

## Amber Valley Borough Council

### The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

#### Notice Issued under Regulation 11 (Special urgency), regarding the intention to take a Key Decision without 28 clear-days' notice

Regulation 9 of the above Regulations requires 28 clear days' notice to be given of all Key Decisions taken on behalf of the Council.

Where such notice is impracticable, Regulation 10 requires two notices and states the decision can only be made where:

- the proper officer has given written notice to the Chairman of the relevant overview and scrutiny committee– or, if there is no such person, each member of the relevant overview and scrutiny committee of the matter about which the decision is to be made;
- a copy of that notice has been made available for public inspection and published on the Council's website and five clear days have elapsed; and
- the Council has issued a Public Notice (i.e. this Notice), setting out the reasons why compliance with Regulation 9 is impracticable

Where the date by which a key decision must be made, makes compliance with regulation 10 impracticable, Regulation 11 states the decision may only be made where the decision maker has obtained agreement from:

- (a) the chairman of the relevant overview and scrutiny committee; or
  - (b) if there is no such person, or if the chairman of the relevant overview and scrutiny committee is unable to act, the chairman of the relevant local authority; or
  - (c) where there is no chairman of either the relevant overview and scrutiny committee or of the relevant local authority, the vice-chairman of the relevant local authority,
- that the making of the decision is urgent and cannot reasonably be deferred.

The Chairman of the Improvement & Scrutiny Committee agreed by telephone on 31 October 2018 that the making of the decision is urgent and cannot reasonably be deferred for the reasons set out below in this Notice.

Notice is hereby given in accordance with Regulation 11 that the Leader of the Cabinet intends to make the following key decisions without the 28 clear days' notice:

#### Decision:

- 1.1 That £150,000 of funding be vired within the 2018/19 Capital programme from the Solar PV/Renewables budget allocation to the Swiss Tearooms.

## Reasons for decision:

The Council received no compliant tenders for the design and build of the Swiss Tearooms, despite six expressions of interest. A review has identified that the budget has proved insufficient, given the challenges, risks and sensitivities of the location. To overcome these issues, it will be necessary to re-run the tender exercise with an increased budget estimated to be £420,000 for the design and build element, with further funds for other costs, such as planning fees and contingency funds.

The Solar PV scheme intended for the Heanor Depot cannot proceed for the foreseeable future, due to both the Council's stated intention to develop the site for housing and due to Western Power's proposed upgrading of the grid in that part of Heanor.

Financial regulation H14 states: "*Where a tender is received that exceeds the capital budget steps will have to be taken to either transfer funds from other projects or revise the specification; subject to the Council's Standing Orders relating to Contracts*".

Financial regulation H25 states: "*Transfers of funds, up to the lower of £10,000 or 10% of the budget, from one project to another in the Capital Programme may be made by the Management Team, in consultation with the appropriate Cabinet Portfolio holder. For transfers exceeding this limit a report shall be taken to the Cabinet for approval*".

Under section 9E of the Local Government Act 2000 any functions which are, under executive arrangements, the responsibility of the Leader and the Cabinet Executive may be discharged by the Leader of the Cabinet. This provision is reflected in the Authority's Constitution in Rule 3 – 2.5.1 which states: '*The Leader of the Cabinet has responsibility for the discharge of all functions which are not the responsibility of the Council, except for those which by law cannot be his/her responsibility. Where the Leader has delegated a function he or she retains the power to carry out that function personally*'.

<b>Reason why the decisions are urgent and cannot reasonably be deferred</b>
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Given the current state of the Swiss Tearooms and the risk of further deterioration to the Swiss Tearooms, the intended decision set out above needs to be made as a matter of special urgency and such decision cannot be reasonably deferred.
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S DELAHAY

Executive Director (Resources), Amber Valley Borough Council

**Date:** 31 October 2018