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| REPORT TO: | CABINET 22nd March 2021 COUNCIL 29th March 2021 |
| SUBJECT: | Revocation of Section 114 Notice |
| LEAD OFFICER: | Chris Buss Interim Director of Finance, Investment and Risk |
| CABINET MEMBER: | Cllr Hamida Ali, Leader of the Council Cllr Stuart King, Cabinet Member for Croydon Renewal |
| WARDS: | ALL |
| CORPORATE PRIORITY/POLICY CONTEXT/ AMBITIOUS FOR CROYDON | |
| Following the formal granting of Capitalisation Directions for 2020/1 and 2021/2 the Council has now a balanced budget. This means that the need for a section 114 notice no longer exists and has been revoked by the statutory Chief Finance officer . | |
| FINANCIAL IMPACT | |
| With the granting of the Capitalisation Direction the Council now has resources to fund expenditure in the Current financial year and has set a balanced budget for 2021/22 | |
| FORWARD PLAN KEY DECISION REFERENCE NO.: N/A | |

REASON FOR URGENCY: The Statutory Chief Finance officer (Section 151 officer) received notification that the Council's request for a Capitalisation Direction was formally confirmed by MHCLG on 16th March 2021 for 2020/21. The effect of that is that the conditions that led to the issuing of the section 114 notice in November 2020 no longer apply. Although no formal decision is required to revoke the notice, the Section 151 officer is of the view that the Cabinet and full Council should be formally advised of this change and its impact as a matter of urgency.

While this report does not contain any key decisions, and as such the Council's procedures for special urgency in relation to key decisions does not apply in this case, the Chair of the Scrutiny and Overview Committee has been consulted prior to seeking the Leader's approval to accept this report as an item of urgent business.

MHCLG also set out in their letter of the 5th March 2021 that they would be minded to additionally approve a capitalisation of up to £50m for 2021/22, but would not issue a formal Direction approval until the summer of 2021.

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below

1. RECOMMENDATIONS

The Cabinet recommends to full Council to:

- 1.1 Note that the Statutory Chief Finance officer is of the view that following the receipt of the Capitalisation Directions for 2020/1 and 2021/22 that the previously issued letter under section 114 of the Local Government Finance Act 1988, no longer applies as the Council has sufficient resources to meet likely revenue costs in 2020/1 and has a balanced budget for 2021/22.

2. EXECUTIVE SUMMARY

- 2.1 Since 11th November 2020, the Council has operated under a Section 114 notice issued by the former section 151 officer. The issuing of two Capitalisation directions on 16th March 2021 means that the conditions under which the section 114 notice was issued no longer apply and the section 151 officer has written to all members of the Council to that effect.

3. DETAIL

- 3.1 The former Section 151 Officer issued a notice under section 114 (3) of the Local Government Finance Act 1988 on 11th November 2020 confirming that in her view that the Council was unable to meet expenditure from within its resources in the current financial year. The Council as required by statute considered that report at its meeting on on 1st December 2020 and accepted the views contained in the report.
- 3.2 Subsequent to that meeting a second notice was issued on the 2nd December 2020 and was considered by the Council on 16th December 2020. The council has remained under the restrictions of a Section 114 notice since that date. The Council has requested a capitalisation direction both for 2020/21 of £70 million and 21/22 of £50 million. Granting of those directions would enable the Council to balance the budget for 2021/22 and enable the Council to meet the spending pressures in 2020/21.
- 3.3 When setting the budget for 2021/22, the assumption was that the directions would be awarded and indeed an offer of a Conditional capitalisation direction was received from the government on the 6th March and accepted by the Leader on March 9th 2021. The formal capitalisation directions were received by the section 151 officer on March 15th 2021 and are attached as Appendices to this report.
- 3.4 The receipt of the Capitalisation directions means that the Council is now able to fund expenditure in the forthcoming financial year (2021/22) and is able to balance the budget in 2022/23. As such the conditions under which the section 114 notice was issued falls away. In the light of this the Section 151 officer has written to all members of the Council advising them of this change in circumstances.
- 3.5 When agreeing the Council tax and budget on March 9th 2021, the budget report identified the need for a continued control environment to exist even after the expiration of the section 114 notice. As such the existing spending control panel arrangements will exist, however it is proposed to exempt with immediate

effect expenditure directly chargeable to the Pension Fund and the Housing Revenue Account (the former being a separate legal entity and not capable of being included under the powers of s114, and the latter ring-fenced and thus not impacting on the General Fund position) both of which have no direct impact on the general fund budget from the controls. Removing the Spend Control Panel ('SCP') review of Covid Relief Payments (fully grant-funded) is also proposed in terms of it being removed from requiring SCP approval as they are fully grant funded (thus meeting the s114 criteria and as such the Panel were automatically approving all of these). Further modifications to the controls will be applied in the light of experience and learning from their ongoing application.

- 3.6 Both capitalisation directions are conditional and should the Council fail to meet the conditions then the Government may choose to withdraw the direction. Should this occur then the Section 151 officer would almost certainly need to issue a new section 114 notice. Similarly, if the Council is unable to contain expenditure in 2021/22 within the revenue budget the conditions may exist whereby a new section 114 notice is required. It is therefore of the utmost importance that the Council meets the conditions set out in terms of the conditions in the letters whilst maintaining a much greater rigour in terms of financial discipline than has been the case hitherto. Non-achievement of savings or over spending are not options and containing spending within the Council's means is non-negotiable. The Secretary of state still has reserve powers under statute as indicated in the Capitalisation direction to appoint commissioners.

4. CONSULTATION

- 4.1 In determining that the s114 notice is formally lifted, discussion has taken place with our external auditors. The Finance Review Panel are aware that in commenting on the budget, as part of the s25 Statement, it is implied that the s114 would cease. The panel will be formally notified of its lifting by being sent this report. In addition, the Leader, Deputy Leader and the Chair of the Overview and Scrutiny Committee have been made aware of the contents of this report.

5 PRE-DECISION SCRUTINY

- 5.1 In the light of the timing of the receipt of the directions no pre decision scrutiny was possible. However , it must be noted that the issue of a notice under section 114 of the Local Government finance act 1988 is a matter of professional opinion of the section 151 officer. Similarly, it is the same officer's opinion that determines when a section 114 notice is no longer in operation.

6 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 6.1 The financial and risk assessment considerations of this report are contained in the body of the report.

Approved by Chris Buss – Interim Director of Finance, Investment & Risk

7. LEGAL CONSIDERATIONS

- 7.1 The Local Government Finance Act 1988 ('the Act') places certain responsibilities on the Chief Finance Officer of a relevant authority. Under section 114(3) of the Act the Chief Finance Officer shall make a report if it appears that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to the Council to meet that expenditure.
- 7.2 The Secretary of State has the power to issue a Capitalisation Direction under the Local Government Act 2003 ('2003 Act'). Section 16(2)(b) of the 2003 Act provides the means by which the government exceptionally permits councils to treat revenue costs as capital costs. The effect of such a Direction is that specified revenue expenditure becomes treated as capital expenditure so that instead of having to be charged to revenue it may be funded from capital sources. Ministers have discretion to impose other conditions under section 20 of the 2003 Act. MHCLG guidance provides further information regarding the process and procedures to be complied with.
- 7.3 Section 31A of the Local Government Finance Act 1992 places the Council under a statutory responsibility to set a balanced budget. Furthermore, additional duties have been placed by the Local Government Act 2003 on the chief finance officer in relation to the robustness of the estimates before setting the budget.
- 7.4 Having regard to these responsibilities the Chief Finance Officer has confirmed that given the issuing of the two Capitalisation directions by the MHCLG the S.114 notice is no longer applicable.

Approved by: Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Director of Law and Governance & Deputy Monitoring Officer.

8. HUMAN RESOURCES IMPACT

- 8.1 There are no immediate human resources issues arising from this report for Council employees or staff.

Approved by Gillian Bevan, Head of HR, Resources on behalf of Sue Moorman, Director of Human Resources.

9. EQUALITIES IMPACT

- 9.1 There are no immediate equality and inclusion implications arising from this report.
- 9.2 Equality analysis will need to be undertaken to ascertain the potential impact on staff, service users, vulnerable groups and wider communities groups that

share protected characteristics and take actions to mitigate any negative

- 9.3 The Council will ensure that as part of the process of delivering current and future savings, it will protect the most vulnerable in our communities and ensure when making difficult decisions about funding it maintains an absolute commitment to promoting equality for everyone who lives and works in the Borough

Approved by Yvonne Okiyo, Equalities Manager

10. ENVIRONMENTAL IMPACT

- 10.1 There is no direct environmental impact of this report.

11. CRIME AND DISORDER REDUCTION IMPACT

- 11.1 There are no direct Crime and disorder reductions impacts of this report

12. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 12.1 There are no recommendations within this report, which is only for noting.

13. DATA PROTECTION IMPLICATIONS

- 13.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

NO

- 13.2 **HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**

NO

No personal data was used in the writing of this report

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| CONTACT OFFICER: | Chris Buss – Interim Director of Finance, Investment & Risk |
| APPENDICES TO THIS REPORT: | Appendix 1 – Capitalisation Direction letters dated 16 th March 2021 |
| BACKGROUND PAPERS: | None |