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To all Members of the Cabinet

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DATE: 15 December 2008

OUR REF: CF

YOUR REF:

Dear Councillor

CABINET - WEDNESDAY, 17TH DECEMBER, 2008

Please find attached the following items which the Leader of the Council is of the opinion should be considered as a matter of urgency at the meeting of the Cabinet on Wednesday, 17th December, 2008.

9 Joint Working for Minerals and Waste Planning Policy (Pages 1 - 6)

To receive information on the decisions made thus far relating to joint working for minerals and waste planning, and the implications this has for the local development scheme as well as exploring options for future working and Governance and to advise on the next steps.

10 Indemnities for Members and Officers (Pages 7 - 16)

To consider the current powers available to local authorities in relation to the provision of indemnities to elected Members and Officers and to agree, prior to Vesting Day, an indemnity for officers.

Yours sincerely

Cherry Foreman

Democratic Services Officer
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CHESHIRE EAST COUNCIL

CABINET

Date of meeting: 17 December 2008
Report of: Chris McCarthy, Interim Strategic Director Places
Title: Joint working for Minerals and Waste Planning Policy

1.0 Purpose of Report

- 1.1 This report has been prepared to inform Members of the decisions that have been made thus far relating to joint working for minerals and waste planning policy and the implications that this has for the local development scheme (appendix 3) as well as exploring options for future working and Governance and to advise on the next steps (appendix 4).

2.0 Decision Required

- 2.1 The content of the report be noted;
- 2.2 Cabinet confirm the decisions made so far, that joint working on minerals and waste planning policy is an appropriate way forward;
- 2.3 Government Office for the North West be advised of suggested amendments to the LDS in relation to the aspect of joint working on minerals and waste planning policy, (appendix 3)
- 2.4 That Cabinet confirm that the Portfolio Holder authorise the Director (or his nominee(s)) to enter into interim arrangements under the Local Authority (Goods and Services) Act 1970 to support and enable officers to facilitate joint working on minerals and waste planning policy and that progress on joint working be reported regularly to the LDF task group;
- 2.5 That further consideration be given to the form of any joint working.

3.0 Financial Implications for Transition Costs

- 3.1 It is proposed to establish an officer working group to take forward this joint working proposal. Any financial implications for transitional costs would be identified by this group and reported back.

4.0 Financial Implications 2009/10 and beyond

- 4.1 As above, the working group will identify and report back on the staff and other resources required to establish the proposed joint working arrangements for mineral and waste planning policy.

5.0 Legal Implications

- 5.1 For the new Authorities the intention legally is as far as possible to have a pro forma joint working/lead authority agreement with “bolt on” schedules containing the details rather than bespoke arrangements for each joint initiative. The pro-forma is in the process of being worked up but is not yet available.
- 5.2 However, the practicalities of how joint working can be achieved could be documented, in advance of or in the absence of the pro forma, by means of an exchange of correspondence under the Local Authorities (Goods and Services) Act 1970. This empowers local authorities to collaborate with regard to the provision or sharing of professional (e.g. planning staff); administrative (e.g. mail shots) or technical services (e.g. mapping, graphics, IT) and related expenditure between participating Authorities. It is routinely used to document practical arrangements for staff and resources sharing and partnership working.
- 5.3 The pro forma and/or the 1970 Act will be able to document the practicalities of future joint working and officer support. The most appropriate form of agreement will be utilised when the permanent governance arrangements at elected member level are determined. Both forms of agreement will however require decisions to be made relating to the professional, technical and administrative arrangements, for example;
- Will there be a separate team/unit; will there be a lead authority;
 - How should that team/unit operate;
 - Staffing arrangements and secondments;
 - Equitable exposure to costs and benefits;
 - What work would the team be expected to undertake;
 - Administrative and IT arrangements;
 - Arrangements for consultation;
 - Proposed timescales for work;
 - Working procedures;
 - Procurement of relevant studies.

- 5.4 There are a substantial number of aspects which have to be resolved between the relevant parties prior to joint working taking place, a number of these relate to the more technical aspects such as for example administration and work area responsibilities. In the interim, it is suggested that work starts to evaluate the most appropriate means by which joint working could take place. To expedite this work it is anticipated that relevant officers of the Authorities be authorised to enter into arrangements to anticipate, facilitate and underpin joint working. At the Strategic Development Task Group there was agreement that such a working group was required to expedite matters.

6.0 Risk Assessment

- 6.1 A draft risk assessment has been undertaken and the results are shown in Appendix 5.

7.0 Background and Options

7.1 Decisions / discussions and advice so far

- 7.1.1 As a consequence of local government review and the creation of Cheshire East and Cheshire West and Chester, the future delivery of minerals and waste planning policy has been re-examined. Various reports and meetings have been prepared and attended at Executive and panel level; by Councillors and Officers and through the Joint Implementation Team. A concise indication of where reports/meetings have taken place is contained within appendix 1. There is significant support for the delivery of minerals and waste planning policy through joint working at Councillor and officer levels in both the East & West Authorities. The details of how such joint working may now be achieved are now being considered and a officer working group is expected to be set up to facilitate and expedite matters further.
- 7.1.2 As an integral part of the work so far has included a SWOT analysis (Strengths; Weaknesses; Threats and Opportunities) of potential joint working between the authorities on Minerals and Waste planning policy. The SWOT analysis was put together following consultation with our North West neighbouring Authorities of Greater Manchester, Lancashire County Council and Merseyside; these Authorities already operate joint working for minerals and waste planning policy. They have been very helpful in identifying some of the strengths as well as weaknesses of any such work. We have also taken advice from the planning policy documentation published by the Planning Officer Society in March 2008. This work can be found in Appendix 2.

7.2 Implications of joint working on the Local Development Scheme

- 7.2.1 All Local Planning Authorities are required to produce and maintain an up to date Local Development Scheme (LDS) for their area. An LDS is

a public statement which sets out the Council's programme for the production of its Local Development Framework. It focuses on the programme of preparation over a three year period, setting out the Council's priorities for planning and identifying which documents are to be produced, in what order and what work might also be undertaken beyond this period. The first task for Cheshire East is to prepare a Local Development Scheme. The LDS has to be submitted to the Secretary of State in December 2008. Full Council will have considered the draft LDS on 9 December 2008.

- 7.22 The draft LDS for the West is going forward indicating that there will be joint working in relation to minerals and waste planning policy. Within the draft LDS prepared by Cheshire East, the initial minerals development plan document was to be developed solely by East Cheshire and a draft timetable was prepared accordingly. Joint working on minerals and waste planning policy has now been agreed as an appropriate way forward. While there is agreement that joint working should take place, the administrative details and form of Governance have yet to be decided. In these respects it is advised that a number of amendments are made to the draft LDS to reflect the new position on joint working. Appendix 3 provides the details. Following the Strategic Development Task Group on the 3 December, it has been indicated that it will not be possible after Full Council to change the LDS being submitted to GONW. Government Office may however indicate that there are inconsistencies between the two LDS for the East and West Cheshire and require amendments to be made. With this in mind it is now advised that the amendments identified in appendix 3 be submitted to the GONW along with the draft LDS, for their consideration.

7.3 Options for the Governance of joint working.

- 7.3.1 The designated officer team will generate advice and draft policy for consideration by the two authorities. At the simplest level of collaborative working, that advice can be provided to the LDF task group /Panel for each authority with a view to endorsement and ultimate adoption by the respective Councils in due course. However, it is likely that there will be the necessity for decisions over more formal political Governance arrangements. Set out within Government advice¹ there would seem to be two options of Governance of joint working arrangements. Appendix 4 sets these options out in more detail. The appendix has drawn heavily upon the guidance note. Advice has also been taken from existing North West authorities already working collaboratively.

¹ 'The preparation of Joint Waste Development Plan Documents: Guidance Note for Metropolitan and Unitary Authorities', by GMGU (Urban Vision Partnership Ltd) funded by Defra, March 2008.

7.3.2 In essence Governance ranges from the strongest decision-making capabilities in the form of Committee taking executive decisions to the looser in the form of a working group. Before identifying which form of Governance is best suited to a particular situation it is helpful to consider the future partnership; the work to be undertaken and potential risks within the partnership. Appendix 5 identifies some of the risks associated with partnership working and provides a draft initial risk assessment on the identified risks. (the table has been worked up following a request from the Strategic Development Task Group on the 3 December). It would be hoped that this work would be continued through the officer working group.

7.3.3 In general it seems that where significant difficult and contentious issues might be anticipated, the use of a stronger structure (such as a joint committee or board) might be more appropriate for reconciling conflicts and resolving the way forward.

7.3.4 Once a decision has been made on Governance then further decisions will have to be made potentially on structures; composition of membership – for councillors and officers, (substitute representatives) meeting arrangements; administration and the like. Nevertheless, practical work at officer level to maintain momentum and continue with the necessary steps to progress policy and site review and development could continue under Local Authority (Goods and Services) Act 1970 arrangements until the Councils agree upon more formal governance arrangements.

8.0 Overview of Day One, Year One and Term One Issues

8.1 The proposed working group will report back in more detail on the issues requiring a decision, such as governance and working arrangements, in due course.

9.0 Reasons for Recommendation

9.1 Following the decision on Local Government Reorganisation there have been a substantial number of discussions on how minerals and waste planning policy should be delivered through the new Authorities. Within these discussions joint working has been fully supported at all levels. It has also been noted that such partnerships are promoted by the Government; would allow for the most appropriate spatial solutions to problems while harnessing existing work and utilising staff resources and expertise. There were also seen to be clear synergies to the Sub Region. (Appendix 1).

9.2 Given the decision made so far on joint working for minerals policy, certain amendments will be required to be made to the draft LDS and these are tabled in appendix 3.

- 9.3 There are a substantial number of aspects which have to be resolved between the relevant parties prior to joint working taking place, a number of these relate to the more technical aspects such as for example administration and work area responsibilities. Experience of the practicalities of such arrangements is still being gathered from Authorities that have entered into joint working arrangements. It is suggested that this continues to ensure that as many practical issues are anticipated as possible prior to vesting. In the interim, it is suggested that work starts to evaluate the most appropriate means by which joint working could take place. To expedite this work it is anticipated that relevant officers of the Authorities be authorised to enter into arrangements to anticipate, facilitate and underpin joint working.
- 9.4 The research work undertaken by GMGU (Urban Vision Partnership Ltd) indicates that where significant difficult and contentious issues might be anticipated, the use of a stronger structure such as a Committee or Board, might be more appropriate for reconciling conflicts and resolving the way forward. Discussions with the West's LDF panel identified some of the risks in appendix 5. Given that contentious issues may well be anticipated this would lend itself towards the stronger form of Governance in the form of a Board or Committee.

For further information:

Portfolio Holder: Councillor David Brown

Officer: Chris McCarthy

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CHESHIRE EAST

CABINET

Date of meeting: 17 December 2008
Report of: Interim Monitoring Officer
Title: Indemnities for Members and Officers

1.0 Purpose of Report

- 1.1 This reports sets out the current powers available to local authorities in relation to the provision of indemnities to elected Members and Officers and proposes that the Cabinet, prior to Vesting Day, agree an indemnity for officers.

2.0 Decision Required

- 2.1 The Cabinet agree that Officers be indemnified to the maximum extent permitted by the Local Authorities (Indemnities for Members and Officers) Order 2004 and Section 111 of the Local Government Act 1972.

3.0 Financial Implications for Transition Costs

- 3.1 The provision of an indemnity is a contingent liability and so at this stage cannot be quantified, dependent upon whether events arise which would require the giving of such an indemnity at some stage in the future. Insurance provision has already been put in place for Members and Officers as part of the preparations for Vesting Day following a tendering exercise which has recently been completed.

4.0 Financial Implications 2009/10 and beyond

- 4.1 As stated above, the provision of an indemnity is a contingent liability which at this stage cannot be quantified either now or in future years depending on events. The premia required to be payable to sustain the policies of insurance for Members and Officers will continue to be payable and will need to be factored into the budget for the new Council.

5.0 Legal Implications

- 5.1 Power to give an indemnity arises by virtue of regulations made under sections 101 and 105 of the Local Government Act 2000, section 111 of the Local Government Act 1972, the Local Authorities (Indemnities for Members and Officers) Order 2004, and the Cheshire (Structural Changes) Order 2008.

6.0 Risk Assessment

- 6.1 The need for Members and Officers to be protected by indemnities is important, bearing in mind the range of activities that Members and Officers, both in the run up to Vesting Day and after Vesting Day (once all of the Local Government functions are vested in the new Council) will be undertaking. Proper public administration dictates that Members and Officers should be so protected when they are acting on behalf of their Authority and properly and lawfully going about pursuing the business of the Authority.

7.0 Background and Options

- 7.1 The Local Authorities (Indemnities for Members and Officers) Order 2004 provides for circumstances in which a relevant authority in England (which includes the Shadow Council and the Council post Vesting Day) may provide an indemnity to any of their Members or Officers. The powers are in addition to any other existing powers that such authorities may have, such as powers under Section 111 of the Local Government Act 1972 – which is relevant in relation to ensuring that any indemnity is extended to those who are acting within the extent of their delegated authority on behalf of the authority (eg individuals who may not be Members or Officers but who have been appointed to act as a representative of the authority most commonly on any outside bodies with which the Shadow Authority or the Unitary Authority post Vesting Day have an involvement). It is proposed that any indemnity agreed include these individuals.
- 7.2 A copy of the text of the Order is reproduced in Appendix 1 to this report.
- 7.3 Article 4 of the Order makes it clear that an indemnity may be provided by means of the authority securing the provision of an insurance policy for the Member or Officer. As stated, insurance arrangements have already now been put in place in anticipation of a formal agreement that an indemnity be introduced.
- 7.4 Article 5 sets out the cases in which indemnities (including those provided by insurance) may be provided. This Article restricts the power to cases in which the Member or Officer is carrying on any function at the request of, with the approval of, or for the purposes of, the authority. However, it does also extend to cases when exercising the function in question, the Member or Officer does so in a capacity other than that of a Member or Officer of the authority. So, this would permit an indemnity, for example, to cover a case where a Member or Officer acts as a Director of a company at the request of the authority, and thus is acting in a capacity as a Director/Trustee. This is particularly relevant in the case of Members who are nominated to serve on outside bodies on behalf of the Council.
- 7.5 Article 6 prevents the provision of an indemnity (or securing of insurance) in relation to criminal acts, any other intentional wrong doing, fraud, recklessness, or in relation to the bringing of (but not the defence of) any action in defamation.

- 7.6 Article 7 gives a limited power to provide an indemnity (including any indemnity provided by insurance) where the action or inaction complained of is outside the powers of the authority itself or outside the powers of the Member or Officer who acts. It also covers cases in which a Member or Officer makes a statement that certain steps have been taken or requirements have been fulfilled but it later becomes clear that this is not the case. This power is, however, limited to cases in which the person indemnified:
- a. reasonably believes that the matter in question was not outside the powers in question, or
 - b. where a document has been issued containing an untrue statement as to the authority's powers, or as to the steps taken or requirements fulfilled, reasonably believed that the statement was true when it was issued or authorised.
- 7.7 Article 8 gives the authority freedom to negotiate such terms for any indemnity or policy of insurance as it thinks appropriate but requires that those terms include repayment for sums expended by the authority or the insurer in cases where a Member has been found to be in breach of the Code of Conduct applicable to him as a Member of the Authority (following proceedings instituted as a result of a complaint to the Standards Board/the authority) or if a Member or Officer has been convicted of a criminal offence (if the indemnity or insurance policy will otherwise cover the proceedings leading to that finding or conviction). Any sums recoverable by the Council may be recovered as a civil debt.
- 7.8 The Council's Governance and Constitution Committee has given consideration to the indemnification of Members but, in relation to Officers/employees, the agreement of the Cabinet is required to the giving of such an indemnity.

8.0 Overview of Day 1, Year 1, and Term 1 Issues

- 8.1 It is not considered that this is relevant.

9.0 Reasons for Recommendation

- 9.1 So as to ensure that an appropriate arrangement is made to indemnify Officers/employees of the authority

For further information:

Officer: Julie Openshaw, Interim Monitoring Officer

Tel No: 01625 504250

Background Documents: None

2004 No.3082

**LOCAL GOVERNMENT, ENGLAND AND
WALES**

The Local Authorities (Indemnities for Members
and Officers) Order 2004

Made 22nd November 2004

Coming into force 23rd November 2004

The First Secretary of State, in exercise of the powers conferred upon him by sections 101 and 105 of the Local Government Act 2000^[1] and having consulted representatives of relevant authorities, representatives of employees of relevant authorities and such other persons as he considered appropriate hereby makes the following Order, of which a draft has been laid before, and approved by, resolution of, each House of Parliament:

Citation, commencement and interpretation

1. - (1) This Order may be cited as the Local Authorities (Indemnities for Members and Officers) Order 2004.

(2) It shall come into force on the day after that on which it is made.

(3) In this Order -

"Part 3 proceeding" means any investigation, report, reference, adjudication or any other proceeding pursuant to Part 3 of the Local Government Act 2000; and
"secure", in relation to any indemnity provided by means of insurance, includes arranging for, and paying for, that insurance and related expressions shall be construed accordingly.

Application

2. This Order applies to relevant authorities in England^[2] and to police authorities in Wales^[3].

Indemnities

3. The authorities to whom this Order applies may, in the cases mentioned in article 5 below,

provide indemnities to any of their members^[4] or officers.

Insurance

4. In place of, or in addition to, themselves providing an indemnity under article 3 above, any authority to whom this Order applies may, in the cases mentioned in article 5 below, provide an indemnity by securing the insurance of any of its members or officers.

Cases in which an indemnity may be provided

5. Subject to article 6 below, an indemnity may be provided in relation to any action of, or failure to act by, the member or officer in question, which -

(a) is authorised by the authority; or

(b) forms part of, or arises from, any powers conferred, or duties placed, upon that member or officer, as a consequence of any function being exercised by that member or officer (whether or not when exercising that function he does so in his capacity as a member or officer of the authority) -

(i) at the request of, or with the approval of the authority, or

(ii) for the purposes of the authority.

Restrictions on indemnities

6. - (1) No indemnity may be provided under this Order in relation to any action by, or failure to act by, any member or officer which -

(a) constitutes a criminal offence; or

(b) is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that member or officer.

(2) Notwithstanding paragraph (1)(a), an indemnity may be provided in relation to -

(a) subject to article 8 below, the defence of any criminal proceedings brought

against the officer or member; and

(b) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

(3) No indemnity may be provided under this Order in relation to the making by the member or officer indemnified of any claim in relation to an alleged defamation of that member or officer but may be provided in relation to the defence by that member or officer of any allegation of defamation made against him.

Matters that exceed the powers of the authority or member or officer

7. - (1) Notwithstanding any limitation on the powers of the authority which grants an indemnity, the authority may provide an indemnity to the extent that the member or officer in question -

(a) believed that the action, or failure to act, in question was within the powers of the authority, or

(b) where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the authority, or any statement that certain steps have been taken or requirements fulfilled, believed that the contents of that statement were true,

and it was reasonable for that member or officer to hold that belief at the time when he acted or failed to act.

(2) An indemnity may be provided in relation to an act or omission which is subsequently found to be beyond the powers of the member or officer in question but only to the extent that the member or officer reasonably believed that the act or omission in question was within his powers at the time at which he acted.

Terms of indemnity or insurance

8. - (1) Subject to paragraphs (2) and (3) below, the terms of any indemnity given (including any insurance secured), under this Order may be such as the authority in question

shall agree.

(2) Paragraph (3) applies where any indemnity given to any member or officer (including any insurance secured for that member or officer) has effect in relation to the defence of -

(a) any criminal proceedings; or

(b) any Part 3 proceedings.

(3) Where this paragraph applies, the indemnity shall be provided, and any insurance secured, on the terms that -

(a) in the case of criminal proceedings, if the member or officer in question is convicted of a criminal offence and that conviction is not overturned following any appeal, and

(b) in the case of Part 3 proceedings -

(i) if a finding is made in those proceedings that the member in question has failed to comply with the Code of Conduct and that finding is not overturned following any appeal, or

(ii) if the member admits that he has failed to comply with the Code of Conduct,

that member or officer shall reimburse the authority or the insurer (as the case may be) for any sums expended by the authority or insurer in relation to those proceedings pursuant to the indemnity or insurance.

(4) Where a member or officer is obliged to reimburse an authority or insurer pursuant to the terms mentioned in paragraph (3) above, those sums shall be recoverable by the authority or insurer (as the case may be) as a civil debt.

Signed by authority of the First Secretary of State.

Nick Raynsford

Minister of State in the Office of the
Deputy Prime Minister

22nd November 2004

A regulatory impact assessment has been prepared in relation to these Regulations. A copy may be obtained from Local Government Legislation Division, Office of the Deputy Prime Minister, Zone 5/D1, Eland House, Bressenden Place, London, SW1E 5DU (telephone 020 7944 4148; [e-mail lgl@odpm.gsi.gov.uk](mailto:lgl@odpm.gsi.gov.uk)).

Notes:

[1] 2000 c. 22. [back](#)

[2] For the meaning of "relevant authority", see section 49(6) of the Local Government Act 2000. [back](#)

[3] For powers in relation to relevant authorities in Wales, see section 105(2) of the Local Government Act 2000. [back](#)

[4] For the meaning of "member", see sections 49(6) and 101(5) of the Local Government Act 2000 and, in relation to elected mayors, the Local Authorities (Elected Mayors) (England) Regulations 2004 (S.I. 2004/1815). [back](#)

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