an amendment.
- (b) If an amendment is moved, the proposer of the original motion has the right of reply at the close of the debate on the amendment.
- (c) The proposer of the amendment has no right of reply to the debate on his or her amendment.

#### **12.10 Motions which may be moved during debate**

When a motion or amendment is being debated, no-one may propose any other motion or amendment except the following procedural motions:

- (i) to amend the motion presently being debated;
- (ii) to proceed to the next business (*see rule 12.11(b)*);
- (iii) that the question be now put (*see rule 12.11(c)*);
- (iv) to adjourn a debate (*see rule 12.11(d)*);
- (v) to adjourn a meeting (*see rule 12.11(d)*);
- (vi) to exclude the public and press in accordance with the Access to Information Rules; and
- (vii) to not hear further a member named under rule 17.1 or to exclude them from the meeting under rule 17.2.

#### **12.11 Closure motions**

- (a) A member may propose, without comment, at the end of a speech of another member:
  - (i) to proceed to the next business;
  - (ii) that the question be now put;
  - (iii) to adjourn a debate; or
  - (iv) to adjourn a meeting.

If the proposal is seconded, the relevant following procedure will apply.

- (b) **On a motion to proceed to next business:**
  - (i) The Mayor must immediately put the procedural motion to the vote, without discussion.
  - (ii) If the motion is approved, then the meeting must proceed to the next business on the agenda and any motion or amendment then being debated is deemed to be lost.
  - (iii) If the proposal is defeated the debate on the business under discussion immediately before the motion was proposed will continue.
- (c) **On a motion that the question be now put:**
  - (i) The Mayor must inform the meeting whether he thinks that the motion or amendment under debate has been sufficiently discussed.
  - (ii) If he considers that it has not been sufficiently discussed, he must allow the debate to continue.
  - (iii) If he considers that it has been sufficiently discussed, he/she must put the procedural motion to the vote.
  - (iv) If the procedural motion is approved during a debate on an amendment, the Mayor will allow the member who proposed original motion his right of reply before putting the amendment to the vote.
  - (v) Otherwise, the Mayor will allow the member who proposed the original motion his right of reply before putting the motion to the vote.
  - (vi) If a motion that the question be now put is passed when the council is debating a motion rather than an amendment, any amendment of which a member has given notice, but which has not been formally proposed, can not be pursued.
- (d) **On a motion to adjourn the debate or adjourn a meeting:**
  - (i) The Mayor must inform the meeting whether he thinks that the motion or amendment under debate is likely to be properly debated without an adjournment
  - (ii) If he considers that it is likely to be properly debated without an adjournment, he must allow the debate to continue
  - (iii) If he considers that it is not likely to be properly debated without an adjournment, he must put the procedural motion to the vote
  - (iv) If the procedural motion is approved, the debate or meeting will be adjourned.

#### **12.12 Point of order**

If a member believes that there has been a breach of these standing orders or any other legal requirement at a council meeting, he may raise it at the meeting by making a point of order. He must specify the breach of procedure to the Mayor, whose ruling will be final.



**12.13 Personal explanation**

A member may make a personal explanation at a council meeting. A personal explanation may only relate to some material part of an earlier speech by the member that may appear to have been misunderstood in the present debate. The ruling of the Mayor on the admissibility of a personal explanation will be final.

**13 PREVIOUS DECISION AND MOTIONS****13.1 Motion to rescind a previous decision**

*A decision made at a Council or Committee meeting within the past six months can only be re-opened by a notice of motion if given by at least eight members (from at least two political groups), of the Council or the Committee in question. Where a committee has fewer than eight members, the notice of a motion must be given by all of them.*

**13.2 Motion similar to one previously rejected**

A motion or amendment in similar terms to one that has been rejected at a meeting of Council in the past six months (other than a motion deemed to have been lost under rule 12.11(b)) can only be moved following a notice of motion signed by at least eight members. Once the motion or amendment is dealt with, no one can propose a similar motion or amendment for six months.

**14 VOTING****14.1 Majority**

*Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those members voting and accessing the meeting at the time the question was put.*

**14.2 Chairman's casting vote**

*If there are equal numbers of votes for and against, the chairman will have a second or casting vote. There will be no restriction on how the chairman chooses to exercise a casting vote.*

**14.3 Method of voting**

*Unless a recorded vote is required under rule 14.4, the chairman shall take the vote using the functionality of the VCP, or if there is no substantial dissent, by the affirmation of the meeting.*

**14.4 Recorded vote**

*There will be a recorded vote taken when five members request it prior to the vote being taken on the item under discussion.*

**14.4 Right to require individual vote to be recorded**

*Where any member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.*

**15 MINUTES**

*The minutes of a meeting of the Council or a Committee must be presented for acceptance at the next ordinary or special meeting of the council or the next meeting of the Committee. The only matter which may be discussed is the accuracy of the minutes. Any challenge to the previous Council Minutes must be submitted to the Monitoring Officer within five working days of the formal publication of the Minutes. Verbal challenges during the meeting will not be accepted.*

**16 EXCLUSION OF PUBLIC**

*Members of the public and press may only be excluded under the Access to Information Rules in Part 4e of this Constitution.*

**17 MEMBERS' CONDUCT****17.1 Member not to be heard further**

*If a member persistently disregards the ruling of the chairman by behaving improperly or offensively or deliberately obstructs business, the chairman may propose that the member be not heard further. If seconded, the motion will be voted on without discussion. If the motion is passed, the host will mute the member's microphone for the remainder of the meeting*

**17.2 Member to leave the meeting**

*If the member continues to behave improperly after such a motion is carried, the chairman may propose that the member leaves the meeting. If seconded, the motion will be voted on without discussion. If a motion is passed, the host will exclude the member from the remainder of the meeting.*

**18 QUORUM OF COMMITTEES/SUB-COMMITTEES AND TECHNICAL PROBLEMS**

**18.1** *The quorum of a committee or sub-committee is one quarter of its membership, or three, whichever is greater.*

**18.2** *If the chairman of a committee or sub-committee believes that a quorum is not accessing the meeting, or that a significant number of members of the public who wish to access the meeting are unable to do so because of a technical issue, the chairman will adjourn the meeting. The remaining business will be considered at a time and date fixed by the chairman. If he does not fix a date, the remaining business will be considered at the next ordinary meeting.*

**18.3** *If, notwithstanding the meeting still being quorate, the chairman believes that a number of members of the committee or sub-committee are unable to access the meeting because of a technical problem that it would be unreasonable to expect those members to be able to resolve, the chairman may (but need not) adjourn the meeting so that the technical problem can be investigated and (if capable of speedy resolution) resolved. The chairman will resume the meeting immediately he is satisfied that the technical problem has been resolved, or is incapable of speedy resolution.*

**19 ELECTION OF CHAIRMAN OF COMMITTEE**

- (a) *The Council shall appoint a Chairman and Vice-Chairman for the year in respect of each Committee. The Council may only remove a chairman or vice-chairman:
 
  - (i) *by notice of motion under 11.1, or*
  - (ii) *by removing him from the committee in accordance with the wishes of a political group under section 16(2) of the Local Government and Housing Act 1989.**
- (b) *In the absence from a meeting of the Chairman and Vice-Chairman the Committee must appoint a Chairman for that meeting.*
- (c) *A Sub-committee shall appoint a chairman and vice-chairman at its first meeting.*

**20 SPECIAL MEETINGS OF THE COMMITTEE**

- (a) *The Chairman of a Committee may call a special meeting of the Committee at any time.*

- (b) *A special meeting of a Committee shall also be called if the chief executive receives emails from at least one-third of the whole number of the Committee, provided that he is satisfied that, taken together, the emails specify a subject matter for the proposed meeting which is within the Terms of Reference of the particular Committee.*
- (c) *The special meeting must be called within 10 working days of receipt of the final email needed to trigger it. The summons to the special meeting will set out the business to be considered and no business other than set out in the summons can be considered at the meeting.*

## **21 ENTITLEMENT TO ATTEND MEETINGS (INCLUDING SUBSTITUTIONS)**

- (a) *Members of the Council may access any Committee or Sub-committee even if they are not a member of it and may address the committee once on each item being considered by the committee, but must not otherwise take part in the proceedings without the consent of the Chairman, and must not vote.*
- (b) *The host will ensure a member accessing the meeting for the purposes in (a) will, unless addressing the committee, be not visible on screen and will have their microphone muted.*
- (c) *Members of the public can address council or committee meetings as permitted by Article 15 of the Council's Constitution, or exceptionally, with the consent of the chairman.*
- (d) *If he will be absent from the whole of a committee or sub-committee meeting, a member may, subject to paragraph (d), be represented by a named substitute member, but only if the intended substitution is notified to the Director of Resources (or her representative) no later than the day before the meeting either:*
  - (i) *by the member who will be absent; or*
  - (ii) *by or on behalf of the leader of his political group (but only if the member who will be absent does not notify a substitution at any time before the start of the meeting).*
- (e) *No member may act as substitute at a meeting of a committee if he has previously acted as substitute at three meetings of that committee during the municipal year.*
- (f) *21(c) and (d) do not apply to the Planning Committee. Rule 23 applies instead.*
- (g) *Substitute members may speak, propose or second motions and amendments and vote as though they were a member of the Committee or Sub-Committee.*

## **22 SUBSTITUTES AT PLANNING COMMITTEE**

- (a) *If he will be absent from the whole of a meeting of the Planning Committee, a member of that committee may, subject to paragraph (b), be represented by a Reserve Planning member but only if the intended substitution is notified to the Director of Resources (or her representative) no later than the day before the meeting either:*
  - (i) *by the member who will be absent; or*
  - (ii) *by or on behalf of the leader of his political group (provided that the member who will be absent does not notify a substitution at any time before the start of the meeting).*
- (b) *A Reserve Planning Member is a member who has been named as such by the Planning Committee.*
- (c) *There can be no more than ten Reserve Planning Members at any time.*

- (d) *The Planning Committee can only name as a Reserve Planning Member a member whom they consider:*
  - (i) *has a sufficient level of experience or training to enable him to contribute to the work of the committee; and*
  - (ii) *is willing and available to frequently attend meetings of the committee (whether or not acting as a substitute).*

## **23 CONFIDENTIALITY**

Members should not disclose (whether verbally, in writing or otherwise) any information, material or matter presented to or considered or decided by a meeting of the Council or Committee/Sub-committee following the exclusion of the press and public from the meeting or meetings concerned unless the Chief Executive has expressly consented in writing.

## **24 DECISIONS AFFECTING PERSONS EMPLOYED BY THE COUNCIL**

*If any matter or question arises at a meeting of the Council, a Committee or Sub-committee concerning the appointment, conduct, promotion, dismissal, suspension, salary, pension, conditions of service or other personal facts or circumstances of any person employed by the Council, that matter or question shall not be discussed until the meeting has decided whether or not to exercise its powers to exclude the press and public during the consideration of that item, pursuant to Section 100A(4) of the Local Government Act 1972 or any re-enactment of that legislation.*

## **25 DECISION OF THE CHAIRMAN**

- (a) *The ruling of the Chairman at any meeting of the Council, or a Committee/sub-committee concerning the conduct of that meeting, the interpretation, construction or application of these rules or questions of order, procedure, propriety, relevancy or regularity; shall be final and shall not be challenged or disputed at any meeting of the Council, or a Committee.*
- (b) *The Chairman must stop any discussion which, in his/her opinion, is irrelevant to the consideration of the business before the meeting or does not concern the economic, social or environmental well being of the district (as the case may be).*

## **27 SUSPENSION AND AMENDMENT OF STANDING ORDERS**

### **27.1 Suspension**

*Any of these standing orders may be suspended by motion for the duration of the meeting. But the motion to suspend must be on notice unless at least half of the whole number of members of the Council, committee or sub-committee are present. Suspension can only be for the duration of the meeting.*

### **27.2 Amendment**

Any motion to add to, vary or revoke these standing orders, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council except where it is a result of a proposal put forward by the Audit and Standards Committee or a proposal from the Chief Executive or the Monitoring Officer in accordance with provision 13.05 'Amendments and Alterations Generally'.



## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	COUNCIL	20 JULY 2020	9
<b>APPOINTMENT OF LEADER AND DEPUTY LEADER</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

Members are invited to appoint a leader and deputy leader of the council in accordance with the council's constitution.

### RECOMMENDATION

1. To appoint a leader and deputy leader of the council to hold office until the next council elections.

### SUMMARY OF PREVIOUS DECISIONS

A leader and deputy leader were last appointed by full council on 22 May 2019.

CORPORATE PRIORITIES	
Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	✓
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	✓
Working with all partners ( <b>Vibrant Economy</b> )	✓
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	✓
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	✓

### REPORT

1. After several years' service, Councillor Sue Fazackerley stood down from the leadership of the council in April this year. Councillor Karen Buckley, as deputy leader, has been acting leader since Councillor Fazackerley's resignation.
2. The council's constitution requires that in the event of a casual vacancy in the office of Leader, the Council shall fill the vacancy as soon as reasonably practicable and the person elected shall hold office until after the next council elections<sup>1</sup>. The council may also appoint a deputy leader.

<sup>1</sup> The term of office of the leader also ends if they resign, cease to be a councillor, or are removed by resolution of the council.

3. Members are therefore invited to appoint a leader and deputy leader. It is understood that the majority Conservative group will propose that Councillor Buckley be appointed as leader of the council and Councillor Roger Small be appointed as deputy leader.

IMPLICATIONS	
Finance	None arising from the report.
Legal	None arising from the report.
Community Safety	None arising from the report.
Human Rights and Equalities	None arising from the report.
Sustainability and Environmental Impact	None arising from the report.
Health & Safety and Risk Management	None arising from the report.

LEAD AUTHOR	CONTACT DETAILS	DATE
Ian Curtis	01253 658506	June 11 2020

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Constitution	2019	<a href="#">Constitution</a>

## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	COUNCIL	20 JULY 2020	10
<b>CONFIRMATION OF MAYOR, COMMITTEE APPOINTMENTS AND WORKING GROUPS</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

The report confirms that term of office of the present mayor and the current committee and working group appointments were extended by emergency legislation introduced to deal with the coronavirus pandemic.

Members are also asked to approve changes to committee membership put forward by the political groups.

### RECOMMENDATIONS

1. Make the changes to committee memberships, chairmanships and vice-chairmanships set out in the table in appendix 1 to the report.
2. Note and endorse the list of current working groups set out in appendix 3 to the report.

### SUMMARY OF PREVIOUS DECISIONS

The council receives a report each year at the meeting preceding its annual meeting. In an election year, the report is presented to the annual meeting.

CORPORATE PRIORITIES	
Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	✓
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	✓
Working with all partners ( <b>Vibrant Economy</b> )	✓
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	✓
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	✓

### REPORT

#### OFFICE OF MAYOR

1. Legislation<sup>1</sup> and the council's constitution normally require the election of a mayor to take place at the council's annual meeting. However, the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020

<sup>1</sup> Local Government Act 1972, section 4(1)



allowed the cancellation of the annual meeting and automatically extended the term of office of the existing mayor to the annual meeting to be held in 2021.

2. Accordingly, Councillor Angela Jacques continues in office as the mayor of the borough until the annual meeting due to be held in May 2021, unless removed from office before then.

#### APPOINTMENT OF COMMITTEES

3. Under its constitution, the council is normally required annually to decide which committees to establish for the municipal year; decide the size and terms of reference for those committees; and decide the allocation of seats. However, those requirements are disapplied for the present by the regulations referred to in paragraph 1. Accordingly, this report needs only deal with any changes to membership of the committees as proposed by the political groups.
4. The Conservative group has proposed some changes to committee appointments. Following the changes, the committees would be as shown in the table at appendix 1. For comparison, the committees as they presently stand are shown in the table at appendix 2. No other political group has proposed any changes.
5. The Local Government and Housing Act 1989 requires the council to allocate seats in accordance with the wishes of any political group to whom the seats have been allocated. Accordingly, the council is invited to accept the proposed changes to committee appointments reflected in appendix 1. For convenience, proposed changes to membership of the Member Development Steering Group and the council's representation on the Blackpool, Fylde and Wyre Economic Prosperity Board (which is a joint committee) are also included in the tables, and the council is invited to accept those changes as well.
6. The table in appendix 3 sets out, for members to note and endorse, the composition of the various working groups that presently sit.

IMPLICATIONS	
Finance	None arising from the report.
Legal	Political balance is a legal requirement for most committees of the council.
Community Safety	None arising from the report.
Human Rights and Equalities	None arising from the report.
Sustainability and Environmental Impact	None arising from the report.
Health & Safety and Risk Management	None arising from the report.

LEAD AUTHOR	CONTACT DETAILS	DATE
Ian Curtis	01253 658506; ian.curtis@fylde.gov.uk	11 June 2020

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Committee Terms of Reference	2019	<a href="#">Constitution</a>

Appendix 1 – List of committee membership as proposed

Appendix 2 – List of committee membership as present

Appendix 3 – List of current working groups and their membership

# Item 10 - Appendix 1 - Proposed Membership

Committee Membership 2019 - 2020 (amended at Council 15/7/19 )

	Audit & Standards	Chief Officer Employment	Environmental, Health & Housing	Finance & Democracy	Licensing*	Operational Management	Planning	Public Protection	Tourism & Leisure	Blackpool, Fylde & Wyre Economic Prosperity Board *	Member Development Steering Group *
CH	Singleton, J	Buckley, K	Threlfall, T	Buckley, K	Green, S	Small, R	Fiddler, T	Green, S	Little, C	Buckley, K	Andrews, F
VC	Gaunt, E	Small, R	Nixon, J	Settle, V	Harrison, G	Kirkham, J	Redcliffe, R	Harrison, G	Sayward, M		Nash-Walker, S
3	Brearley, P	Collins, P	Andrews, F	Anthony, P	Blackshaw, B	Bamforth, M	Armit, T	Blackshaw, B	Anthony, P		Collins, D
4	Collins, D	Oades, L	Brearley, P	Collins, P	Clayton, A	Brickles, J	Dixon, C	Clayton, A	Armit, T		Hardy, P
5	Collins, P	Redcliffe, R	Griffiths, N	Gaunt, E	Collins, D	Clayton, A	Mulholland, K	Jacques, A	Blackshaw, B		Morris, M
6	Nash, E	Fazackerley, S	Hardy, P	Nulty, L	Fazackerley, S	Dixon, C	Nixon, J	Andrews, F	Green, S		O'Rourke, D
7	Gill, B		Harris, W	O'Rourke, D	Jacques, A	Harris, W	Nulty, L	Henshaw, K	Harrison, G		Willder, V
8	Mulholland, K		Aitken, B	Oades, L	Andrews, F	Hodgson, P	Oades, L	Hodgson, P	Lee, M		
9	Nash-Walker, S		Henshaw, K	Redcliffe, R	Henshaw, K	Rigby, B	O'Rourke, D	Sayward, M	Mulholland, K		
10			Lloyd, R	Silverwood, E	Hodgson, P	Mulholland, K	Speak, H	Thomas, R	Settle, V		
11	Broughton, H*	Broughton, H*	Morris, M	Singleton, J	Lee, M	Willder, V	Thomas, R	Trudgill, S	Silverwood, E		
12	Horrocks, B*	Horrocks, B*	Rigby, B	Withers, M	Sayward, M	Trudgill, S	Trudgill, S		Fazackerley, S		
13					Thomas, R						
14					Trudgill, S						
15					Willder, V						
							Substitutes x 10				
							Brickles, J				
							Clayton, A				
							Gill, B				
							Griffiths, N				
							Hardy, P				
							Hodgson, P				
							Andrews, F				
							Jacques, A				
							Kirkham, J				
							Willder, V				
	Conservative: 5	Conservative: 4	Conservative: 7	Conservative: 8	Conservative: 0	Conservative: 7	Conservative: 7	Conservative: 7	Conservative: 7		Conservative: 0
	Independent: 3	Independent: 2	Independent: 4	Independent: 4	Independent: 0	Independent: 4	Independent: 4	Independent: 4	Independent: 4		Independent: 0
Other	Non Aligned: 1	Non Aligned: 0	Non Aligned: 1	Non Aligned: 0	Non Aligned: 0	Non Aligned: 1	Non Aligned: 1	Non Aligned: 0	Non Aligned: 1		Non Aligned: 0
	* Statutory Independent Persons	* Statutory Independent Persons			* not required to be politically balanced					* not required to be politically balanced	* not required to be politically balanced
	Lead Officer - Paul O'D		Lead Officer - Tracy M	Lead Officer - Allan O	Lead Officer - Ian C	Lead Officer - Allan O	Lead Officer - Mark E	Lead Officer - Ian C	Lead Officer - Paul W		Lead Officer - Lyndsey L

# Item 10 - Appendix 2 - Current Membership

## Committee Membership 2019 - 2020 (amended at Council 15/7/19 )

	Audit & Standards	Chief Officer Employment	Environmental, Health & Housing	Finance & Democracy	Licensing*	Operational Management	Planning	Public Protection	Tourism & Leisure	Blackpool, Fylde & Wyre Economic Prosperity Board *	Member Development Steering Group *
CH	Singleton, J	Fazackerley, S	Aitken, B	Buckley, K	Jacques, A	Small, R	Fiddler, T	Jacques, A	Little, C	Fazackerley, S	Thomas, R
VC	Nash, E	Buckley, K	Willder, V	Settle, V	Andrews, F	Threlfall, T	Redcliffe, R	Andrews, F	Nixon, J		
3	Brearley, P	Collins, P	Andrews, F	Anthony, P	Blackshaw, B	Bamforth, M	Armit, T	Blackshaw, B	Anthony, P		Collins, D
4	Collins, D	Oades, L	Brearley, P	Collins, P	Clayton, A	Brickles, J	Dixon, C	Clayton, A	Armit, T		Hardy, P
5	Collins, P	Redcliffe, R	Griffiths, N	Gaunt, E	Collins, D	Clayton, A	Mulholland, K	Green, S	Blackshaw, B		Morris, M
6	Gaunt, E	Small, R	Hardy, P	Nulty, L	Fiddler, T	Dixon, C	Nixon, J	Harrison, G	Green, S		Nash-Walker, S
7	Gill, B		Harris, W	O'Rourke, D	Green, S	Harris, W	Nulty, L	Henshaw, K	Harrison, G		O'Rourke, D
8	Mulholland, K		Harrison, G	Oades, L	Harrison, G	Hodgson, P	Oades, L	Hodgson, P	Lee, M		Sayward, M
9	Nash-Walker, S		Henshaw, K	Redcliffe, R	Henshaw, K	Kirkham, J	Sayward, M	Sayward, M	Mulholland, K		Willder, V
10			Lloyd, R	Silverwood, E	Hodgson, P	Mulholland, K	Speak, H	Thomas, R	Settle, V		
11	Broughton, H*	Broughton, H*	Morris, M	Singleton, J	Lee, M	O'Rourke, D	Thomas, R	Trudgill, S	Silverwood, E		
12	Horrocks, B*	Horrocks, B*	Rigby, B	Withers, M	Sayward, M	Trudgill, S	Trudgill, S		Small, R		
13					Thomas, R						
14					Trudgill, S						
15					Willder, V						
							Substitutes x 10				
							Brickles, J				
							Clayton, A				
							Gill, B				
							Griffiths, N				
							Hardy, P				
							Hodgson, P				
							Andrews, F				
							Jacques, A				
							Kirkham, J				
							Willder, V				
	Conservative: 5	Conservative: 4	Conservative: 7	Conservative: 8	Conservative: 0	Conservative: 7	Conservative: 7	Conservative: 7	Conservative: 7		Conservative: 0
	Independent: 3	Independent: 2	Independent: 4	Independent: 4	Independent: 0	Independent: 4	Independent: 4	Independent: 4	Independent: 4		Independent: 0
Other	Non Aligned: 1	Non Aligned: 0	Non Aligned: 1	Non Aligned: 0	Non Aligned: 0	Non Aligned: 1	Non Aligned: 1	Non Aligned: 0	Non Aligned: 1		Non Aligned: 0
	* Statutory Independent Persons	* Statutory Independent Persons			* not required to be politically balanced					* not required to be politically balanced	* not required to be politically balanced
	Lead Officer - Paul O'D		Lead Officer - Tracy M	Lead Officer - Allan O	Lead Officer - Ian C	Lead Officer - Allan O	Lead Officer - Mark E	Lead Officer - Ian C	Lead Officer - Paul W		Lead Officer - Lyndsey L

Cross-cutting Working Groups	Formed	Remit	Membership and date appointed
Leadership Board	2020	To provide a steer on corporate priorities	Chairmen for the time being of each programme committee and the Planning Committee
Planning Committee Working Groups	Formed	Remit	Membership (and date appointed)
SHLAA Steering Group		To consult with relevant stakeholders to keep the strategic housing land availability assessment up to date. Two Councillors to attend in an overseeing role.	<u>12 June 2019</u> Peter Collins, Linda Nulty
Local Listings Project Board	2016	To establish a process and protocol, to be applied to compiling a local list of heritage assets including buildings. To undertake research in this regard and to make recommendations to Planning Committee in respect of the potential for local listing and related conservation issues.	<u>12 June 2019 &amp; 3 July 2019</u> Richard Redcliffe, Julie Brickles, Ray Thomas, Heather Speak
Arboriculture & Landscape Strategy Working Group	13-Sep-17	Steer the formation of an Arboriculture & Landscape Strategy for the borough.	<u>Planning 13 Nov 2019</u> Chris Dixon, Jayne Nixon, Ray Thomas <u>EH&amp;H 7 Jan 2020</u> Ben Aitken, Viv Willder, Noreen Griffiths
A585 - Skippool to Windy Harbour Relief Road	2015	To oversee the Council's case to be presented to the NSIP examination of the proposed development.	Linda Nulty, 3 x vacancies
Town Centres Working Group	11/03/2020	to examine all opportunities to secure funding to assist in the future development of St Annes, including, but not limited to any future rounds of the Future High Street Fund.	<u>11 March 2020</u> Richard Redcliffe, Liz Oades, David O'Rourke, Stan Trudgill, Michael Sayward, Roger Small, Michael Withers.
Finance and Democracy Committee Working Groups	Formed	Remit	Membership (and date appointed)

Budget Working Group		To co-ordinate and oversee the budget setting process and to provide a strategic steer to programme committees on key elements of the budget setting process such as the level of growth or savings required in light of the overall financial position of the Council, capital bid expectations, fees and charges levels etc.	24 June 2019 Sue Fazackerley, Chairman & Vice of F&D, Chairman T&L, EH&H, Planning & Op Mgmt plus F&D committee members Richard Redcliffe & John Singleton
<b>Operational Management Committee Working Groups</b>	<b>Formed</b>	<b>Remit</b>	<b>Membership (and date appointed)</b>
Car Parking Working Group	2016	The group forms approx. every two years to review the council's strategy and approach to car parking	20 June 2019 Alan Clayton, Paul Hodgson, David O'Rourke, Roger Small, Tommy Threlfall, Stan Trudgill
Bus Shelter Review	2006	To review the provision of the service, best use of \$106 funds & policy for new requests	20 June 2019 Julie Brickles, Alan Clayton, Paul Hodgson, Roger Small, Mark Bamforth
<b>Tourism and Leisure Committee Working Groups</b>	<b>Formed</b>	<b>Remit</b>	<b>Membership (and date appointed)</b>
Arts Service Review Working Group	2016	To review the Arts Service and in particular the Lytham St Annes Art Collection	6/6/2019 Peter Anthony, Sue Fazackerley, Gavin Harrison, Cheryl Little, Roger Lloyd, Jayne Nixon, Vince Settle, Ray Thomas

The Island Regeneration Working Group	2017	To assess any interest received following the marketing process undertaken for the site	<u>6/6/2019</u> Chair T&L - Cheryl Little, Chair Op Mgmt - Roger Small, Chair Planning - Trevor Fiddler, Chair F&D - Karen Buckley, Leader - Sue Fazackerley
Coastal Explorers Project	09-Jul-05	To oversee Coastal Explorers Project	<u>6/6/2019</u> Chair T&L - Cheryl Little, Vice Chair T&L - Jayne Nixon, Chair Op Mgmt - Roger Small, Vice Chair OpMgmt - T Threlfall
<b>Environment, Health and Housing Committee Working Groups</b>	<b>Formed</b>	<b>Remit</b>	<b>Membership (and date appointed)</b>
Carbon Neutral Working Group	2018, revised 5/11/2019	To investigate and consider the options to minimize the reliance on single use plastic items across the borough to become a 'plastics conscious' borough. To develop a Carbon Reduction Action Plan with a view to the Council becoming net-zero carbon by 2050.	<u>EH&amp;H 11/6/19</u> Ben Aitken, Viv Willder, Karen Henshaw <u>OP Mgmt 20/6/19</u> Julie Brickles, Chris Dixon, <u>Planning 13/11/2019</u> Tim Armit, <del>Michael Sawward</del>
Crematorium		Look at long term issues regarding the crematorium including, but not limited to, capacity in light of housing developments in the borough.	<u>EH&amp;H 11/6/2019</u> Ben Aitken, Viv Willder, Noreen Griffiths, Gavin Harrison
<b>Public Protection Committee Working Groups</b>	<b>Formed</b>	<b>Remit</b>	<b>Membership (and date appointed)</b>
Caravan Site Licensing Working Group	18/07/2018	To review proposed conditions on new and existing site licenses regarding registers and evidence proof to ensure a consistent approach.	<u>17 July 2019</u> Brenda Blackshaw, Paul Hodgson, Karen Henshaw, Frank Andrews, Alan Clayton

## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	COUNCIL	20 JULY 2020	11

### STANDARDS FRAMEWORK: INDEPENDENT PERSONS

#### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

#### SUMMARY

The purpose of the report is to consider the re-appointment of the council's two Independent Person as part of the standards process.

#### RECOMMENDATIONS

1. That the Council expresses its condolences in respect of Mr Tony Mozley, former Independent Person and pays tribute to his dedication to the role over the previous years.
2. That Mrs Helen Broughton and Mr Brian Horrocks, the council's statutory Independent Persons pursuant to Section 28 (7) of the Localism Act 2011, be appointed for a further 12 months from 30 September 2020 to 30 September 2021.

#### SUMMARY OF PREVIOUS DECISIONS

The council's independent persons were previously reappointed until 30 September 2020, pending the Government's response to the recommendations of the Committee on Standards in Public Life, which were published in January 2019.

#### CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	✓
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	✓
Working with all partners ( <b>Vibrant Economy</b> )	✓
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	✓
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	✓

## REPORT

1. Members will be aware that Mr Tony Mozley, one of the council's independent persons, sadly died in May. The role of Independent Person is required in law as part of the standards process in dealing with allegations of member misconduct.
2. The term of office for the current two independent persons is due to expire in September 2020. The Committee on Standards in Public Life report on ethical standards in local government was published in January 2019 and recommended significant reform to the standards machinery in local government. The Government has not yet responded to the recommendations. Council is therefore asked to extend the appointment of the existing independent persons until 30 September 2021 so that their expertise in standards matters is retained pending any changes to the legislation.

IMPLICATIONS	
Finance	No implications
Legal	Section 28 (7) of the Localism Act 2011 states the requirement to appoint at least one Independent Person for standards matters
Community Safety	No implications
Human Rights and Equalities	No implications
Sustainability and Environmental Impact	No implications
Health & Safety and Risk Management	No implications

LEAD AUTHOR	CONTACT DETAILS	DATE
Ian Curtis	ian.curtis@fylde.gov.uk & Tel 01253 658506	8 July 2020

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
None		



## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	COUNCIL	20 JULY 2020	12
<b>PAVEMENT LICENCES</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

The Business and Planning Act 2020 has introduced a temporary fast-track process to allow pubs, cafes and other food businesses to obtain permission to place furniture such as tables and chairs on the pavement outside their premises. Businesses will need to apply to the council for a licence. The council needs to make decisions on a number of matters to allow applications to be made and determined.

### RECOMMENDATIONS

1. Adopt the draft Pavement Café Licensing policy appended to this report;
2. Set a fee of £100 to be charged for applications for pavement licences under the Planning and Business Act 2020;
3. Require applicants for pavement licences to include the information set out in section 3.1 of the draft policy as part of, or accompanying, their application;
4. Publish the conditions set out in appendix 2 of the draft policy as the conditions subject to which the council proposes to grant pavement licences;
5. Direct that licenses be granted to for a duration of six months unless specific considerations related to the site or application indicate a different duration to be appropriate;
6. Add "*all matters in relation to pavement licences under the Planning and Business Act 2020*" as item 39 in the functions of the Public Protection Committee in part 2 of the council's constitution;
7. Delegate to the Director of Resources the power to make determinations in relation to applications for pavement licences under the Business and Planning Act 2020; and
8. Allow disappointed applicants to make representations to the Public Protection Committee as set out in paragraph 16.

### SUMMARY OF PREVIOUS DECISIONS

None

CORPORATE PRIORITIES	
Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	
Working with all partners ( <b>Vibrant Economy</b> )	√
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	√
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	√

## REPORT

### PAVEMENT LICENCES

1. The Business and Planning Act was introduced to parliament on 29 June this year and is expected to come into force on 20 July. It contains measures intended by the Government to assist businesses and communities to recover from economic dislocations caused by the coronavirus pandemic. Among these is a fast track procedure for pavement licences.
2. A pavement licence is a licence which allows a business to place removable furniture (for example, tables and chairs, heaters) on certain highways (for example, pavements) adjacent to their premises for use by the business to sell and serve food or drink, and for their customers to consume it.
3. A draft policy for pavement licences under the 2020 act is attached as appendix 1. Members are asked to consider adopting the policy, and to make specific decisions on certain matters needed to allow applications to be made and determined.

### APPLICATION PROCESS

4. An application for a licence must be made electronically and include a fee set by the council, to a maximum of £100.
5. The streamlined process provides for a seven-day consultation period after an application has been made. During the consultation period, the business must display a notice outside the premises, and the council must publish the application and invite representations on it.
6. The council must make a decision on the application within seven days after the end of the consultation period. If it fails to do so, the application is deemed to be granted as made.

### DETERMINATION CRITERIA FOR APPLICATIONS

7. Before deciding whether to grant an application, the council must take into account any representations which it has received during the consultation period. It must also consult the highway authority and such other persons as it considers appropriate. The council must refuse the application if granting it would prevent access to the highway for highway users, as described in the act.
8. An application which is granted or deemed to have been granted will be potentially subject to four kinds of condition. These are:
  - A mandatory condition, whose wording is set out in the act, designed to preserve access for highway users;
  - Bespoke conditions, tailored by the council to the particular application (not applicable if the licence is deemed to have been granted);
  - Standard conditions published by the council, unless inconsistent with any bespoke condition;
  - National conditions published by the Secretary of State, unless inconsistent with a bespoke condition or standard condition.
9. There is no statutory right of appeal against decisions to refuse a licence or place conditions on one. The council could, if it wished, introduce an internal review procedure.

## DECISIONS NEEDED BY THE COUNCIL

10. **Fees for applications:** The council can charge a fee for applications subject to a maximum of £100. Members are asked to decide what fee to charge. Applications under the existing, less streamlined, procedure are charged on a cost recovery basis of £312 for a new application, and £230 for a renewal. Officers' recommendation is to charge the maximum permissible fee of £100 for new applications. Members may want to consider charging a lower fee for renewals.
11. **Information to be included in applications:** Applications must include certain information required by the legislation. Councils can also ask for other information. Officers' recommendation is to require applications to include the information set out in section 3.1 of the draft policy.
12. **Standard conditions:** These are the conditions that will be applied to every licence granted or deemed to be granted. The draft Government guidance says that, in setting standard conditions, councils should consider:
  - public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
  - public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
  - accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
    - any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
    - whether there are other permanent street furniture or structures in place on the footway that already reduce access;
    - the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of Inclusive Mobility, and
    - other users of the space, for example if there are high levels of pedestrian or cycle movements.

Taking this guidance into account, officers recommend that members adopt the conditions set out in appendix 2 of the draft policy (itself attached as appendix 1 to this report) as its standard conditions.
13. **Duration of licence:** Licences last until 30 September 2021, unless granted for a shorter period. The draft Government guidance says: *"The expectation is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space"*. Notwithstanding that guidance, it is considered that granting licences for a maximum of six months would allow flexibility to address issues that might arise during the currency of a licence, for example by amending the conditions on a renewal.
14. **Delegation:** Licensing matters other than those covered by the Licensing Act 2003 and the Gambling Act 2005 normally fall within the remit of the Public Protection Committee, with powers to decide on individual applications being delegated to officers where appropriate. As the Business and Planning Act is entirely new legislation, it is not covered by any existing delegation. Accordingly, members are asked to add all matters relating to the act to the terms of reference of the Public Protection Committee.
15. The timescales prescribed under the act for applications to be processed make it impossible for them to be placed before a committee meeting. Members are therefore asked to delegate the determination of applications under the Business and Planning Act 2020 to the Director of Resources. Members will note that the draft policy, which members are invited to adopt, includes ward members as consultees for any application made for a site within their ward.
16. **Appeals:** Members are asked if they wish to put in place a procedure for an internal review of determinations made under the act. It is recommended that any applicant whose licence application is refused, or is granted

subject to conditions with which they disagree, be given the chance to make written and /or oral representations (limited to ten minutes) to the next scheduled meeting of the Public Protection Committee.

IMPLICATIONS	
Finance	Insofar as the legislation results in applicants applying for licences under the new provisions, rather than the existing ones, there will be a loss of revenue to the council. This will depend on the fee charged for the new licences, but if the maximum fee of £100 is charged, will be up to £212 per licence.
Legal	The legislation containing the new provisions was put in place with extreme speed.
Community Safety	The new arrangements are part of the Governments commitment to assist businesses and communities recover from the dislocations caused by coronavirus.
Human Rights and Equalities	No implications
Sustainability and Environmental Impact	The new provisions are designed to encourage use of more pavement areas for eating and drinking. This will inevitably have an environmental impact, but the suggested conditions are intend to manage and mitigate such impacts.
Health & Safety and Risk Management	The suggested conditions are intended to minimise health and safety risks to pedestrians and other highway users.

LEAD AUTHOR	CONTACT DETAILS	DATE
Ian Curtis	ian.curtis@fylde.gov.uk & 01253 658506	30 June 2020

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Business and Planning Bill: Explanatory notes	25 June 2020	<a href="https://publications.parliament.uk/pa/bills/cbill/58-01/0148/en/200148en.pdf">https://publications.parliament.uk/pa/bills/cbill/58-01/0148/en/200148en.pdf</a>
House of Commons Library briefing paper: Business and Planning Bill 2019-21	26 June 2020	<a href="https://commonslibrary.parliament.uk/research-briefings/cbp-8947/">https://commonslibrary.parliament.uk/research-briefings/cbp-8947/</a>
Draft Pavement Café Licensing Policy	30 June 2020	Town Hall, Lytham St Annes

Attached documents  
Draft Pavement Café Licensing Policy



# Draft Pavement Café Licensing Policy

Business and Planning Act 2020

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## 1. Introduction

The Covid-19 pandemic has affected businesses across the economy causing many to cease trading for several months while others have had to significantly modify their operations.

As the economy starts to re-open, on 25 June 2020 the Government announced a further and urgent relaxation to planning and licensing laws to help the hospitality industry recover from the coronavirus lockdown by removing short term obstacles that could get in their way.

The Business and Planning Act plans to make it easier for premises serving food and drink such as bars, restaurants and pubs, as lockdown restrictions are lifted but social distancing guidelines remain in place to seat and serve customers outdoors through temporary changes to planning procedures and alcohol licensing.

The measures included in the Act modify provisions in the Licensing Act 2003 to provide automatic extensions to the terms of on-sales alcohol licences to allow for off-sales. It will be a temporary measure to boost the economy, with provisions lasting until the end of September 2021.

The Act also introduces a temporary fast-track process for these businesses to obtain permission, in the form of a "pavement licence", from Fylde Council for the placement of furniture such as tables and chairs on the pavement outside their premise which will enable them to maximise their capacity whilst adhering to social distancing guidelines.

Currently in Fylde, tables and chairs permissions are granted as Pavement licences by Fylde Borough Council, under Part 7A of the Highways Act 1980. The fee varies between local authorities and there is a time consuming 28-day consultation period.

The new temporary measure places a cap on the application fee for businesses, and introduces a new 14-day determination period, ensuring that businesses can obtain licences in a timely and cost-effective manner aiding to their financial recovery.

## 2 Scope

### 2.1 Definition of pavement licence

A pavement licence is a licence granted by the local authority, or deemed to have been granted, which allows the licence-holder to place removable furniture over certain highways adjacent to the premises in relation to which the application was made, for certain purposes.

### 2.2 Eligible Businesses

A business which uses (or proposes to use) premises for the sale of food or drink for consumption (on or off the premises) can apply for a licence. Businesses that are eligible include: public houses, cafes, bars, restaurants, snack bars, coffee shops, and ice cream parlours.

A licence permits the business to use furniture placed on the highway to sell or serve food or drink and/or allow it to be used by people for consumption of food or drink supplied from, or in connection with the use of the premises

### 2.3 Eligible Locations

Licences can only be granted in respect of highways listed in section 115A(1) Highways Act 1980.



Generally, these are footpaths restricted to pedestrians or are roads and places to which vehicle access is restricted or prohibited. Highways maintained by Network Rail or over the Crown land are exempt (so a licence cannot be granted).

#### 2.4 Type of furniture permitted

The furniture which may be used is:

- counters or stalls for selling or serving food or drink;
- tables, counters or shelves on which food or drink can be placed;
- chairs, benches or other forms of seating; and
- umbrellas, barriers, heaters and other articles used in connection with the outdoor consumption of food or drink.

This furniture is required to be removable, which in principle this means it is not a permanent fixed structure, and is able to be moved easily, and stored away of an evening.

The Council would also expect the type of furniture to be 'in keeping' with the local area.

#### 2.5 Planning Permission

Once a licence is granted, or deemed to be granted, the applicant will also benefit from deemed planning permission to use the land for anything done pursuant to the licence while the licence is valid.

### 3. Application and Determination of Pavement Licences

#### 3.1 Submission of the Application

An application for a Pavement Licence must be made to the Council, and the following will be required to be submitted with the application:

- a completed Application Form
- the required fee of **£100**
- a plan showing the location of the premises shown by a red line, so the application site can be clearly identified
- a plan clearly showing the proposed area covered by the licence in relation to the highway, if not to scale, with measurements clearly shown. The plan must show the positions and number of the proposed tables and chairs, together with any other items that they wish to place on the highway. The plan shall include clear measurements of, for example, pathway width/length, building width and any other fixed item in the proposed area.
- the proposed days of the week on which, and the times of day between which, it is proposed to put furniture on the highway,
- evidence of the right to occupy the premises (e.g. the lease);
- photos or brochures showing the proposed type of furniture and information on potential siting of it within the area applied;
- (if applicable) reference of existing pavement licence currently under consideration by the local authority;
- evidence that the applicant has met the requirement to give notice of the application (for example photographs of the notice outside the premises and of the notice itself);
- a copy of a current certificate of insurance that covers the activity for third party and public liability risks, to a minimum value of £5 million, and
- any other evidence needed to demonstrate how the Council's local conditions, and any national conditions will be satisfied.



3.2 Fees
<p>The fee for applying for a licence under the new process are set local but are capped at £100. The Council has determined that the fee for applications will be <b>£100</b>.</p>
3.3 Consultation
<p>Applications are consulted upon for 7 days, starting with the day on which a valid application was made to the Council.</p> <p>The Council will publish details of the application on its website at <a href="http://www.fylde.gov.uk">www.fylde.gov.uk</a>.</p> <p>The Council is required by law to consult with the Highways Authority. In addition, to ensure that there are not detrimental effects to the application the Council will consult with:</p> <ul style="list-style-type: none"> <li>• Fylde Council Regeneration</li> <li>• Fylde Council Environmental Services (including Food and Safety Teams)</li> <li>• Fylde Council Planning Department</li> <li>• Lancs Fire &amp; Rescue Service</li> <li>• Lancashire Police</li> <li>• Ward Councillors</li> </ul> <p>Members of the public and others listed above can contact the Council to make representations.</p> <p>The Council must take into account representations received during the public consultation period and consider these when determining the application.</p>
3.4 Site Nuisance
<p>An applicant for a pavement licence must on the day the application is made, fix a notice of the application to the premises so that the notice is readily visible to, and can be read easily by, members of the public who are not on the premises. The notice must be constructed and secured so that it remains in place until the end of the public consultation period.</p> <p>Evidence of the site notice requirement must be supplied to the Council.</p> <p>The Site Notice must:</p> <ul style="list-style-type: none"> <li>• state that the application has been made and the date on which it was made;</li> <li>• state the statutory provisions under which the application is made;</li> <li>• state the address of the premises and name of the business;</li> <li>• describe the proposed use of the furniture;</li> <li>• indicate that representations relating to the application may be made to the Council during the public consultation period and when that period comes to an end;</li> <li>• state the Council's website where the application and any accompanying material can be viewed during the consultation period;</li> <li>• state the address to which representations should be sent during the consultation period; and</li> <li>• the end date of the consultation (5 working days starting the day after the application is submitted to the authority).</li> </ul> <p>A template Site Notice is shown as Appendix 1.</p>
3.5 Site Assessment

The following matters will be used by the Council and consultees in considering the suitability of the proposed application:

- public health and safety – for example, ensuring that uses conform with latest guidance on social distancing and any reasonable crowd management measures needed as a result of a licence being granted and businesses reopening;
- public amenity – will the proposed use create nuisance to neighbouring occupiers by generating anti-social behaviour and litter; and
- accessibility – taking a proportionate approach to considering the nature of the site in relation to which the application for a licence is made, its surroundings and its users, taking account of:
  - any other temporary measures in place that may be relevant to the proposal, for example, the reallocation of road space. This could include pedestrianised streets and any subsequent reallocation of this space to vehicles;
  - whether there are other permanent street furniture or structures in place on the footway that already reduce access;
  - the impact on any neighbouring premises
  - the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), and
  - other users of the space, for example if there are high levels of pedestrian or cycle movements.

Applicants are strongly encouraged to talk to neighbouring businesses and occupiers prior to applying to the local authority, and so take any issues around noise, and nuisance into consideration as part of the proposal.

### 3.6 Determination

Once the application is submitted the Council has 10 working days from the day after the application is made (excluding public holidays) to consult on and determine the application. This consists of 5 working days for public consultation, and then 5 working days to consider and determine the application after the consultation.

If the local authority determines the application before the end of the determination period the local authority can:

- grant the licence in respect of any or all of the purposes specified in the application,
- grant the licence for some or all of the part of the highway specified in the application, and impose conditions, or
- refuse the application.

If the local authority does not determine the application within the 10-working day period, the application will be deemed to have been granted.

### 3.7 Approval of Applications

The Council may approve applications meeting the criteria contained within these guidelines.

On approving the application, the Council will issue a Pavement Licence to which conditions will be attached. The licence will also contain specific terms such as days and hours when tables and chairs are permitted and appearance and location of the furniture corresponding to the application.

A copy of the Council's standard conditions, which will be attached to all Pavement Licences are shown at Appendix 2. Additional conditions may be attached if the Council considers it appropriate in the circumstances of any particular case.

The Council generally will only permit Pavement Licences between 09:00 and 21:00.

Applications outside these hours will be assessed in terms of the criteria detailed above. The Council however retains the right to specify permitted hours of trading that are less than those specified above in appropriate

circumstances.

### 3.8 Licence Duration

If the Council determines an application before the end of the determination period (which is 5 working days, beginning with the first day after the public consultation period, excluding public holidays) they can specify the duration of the licence, subject to a minimum duration of 3 months.

The expectation from the Government is that local authorities will grant licences for 12 months or more unless there are good reasons for granting a licence for a shorter period such as plans for future changes in use of road space. As such, the Council will normally grant applications for 12 months.

If a licence is 'deemed' granted because the authority does not make a decision on an application before the end of the determination period, then the licence will be valid for a year.

A licence granted or deemed to be granted will not be valid beyond 30 September 2021.

### 3.9 Refusal of Applications

The Highways Authority is a statutory consultee and the local authority will anticipate a response from them. Generally speaking, where no response is received from the Highways Authority, an application will be refused.

If the site is deemed unsuitable for a Pavement Licence, or if relevant representations are made which cannot be mitigated by conditions then the application may be refused.

There is no statutory appeal process against decision to refuse an application.

## 4. Conditions

The Council's standard conditions are set out at Appendix 2. In some cases, extra measures may be required. This will be determined when assessing any application, on a case by case basis.

Where a local authority sets a local condition that covers the same matter as set out in national published conditions, then the locally set condition takes precedence over the national condition where there is reasonable justification to do so.

However, this is not the case for the statutory no-obstruction condition which is as applies to all Licences. The National 'no obstruction' condition is shown in Appendix 3.

## 5. Enforcement

The Council aims to work closely with other enforcement authorities to enforce the provisions of all appropriate legislation. The case remains that an obstruction of the Highway is an offence under The Highways Act 1980 and will be dealt with by the Highways Authority or the Police.

Obtaining a licence does not confer the holder immunity in regard to other legislation that may apply, e.g. Public Liability, Health & Safety at Work, Food Hygiene and Safety, Alcohol and Entertainment Licensing, Social distancing controls, and applicants must ensure all such permissions, etc. are in place prior to applying.

If a condition imposed on a licence either by the Council or via a National Condition is breached the Council will be able to issue a notice requiring the breach to be remedied and the authority can take action to cover any costs.

The authority may revoke a licence in the following circumstances:

1. For breach of condition, (whether or not a remediation notice has been issued) or
2. Where:
  - There are risks to public health or safety – for example by encouraging users to breach government guidance on social distancing by placing tables and chairs too close together;
  - the highway is being obstructed (other than by anything permitted by the licence);
  - there is anti-social behaviour or public nuisance – for example, the use is increasing the amount of noise generated late at night and litter is not being cleaned up;
  - it comes to light that the applicant provided false or misleading statements in their application – for example they are operating a stall selling hot food and had applied for tables and chairs on which drinks could be consumed; or
  - the applicant did not comply with the requirement to affix the notice to notify the public for the relevant period.
3. The Council may also revoke the licence where all or any part of the area of the relevant highway to which the licence relates has become unsuitable for any purpose for which the licence was granted or deemed to be granted. For example, the licensed area (or road adjacent) is no longer to be pedestrianised. The Council will give reasons where these powers are used.

#### 6. Review Procedures

This Policy covers the Temporary Permission for Pavement Licences under the Business and Planning Act which are scheduled to expire on 30 September 2021.

This Policy will be reviewed from time to time should changes occur in relevant legislation, the nature of Pavement Licence's generally, relevant social distancing measures or as a result of local considerations within the Fylde Borough.

# BUSINESS AND PLANNING ACT 2020

## Application for a Pavement Licence

**[NAME OF PREMISES]**  
**[FULL ADDRESS OF PREMISES]**

TAKE NOTICE, [applicant name], has made an application on [DATE], pursuant to Section 1(1) of the Business and Planning Act 2020, for a Pavement Licence to be granted in respect of the premises detailed above.

[Days and times during which it is proposed to place street furniture on the highway]

A copy of the application can be viewed at the Fylde Council Offices, Town Hall, Lytham St Annes FY8 1LW or online at [www.fylde.gov.uk](http://www.fylde.gov.uk)

Any person who wishes to make representations in relation to this application must do so in writing to Licensing, Fylde Council Offices, Town Hall, Lytham St Annes FY8 1LW, [licensing@fylde.gov.uk](mailto:licensing@fylde.gov.uk). Representations must be made within the public consultation period which ends [DATE which is 8 days after the day on which the application is made].

## Appendix 2

**Standard Pavement Licence Conditions**

1. Being the licence holder of a Pavement Licence does not imply an exclusive right to the area of public highway. The licence holder must be aware that Fylde Council and others (e.g. police, highways authority, statutory undertakers) will need access at various times (including emergencies) for maintenance, installation, special events, improvements etc or any other reasonable cause. This may mean that the pavement licence will need to cease operating and/or be removed for a period of time. On these occasions there would be no compensation for loss of business.
2. Fylde Council requires evidence that the licence holder has Public Liability Insurance for the operation of the Pavement Licence. This must indemnify Fylde Council and Lancashire County Council against all claims for injury, damage or loss to users of the public highway, arising from the use of the highway for the permitted purpose. The minimum level of indemnity must be £5 million in respect of any one incident.
3. Tables and chairs must not be placed in position outside of permitted times. When the licence is not in use, all tables and chairs and other furniture must be stored securely inside a premises away from the highway.
4. Fylde Council and/or Lancashire County Council are empowered to remove and store or dispose of furniture from the highway, at the cost of the licensee, if it is left there outside the permitted hours, or should any conditions of the licence be ignored. The Council will not be responsible for its safekeeping.
5. The licence holder is not to make or cause to be made any claim Fylde Council in the event of any property of the licence holder becoming lost or damaged in any way from whatever cause.
6. An unimpeded pedestrian route must be maintained at all times for people wishing to use the footway as per the National Licence Conditions.
7. The method of marking the boundary of the licensed area must be agreed between the licence holder and the Licensing Department. Whatever method is agreed a 2 metre clear walkway must be maintained for the use of pedestrians.
8. Emergency routes to the premises and adjacent buildings must not be obstructed by the pavement furniture, which should not, in normal circumstances, extend beyond the width of the premises frontage.
9. Tables and chairs should be of an approved type and should be kept in a good state of repair. Furniture should be placed so as not to obstruct driver sightlines, or road traffic signs. Placement of tables and chairs must allow pedestrians to use the footway parallel to the frontage of the premises. Care should be taken in the use of hanging baskets, awnings, protruding umbrellas etc. Alternative items may not be used without first seeking the written authority of the Council.
10. All potential obstructions must be removed from the public highway when the premises are closed to prevent a safety hazard to pedestrians, particularly during the hours of darkness.
11. The licensee should ensure that the area operates in a safe and orderly manner, thereby ensuring that any safety risk or nuisance to customers, other users of the public highway or any adjacent land or premises, is minimised.
12. The operation of the area must not interfere with highway drainage arrangements.

13. During the hours of darkness suitable and sufficient lighting must be provided to ensure safe use of the area. Any proposals to provide additional lighting to the licensed areas must be agreed with the Highway Authority.
14. All detritus (food and drink remnants, spillages, bottles, cans, wrappers etc) be regularly removed from the footway surface to reduce hazards to pedestrians. The licence holder must make arrangements to regularly check for and to remove litter and rubbish on pedestrian walkways, caused by persons using the Facility, for a distance of up to 10 metres from the boundary of the Facility. The licence holder must ensure that any tables are cleared in an efficient manner during the hours of operation. The licence holder must ensure the licensed area and surrounding highway is to be washed down at the completion of each day's usage using a method sufficient to remove food debris, grease and other spillages that may occur.
15. The licence holder is not permitted to make any fixtures, or excavations of any kind, to the surface of the highway without prior written approval. Any costs incurred as a result of damage to the highway, due to the positioning of tables and chairs etc, will be recovered in full from the licence holder by Fylde Council or the Highway Authority.
16. The Licensee of a premises not licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcohol within licensed area.
17. The Licensee of a premises licensed under the Licensing Act 2003 or any modification or re-enactment thereof, must not allow the consumption of alcohol within the Facility outside the hours in force for the premises itself.
18. The licence must be displayed on the premises with a plan of the agreed layout in clear view.
19. The licensee is responsible for ensuring that the conditions of the licence and any other necessary permissions and regulations are adhered to. The Licence holder is to use the highway solely for the purpose of the licence in line with the provisions of this licence and for no other purpose whatsoever.
20. The licence holder must remove any tables, chairs and other furniture immediately at the end of the licence period or on revocation of the licence.
21. Fylde Council reserves the right to revoke this licence at any time if any of the above conditions are not fulfilled and maintained.

**National Conditions**

The Secretary of State publishes this condition in exercise of his powers under [clause 5(6)] of the Business and Planning Act 2020:

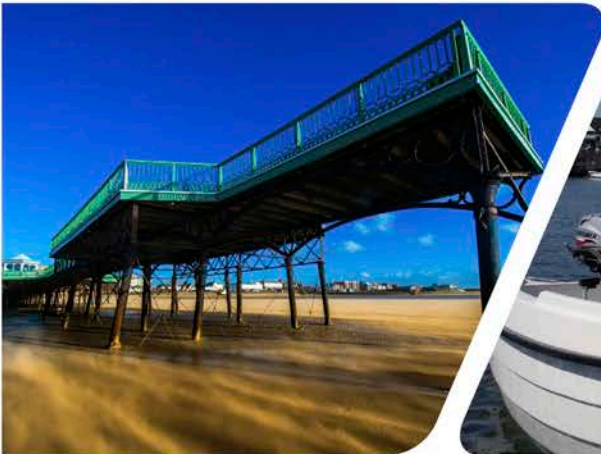
Condition relating to clear routes of access:

It is a condition that clear routes of access along the highway must be maintained, taking into account the needs of disabled people, and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#).

Guidance on the effect of this condition

1. To the extent that conditions imposed or deemed to be imposed on a pavement licence do not require the licence holder to require clear routes of access to be maintained, taking into account the needs of disabled people and the recommended minimum footway widths and distances required for access by mobility impaired and visually impaired people as set out in Section 3.1 of [Inclusive Mobility](#), the licence is granted subject to those requirements.
2. To the extent that a licence is granted subject to a condition which imposes requirements to maintain clear routes of access that are inconsistent with the requirements set out in this condition this condition is not imposed on the licence.





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## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
CHIEF EXECUTIVE	COUNCIL	20 JULY 2020	13
<b>A LANCASHIRE COMBINED AUTHORITY</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

This report outlines the proposal to consider a Combined Authority across Lancashire with the option of a directly elected Mayor with limited powers, in response to the forthcoming Devolution White Paper. Any decision to establish a Lancashire Combined Authority would require the consent of all the local authorities covered by the Combined Authority. The council is not seeking consent to be a member of a Combined Authority with a directly elected Mayor at this stage it is seeking in principle to consider this option as part of preparations for local Government reform to be included in the Devolution White Paper. Further work will be undertaken to examine the nature, governance structure and operation of a Combined Authority that works most effectively in Lancashire. However, at this stage all the local authorities across the county are seeking to agree in principle a collective commitment to explore the concept of a Lancashire Combined Authority with a directly elected Mayor.

It is accepted that the process may be delayed as a result of the Coronavirus however, the Government has made a commitment to publish a white paper on devolution and local Government reform to establish more effective working relationships with the regions.

### RECOMMENDATIONS

1. Note the agreement of Lancashire Leaders on 10 June 2020 as set out at paragraph 36
2. Agree to explore a Combined Authority for Lancashire with an Elected Mayor, with limited powers
3. Acknowledge that local Government re-organisation will need to take place to enable simplified governance arrangements in the Combined Authority area
4. Appoint the Leadership Board and Budget Working Group to explore both devolution and re-organisation and make recommendations to full council

### SUMMARY OF PREVIOUS DECISIONS

Full Council February 5<sup>th</sup>, 2018:

It was RESOLVED that

1. Fylde Council no longer agrees to be a constituent member of the Lancashire Combined Authority in its current form or be part of the Shadow Combined Authority
2. After over two years of planning the Combined Authority model has failed to gain the necessary unanimous support amongst all Lancashire Authorities and is unlikely to do so; and
3. Fylde Council continues to work with all Lancashire authorities to establish alternative options for working together on strategic regional initiatives.

CORPORATE PRIORITIES	
Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	
Working with all partners ( <b>Vibrant Economy</b> )	√
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	√
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	

## REPORT

1. The debate on a Combined Authority for Lancashire has been taking place for several years, on February 5<sup>th</sup>, 2018 Fylde resolved not to be a constituent member of a Lancashire Combined Authority in 'its current form' and to continue to work with all Lancashire authorities to establish alternative options for working together on strategic regional initiatives. To date no alternative arrangements have been developed with the Combined Authority emerging as the favoured option after success in other areas of the country and support from the Government as the preferred model for two tier shire regions which will be confirmed in the Devolution White Paper scheduled to be published later this year.
2. The Government set out in the Queen's Speech an ambition to spread opportunity to all communities across the UK with the forthcoming Devolution White Paper marking the first steps in moving towards ensuring the country is in the best possible position after leaving the European Union. There is a renewed energy in devolution to rethink services around the resident in towns, cities and communities, a Combined Authority with a directly elected Mayor is considered the preferred model for regional engagement based on the evidence from existing Combined Authorities. The issue has gained impetus with the Government's desire to push forward with devolution as a fundamental part of "levelling up" and recently the response to economic recovery post COVID 19; concerns about the future financial viability of some local authorities; and that Combined Authorities benefit through more central Government funding and greater control over expenditure.
3. A Combined Authority is a legal entity that enables a group of two or more councils to collaborate and, within the powers given to the combined authority, take collective decisions across council boundaries. They can only be created by parliament, although the development and administration of a Combined Authority must be locally driven by the authorities involved. The powers given to each combined authority are set out in the legislation creating it. The powers normally include powers presently exercised by the constituent authorities, but which can be more effectively deployed across a wider area, and powers devolved by national Government as part of a devolution deal. The desired package of powers for the combined authority is first agreed between the constituent authorities and then negotiated with Government.
4. Linked to Combined Authorities is the idea of an elected Mayor for the area covered. The Government has expressed a strong preference for Combined Authorities to have an elected Mayor<sup>1</sup> for the combined area. As with the Combined Authority, the precise powers exercised by the Mayor are a matter for the authorities involved and form the basis of the "deal" with Government, but a single, democratically elected representative for an area is seen by the Government as the best way to facilitate a constructive two way dialogue and demonstrate local accountability.
5. There are currently ten Combined Authorities across the country, ranging from the longest established – in Greater Manchester – to the more recently created Combined Authority in West Yorkshire. Each has a different number of constituent local authorities and varying levels of devolved funding and powers from Government, and a different level of power given to the elected Mayor, where there is one in place.
6. Although devolution deals, where Government passes powers and funding to local authorities, are not linked in law to Combined Authorities, the Government has made it clear that it expects local authorities to be able

<sup>1</sup> Combined authority mayors are distinct from and complementary to ceremonial or elected mayors in their constituent authorities.

to work closely together on a larger footprint in order to make a deal viable, and that the Combined Authority model represents the best way to achieve this.

7. The consideration of a Combined Authority for Lancashire is aimed at creating a single, clear and influential voice for Lancashire to obtain devolved powers and additional regional funding from central Government. A Combined Authority is a legally formed, locally owned body established by national legislation to deliver a range of agreed joint functions (to be determined by the authorities) and enable collaboration and collective strategic decisions across the region. Existing Combined Authorities have secured devolved powers and additional funding with longer standing Combined Authorities like Manchester agreeing further deals to secure additional powers.
8. The creation of a Combined Authority is entirely optional and must be initially driven by the authorities involved. There are other options for closer working with other local authorities, such as through a formally appointed joint committee or simple information arrangements. Operational shared service agreements between authorities can exist in any governance set up.
9. **Joint Committees** - Any local authorities can establish a joint committee and delegate a wide range of powers and functions to be exercised by that committee. Governance arrangements can be locally determined within a statutory framework. This option sits comfortably with normal operational rules and practices for local authorities, and have been implemented successfully, albeit usually for specific individual service areas or where there are shared service arrangements (for example, waste collection and disposal). Authority would ultimately rest with each partner local authority's full council or executive, and arrangements can be started and ended as necessary. Whilst this offers familiarity and flexibility, arrangements can be fragile and lack a sense of permanence. Whilst Government has always advised that it would be willing to engage with groups of local authorities in any and all forms of joint working that might suit local circumstances, there are no significant devolution deals based on simple joint committee working.
10. **Informal Arrangements** - Lancashire Leaders currently meet on a monthly basis, and it is the forum through which pan-Lancashire issues and initiatives are steered, such as the development of the Greater Lancashire Plan. Informal arrangements have the benefit of flexibility, but the obvious disadvantage of potential impermanence, and a reliance on voluntary support and contributions from partners, making long term planning difficult. Whilst the Leaders meetings have "operating principles", there is nothing deeper tying individual authorities into the arrangements. Whilst the Lancashire Leaders have met with Government and civil servants, there is no sense that such arrangements could be the basis for a devolution deal or for accessing additional funding opportunities.
11. **Combined Authority** - Combined Authorities are created by act of parliament. Whilst there are substantial local freedoms involved in the setting up and running of the Combined Authority, there is a significant and serious commitment involved, and a robust process to follow in the creation of the Combined Authority design to test its likely impact and effectiveness. This includes a review of governance arrangements in the proposed area to evidence effective delivery of statutory functions. Combined Authorities are governed by a constitution developed by the constituent authorities, approved by Government and designed specifically for the purpose.
12. A Combined Authority can, subject to Government approval, take on any powers that its members wish it to have. Primarily though, in consultation with Government, it would seek to reach a devolution deal, where central powers and responsibilities are handed down from Government. Agreeing a Combined Authority is the gateway to a Devolution Deal or other agreements with Government across a variety of public service areas. Typically, in other places this has included greater control through:
  - integrated public services (health and social care, emergency services, housing providers, one public estate, schools)
  - economic development (including employment and business support)
  - transport including wider freedoms around concessionary travel for young people and bus franchising
  - spatial planning, land use and housing
  - apprenticeships, skills development and adult education

- homelessness
  - crime e.g. co-commissioning (in some areas the elected Mayor is also the PCC)
  - regional housing delivery
  - regional infrastructure and economic centres
13. A Combined Authority is not primarily a mechanism to draw power or resource 'up' from local councils, neither is it a 'takeover' by any authority or a merger. However, the Devolution White Paper scheduled to be published later this year will include clear guidance on how a region will be able to access devolved powers and funding, a Combined Authority with a directly elected Mayor is expected to be the preferred model along with consideration of local Government re-organisation as part of implementing arrangements that work best within the Combined Authority. The option of local Government re-organisation is in response to growing pressure on adult and children's services and the need to have appropriate economies of scale to deliver the services as efficiently as possible.
14. In return for establishing a Combined Authority Lancashire could expect devolution of funding and powers common to most of the existing Combined Authorities, such as:
- a thirty-year Investment Fund (potentially £500m to £750m for Lancashire)
  - powers to raise local levies
  - powers over police and fire functions
  - an integrated transport body and local transport planning
  - bus franchising
  - strategic housing planning
  - powers over land assembly and infrastructure provision
  - adult education
15. It would be for the constituent authorities in negotiation with the Government to determine the focus and detail of a Devolution Deal and the devolution 'ask' for Lancashire. This is an opportunity to secure resources and powers from central Government for Lancashire, to enable several funding decisions to be taken closer to local people.
16. There are several steps that authorities must progress through to create a Combined Authority. This process helps demonstrate commitment on the part of the authorities involved and allows serious consideration of the structure and priorities of the new body. It also ensures full public engagement with the proposals. Lancashire has already undertaken a number of these steps as part of earlier efforts. Whilst these will need to be revisited and repeated, there is experience and knowledge to draw on.
17. The first stage is to conduct a governance review, involving a consideration of the different models of local Government available, to identify how a Combined Authority could improve delivery of public services. This process involves carrying out a public consultation in all areas where it is proposed the Combined Authority operates.
18. This is followed by the preparation and publication of a formal scheme, including details of the proposed powers and functions, as well as operating principles (including a constitution), which will form the basis of formal negotiations with central Government. Ultimately, once agreed, the Combined Authority is brought into effect by a statutory instrument.
19. The authorities who make up a Combined Authority would determine a governance structure that works most effectively in the Lancashire context. The governance structure requires the consent of all local authorities in the area covered by the Combined Authority. This should be one contiguous geographical area however, it does not require all the local authorities within the county boundary to be part of the Combined Authority. The authorities in Lancashire are seeking to include the fifteen local authorities in the county as part of a Lancashire Combined Authority, with each local authority making up the Combined Authority having a single vote.



20. Eight of the ten existing Combined Authorities were formed with a Mayor, and one of the two remaining Combined Authorities has now decided to move to a Mayoral model. The elected Mayor is the chair of the area's Combined Authority and is elected directly by the residents of the combined area. The Mayor, in partnership with the Combined Authority, exercises the powers and functions devolved from Government. The Government believes the role of Mayor provides clear accountability over the powers, functions and funding that is devolved from national to local level. No position has been taken on an elected Mayor for Lancashire, the indication is that the directly elected Mayor will be the preferred model and will secure most benefit.
21. The specific powers of a Mayor and the Combined Authority collectively are a matter for local determination as part of the development of the Combined Authority. The Mayor may have powers invested in them as an individual, but it is more common that they are a recognised voice and convenor for the area. Decisions are in practice made more consensually by the members of the Combined Authority with the elected Mayor fulfilling a role of providing clear strategic direction and influence. Whilst an elected Mayor is not compulsory in a Combined Authority the Government has stated that Mayors introduce direction, clarity and accountability into the system, and would provide a clear, influential voice for Lancashire. The elected Mayor may also take on the role of the Police and Crime Commissioner for the area, although this is also a matter for local determination.
22. The Leaders of the Lancashire local authorities are keen to explore the option of a Combined Authority to secure devolved powers and funding like those experienced in Greater Manchester and Merseyside. The concern is that Lancashire is being left behind and missing opportunities because there is no recognised formal body to engage with Government and that the Devolution White Paper will include engagement arrangements with Government that require a Combined Authority structure. At a recent Lancashire Leaders meeting the advice from civil servants on behalf of the secretary of state was that Lancashire will require a Combined Authority to engage in the process and that local Government re-organisation is a possibility with or without a Combined Authority arrangement. Lancashire leaders are keen to explore the option of a Combined Authority in a bid to have control of the change process that will be included in the Devolution White Paper.
23. Lancashire authorities will carry out an assessment of the options and implications of a Combined Authority, including with a directly elected Mayor, within the context of the Devolution White Paper that is due to be published. Once the work is complete this council will consider a further report on the options for a Combined Authority and whether to be a member.
24. The Government has established a clear direction of travel in wanting to deal with local Government on economy, planning, housing and skills through Combined Authorities, that will be confirmed in the Devolution White Paper and it is appropriate that Lancashire starts to prepare now for the proposed changes based on the advice and guidance from the secretary of state. Councils without a Combined Authority structure risk being given considerably lower priority in terms of powers and funding.
25. Devolution Deals benefit the economy by drawing down funding, freedoms, flexibilities and powers from central Government to the Combined Authority and Mayor. This collaborative place-based leadership is aligned to the local priorities measured through typical economic metrics such as Gross Value Added (GVA - the measure of the value of goods and services produced in an area, industry or sector of an economy), business numbers, employment rates and wider community indices such as equality, inclusion, vibrancy, prosperity, innovation, sustainability, health, wellbeing and happiness.
26. Greater Manchester has the largest devolved powers outside of London in excess of £8.6bn including a £900m Investment Fund Grant (£30m per year for 30 years); £300m Housing Investment Fund (recycled loan); £92m devolved Adult Education Budget; £6bn health and social care budget (although not under the direct control of the Greater Manchester Combined Authority) with £450m Transformation Fund alongside other funding for homelessness, work and health, business rates, transforming cities and growth deal. Whilst all deals are subject to negotiation, if Lancashire was as successful as Greater Manchester, on a population pro-rata basis this could equate to between £1.2bn and £4.6bn (subject to health and social care) for Lancashire.
27. A Combined Authority will provide a single voice for Lancashire to bid for central government funding and devolution powers. Any local authority not part of the Combined Authority will not receive any of the funding

or power benefits of being a constituent member. The scale of funding for Lancashire devolved from Government will be determined through the devolution deal but is likely to be significant.

28. The powers to establish a Combined Authority are contained within the Local Democracy, Economic Development and Construction Act 2009 and The Cities and Local Government Devolution Act 2016. A constitution for the Combined Authority would be developed as part of the proposal. A parliamentary order is needed to establish a Combined Authority. The establishment of a Combined Authority is likely to provide access to a wider range of policy options through greater devolved powers. The exact nature of these would be determined through the development of a devolution deal.
29. Local Government reorganisation has also been proposed as part of establishing a Combined Authority for Lancashire, this is the process by which the structure of local Government in an area is reviewed. This might be through the merger of councils at the same level (i.e. two or more districts become one); through the merger of districts and counties to become unitary authorities; or through the significant redrawing of boundaries. It could be some or all these options together.
30. The creation of a Combined Authority, elected Mayor and a devolution deal are separate from the issue of local Government reorganisation. However, as part of the Combined Authority negotiation process with central Government they would require a review of the local governance arrangements, and where appropriate a simplification, to ensure the efficient and effective delivery of statutory functions within the area.
31. The creation of a Combined Authority is not a mechanism to take power away from individual local authorities, nor is it the creation of a unitary by proxy. It represents an opportunity for all partner authorities to enhance their power and influence over a wider range of issues in a joined-up way, including the consideration of how these are best implemented on the ground.
32. Currently, all 15 local authorities in Lancashire are involved in the Lancashire Leaders meetings and have been invited to consider a formal position in relation to the Combined Authority and elected Mayor. A Combined Authority requires the consensus of all participating authorities and they must have shared boundaries. This has proved challenging for Lancashire and while it may be possible to move forward if one or two authorities were not engaged, undoubtedly a stronger case is made to Government if all 15 moves forward together. A timetable towards approval of any devolution deal would likely be a minimum of 2 years (to 2022).
33. Government has provided strong indications that they wish to "level up" the country in terms of prosperity, opportunity and income with devolution as the mechanism to do this. In order to effectively secure these benefits for the people of Lancashire a Combined Authority with elected Mayor is likely to be a requirement. As Lancashire emerges from the COVID-19 pandemic, more than ever we need a strong and influential voice with Government and Combined Authority status would give greater weight to the economic recovery planning that needs to take place including tailored opportunities to tackle the immediate impacts ahead of the Comprehensive Spending Review as well as the strategic infrastructure for a rebound and sustainable growth in Lancashire's economy. Evidence from recent Combined Authority activity and funding deals illustrates starkly how Lancashire could be missing out with the new West Yorkshire Combined Authority benefitting significantly from the recent Transforming Cities funding whilst Lancashire's award fell well short in the bidding.
34. Collaborative place-based leadership will ensure Lancashire is best placed to achieve its economic ambitions through a positive and confident growth-led recovery. Combined Authorities are empowered to take a medium to longer term view, working in partnership with Government to align budgets and devolve powers, freedoms and flexibilities to the shared priorities and outcomes they want to achieve together.
35. It is important that Fylde is 'round the table' at this stage to understand the impact and options of the Devolution White Paper and if necessary be prepared with an option that enables Fylde to influence the change ahead rather than have change imposed. There are benefits for Lancashire in establishing a Combined Authority, additional resources and powers will become available for the benefit of local people and it will allow more decisions to be made within Lancashire which affect Lancashire. However, there are disadvantages as well as the discomfort of change including the possibility of a directly elected Mayor, a new level of governance and additional administration that can create confusion as to who is responsible for service delivery in the community.

36. At a meeting of all 15 Lancashire Leaders on 10 June the following agreement was reached:

- a) Re-confirm in principle our agreement to explore a Combined Authority for Lancashire with an Elected Mayor, with limited powers, subject to ratification by each Council and
- b) Acknowledge that the delivery of Local Government functions may need to be simplified in the Combined Authority area.
- c) Explore possible models for devolution and improved governance arrangements via the Local Government Association and report back to Leaders.
- d) Subject to agreement of the above, write to Government, signed by all Leaders, confirming the position and seeking to pursue on going conversations to secure these outcomes in the interests of our own residents and businesses and those of Lancashire.

37. Any decision to establish a Combined Authority requires the consent of all the local authorities covered by the Combined Authority. This report is not seeking this consent at this stage. Further detailed work will be undertaken to examine the nature, governance structure and operation of a Combined Authority that works most effectively in the Lancashire context. Any financial implications for Fylde Council will be considered as proposals are developed. At this stage all the local authorities across the county are seeking an agreement in principle to demonstrate collective commitment to the concept and the recommendation is that Fylde is at the table to influence our future.

IMPLICATIONS	
Finance	None arising directly from the recommendations in the report at this stage. Any financial implications for Fylde Council will be considered as proposals are developed.
Legal	Any combined authority would be formally established by legislation, which would set out the functions and governance arrangements for the authority.
Community Safety	None arising from this report
Human Rights and Equalities	None arising from this report
Sustainability and Environmental Impact	None arising from this report
Health & Safety and Risk Management	None arising from this report

LEAD AUTHOR	CONTACT DETAILS	DATE
Allan Oldfield	Allan.oldfield@fylde.gov.uk	April 7 <sup>th</sup> 2020

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Guide to Devolution White Paper	Jan 2020	<a href="http://www.nlgn.org.uk/public/2020/undivided-attention-a-guide-to-devolution-and-why-it-matters/">http://www.nlgn.org.uk/public/2020/undivided-attention-a-guide-to-devolution-and-why-it-matters/</a>
LGA Queens Speech Response – Devolution White Paper	October 2019	<a href="https://www.local.gov.uk/queens-speech-lga-responds-devolution-white-paper">https://www.local.gov.uk/queens-speech-lga-responds-devolution-white-paper</a>



## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	COUNCIL	20 JULY 2020	14
<b>REGULATION OF INVESTIGATORY POWERS ACT (RIPA) POLICY</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

Under the Regulation of Investigatory Powers Act 2000, the council must have in place a system of authorising, recording and reviewing any surveillance that it carries out that is covered by the act. Its system must comply with the act, regulations and codes of practice. It must have its own RIPA policy.

It is good practice for the council to evaluate and review its RIPA policy annually. No substantive changes are proposed to the policy this year.

### RECOMMENDATION

Council is recommend to endorse the RIPA policy as updated.

### SUMMARY OF PREVIOUS DECISIONS

The council is invited annually to note the use made by the council of surveillance powers and adopt or endorse the council's RIPA policy. The council last did so at its meeting on 15 July 2019.

The Audit and Standards Committee receives quarterly reports on the council's use of surveillance powers.

CORPORATE PRIORITIES	
Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	✓
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	
Working with all partners ( <b>Vibrant Economy</b> )	
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	

### REPORT

#### THE RIPA FRAMEWORK

1. The Regulation of Investigatory Powers Act 2000 (RIPA) regulates covert investigations by a number of bodies, including local authorities. It was introduced to ensure that individuals' rights are protected while also ensuring that law enforcement and security agencies have the powers they need to do their job effectively.
2. Fylde Council is therefore included within RIPA framework with regard to the authorisation of both directed surveillance and of the use of covert human intelligence sources.

3. Directed surveillance includes the covert surveillance of an individual in circumstances where private information about that individual may be obtained. A covert human intelligence source ("CHIS") is a person who, pretending to be someone that they are not, builds up a relationship of trust with another person for the purpose of obtaining information as part of an investigation.
4. RIPA introduced a mandatory system of authorisation and review for surveillance activities. Only certain people can be designated to authorise surveillance. Authorisations must be approved by the Magistrates' Court. There must be a centrally-retrievable record of authorisations.
5. As well as the act, the RIPA framework includes statutory instruments and codes of practice issued by the Home Office. Each public authority that can use RIPA must have its own RIPA policy. Inspectors from the Investigatory Powers Commissioners Office ("IPCO") can inspect any public authority's RIPA compliance. The inspections can be rigorous and thoroughgoing.

#### **CONSIDERATION OF RIPA POLICY**

6. The policy has been amended this year to change some outdated web links. There are no substantive changes, and the revised policy is attached for members' information.

<b>IMPLICATIONS</b>	
Finance	There are no financial implications arising from this report
Legal	Authorisation of surveillance activity gives that surveillance "lawful authority" for the purposes of the European Convention on Human Rights.
Community Safety	CCTV cameras have the capability of being used for purposes falling within the ambit of RIPA. If they were so used, a RIPA authorisation would need to be obtained.
Human Rights and Equalities	See the comments under "Legal"
Sustainability and Environmental Impact	No implications
Health & Safety and Risk Management	Failure to comply with the statutory requirements would lead to an adverse report by the regulator.

<b>LEAD AUTHOR</b>	<b>CONTACT DETAILS</b>	<b>DATE</b>
Ian Curtis	01253 658506 and ian.curtis@fylde.gov.uk	16 June 2020

<b>BACKGROUND PAPERS</b>		
Name of document	Date	Where available for inspection
Employees' Guide: RIPA	June 2020	Town Hall, Lytham St Annes

Attached documents

Appendix 1 – 2020 RIPA Employees' Guide Policy



## Employees' Guide

### Regulation of Investigatory Powers Act 2000

### Directed Surveillance and Use of Covert Human Intelligence Sources

				<b>Ref. Number</b>	FP 78
<b>Authorised By</b>	Allan Oldfield	<b>Job title</b>	Chief Executive	<b>Issue Date</b>	Dec 2014
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Revised June 2019

## 1 Introduction

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) regulates covert investigations by a number of bodies, including local authorities. It was introduced to ensure that individuals' rights are protected while also ensuring that law enforcement and security agencies have the powers they need to do their job effectively.
- 1.2 Fylde Council is therefore included within the RIPA framework with regard to the authorisation of both [Directed Surveillance](#) and of the use of [Covert Human Intelligence Sources](#).
- 1.3 The purpose of this guidance is to:
- explain the scope of RIPA and the circumstances where it applies
  - provide guidance on the authorisation procedures to be followed.
- 1.4 The Council has had regard to the Code of Practice produced by the Home Office in preparing this guidance. It is available on the Internet at [www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice](http://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice).
- 1.5 This policy is reviewed annually by the full council. Additionally, reports on the use of authorisations under RIPA are made to the council's Audit and Standards Committee on a quarterly basis.
- 1.6 In summary RIPA requires that when the Council undertakes [directed surveillance](#) or uses a [covert human intelligence source](#), these activities must satisfy certain conditions and be authorised by an officer with delegated powers and approved by a Justice of the Peace.
- 1.7 The table and paragraphs 1.8 to 1.10 below set out the officers of the council who have delegated powers under RIPA and the extent of their powers:

Job title	Extent of power
Chief Executive	All
Directors	In connection with directorate activities
Director of Resources	In connection with council tax and housing benefits

- 1.8 Personnel matters are for RIPA purposes regarded as being within the province of the Human Resources section and not that of individual directorates. [Covert](#) surveillance of any council employee for the purpose of preventing or detecting crime arising out of their employment by the council

can therefore only be authorised by the Chief Executive or the Director of Resources.

- 1.9 There are special rules that apply where the Council intends to undertake [directed surveillance](#) or use a [covert human intelligence source](#) and the surveillance or use of the source is likely to result in [confidential material](#) being acquired. In those circumstances, the chief executive must authorise the use of the source. Nobody else can authorise the surveillance or use of the source unless the chief executive is absent. Even if the chief executive is absent, only the officer acting for the time being as Head of Paid Service can authorise: no other officer can do so.
- 1.10 The same special rules apply where the council intends to use a [covert human intelligence source](#) who is under 18 years old, or who is vulnerable. A person is vulnerable if he or she is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself, or unable to protect himself against significant harm or exploitation. Again, the chief executive must authorise the use of such a source. Nobody else can authorise the surveillance or use of the source unless the chief executive is absent. Even if the chief executive is absent, only the officer acting for the time being as Head of Paid Service can authorise: no other officer can do so.
- 1.11 The council will only use a person who is vulnerable as a covert human intelligence source in the most exceptional circumstances, and will not use any person who is under 16 years old.
- 1.12 Authorisation and approval under RIPA gives lawful authority to carry out [surveillance](#) and the use of a source. Obtaining authorisation and approval helps to protect the Council and its officers from complaints of interference with the rights protected by Article 8(1) of the European Convention on Human Rights which is now enshrined in English law through the Human Rights Act 1998. This is because any interference with the private life of citizens will be “in accordance with the law”. Provided activities undertaken are also “reasonable and proportionate”, they will not be in contravention of Human Rights legislation.
- 1.13 It should be noted that the Council cannot authorise [Intrusive Surveillance](#). Investigators should familiarise themselves with the provisions of chapters 5 and 6 of the [Code of Practice](#) on Covert Surveillance to ensure a good understanding of the limitation of powers within RIPA.
- 1.14 Deciding when authorisation is required involves making a judgment. [Paragraph 2](#) sets out some factors you will need to consider. If you are in any doubt, seek the advice of an Authorising Officer, if they are in doubt they will

seek advice from the Head of Governance. While it is always safer to get authorisation, many kinds of investigation may not involve the use of the kinds of surveillance covered by RIPA.

- 1.15 The Head of Governance has responsibility for maintaining a centrally retrievable record of authorisations under RIPA and for overseeing:
  - 1.15.1 the integrity of the process in place within the authority to authorise and seek approval of directed surveillance;
  - 1.15.2 compliance with Part II of the 2000 Act, Part III of the 1997 Act and with the codes of practice;
  - 1.15.3 engagement with the Investigatory Powers Commissioner's Office ("IPCO") and inspectors when they conduct their inspections, and
  - 1.15.4 where necessary, overseeing the implementation of any post-inspection action plans.
- 1.16 Before any officer of the Council undertakes or commissions any [surveillance](#) of any individual or individuals they need to assess whether the activity comes within RIPA. In order to do this the following key questions need to be asked.

## **2 Directed Surveillance**

### **2.1 What is meant by Surveillance?**

"Surveillance" includes:

- a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communication;
- b) recording anything monitored, observed or listened to in the course of surveillance; and
- c) surveillance by or with the assistance of a surveillance device.

### **2.2 When is surveillance directed?**

Surveillance is 'Directed' for the purposes of RIPA if it is [covert](#) and is undertaken:

- a) for the purposes of a [specific investigation](#) or a [specific operation](#);

- b) in such a manner as is likely to result in the obtaining [of private information](#) about a person (whether or not one is specifically identified for the purposes of the investigation or operation); and
- c) otherwise than by way of an [immediate response](#) to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation to be sought for the carrying out of the [surveillance](#).

2.3 Is the surveillance covert?

Covert surveillance is that carried out in a manner **calculated** to ensure that subjects of it are unaware it is or may be taking place.

If activities are open and not hidden from the subjects of an investigation, the RIPA framework will normally not apply.

2.4 Is it for the purposes of a specific investigation or a specific operation?

For example, are Town Hall CCTV cameras which are readily visible to anyone walking around the building covered?

The answer is not if their usage is to monitor the general activities of what is happening in the car park. If that usage, however, changes, RIPA may apply.

For example, **if** the CCTV cameras are targeting a particular known individual, and are being used in monitoring his activities, that has turned into a specific operation. However, the operation will only require authorisation if the surveillance is covert.

2.5 Is it in such a manner that is **likely** to result in the obtaining of private information about a person?

"Private information" is any information relating to a person's private or family life.

An investigation that merely gathers intelligence about a person's use of public spaces and premises open to the public would not by itself usually be likely to result in the obtaining of private information.

For example, the fact that a person has visited a particular pub and spoke to another particular person on a particular occasion will not be private information about either of them. But recording information about what they talk about may be. Private information may also be obtained if several

records about what the person did in a public place are analysed together to produce a pattern of behaviour.

If it is likely that observations will not result in the obtaining of private information about a person, then it is outside RIPA framework. However, the use of 'test purchasers' may involve the use of [covert human intelligence sources](#) (see later). If in doubt, speak to your Authorising Officer.

2.6 Otherwise than by way of an immediate response to event or circumstances where it is not reasonably practicable to get authorisation

The Home Office gives the example of an immediate response to something happening during the course of an observer's work, which is unforeseeable.

However, if as a result of an immediate response, a [specific investigation](#) subsequently takes place that brings it within RIPA framework.

2.7 Is using the internet or social media to get information about in individual directed surveillance?

The internet and social media can be valuable resources for investigations. If you use the internet or social media just to identify individuals who might be of interest, you will probably not be doing directed surveillance and would not have to obtain RIPA authorisation. But if you are using them to build up a more complete picture of someone's behaviour and habits, you might need to consider obtaining an authorisation.

The key consideration is whether you are getting private information. If you are only using information you could get the information by casual browsing, that is not likely to be private information. But if you are visiting a site or feed multiple times, or combining information from a number of online sources, to help you with your investigation of an individual, the position may be different. You be carrying out directed surveillance and need an authorisation. The former Office of Surveillance Commissioners issued guidance on when the use of social media and the internet might need authorisation under RIPA. You can read the guidance at [appendix 4](#). You can also look at paragraphs 3.10 to 3.17 of the [Code of Practice](#).

**3 Is the Surveillance Intrusive?**

3.1 [Surveillance](#) becomes intrusive if it:

- a) is carried out in relation to anything taking place on any **residential premises** or in any **private vehicle**; and



- b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device; or
  - c) Is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle but is carried out without that device being present on the premises or in the vehicle, where the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.
- 3.2 Surveillance is also automatically deemed to be intrusive if it relates to certain kinds of premises which are, at the time of the surveillance, being used for legal consultations. The premises are prisons, courts, police stations, legal practitioners' offices and high security hospitals.

**The council cannot carry out intrusive surveillance.**

#### **4 Covert use of Human Intelligence Source (CHIS)**

- 4.1 A person is a Covert Human Intelligence Source if:
- a) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph b) or c),
  - b) he covertly uses such a relationship to obtain information or provide access to any information to another person; or
  - c) he covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.
- 4.2 A purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of that purpose.
- 4.3 An example of a CHIS would be an officer or other person who pretends to form a friendship with a suspect, but who is really using that relationship to secretly obtain information from the suspect.

- 4.4 It would be unusual for the council to use a CHIS, but if you do so, you need to obtain authorisation

## **5 Authorisations, approvals, renewals and cancellations**

### **5.1 The Process for Authorisation and Approval**

- 5.1.1 Obtaining authorisation and approval is a two-stage process. The first stage is to obtain authorisation from an Authorising Officer. Details of Authorising Officers and their remits are in [paragraphs 1.7 to 1.10](#).
- 5.1.2 The second stage is to obtain approval from a Justice of the Peace. This involves applying to the magistrates' court. The council will follow the Home Office [guidance on applying for approval](#). Only qualified lawyers or officers authorised by the council under [section 223 of the Local Government Act 1972](#) can make the application for approval and appear in court.
- 5.1.3 A Justice of the Peace, in considering giving approval to an authorisation, must consider whether the statutory tests have been met and whether the use of the surveillance technique is necessary and proportionate.
- 5.1.4 An authorisation or renewal is not effective until it has been approved by a Justice of the Peace. The investigating officer should not begin the authorised surveillance until it has been approved.

### **5.2 The Conditions for Authorisation**

#### **5.2.1 Directed Surveillance**

- 5.2.1.1 For [directed surveillance](#) no officer shall grant an authorisation for the carrying out of directed surveillance unless he believes:

- a) that an authorisation is **necessary** for the purpose of preventing or detecting crime or of preventing disorder and
- b) the authorised [surveillance](#) is **proportionate** to what is sought to be achieved by carrying it out.

- 5.2.1.2 In order to ensure that authorising officers have sufficient information to make an informed decision it is important that detailed records are maintained. As such the [forms](#) listed in the Appendix are to be completed where relevant.

- 5.2.1.3 Authorisations should provide enough flexibility to avoid the need for

amendments to accommodate minor changes in the times or methods of surveillance, while still facilitating effective monitoring of compliance with the authorisation.

### 5.2.2 Covert Use of Human Intelligence Sources

5.2.2.1 The same principles apply as for [Directed Surveillance](#). (see paragraph [5.1.1](#) above), but there are some additional requirements. The person authorising use of a CHIS must believe that management arrangements for the source satisfy requirements laid down in RIPA and relevant regulations. The requirements are set out in [Appendix 3](#).

5.2.2.2 The conduct so authorised is any conduct that:

- a) is comprised in any such activities involving the use of a [covert human intelligence source](#), as are specified or described in the authorisation;
- b) relates to the person who is specified or described as the person to whose actions as a covert human intelligence source the authorisation relates; and
- c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.

5.2.2.3 In order to ensure that authorising officers have sufficient information to make an informed decision it is important that detailed records are maintained. As such the [forms](#) listed in appendix 2 are to be completed where relevant.

5.2.2.4 It is also sensible to make any authorisation sufficiently wide enough to cover all the means required, while still facilitating effective monitoring of compliance with the authorisation.

### 5.3 Requirements of RIPA

5.3.1 All authorisations **must** be in **writing**. The Appendix to this guidance refers to standard [forms](#), which must be used. **Officers must direct their mind to the circumstances of the individual case with which they are dealing when completing the form.**

5.3.2 Although it is possible to combine two authorisations in one form the Council's practice is for separate forms to be completed to maintain the distinction between [Directed Surveillance](#) and the use of a [source](#).

5.3.3 Authorisations lapse, if not renewed, three months from the date of approval

by the Magistrates Court for directed surveillance and twelve months from date of approval by the Magistrates Court for the conduct or use of a [covert human intelligence source](#). **Nevertheless, the authorising officer must ensure that each authorisation specifies an expiry date.**

- 5.3.4 The person who originally granted the authorisation can renew it in the same terms at any time before it ceases to have effect. If the person who originally granted the authorisation is unavailable, another [person entitled to grant a new authorisation](#) can renew it. Authorisations may be renewed more than once, provided they continue to meet the criteria for authorisation. Any renewal will not be effective unless approved by the Magistrates Court.

But, for the conduct of a [covert human intelligence source](#), an Authorised Officer should not renew unless a review has been carried out and that person has considered the results of the review when deciding whether to renew or not. A review must cover what use has been made of the source, the tasks given to them and information obtained.

- 5.3.5 The benefits of obtaining an authorisation are described in [paragraph 7](#) below.

#### 5.4 Factors to Consider

- 5.4.1 Any [person giving an authorisation](#) should first satisfy him/herself that the authorisation is **necessary** on particular grounds and that the surveillance is **proportionate** to what it seeks to achieve. This will include consideration of the guidance in paragraphs 3.3 to 3.6 of the [Covert Surveillance and Property Interference Code of Practice](#).
- 5.4.2 Particular consideration should be given to **collateral intrusion** on or interference with the privacy of persons other than the subject(s) of [surveillance](#). Such collateral intrusion or interference would be a matter of especial concern in cases where there are special sensitivities, for example in cases of premises used for any form of medical or professional counselling, advice or therapy.
- 5.2.8 An application for an authorisation should include **an assessment of the risk** of any collateral intrusion or interference. The authorising officer must take this into account when considering the proportionality of the surveillance.
- 5.4.3 Those carrying out the [covert surveillance](#) should inform the Authorising Officer if the operation/investigation unexpectedly interferes with the privacy of individuals who are not the original subjects of the investigation or covered by the authorisation in some other way. In some cases the original authorisation may not be sufficient and consideration should be given to

whether a separate authorisation is required.

- 5.4.4 Any person giving an authorisation will also need to be aware of particular **sensitivities in the local community** where the surveillance is taking place or of similar activities being undertaken by other public authorities which could impact on the deployment of surveillance. Where the Authorising Officer considers that conflicts might arise they should consult a senior police officer before granting the authorisation.

## 5.5 Home Surveillance

- 5.5.1 The fullest consideration should be given in cases where the subject of the surveillance might reasonably expect a high degree of privacy, for instance at his/her home, or where there are special sensitivities.

## 5.6 Spiritual Counselling

No operations should be undertaken in circumstances where investigators believe that surveillance would lead to them intrude on spiritual counselling between a Minister and a member of his/her faith. In this respect, spiritual counselling is defined as conversations with a Minister of Religion acting in his/her official capacity where the person being counselled is seeking or the Minister is imparting forgiveness, absolution of conscience or counselling concerning appropriate repentance. "Minister of Religion" does not necessarily imply a paid office.

## 5.7 Confidential Material

- 5.7.1 RIPA does not provide any special protection for [confidential material](#). Nevertheless, such material is particularly sensitive, and is subject to additional safeguards under this guidance.
- 5.7.2 In general, any application for an authorisation that is likely to result in the acquisition of confidential material should include an assessment of how likely it is that confidential material will be acquired. Special care should be taken where the target of the investigation is likely to be involved in handling confidential material. Such applications should only be considered in exceptional and compelling circumstances with full regard to the proportionality issues this raises.
- 5.7.3 The following general principles apply to confidential material acquired under authorisations:
- Those handling material from such operations should be alert to anything that may fall within the definition of confidential material. Where there is doubt as to whether the material is confidential,

advice should be sought from the Head of Governance before further dissemination takes place;

- Confidential material should not be retained or copied unless it is necessary for a specified purpose;
- [Confidential material](#) should be disseminated only where an appropriate officer (having sought advice from the Head of Governance) is satisfied that it is necessary for a specific purpose;
- The retention or dissemination of such information should be accompanied by a clear warning of its confidential nature. It should be safeguarded by taking reasonable steps to ensure that there is no possibility of it becoming available, or its content being known, to any person whose possession of it might prejudice any criminal or civil proceedings related to the information.
- [Confidential material](#) should be destroyed as soon as it is no longer necessary to retain it for a specified purpose.

#### 5.8 Combined authorisations

A single authorisation may combine two or more different authorisations under RIPA. Combined authorisations must not include [intrusive](#) surveillance activity.

#### 5.9 Partnership working

The council's human resources service and fraud investigation services are outsourced to other councils. As the tasking authority, it is Fylde's responsibility to provide the authorisation. This means that where the outsourced human resources or fraud investigation service wishes to carry out [directed surveillance](#) or use a [CHIS](#), authorisation must be obtained from an appropriate [Authorising Officer](#) of Fylde Council. An authorisation sought or granted by an officer of the council providing the outsourced service would not be valid under RIPA and would not give lawful authority for the activity.

### 6 Handling and disclosure of product

- 6.1 [Authorising Officers](#) are reminded of the guidance relating to the retention and destruction of confidential material as described in paragraph [5.2.9.3](#) above.
- 6.2 Authorising Officers are responsible for ensuring that authorisations undergo timely reviews and are cancelled promptly after directed surveillance activity is no longer necessary. It is good practice for a cancellation application to

describe the activity undertaken, any material acquired and how that material is to be managed.

- 6.3 Authorising Officers must ensure that the relevant details of each authorisation are sent to the [designated officer](#) for registration as described in [paragraph 8](#) below.
- 6.4 The authorised officer should retain applications for [directed surveillance](#) for 5 years. Where it is believed that the records could be relevant to pending or future criminal proceedings, they should be retained for a suitable further period, commensurate to any subsequent review.
- 6.5 [Authorising officers](#) must ensure compliance with the appropriate [data protection](#) requirements and the relevant codes of practice in the handling and storage of material. Where material is obtained by [surveillance](#), which is wholly unrelated to a criminal or other investigation or to any person who is the subject of the investigation, and there is no reason to believe it will be relevant to future civil or criminal proceedings, it should be destroyed immediately. Consideration of whether or not unrelated material should be destroyed is the responsibility of the Authorising Officer.
- 6.6 There is nothing in RIPA that prevents material obtained through the proper use of the authorisation procedures from being used in other investigations. However, you should always bear in mind that the purpose of your surveillance is governed by its authorisation. If the purpose changes, you will need to seek a new authorisation.

## **7 The Use of Covert Human Intelligence Sources**

- 7.1 The [Authorising Officer](#) must consider the continuing safety and welfare of any employee to be used as a [CHIS](#), and the foreseeable consequences to others of the tasks they are asked to carry out. He should assess any risk to the employee **before** authorisation is given.
- 7.2 The Council's practice is **not** to use an employee acting as a source to infiltrate existing criminal activity, or to be a party to the commission of criminal offences, even where this is within the limits recognised by law.
- 7.3 The Authorising Officer must believe that the use of an employee as a source is proportionate to what it seeks to achieve. He should satisfy himself that the likely degree of intrusion into the privacy of those potentially affected is proportionate to what the use of the source seeks to achieve. Accurate and proper records should be kept about the source and tasks undertaken.
- 7.4 Particular care should be taken in circumstances where people would expect

a high degree of privacy or where, as a consequence of the authorisation, [confidential material](#) is likely to be obtained.

## **8 Confidential material**

RIPA does not provide any special protection for confidential material. Nevertheless, such material is particularly sensitive, and is subject to additional safeguards under the relevant Home Office [Code](#). In general, any application for an authorisation that is likely to result in the acquisition of confidential material should include an assessment of how likely it is that confidential material will be acquired.

## **9. Central Register of Authorisations**

9.1 RIPA requires a central register of all authorisations to be maintained. The Head of Governance or his nominated representative maintains this register.

9.2 Whenever an authorisation is granted the [Authorising Officer](#) must arrange for the following details to be forwarded by e-mail to the Head of Governance or nominated representative. Receipt of the e-mail will be acknowledged.

- Whether it is for [Directed Surveillance](#) or [CHIS](#) ;
- Applicants name, job title and directorate;
- Applicant's address and Contact Number;
- Identity of 'Target';
- Authorising Officer and Job Title; (in line with delegation scheme)
- Date of Authorisation;
- Whether the special provisions for urgent authorisation were used and, if so, why;
- Whether the investigation or operation is likely to result in obtaining [confidential material](#); and
- The first date for review.

A copy of the authorisation should be sent either with the notification or to follow as soon as practicable afterwards.

9.3. The Head of Governance or person nominated to maintain the register of authorisations will:

- a) Review the authorisation and draw the authorising officer's attention to any issues or problems with it;
- b) Check that arrangements have been made to seek approval of the authorisation from the Magistrates Court and to forward details of the approval for inclusion on the central record when granted;



- c) Remind [authorising officers](#) of the expiry of authorisations;
- d) Check that surveillance does not continue beyond the authorised period;
- e) At the anniversary of each authorisation, remind authorising officers to consider the destruction of the results of [surveillance](#) operations;
- f) At the fifth anniversary of each authorisation, remind authorising officers to consider destruction of the forms of authorisation, renewal or cancellation.

9.4 It is each director's responsibility to securely retain all authorisations, renewals and cancellations within their directorate. These records are confidential and should be retained for a period of five years from the ending of the authorisation. Once the investigation is closed (bearing in mind court proceedings may be lodged some time after the initial work) the records held by the directorate should be disposed of in an appropriate manner (e.g. shredded).

## **10 Benefits of Obtaining Authorisation under RIPA.**

### **10.1 Authorisation of surveillance and human intelligence sources**

RIPA states that

- if authorisation confers entitlement to engage in a certain conduct
- and
- the conduct is in accordance with the authorisation, **then**
- it shall be "lawful for all purposes".

However, the corollary is not true – i.e. if you do **not** obtain RIPA authorisation it does not make any conduct unlawful (e.g. use [of intrusive surveillance](#) by local authorities). It just means you cannot take advantage of any of the special RIPA benefits.

10.2 RIPA states that a person shall not be subject to any civil liability in relation to any conduct of his which -

- a) is incidental to any conduct that is lawful by virtue of authorisation;
- and

- b) is not itself conduct for which an authorisation is capable of being granted under a relevant enactment and might reasonably be expected to have been sought in the case in question

## 11 Scrutiny and Tribunal

[IPCO](#) regulates conduct carried out under RIPA. The Commissioner provides independent oversight of the use of investigatory powers by intelligence agencies, police forces and other public authorities. This includes authorising [directed surveillance](#) and the use of [covert human intelligence sources](#).

## APPENDIX 1.

### Definitions from RIPA

- **“Confidential Material”** consists of:
  - a) matters subject to legal privilege;
  - b) confidential personal information; or
  - c) confidential journalistic material.
- **“Matters subject to legal privilege”** includes both oral and written communications between a professional legal adviser and his/her client or any person representing hi/her client, made in connection with the giving of legal advice to the client or in contemplation of legal proceedings and for the purposes of such proceedings, as well as items enclosed with or referred to in such communications. Communications and items held with the intention of furthering a criminal purpose are not matters subject to legal privilege (see Note A below)
- **“Confidential Personal Information”** is information held in confidence concerning an individual (whether living or dead) who can be identified from it, and relating:
  - a) to his/her physical or mental health; or
  - b) to spiritual counselling or other assistance given or to be given,

and

which a person has acquired or created in the course of any trade, business, profession or other occupation, or for the purposes of any paid or unpaid office (see Note B below). It includes both oral and written information and also communications as a result of which personal information is acquired or created. Information is held in confidence if:

- c) it is held subject to an express or implied undertaking to hold it in confidence; or
  - d) it is subject to a restriction on disclosure or an obligation of secrecy contained in existing or future legislation.
- **“Confidential Journalistic Material”** includes material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence, as well as communications resulting in information being acquired for the purposes of journalism and held subject to such an undertaking.

**Note A.** *Legally privileged communications will lose their protection if there is evidence, for example, that the professional legal adviser is intending to hold or use them for a criminal purpose; privilege is not lost if a professional legal adviser is properly advising a person who is suspected of having committed a criminal offence. The concept of legal privilege shall apply to the provision of professional legal advice by any agency or organisation.*

**Note B.** *Confidential personal information might, for example, include consultations between a health professional or a professional counsellor and a patient or client, or information from a patient’s medical records.*

**APPENDIX 2.**

1. RIPA 2000 PART II **APPLICATION** FOR AUTHORITY FOR DIRECTED SURVEILLANCE
2. RIPA 2000 PART II APPLICATION FOR **RENEWAL** OF DIRECTED SURVEILLANCE
3. RIPA 2000 PART II APPLICATION FOR **CANCELLATION** OF DIRECTED SURVEILLANCE
4. RIPA 2000 PART II **REVIEW** OF DIRECTED SURVEILLANCE
5. RIPA 2000 PART II APPLICATION FOR **CHANGE OF CIRCUMSTANCES** OF DIRECTED SURVEILLANCE

**APPENDIX 3**

**Management arrangements for CHIS**

[From RIPA, section 29(5)]

- a) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have day-to-day responsibility for dealing with the source on behalf of that authority, and for the source's security and welfare;
- (b) that there will at all times be another person holding an office, rank or position with the relevant investigating authority who will have general oversight of the use made of the source;
- (c) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of the source;
- (d) that the records relating to the source that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Secretary of State; and
- (e) that records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.

The matters specified in paragraph (d) are the following (see The Regulation of Investigatory Powers (Source Records) Regulations 2000)

:

- (a) the identity of the source;
- (b) the identity, where known, used by the source;
- (c) any relevant investigating authority other than the authority maintaining the records;
- (d) the means by which the source is referred to within each relevant investigating authority;
- (e) any other significant information connected with the security and welfare of the source;
- (f) any confirmation made by a person granting or renewing an authorisation for the conduct or use of a source that the information in paragraph (d) has been considered and that any identified risks to the security and welfare of the source have where appropriate been properly explained to and understood by the source;
- (g) the date when, and the circumstances in which, the source was recruited;
- (h) the identities of the persons who, in relation to the source, are discharging or have discharged the functions mentioned in section 29(5)(a) to (c) of the 2000 Act or in any order made by the Secretary of State under section 29(2)(c);
- (i) the periods during which those persons have discharged those responsibilities;

- (j) the tasks given to the source and the demands made of him in relation to his activities as a source;
- (k) all contacts or communications between the source and a person acting on behalf of any relevant investigating authority;
- (l) the information obtained by each relevant investigating authority by the conduct or use of the source;
- (m) any dissemination by that authority of information obtained in that way; and
- (n) in the case of a source who is not an undercover operative, every payment, benefit or reward and every offer of a payment, benefit or reward that is made or provided by or on behalf of any relevant investigating authority in respect of the source's activities for the benefit of that or any other relevant investigating authority.

#### **APPENDIX 4**

##### **Covert surveillance of Social Networking Sites (SNS)**

[From paragraph 289, OSC Procedures and Guidance 2016]

289 The fact that digital investigation is routine or easy to conduct does not reduce the need for authorisation. Care must be taken to understand how the SNS being used works. Authorising officers must not be tempted to assume that one service provider is the same as another or that the services provided by a single provider are the same.

289.1 Whilst it is the responsibility of an individual to set privacy settings to protect unsolicited access to private information, and even though data may be deemed published and no longer under the control of the author, it is unwise to regard it as 'open source' or publicly available; the author has a reasonable expectation of privacy if access controls are applied. In some cases data may be deemed private communication still in transmission (instant messages for example). Where privacy settings are available but not applied the data may be considered open source and an authorisation is not usually required. Repeat viewing of "open source" sites may constitute directed surveillance on a case by case basis and this should be borne in mind.

289.2 Providing there is no warrant authorising interception in accordance with section 48(4) of the 2000 Act, if it is necessary and proportionate for a public authority to breach covertly access controls, the minimum requirement is an authorisation for directed surveillance. An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by a member of a public authority or by a person acting on its behalf (i.e. the activity is more than mere reading of the site's content).

289.3 It is not unlawful for a member of a public authority to set up a false identity but it is inadvisable for a member of a public authority to do so for a covert purpose without authorisation for directed surveillance where private information is likely to be obtained. The SRO should be satisfied that there is a process in place to ensure compliance with the legislation. Using photographs of other persons without their permission to support the false identity infringes other laws.

289.4 A member of a public authority should not adopt the identity of a person known, or likely to be known, to the subject of interest or users of the site without authorisation, and without the consent of the person whose identity is used, and without considering the protection of that person. The consent must be explicit (i.e. the person from whom consent is sought must agree (preferably in writing) what is and is not to be done).

## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	COUNCIL	20 JULY 2020	15
<b>PLANNING APPEALS PROTOCOL</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

At the meeting of the Planning Committee held on 22 January 2020, it was resolved that, subject to the inclusion of an additional footnote to provide further explanation of the different methods that may be followed in the determination of planning appeals, the Committee recommended to the Audit & Standards Committee and Full Council that the Planning Appeals Protocol be incorporated into the Council's Constitution and that the adopted procedures be used in presenting the Council's case to appeals with respect to those decisions made contrary to the recommendation of planning officers.

In line with that resolution, the Audit and Standards Committee at its meeting on 21 May 2020, considered the matter and recommended to Full Council that the Planning Appeals Protocol be incorporated into the Council's Constitution.

### RECOMMENDATION

That Full Council agree to the proposed Planning Appeal Protocol being incorporated into the Council's Constitution and that the adopted procedures be used in presenting the Council's case to appeals with respect to those decisions made contrary to the recommendation of planning officers.

### SUMMARY OF PREVIOUS DECISIONS

Planning Committee – 22 January 2020 - It was RESOLVED that, subject to the inclusion of an additional footnote to provide further explanation of the different methods that may be followed in the determination of planning appeals, the Planning Committee recommend to Audit & Standards Committee and Full Council that the Planning Appeal Protocol be incorporated into the Council's constitution and that the adopted procedures be used in presenting the council's case to appeals with respect to those decisions made contrary to the recommendation of planning officers.

Audit and Standards Committee – 21 May 2020 it was RESOLVED to recommend to Council that the Planning Appeals Protocol be incorporated into the Council's constitution.

CORPORATE PRIORITIES	
Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	✓
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	✓
Working with all partners ( <b>Vibrant Economy</b> )	
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	



## REPORT

1. As part of the Planning Service's continuous improvement programme, it has been noted that the procedures that are followed in circumstances where planning permission is refused by the Planning Committee contrary to officer recommendation or the council's case is altered as a result of supplementary evidence being submitted by an applicant are not as clear as they might be and have never been documented.
2. The Planning Committee considered a proposed protocol that sets out the responsibilities and the procedures that should be followed where:
  - There is a change in circumstances between the determination of a planning application and the determination of any subsequent appeal that warrants a change in the council's case,
  - Council planning officers are unable to represent the Council due to a potential conflict with their professional code of conduct,
  - A local member's view is contrary to that of the council as a whole.
3. The Planning Committee agreed the proposed protocol, which is attached as appendix 1 to this report, with the addition of a note to explain the different processes that are available in determining an appeal. It is intended that the appeal protocol would be read alongside the existing Officer/Member Code of Conduct and the Officer/Member Protocol.
4. The Audit and Standards Committee at its meeting on 21 May 2020 also considered the proposed protocol suggested by the Planning Committee and recommended to Full Council its inclusion within the Constitution as outlined.

IMPLICATIONS	
Finance	The protocol seeks to formalise the current practices of the council and so, the costs associated with the appointment of external consultants to represent the council at such inquiries is not expected to increase and will be met from existing budgets. Where it is not possible to meet these costs from existing budgets, any additional budgetary requirements will be considered on a case by case basis.
Legal	None directly arising from this report.
Community Safety	None directly arising from this report.
Human Rights and Equalities	None directly arising from this report.
Sustainability and Environmental Impact	None directly arising from this report.
Health & Safety and Risk Management	The establishment of a clear protocol will reduce the risk associated with the appeal process in such circumstances and help to ensure that the reputation of the organisation is maintained.

LEAD AUTHOR	CONTACT DETAILS	DATE
Mark Evans	<a href="mailto:mark.evans@fylde.gov.uk">mark.evans@fylde.gov.uk</a>	June 2020

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Constitution	2019	<a href="#">Fylde Council Website</a>
Planning Committee Minutes Audit & Standards Committee	22 January 2020 and 21 May 2020	<a href="#">Fylde Council Website</a> (Item 10 refers)

**Attachments** - Appendix 1- (Draft) Planning Appeal Protocol

## **Appendix 1 - (Draft) Planning Appeal Protocol**

### **Background**

The role of planning officers is to **advise** planning committees, who in turn are entitled to reach their own decisions by attaching different weight to the various planning criteria that are relevant to the determination of an application. Planning committees are, therefore, perfectly entitled not to follow the advice of officers. However, the committee must ensure that their decision is based upon sound planning grounds.

In the event that planning permission is refused or granted subject to the imposition of planning conditions that an applicant considers to be unreasonable, the applicant has the right of appeal against the council's decision. Less frequently, a planning inquiry may be held where the council is minded to approve a planning application, but the Secretary of State has invoked his power to 'call in'<sup>1</sup> an application for his own determination. Planning appeals are heard by the Planning Inspectorate which is an independent arm of government

Normally planning officers will prepare and present the council's case in any appeal. There may, however, be occasions when the decision of the council is not in line with the professional judgement of planning officers and in these circumstances the Council's officers are not able to represent the council at an appeal. This is because, at an appeal hearing or inquiry, a planning officer would be both expected by the planning inspector and required by the provisions of the Royal Town Planning Institute's Code of Professional Conduct, to give their professional opinion on the development proposal.

This protocol is intended to provide guidance to officers and members in circumstances where:

- Circumstances change between the determination of the planning application and the determination of the appeal,
- Council planning officers are unable to represent the Council due to potential conflict with their professional code of conduct,
- A local member's view is contrary to that of the council as a whole.

This protocol should be read alongside the Officer/Member Code of Conduct and the Officer/Member Protocol.

### **The Appeal Process**

Appeals may be heard by public inquiry, informal hearing or written representations depending upon the complexity of the case<sup>1</sup>. The decision by which method a particular appeal will be determined is for the Planning Inspectorate to determine, however, before making this decision, the Inspectorate normally consult with interested parties. The council's constitution delegates authority to respond to any such consultations to the Director of Development Services<sup>2</sup>.

In the event that the Committee decision is in line with the officer recommendation, the appeal case will normally be prepared and presented by council planning officers with specialist assistance brought in as necessary (for example, to assist in viability appraisals or specialist retail impact matters).

In these circumstances officers will be acting on behalf of the council and elected members would not be expected to be involved in the detailed preparation or presentation of the council's case.

The appeal process allows interested parties to make their views known to the planning inspector responsible for determining the appeal. If an individual member wishes to make specific comments in regard to an appeal, they may do so as a private individual or as a member of the council.

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<sup>1</sup> S.77 of the Town and Country Planning Act 1990

<sup>2</sup> Para 4.4 Part 3 FBC Constitution – July 2017

### **Changes in Council's case**

The Planning Practice Guidance (PPG) encourages appellants to continue to discuss their proposal with the local planning authority after an appeal has been lodged. As a result of such discussions the application originally considered by the Planning Committee may be amended or additional information may be presented by the appellant that results in one or more reasons for refusal 'falling away' as they are no longer relevant to the council's case.

Such discussions will often take place right up to the opening of the hearing or public inquiry and may even take place alongside the event.

- 1. In circumstances where the evidence indicates that the council's case should be amended, The Head of Planning & Housing (or the Head of Governance, as appropriate) will, following consultation with the Chairman and Vice Chairman of the Planning Committee, notify the Planning Inspectorate and members of the Planning Committee of any amendments to the council's position as soon as practically possible.**

Any individual member who does not agree with the council's amended case will be able to make their own views known to the Inspector.

### **Decision Contrary to Officer Recommendation**

The council's constitution advises that, in making decisions on planning applications and planning matters, *"members should not normally take a decision contrary to the officers' recommendation without adjourning for a few minutes so that the reasons for the proposed decision can be discussed and then agreed by the committee and, where there is concern about the validity of reasons, considering deferring the decision to another meeting to have them tested and discussed"*<sup>3</sup>;

This is a practice that has been followed at Fylde for many years and so should continue. Where the Chairman considers that there is a potential that a decision could be made contrary to recommendation he should raise this possibility at the Chairman's briefing to allow officers time to consider the possible scope of reasons for refusal. Similarly, where a member of the committee has concerns about the suitability of a proposed development, he or she should seek to discuss those concerns with the case officer or senior planning officers ahead of the committee meeting in order that those concerns may be fully considered.

In the event that a decision is made contrary to the advice of planning officers and is then challenged by an appeal, it will usually be necessary for special arrangements to be made regarding that appeal to prevent conflict with the RTPI's Code of Professional Conduct.

### **The Royal Town Planning Institute Code of Professional Conduct**

The RTPI requires that Chartered Town Planners exercise their professional judgement in accordance with the Code of Professional Conduct (the Code)<sup>4</sup>. In particular:

- Members [of the RTPI] must exercise fearlessly and impartially their independent professional judgement to the best of their skill and understanding.
- Members [of the RTPI] must not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions, nor knowingly enter into any contract or agreement which requires them to do so.

<sup>3</sup> Para 10.7 – Member/Officer Protocol for Planning

<sup>4</sup> Para 11 & 12 RTPI Code of Professional Conduct – February 2016

In addition to the requirements placed on individual chartered town planners, the Code also requires those members who, as managers, have responsibility for the work of an organisation engaged in planning work, to take all reasonable steps to ensure that planning matters in the organisation or body are conducted in accordance with the Code<sup>5</sup>.

### **Defending Appeals – All methods of determination**

In the event that planning permission is refused, or a planning condition is imposed, contrary to the professional judgement of planning officers, the Code prevents planning officers representing the council at any subsequent planning appeal.

The RTPI Code of Conduct only extends to professional views. Accordingly, the administration of appeals and the presentation of background policy and factual information may still be provided by the planning service. However, in such circumstances the council's appeal case will be overseen by the council's legal team.

**2. In order to avoid any conflict with the RTPI code of conduct, in circumstances where a decision is made contrary to the recommendation of planning officers, appeals will be overseen by the Head of Governance.**

The appeal process includes a significant level of administration as it is important that copies of the planning file on which the council's decision was made are passed to the appellant and the planning Inspectorate. There is also a need to notify those who were informed of the original application, including residents, Parish/Town Councils, and other consultees. The support staff in the Development Management team will undertake this work irrespective of the nature of the decision.

In relation to all three procedures, planning officers will take responsibility for submitting the appeal questionnaire, the statement of case and any other documentation required. However, it is important that these fully and accurately represent the basis of the decision made by members. This will be simpler to achieve if the decision, with reasons, are clearly set out in the minutes.

Planning Inspectorate guidance states:

*"The local planning authority's reasons for refusal should be clear and, where the Committee's decision goes against the planning officer's recommendation, it is good practice for the reasons for this to be stated clearly in the Committee minutes."*

Recent case law suggests that this is more than "good practice" and is a legal requirement, other than where reasons can be inferred from the officer report.

Officers will provide advice and support towards making the best possible case in setting out the council's appeal case.

### **Defending appeals –representations in writing**

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<sup>5</sup> Para 20 RTPI Code of Professional Conduct – February 2016

Most planning appeals are decided by the written representations procedure. With this procedure the Inspector considers written evidence from the appellant, the LPA and anyone else who has an interest in the appeal. The site is also likely to be visited.

In the event that the Planning Inspectorate determines that an appeal will be determined by written representations, the Proposer and Seconder of the motion will be contacted on receipt of the appeal and asked to set out the scope of the case that they wish the council to present on the appeal. Planning Officers will be able to provide the necessary contextual and policy background and will be able to assist members in the format that their statement should take. However, as the RTPI Code of Conduct prevents planning officers from making or subscribing to any statements or reports which are contrary to their own bona fide professional opinions, the responsibility for preparing the statement will rest with members, assisted by the council's legal team.

Officers will draft the Statement of Case under this instruction, and will do so in a timescale that allows a reasonable opportunity for the Chairman, Vice-chairman, Proposer and Seconder to review, suggest amendments, and agree the wording of the Statement before it is submitted. Members will recognize that the Planning Inspectorate works to fixed deadlines and so will need to commit to respond in a timely manner.

### **Defending appeals – representation at inquiries or hearings**

If an appeal is to be determined by way of an informal hearing, the Head of Planning & Housing will consider whether a planning officer can present the Authority's case. If a planning officer is unable to speak with conviction and in support of the decision made by Members the Chairman and Vice Chairman will be notified, as soon as practically possible after the receipt of the appeal. Where officers are not to be involved in leading the appeal, the Head of Governance will discuss alternative approaches with the Chairman of the Planning Committee. In some cases, it may be practical to appoint a planning consultant to present the Council's case. In other cases it may be appropriate for a member or members to present the Council's case. This role could be taken by the Chairman of the Committee or by a member who proposed or seconded the motion. The nature of informal hearings is such that it will rarely be appropriate to appoint a legally qualified advocate to present the Council's case.

If an appeal is to be determined at a public inquiry, the Council will generally have legal representation. However, for reasons explained, it may be difficult for officers to give evidence on planning merits where the decision is against their recommendation. Again, the options are calling on a planning consultant to give evidence or calling on the Chairman or other members.

If members are to be called as witnesses, officers will give them all reasonable support. Officers will arrange a meeting with the members involved to offer guidance and support, go through the planning application and inquiry procedure in detail and answer any queries or concerns that Members may have. At the hearing itself, members will be accompanied by a legal or planning officer.

- 3. Where planning officers are not to be involved in leading the appeal, the Head of Governance will discuss alternative approaches with the Chairman of the Planning Committee. The decision whether to appoint external consultants to present the council's case will be made by the Head of Governance following consultation with the Chairman of the Planning Committee.**

In order to ensure the council is able to meet the tight deadlines imposed by the appeals process and to ensure compliance with the council's procurement rules, a list of approved consultants who have been pre-vetted will be maintained. In the event that it is necessary to appoint a consultant to represent the council at an appeal, each individual or company on the agreed list will be approached to establish whether they are able to represent the council. In the event that interest is shown by more than one company, the decision regarding which company to use will rest with the council's Head of Governance having regard to cost and quality as set out in Fylde Council's 'Guide to Buying for the Council'.

- 4. An approved list of planning consultants will be maintained by the council. In the event that it is necessary to appoint a consultant to represent the council at an appeal, each individual or company on the agreed list will be approached to establish whether they are able to represent the council. The decision regarding which company to use will rest with the council's Head of Governance having regard to cost and quality.**

If members are to present the Council's case, officers will give them all reasonable assistance. Prior to the date of the hearing, officers will arrange a meeting with the members involved to offer guidance and support, go through the planning application in detail and answer any queries or concerns that Members may have. At the hearing itself, Members will be accompanied by either a legal officer, planning officer or a planning consultant, although it must be noted that the planning officer will not be able to make representations in regard to the merits of the council's case at the hearing,

- 5. Planning officer support will relate to procedural matters and to resisting any application for costs, with advice to members on technical and policy matters if the need arises. Planning officers will not give evidence on the merits of the case. Officers, or a planning consultant, will also accompany members on any site visit that the Inspector may wish to make.**

### **Defending appeals in difficult cases**

Whilst officers fully respect the role and responsibility of elected members in the decision making process, there may be occasions when the prospects of success are so bleak that the better course would be not to defend an appeal. The costs of defending an appeal can be substantial, and members and officers need to pay heed to the risk of an adverse award of costs.

The Planning Inspectorate has published detailed guidance on when an award of costs against a local authority may be appropriate<sup>6</sup>. Examples given include:

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
- failure to produce evidence to substantiate each reason for refusal on appeal
- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

- 6. If officers' professional view is that appeals should not be defended, whether by reason of potential costs or otherwise, they are obliged to give their professional advice and recommendation, and the Planning Committee would be invited to make a decision, if necessary at a special meeting of the Planning Committee.**

It is likely that reports to members in these circumstances would be taken as "Part 2" items, and that any consultation would be on a confidential basis, to avoid prejudicing the Council's position should members nevertheless decide to defend the appeal.

This issue is not necessarily confined to occasions on which members have made a determination against officer advice.

<sup>6</sup> [www.gov.uk/claim-planning-appeal-costs](http://www.gov.uk/claim-planning-appeal-costs)

### **Individual Member View Contrary to that of the Council**

When an appeal is lodged, members who represent that ward are notified of the appeal by email. This allows them to make individual representations should they wish.

There may be circumstances where the opinions of an individual councilor are at variance with the decision of the council.

- 7. In circumstances where a member's view differs to that of the council and he or she wishes their individual views to be taken into consideration by a planning inspector, they may do so in writing or by appearing at an informal hearing or public inquiry. Whilst council planning officers will be able to provide advice or guidance to individual members, they will not be able to divulge information relating to the council's case that is not available to the general public.**

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<sup>i</sup> Appeals may be determined by one of three processes: written representations, informal hearings or public inquiries

#### **Written representations**

This is the method used for the determination of the majority of planning appeals. In this type of appeal, the inspector reaches a decision based on written submissions from the applicant, the local planning authority and any objectors. A simplified method is used for the determination of applications relating to householder development (residential extensions), advertisements and minor commercial (shop front) appeals.

#### **Informal hearings**

If an informal hearing is called, evidence for and against the development is given orally, but in a less formal setting than at a public inquiry, with the inspector leading a round table discussion to consider the merits of the proposal.

#### **Public inquiries**

These are the most formal and adversarial of the three options. Over the course of an inquiry, the inspector takes oral evidence from anyone with a vested interest in the development, or who wishes to express a view. The inspector also takes any written submissions into account when making the final decision.

## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	COUNCIL	20 JULY 2020	16
<b>OUTSIDE BODIES – UPDATE</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

At the meeting of the Tourism and Leisure Committee held on 12 March 2020, consideration was given to a request to include the Park View 4 U Group on the list of Outside Bodies for Fylde Council. The formalisation of the body has emerged from discussions between the Council, the Trust and the Friends Group with a view to having a Council representative attending the Park View joint meetings. The Committee was also asked to nominate an appropriate member to represent the Council on the new outside body.

The Committee agreed to recommended to Full Council the inclusion of the Park View 4 U Group on the approved list of Outside Bodies for Fylde Council. In addition, the Committee nominated Councillor Michael Sayward as the Council's representative on the Group.

The report also outlines the circumstances behind the recommendation to change the nominated representative on the Lowther Trust.

### RECOMMENDATIONS

1. To agree to the Tourism and Leisure Committee's recommendation of Park View 4U Group being added to the approved list of Outside Bodies for Fylde Council.
2. To agree to the nomination of Councillor Michael Sayward as the Council's representative on Park View 4 U Outside Body.
3. To agree that Councillor Susan Fazackerley replaces Councillor Roger Small as the appointed representative for the Lowther Trust.

### SUMMARY OF PREVIOUS DECISIONS

Tourism and Leisure Committee – 12 March 2020

1. To recommend to Full Council that the Pak View 4U Group is added to the approved list of Outside Bodies for Fylde Council.
2. To seek Full Council's approval to nominate Councillor Michael Sayward the Council's representative on Park View 4 U Outside Body.



CORPORATE PRIORITIES	
Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	
Working with all partners ( <b>Vibrant Economy</b> )	✓
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	✓
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	✓

## REPORT

- Members will be fully aware of the work that Park View 4 U have undertaken over the years. The Council has been approached about the feasibility of Park View 4 U being recognised as a formal outside body with a view to having a Council representative attending the Park View Trust meetings
- The Tourism and Leisure Committee at its meeting on 12 March 2020 agreed to recommended to Full Council the inclusion of the Park View 4 U Group on the approved list of Outside Bodies for Fylde Council. In addition, the Committee nominated Councillor Michael Sayward as the Council's representative on the Group.
- In response to changes in roles and responsibilities over recent weeks Councillor Roger Small has taken on additional tasks and is also no longer a member of the Tourism & Leisure committee. Councillor Small has been the appointed representative for the council on Lowther Trust however, with the additional challenges as a Chairman and Deputy Leader as a result of COVID 19 it is proposed that a new appointment is made for Lowther Trust.
- Appointments to Outside Bodies are proposed by the respective committee and approved by Full Council. After discussion with the Chairman of the Tourism & Leisure Committee it is proposed that Councillor Susan Fazackerley is appointed as the council representative for Lowther Trust.
- The Trust is facing significant challenges as a result of the impact on live performances from COVID 19, the recovery plan for the theatre is in already in development. It is important and appropriate that the council representative is fully engaged in the recovery program and that a new appointment is made at this meeting rather than the October council.

IMPLICATIONS	
Finance	There are no financial implications arising from this report
Legal	None as a result of this report
Community Safety	None as a result of this report
Human Rights and Equalities	None as a result of this report
Sustainability and Environmental Impact	None as a result of this report
Health & Safety and Risk Management	None as a result of this report

LEAD AUTHOR	CONTACT DETAILS	DATE
Paul Walker	01253 658491	June 20

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
T & L Committee Agenda and Minutes	12 March 2020	<a href="http://www.fylde.gov.uk">www.fylde.gov.uk</a>