

# **Governance & Constitution Committee**

## **Agenda**

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**Date:** Monday, 9th February, 2009  
**Time:** 2.00 pm  
**Venue:** Committee Suite 1 & 2, Westfields, Middlewich Road,  
Sandbach CW11 1HZ

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

### **PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT**

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee.

Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.

Note: In order for officers to undertake any background research it would be helpful if questions were submitted at least one working day before the meeting.

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Please contact Mark Nedderman on 01270 529640  
E-Mail: [mark.nedderman@congleton.gov.uk](mailto:mark.nedderman@congleton.gov.uk) with any apologies or requests for further  
information or to give notice of a question to be asked by a member of the public

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4. **Minutes of Previous Meeting** (Pages 1 - 6)

To approve the Minutes of the Meeting held on 12 January 2009.

5. **Constitution-General Power** (Pages 7 - 8)

To consider a report of the Borough Solicitor relating to a recommendation to Council that authority be delegated to the Borough Solicitor to make such essential additions and changes to the Constitution as might arise following the Council meeting.

6. **Decision-making and Overview and Scrutiny structure of the Council**  
(Pages 9 - 26)

To consider a report of the Borough Solicitor relating to a recommendation to Council in respect of various constitutional provisions.

7. **Joint Health Scrutiny Committees** (Pages 27 - 32)

To consider a report of the Governance Lead Officer regarding the establishment of a Joint Scrutiny Committee with Wirral Metropolitan Borough Council (MBC) in relation to the Cheshire and Wirral Partnership NHS Foundation Trust and the Authority's participation in the Joint Scrutiny Committee.

8. **Planning and Development Control: Committee Structure and Delegations**  
(Pages 33 - 44)

To consider a report of the Borough Solicitor regarding a proposed Committee structure and scheme of delegation for discharging the Council's development control functions.

9. **Planning Protocol of Conduct in relation to the Determination of Planning Matters** (Pages 45 - 66)

To consider a report of the Borough Solicitor relating to a proposed Planning Protocol for the consideration of planning matters.

10. **Public Questions/Speaking - Licensing Committee and Scrutiny Committees**  
(Pages 67 - 74)

To consider a report of the Borough Solicitor regarding public questions/speaking at Licensing Committee and Scrutiny Committees.

11. **Delegation of Non-Executive Functions - Licensing and Environmental Health**  
(Pages 75 - 82)

To consider a report of the Borough Solicitor regarding the delivery of non-executive Licensing and Environmental Health functions from 1 April 2009.

12. **Local Environmental Quality Strategy** (Pages 83 - 106)

To consider a report of the Borough Solicitor regarding a proposed Local Environmental Quality Strategy.

13. **Adoption of Finance and Contract Procedure Rules** (Pages 107 - 114)

To consider a report of the Borough Treasurer and Head of Assets regarding recommendations to Council on the Council's Finance and Contract Procedure Rules which will apply with effect from 1<sup>st</sup> April 2009.

Full Finance and Contract Procedure Rules (Appendix 2) to follow.

14. **Access to Information Rules** (Pages 115 - 130)

To consider a report of the Borough Solicitor regarding recommendations to full Council on the adoption of Access to Information Rules.

15. **Public Rights of Way**

Report to follow.

16. **Trading Standards**

Report to follow.

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**CHESHIRE EAST COUNCIL**

Minutes of a meeting of the **Governance & Constitution Committee**  
held on Monday, 12th January, 2009 at Committee Suite 1 & 2, Westfields,  
Middlewich Road, Sandbach CW11 1HZ

**PRESENT**

Councillor A Ranfield (Chairman)  
Councillor (none)

Councillors M Asquith, Mrs S Bentley, D Cannon, R Cartlidge, Mrs S Jones,  
A Kolker, Mrs G Merry, A Moran, R Walker and R West

**Apologies**

Councillors D Topping

**55 OFFICERS PRESENT**

Mike Flynn, Governance Lead Officer  
Julie Openshaw, Interim Monitoring Officer  
Chris Chapman, Borough Solicitor  
Brian Reed, LGR Governance Group  
Carol Jones, Crewe and Nantwich Borough Council

**56 APOLOGIES FOR ABSENCE**

An apology for absence was received from Councillor D Topping.

**57 DECLARATIONS OF INTEREST**

There were no declarations of interest made.

**58 PUBLIC SPEAKING TIME/OPEN SESSION**

There were no members of the public present.

**59 MINUTES OF PREVIOUS MEETING**

The Minutes of the meeting held on the 1<sup>st</sup> December 2008 were approved as a correct record.

**60 CHESHIRE EAST WORK PLAN**

The Borough Solicitor submitted an updated work plan detailing the current proposals in respect of reports to be brought to the Committee and the current status of each work area.

Members were informed that subject to the date not clashing with other dates within the Cheshire East diary an additional meeting of the Committee had been proposed to take place on 27<sup>th</sup> January 2009.

RESOLVED – That the Committee note the current details of the work plan as referred to at the meeting and that officers liaise with Members in order to establish whether there might be any conflicting meetings which would prevent the proposed meeting taking place on 27 January 2009.

### **61 PROGRESS REPORT - APPOINTMENTS TO OUTSIDE BODIES**

Consideration was given to a report outlining the progress to date made in respect of the arrangements to make appointments to outside bodies in Cheshire East.

The Task Group set up to undertake this work had met on five occasions and was expected to hold another three meetings. Following those meetings the task group was expected to make recommendations to the Governance and Constitution Committee in respect of the following :-

(a) A procedure for making appointments to outside organisations with effect from 1<sup>st</sup> April 2009 which would include

- Recommendations as to Cabinet appointments
- Recommendations as to appointments to be made by the Governance and Constitution Committee
- Terms of office
- Basis of making appointments
- Means of monitoring effectiveness of representation
- A Protocol for dealing with casual vacancies

(b) Recommended named appointments to category 2 organisations

RESOLVED – That the report be noted.

### **62 MEMBER/OFFICER RELATIONS PROTOCOL**

The Borough Solicitor submitted a report containing a draft Member/Officer Relations Protocol the aim of which was to guide Members and officers of Cheshire East Council in their relations.

The Protocol would help build good working relationships between members and officers as they work together to build the new Authority.

The Member/Officer Relations Protocol had been prepared in conjunction with other codes and protocols contained elsewhere within the Cheshire East Constitution.

RESOLVED –

- (a) That the proposed Member/Officer Relations Protocol be endorsed;
- (b) That Council be recommended to adopt the draft Member/Officer Relations Protocol as contained in the appendix to the report into the Constitution.

### **63 SCRUTINY PROCEDURE RULES**

Consideration was given to a report of the Monitoring Officer relating to draft Scrutiny Procedure Rules which would apply with effect from 1<sup>st</sup> April 2009.

At its meeting on the 15<sup>th</sup> December 2008, the Council's Scrutiny Committee had considered the draft rules and recommended that they should take effect in the form appended to the report, with effect from 1<sup>st</sup> April 2009.

RESOLVED –

- (a) That Council be recommended to adopt the draft Scrutiny Procedure Rules contained in appendix B to the report, to take effect on 1<sup>st</sup> April 2009 subject to the following change :-

Rule 3.2 – Co-option. The rule be amended to clarify that statutory co-optees will be voting Members only in respect of education matters as defined in relevant guidance

- (b) That Council be recommended to authorise the Monitoring Officer to make such consequential changes to the Constitution as he considers are necessary in order to give effect to its intentions.

### **64 LOCAL CHOICE FUNCTIONS**

Consideration was given to a report of the Monitoring Officer on the allocation of Local Choice Functions within the decision making framework from 1<sup>st</sup> April 2009.

On 6<sup>th</sup> January 2009, the Cabinet had considered a report which now formed the appendix to the report of the Monitoring Officer, recommending that the Governance and Constitution Committee make recommendations to Council.

RESOLVED –

That Council be recommended that

(i) With effect from Vesting Day, the allocation of local choice functions between Cabinet and the Council, and the further delegations to Committees and officers, be as set out in the appendices to the report, subject to the Borough Solicitor being responsible for arrangements for questions at Council on Police Authority Functions

(ii) the Monitoring Officer be authorised to determine the remaining detail of the allocation of local choice functions in consultation with the Leader and

appropriate Cabinet Members and to make such amendments to the Council's emerging Constitution as he considers are necessary to give effect to the decision of Council.

## **65 DELEGATION OF EXECUTIVE FUNCTIONS**

Consideration was given to a report of the Monitoring Officer on options for delegating and recording the delegation of Executive functions from 1<sup>st</sup> April 2009.

On 6<sup>th</sup> January 2009, the Cabinet had considered a report which now formed the appendix to the report of the Monitoring Officer, recommending the Governance and Constitution Committee to make recommendations to Council.

RESOLVED –

That Council be recommended that

- (i) With effect from Vesting Day, the approach set out in the appendix to the report be adopted as part of Cheshire East's Executive arrangements and that this be reflected in the Council's Constitution
- (ii) That the Monitoring Officer be authorised to determine the remaining detail of the appendix in consultation with the Leader and appropriate Cabinet Members and to make such amendments to the Council's emerging Constitution as he considers are necessary to give effect to the decision of Council.

## **66 CABINET DECISION MAKING ARRANGEMENTS**

Consideration was given to a report of the Monitoring Officer on options for Cabinet decision making arrangements for the Council from 1<sup>st</sup> April 2009.

On 6<sup>th</sup> January 2009, the Cabinet had considered a report which now formed the appendix to the report of the Monitoring Officer, recommending the Governance and Constitution Committee to make recommendations to Council.

RESOLVED –

(a) That Council be recommended that with effect from Vesting Day :-

(1) The Council shall have a Leader and Cabinet form of Executive Arrangements, these to include the "Strong Leader" model, in respect of which and amongst other things the Leader :

- a. is elected by Council;
- b. is empowered to appoint Members of the Council to and remove Members of the Council from the Cabinet, subsequent notification being given to Council;
- c. is empowered to determine the extent of the decision-making powers of Cabinet Members and other executive decision-making bodies.



(2) The Council's Executive arrangements shall comprise those arrangements set out in appendices A and B to the report, subject to the following changes :-

a. reference to Deputy Leader to be removed from the Adult Services Portfolio and that the role of the Deputy Leader be defined;

b. the following functions listed within the Children and Family Services Portfolio to apply, as appropriate, to the Portfolio Holders for Adult Services, Children and Family Services and Health and Wellbeing :-

(i) Liaison with NHS Trusts and Health Authorities;

(ii) Mental Health and Disability;

(iii) Health Promotion;

(iv) Development of integrated services with health partners.

c. The references within the Children and Family Services Portfolio to :-

(i) Mental Health and Disability, to be made specific to Children and Young People; and

(ii) Connexions to be removed.

d. In respect of the Health and Wellbeing Portfolio :-

(i) Public Rights of Way to be added beneath Countryside;

(ii) Tourism to become a dependency rather than being a prime responsibility.

e. That in respect of the Environmental Services Portfolio :-

(i) Health and Safety enforcement to become a dependency rather than being a prime responsibility;

(ii) Public Rights of Way maintenance to be deleted and moved to Health and Wellbeing, as Public Rights of Way

f. That the Prosperity Portfolio shall include Building Control;

g. That the Safer and Stronger Communities Portfolio shall include Health and Safety enforcement in the list of prime responsibilities;

h. That Performance and Capacity Portfolio shall include Twinning in the list of prime responsibilities.

(b) That further consideration be given to the definition of a key decision, to potentially include a financial threshold of £1 million, beyond which an Executive decision shall be a key decision; and that a report be made to Members on the implications;

(c) That Council be recommended that the Monitoring Officer be authorised to make such changes to the Council's emerging Constitution as he considers are necessary to give effect to the wishes of Council.

## 67 CABINET PROCEDURE RULES

Consideration was given to a report of the Monitoring Officer on the Cabinet Procedure Rules which would apply with effect from 1<sup>st</sup> April 2009.

On 6<sup>th</sup> January 2009, the Cabinet had considered a report which now formed the appendix to the report of the Monitoring Officer recommending the Governance and Constitution Committee to make recommendations to Council.

RESOLVED –

(a) That Council be recommended that :-

1. The Cabinet Procedure Rules appended to the report be adopted by Council with effect from Vesting Day;
2. The issues identified in appendix A to the report be noted and that the Council shall have a Leader and Cabinet form of Executive arrangements, these to include the “Strong Leader” model;
3. Subject to Access to Information provisions, any Member of the Council will be entitled to attend, speak at, and ask questions and supplementary questions at meetings of the Cabinet provided that 3 working days notice has been given of any question which is proposed to be asked;
4. A 3 working day notice period be required in respect of any question which is to be asked at Cabinet by a member of the public.

(b) That a further report be made to Members upon the practical arrangements for individual Cabinet Member decision-making.

The meeting commenced at 2.00 pm and concluded at 3.58 pm

Councillor A Ranfield (Chairman)

## CHESHIRE EAST

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting:** 9<sup>th</sup> February 2009  
**Report of:** Borough Solicitor  
**Title:** Constitution-General Power

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#### **1.0 Purpose of Report**

- 1.1 To seek a recommendation to Council on 24<sup>th</sup> February to delegate authority to the Borough Solicitor to make such essential additions and changes to the Constitution as might arise following the date of the Council meeting.

#### **2.0 Decision Required**

- 2.1 A recommendation from the Governance and Constitution Committee that Council delegate to the Borough Solicitor, in consultation with the political Group Whips, the power to make such additions and changes to the Council's constitution as he considers are necessary in order to ensure the delivery of efficient and effective local authority functions with effect from Vesting Day.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 There are no financial implications for Transition Costs.

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 There are no financial implications 2009/10 and beyond.

#### **5.0 Legal Implications**

- 5.1 The legal implications are written into the main body of this report.

#### **6.0 Risk Assessment**

- 6.1 The delegation to the Borough Solicitor of a general power to make additions and changes to the Constitution will ensure that any risks to the continuing delivery of authority's functions are minimised.

## **7.0 Information**

- 7.1 Over the last few months a number of reports have been brought to the Committee which have resulted in recommendations to Council upon a range of Constitutional matters.
- 7.2 The Committee will receive further reports on remaining issues which will complete the Constitutional picture.
- 7.3 The meeting of the Committee on 9<sup>th</sup> February, and the subsequent meeting of Council on 24<sup>th</sup> February, will be the last opportunity before Vesting Day for Constitutional matters to be dealt with. Whilst officers believe that the work of the Committee will adequately provide Cheshire East Council with a robust Constitution, which will fully enable the Council to undertake all local authority functions with effect from Vesting Day, it is vitally important for a general delegated authority to be agreed which will enable urgent additions and changes to be made to the Constitution.
- 7.4 Such authority would make provision for any addition or change to be made to the Constitution following the meeting of Council on 24<sup>th</sup> February which, in the opinion of the Borough Solicitor, was necessary to ensure the delivery of efficient and effective local authority functions with effect from Vesting Day.
- 7.5 It is proposed that such power would be exercised in consultation with the political Group Whips in order for Members to be kept fully aware of the need for any Constitutional change.
- 7.6 Whilst it is expected that this power would apply primarily to the period between the meeting of Council on 24<sup>th</sup> February and Vesting Day, the Committee is asked to agree that it should be of continuing effect in order for any necessary changes or additions to be made to the Constitution until the meeting of Council on 5<sup>th</sup> May.

## **8.0 Reasons for Recommendation**

- 8.1 In order to ensure that Cheshire East Council is fully able to undertake all local authority functions with effect from Vesting Day.

### ***For further information:***

*Officer: Brian Reed*

*Tel No: 01270 529670*

*Email: [brian.reed@cheshire.gov.uk](mailto:brian.reed@cheshire.gov.uk)*

***Background Documents: None***

## CHESHIRE EAST

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting:** 9<sup>th</sup> February 2009  
**Report of:** Borough Solicitor  
**Title:** Decision-making and Overview and Scrutiny structure of the Council

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#### **1.0 Purpose of Report**

- 1.1 To obtain a recommendation of the Committee to Council in respect of the remainder of Committees which will form part of the Council's decision-making and Overview and Scrutiny structure after Vesting Day, and in respect of the responsibilities of decision-making bodies.

#### **2.0 Decision Required**

A recommendation from the Committee to Council:

- 2.1 That the following Committees be appointed:

Children and Families Scrutiny Committee  
Health and Adult Social Care Scrutiny Committee  
Environment and Prosperity Scrutiny Committee  
Sustainable Communities Scrutiny Committee  
Corporate Scrutiny Committee  
Staffing Committee  
Lay Members Appointments Committee  
Appeals Committee  
Standards Committee  
Standards Assessments Sub-Committee  
Standards Review Sub-Committee  
Governance and Constitution Committee

- 2.2 That the appointed committees shall have the decision-making powers and memberships set out in the Appendix, with effect from Vesting Day.
- 2.3 That the Political Groups notify the Borough Solicitor of the Members to be nominated for appointment to the Committees set out in the Appendix and that the membership numbers be confirmed by the Borough Solicitor in consultation with appropriate Members.
- 2.4 That the responsibilities of the decision-making bodies set out in the Appendix be agreed.

2.5 That the Shadow Council's existing Staff Employment Procedure Rules be incorporated into the Council's Constitution with appropriate amendments to reflect the Council's practices and procedures after Vesting Day.

2.6 That the Monitoring Officer will make such additions and amendments to the Council's Constitution as he considers are necessary to give effect to the wishes of Council.

### **3.0 Financial Implications for Transition Costs**

3.1 There are no implications for Transition Costs.

### **4.0 Financial Implications 2009/10 and beyond**

4.1 The staffing structure has sought to take account of the Council's emerging committee structure. Additional committees do have implications for staffing and Member allowances costs but these are unavoidable.

### **5.0 Legal Implications**

5.1 It is essential that the Council has in place a committee structure prior to Vesting Day. The structure must be properly documented in the Constitution together with the powers of each committee. Other legal implications have been taken into account in the main body of this report.

### **6.0 Risk Assessment**

6.1 As the Council will have a fully-functioning decision-making structure, any risks to the Council will be minimised.

### **7.0 Information**

7.1 The Committee has already made major recommendations to Council, which meets on 24<sup>th</sup> February, on the key elements of the Council's decision-making structure: Portfolio Holders powers, officer delegations, powers of Planning and Licensing Committees. Other committees are currently operating.

7.2 Other reports appear on the agenda of this Committee meeting in respect of the appointment of some decision-making bodies but it is now necessary for the powers of the remaining committees to be decided. The Committee is asked to make appropriate recommendations to Council.

7.3 The appendix to this report includes those committees which have not yet been considered by the Committee and sets out suggested powers and Committee Memberships.

7.4 Certain committees, which are presently operating within Cheshire East Council, are also listed in the Appendix. The Appendix indicates where it is

recommended that the powers and Memberships of these Committees should continue to remain the same as apply during the Shadow Period.

- 7.5 The Appendix to this report also includes the current responsibilities of Council and of Cabinet. The Committee is asked to recommend to Council that these responsibilities should continue to apply with effect from Vesting Day.
- 7.6 The Shadow Council currently has Staff Employment Procedure Rules which provide for a range of employment issues. These now need to be amended to reflect the unitary and full local government status of the Council post Vesting Day. The Committee is therefore asked to recommend to Council that the existing Rules, appropriately amended be adopted by the Council and included in the Constitution.

## **8.0 Reasons for Recommendation**

- 8.1 In order for the Council to have full and robust decision-making local authority powers and overview and scrutiny arrangements on Vesting Day.

### ***For further information:***

*Officer: Brian Reed*

*Tel No: 01270529670*

*Email: reed.brian@cheshire.gov.uk*

### ***Background Documents:***

- ***Cheshire East Constitution***
- ***Governance and Constitution Committee reports***

*Documents are available for inspection at:*

The offices of Cheshire East Shadow Council  
Westfields  
Middlewich Road  
Sandbach  
CW11 1HZ

## Appendix

### Overview and Scrutiny Committees

Five Overview and Scrutiny Committees will be appointed which, between them, will relate to the Cabinet and specifically as appropriate to the nine individual Portfolios:

- Children and Families
- Health and Adult Social Care
- Environment and Prosperity
- Sustainable Communities
- Corporate Scrutiny

Health and Adult Social Care will fulfil the legally required task of NHS Scrutiny, together with review and advice on jointly commissioned services in Adult Social Care and Mental Health.

External scrutiny of the LAA, Crime and Disorder and Community Strategies will be undertaken by the Sustainable Communities Committee.

Corporate Scrutiny Committee will review the three “corporate” portfolios, and Cabinet and organisational performance as a whole.

Any of the Committees may be invited to provide advice and recommendations on the development and updating of the Authority’s policies.

The Committees will consist of 14 or 15 Members (plus appropriate co-option) which will enable all non-Executive Members to have a place on at least one Committee.

The Scrutiny Committees will/may specifically:

1. discharge the Council’s functions under Section 21 of the Local Government Act 2000 (Scrutiny Committees)
2. oversee the Council’s overall scrutiny function including the preparation, implementation, monitoring and review of an annual work programme for scrutiny and arrangements for the scrutiny of other public bodies particularly where required to do so by law and where partners can contribute to Community Plan priorities and to Local Area Agreement outcomes;



3. establish such task and finish groups, appointing the Chairman with such membership as it sees fit, to undertake scrutiny on a task and finish basis;
4. ensure that officers discharge their responsibilities effectively and efficiently in relation to the scrutiny function;
5. scrutinise decisions of the Cabinet, and offer advice or make recommendations on the matter under scrutiny once the Committee have considered the issues;
6. refer to the Council or appropriate Committee/Sub-Committee any matter which, following scrutiny, the Committee determines should be brought to the attention of the Council or the Committee or Sub-Committee;
7. if requested, offer any views or advice to the Cabinet in relation to any matter referred to the Committee for consideration;
8. undertake general policy reviews with a cross-service and multi-organisational approach wherever possible and make recommendations to the Council or the Cabinet to assist in the development of future policies and strategies;
9. in performing its role, the Committee may consult and involve the local community and other local public, private and voluntary bodies or organisations;
10. review the Council's response to its obligations in respect of the overall performance management regime and where appropriate advise the Cabinet and the Council of its findings;
11. scrutinise decisions after implementation to examine their effect and outcomes;
12. review and making recommendations in relation to matters which are not the direct responsibility of the Council but which affect the social, economic and environmental well-being of an area, or the Council's area as a whole, or under any statutory requirement or Council contract, procedure or practice;
13. develop, maintain and monitor policies and procedures for handling complaints made against the Council and monitor on a regular basis the level and nature of complaints received and ensure that advice is formulated regarding action to be taken to address areas of concern;
14. monitor the level and nature of Ombudsman complaints and advise the Cabinet, Committees, Sub-Committees and officers on remedial action as appropriate;

15. ensure in conjunction with the Standards, and Governance and Constitution Committees that the Council has in place appropriate mechanisms to protect organisational Integrity including the development of appropriate policies and guidance;
16. deal with any overview and scrutiny matter which is the subject of a Call-In, a Councillor Call for Action or Local Petition;
17. provide a regular programme of training and development for all Members and Co-opted Members involved in the work of the Committee.

#### HEALTH AND ADULT SOCIAL CARE SCRUTINY COMMITTEE

The Health and Adult Social Care Scrutiny Committee will:

1. fulfil the Health Scrutiny duties falling on the Authority by virtue of the Health and Social Care Act 2001 (consolidated into the NHS Act 2006) and subsequent relevant legislation and Government Guidance;
2. liaise with NHS Trusts on any matter relating to the planning, provision and operation of Health services in East Cheshire, including commenting on the annual “health check” of the performance of those Trusts;
3. respond to any formal consultations undertaken by relevant NHS Trusts on any substantial development or variation in service;
4. participate with other relevant local authorities in joint scrutiny arrangements of NHS Trusts providing cross-border services to East Cheshire residents, in particular the Cheshire and Wirral Partnership Foundation Trust;
5. prepare an annual Work Programme and commission scrutiny reviews to ensure that all sections of East Cheshire’s local communities have equal access to Health services and have an equal chance of a successful outcome from those services;
6. liaise with the Local Involvement Network (LiNK) for East Cheshire, commissioning work and receiving reports and recommendations as appropriate;
7. deal with any matter referred by the Department of Health, the Local Involvement Network or by the Council;
8. offer advice to the Cabinet on Key Decisions relating to the operation of the Council’s Adult Social Care functions;

9. receive reports from the Council's external inspectors on its Adult Social Care responsibilities and to offer advice thereon to the Cabinet;
10. keep under review the Council's performance management arrangements in relation to its Adult Social Care responsibilities and offer advice as appropriate;
11. deal with any Health or Adult Social Care matter which is the subject of a Call-In, a Councillor Call for Action or Local Petition;
12. provide a regular programme of training and development for all Members and Co-opted Members involved in the work of the Committee;

### **Staffing Committee**

7 Members: 5:1:1

1. Undertaking the selection process for the appointment, and formulating recommendations to the Council in relation to:
  - the appointment and dismissal of the Head of the Paid Service;
  - the designation of an officer to act as Monitoring Officer and Chief Finance Officer;
  - the appointment/dismissal of Monitoring Officer and Chief Finance Officer;

in accordance with legislation and the appropriate procedures set out in the Staff Employment Procedure Rules;
2. undertaking the selection, appointment and dismissal processes for any staff where so required by law;

(It should be noted that the Chief Executive has powers to appoint all other staff)

3. hearing and determining any appeals by staff under the Council's approved personnel policies and procedures including through any appointed Sub-Committee;
4. hearing and dealing with disputes registered with the Council by recognised Trade Unions.

## **Lay Members Appointments Committee**

7 Members: 5:1:1

Appointing Lay Members (who shall not be Members of the Council) to serve on the Independent Admissions and Exclusion Appeals Panel as required under the relevant legislation.

## **Appeals Committee**

7 Members: 5:1:1

1. Hearing and determining appeals lodged under the Marriage Acts.
2. Hearing and determining any appeals lodged with the Council for determination, as authorised under all relevant education legislation, excluding those duties falling to the Independent Appeals Panel (schools admissions and exclusions).
3. Hearing and determining any appeals lodged with the Council in respect of school transport.
4. Hearing and determining appeals from bus contractors in accordance with contract procedures.
5. Hearing and determining any appeals lodged with the Council as Social Services Authority, and as authorised under all relevant social services legislation.

## **Standards Committee**

(Existing Committee to continue with existing membership and powers):

### **1. Composition**

The Standards Committee will be composed of:

8 Councillors

5 Statutory Independent Members, who will be entitled to vote at meetings, but who are not Councillors or officers of the Council;

3 Parish Members. At least one Parish Member must be present when matters relating to Parish Councils or their Members are being considered;

### **2. Powers**

The Committee will be responsible for

- discharging the Council's functions under Part III of the Local Government Act 2000;
- considering and granting, or otherwise, dispensations in respect of Members' Interests when so enabled under Part III of the Local Government Act 2000;

- promoting high standards of ethical behaviour by developing, maintaining and monitoring codes of Conduct for Members of the Council (including Co-opted Members and other persons acting in a similar capacity) and for employees in accordance with best practice and Government guidance;
  - advising the Council on the adoption or revision of the Codes of Conduct for Members and Officers;
  - ensuring that Members receive advice and training as appropriate on the Members' Code of Conduct;
  - issuing advice to Members on the treatment of personal interests and on conduct matters generally;
  - ensuring that the Council maintains appropriate links with the Standards Board for England and the Commission for Local Administration in England (Ombudsman);
  - referring issues, which impinge on staff conduct, performance, terms of employment, training and development to the appropriate and responsible Executive Member and/or Manager;
  - promoting high standards of responsiveness by the Council to its clients and contacts
- (a) advising other persons/bodies on probity and ethics as appropriate, particularly where that person or body is exercising functions on behalf of the Council;
- (b) supporting the Council's statutory officers as appropriate or their authorised deputies, in the performance of their duties;
- the local determination of complaints following any allegations of misconduct by Members;
  - the determination of applications for exemption in respect of politically restricted posts;

#### **4 Standards Assessment Sub-Committee**

To make initial assessments of allegations that a Member has failed to comply with the Code of Conduct and decide whether to:

- Refer the allegation to the Monitoring Officer (for an investigation to be undertaken or for alternative action) or:
- Refer the allegation to the Standards Board for England; or
- Decide that no action will be taken in respect of the allegation

## **5 Standards Review Sub-Committee**

Upon the receipt of a request for a review of a decision of the Standards Assessment Sub-Committee that no action be taken in respect of an allegation that a Member has failed to comply with the Code of Conduct, to decide whether to:

- Refer the allegation to the Monitoring Officer (for an investigation to be undertaken or local resolution attempted);
- Refer the allegation to the Standards Board for England; or
- Decide that no action will be taken in respect of the allegation.

## **Governance and Constitution Committee**

14 Members: 10:2:1:1

The Governance and Constitution Committee is responsible for:

1. overseeing, monitoring, co-ordinating and implementing the Council's administrative and political business, including electoral matters; administrative boundaries; support for and facilities for Members, including Members' learning and development and party groups for the purpose of their duties as councillors; and administrative arrangements for and the conduct of the Council and other meetings;
2. determining policies and conventions in relation to the political management of the Council, including statutory requirements concerning political balance and rights to information;
3. reviewing the Council's Constitution and recommending any changes to the Council;
4. advising the Council on, and overseeing the promotion of private legislation on behalf of the Council;
5. recommending to the Council, as appropriate, the appointment of Members to Committees and Sub-Committees (including any co-opted members other than in respect of Scrutiny Committees);
6. appointing representatives to serve on outside bodies and organisations (including education bodies and establishments) not falling to the Cabinet to appoint;
7. overseeing and monitoring the Members Allowance budget including pensions and keeping under review the scheme for the payment of allowances to Members;
8. approving annual conference and seminar attendance;

9. recommending to the Council any issues relating to the Honorary Aldermen;
10. approving reasons for absence for Members;
12. approving the overall seating plan for Council meetings;
13. overseeing and agreeing the arrangements for Members to be indemnified for and insured against risks and liabilities arising from the performance of their duties as Members of the Council, and as the Council's representatives on outside bodies.
14. overseeing the Council's role and responsibilities in respect of Corporate Governance;
15. developing a Code of Corporate Governance and to undertake as appropriate an assessment of wider governance issues;
16. supporting the Council's audit function, both internal and external;
17. ensuring the Council has in place appropriate policies and mechanisms to safeguard the Council's resources;
18. supporting the Chief Financial Officer in relation to the performance of their duties;
19. approving any Council Statement of Accounts as may be required by the relevant Account and Audit Regulations;
20. ensuring any Council's Risk Management process is operating effectively.
21. undertaking work, and making recommendations, upon the Council's political management structure.
22. receiving the Annual Audit Report
23. monitoring performance against the Audit Plan
24. reviewing and making recommendations upon the Statement of Internal Control

## **Responsibilities of Council**

The following functions are the responsibility of the Council and will be discharged by the full Council unless specified to be delegated to another Committee, Sub-Committee or body under this Constitution. The Council:

1. is accountable to its citizens for the proper discharge of all of its functions and for the delivery of such services as it is responsible for;
2. will keep under review the running of the Council's affairs and will implement changes where it considers there is a need to do so to improve the way in which the organisation operates, its relationships with the Council's citizens and the delivery of any services in the most effective and efficient way;
3. will adopt the Council's Constitution in accordance with the requirements of the Local Government Act 2000 and approve any subsequent amendments to it in whole or in part;
4. will appoint to the following offices
  - Council Mayor
  - Council Deputy Mayor
  - Leader of the Council
  - Chairmen and Vice-Chairmen of Committees, Sub-Committees and Special Committees
  - such other offices as may be required under this Constitution or by the Council;
5. will determine whether functions which are classified as "local choice" functions under the Local Government Act 2000 should be reserved to the Council or delegated to the Cabinet;
6. will adopt the Council's Codes of Conduct for Members and Officers and the Protocol on Member/Officer Relations;
7. will agree the establishment and composition of, and make appointments to, Committees, Sub-Committees other than those which may be established within the Cabinet;
8. will agree and amend the terms of reference of its Committees and Sub-Committees;
9. will consider any matter which has been referred or submitted to it by the Cabinet;
10. where a matter is referred to it for determination by a Committee or Sub-Committee other than a Cabinet body, under this Constitution or under some other approved policy or procedure, to determine that matter;



11. will adopt or otherwise, as provided in the Council Procedure Rules, motions submitted under Standing Order No.12 (Notice of Motion) which do not relate solely to a Cabinet function;
12. will approve the Members Allowance Scheme including any pension provision for elected Members following advice from the Independent Remuneration Panel;
13. will appoint/dismiss the Head of Paid Service, designate an officer to act as Monitoring Officer and Chief Finance Officer.
14. will approve the Council's response to any issues or proposals in relation to local government boundaries including Electoral Wards, the conduct of elections and the discharge of local authority functions;
15. may determine other matters which may from time to time be submitted to it for determination, either by resolution or through approved procedures, where such matters do not fall within the functions of the Cabinet.

## **Responsibilities of Cabinet**

### **General Responsibility of the Cabinet, Committees and Sub-Committees**

These bodies are responsible and accountable to the Council as appropriate in accordance with this Constitution, their terms of reference and under the approved policies, regulations and procedures of the Council for:

1. ensuring the effective and efficient discharge of the functions delegated to them;
2. ensuring that any Council services are appropriate for and responsive to the needs and views of the Council's citizens, and are delivered effectively and efficiently;
3. ensuring that good external relationships and effective local liaison are promoted in relation to any Council services;
6. monitoring the functions of the Council within their remit and contributing to any Council aims, objectives and policies;

7. determining policies and objectives for any Council services, within their remit, reviewing the extent to which they are met, and agreeing any necessary action;
8. determining the Council's views on matters specific to their areas of responsibility and related external matters;
9. ensuring the effective and efficient management of any services and resources falling within their purview in accordance with this Constitution and, where appropriate, the effective and efficient discharge of the responsibilities of any subordinate bodies or person.

### **Responsibility of the Cabinet**

Where the Cabinet is exercising a Cabinet function, in whole or in part, as set out below, the Cabinet is empowered to take all necessary and appropriate decisions to fulfil the obligations placed upon it subject to any restrictions or constraints imposed by the law or this Constitution.

### **The Cabinet**

Insofar as such functions do not fall within the responsibilities of individual Cabinet Members, the Cabinet is responsible for and accountable to the Council, where appropriate, for the following functions, recognising that certain functions discharged by officers or services within its remit fall, by virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and any subsequent amendments thereto, to be discharged by the Council:

1. consulting on, developing, monitoring and reviewing the various elements of the Council's plans and policies;
2. subject to consultation with the appropriate Scrutiny body or bodies, advising on Budget setting, including all other related financial matters, plans and proposals;
3. ensuring that proper arrangements exist for the effective and efficient management of the Council's executive affairs;
4. ensuring that the Council prepares for the Performance Management regime and any Government initiatives dealing with such matters which have financial implications.

5. monitoring and auditing the lawful, proper and efficient conduct of the Council's financial affairs, including the extent to which budgets and financial policies are being and will be met, and requiring or approving any remedial action to be taken where it considers it necessary and appropriate;
6. advising the Council where appropriate, and determining such matters as may be prescribed from time to time, under the Council's Constitution as the responsibility of the Cabinet;
7. approving, monitoring and reviewing any Council Corporate personnel and human resources policies;
8. approving, monitoring and reviewing the provision of services to the Council which are delivered by internal and/or external suppliers;
9. overseeing, approving and co-ordinating policies on national and external communications, public and media relations and public affairs generally;
10. overseeing relationships with, participation in and contribution to external organisations and partnerships, Local Government Association, the North West Regional Assembly or their successors or like bodies;
11. ensuring officers exercising delegated powers on behalf of the Cabinet discharge their responsibilities efficiently and effectively;
12. ensuring that officers discharge their responsibilities efficiently and effectively in relation to Cabinet functions;
13. overseeing the exercise of any Council powers and duties in relation to Part 1 of the Local Government Act 2000 (Promotion of Economic, Social or Environmental Well Being etc);
14. advising the Council on strategic matters in relation to corporate governance, community governance and community strategy;
15. monitoring and reviewing issues relating to local working;
16. overseeing the promotion of the Council's image, role and relationships in the European context, particularly with the European Commission and other European institutions;
17. preparing and approving, as appropriate, Regional and Sub-Regional Plans and Strategies;
18. preparing and approving major planning studies;

19. supporting the North West Regional Assembly or any successors or like body, where appropriate, on regional policy, transportation, planning and environmental issues and related matters and any other matters of relevance to the Council and ensuring that the Council's views are made known;
20. promoting employment and investment in the Council's area, including the preparation and approval of any Economic Development and Tourism Strategies;
21. deciding such other matters as may fall to the Cabinet to determine as required by the law or as delegated to it by the Council;
22. dealing with any executive Local Development Framework functions which are given to the Council by the Secretary of State.
23. making decisions upon those executive functions which arise under the Cheshire (Structural Changes) Order 2008.

The Cabinet may discharge these functions itself, through a Task Group/Cabinet Sub-Committee or by delegation to an officer. In addition, the Cabinet may appoint such advisory panels, including any member of the Council, as it considers appropriate to provide advice to it.

### **Independent Remuneration Panel**

The Council's Independent Remuneration Panel has the following responsibilities:

To make recommendations to the Council:

- as to the amount of basic allowances that should be paid to Members;
- about the responsibilities or duties which should lead to the payment of a special responsibility allowance and as to the amount of such allowance;
- about the duties for which a travelling and subsistence allowance can be paid and as to the amount of such allowance;
- as to the amount of the co-optees' allowance;
- as to whether the Council's allowances scheme should include an allowance in respect of the expenses for arranging for the care of children and dependants and, if it does make such

recommendation, the amount of such allowance and the means by which it is determined;

- on whether any allowance should be backdated to the beginning of a financial year in the event of the scheme being amended;
- as to whether annual adjustments of allowance levels may be made by reference to an index and, if so, for how long such a measure should run;
- as to which Members of the Council are entitled to pensions, in accordance with a Scheme made under Section 7 of the Superannuation Act 1972;
- as to treating basic allowance and special responsibility allowance as amounts in respect of which such pensions are payable.

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## CHESHIRE EAST

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting:** 9<sup>th</sup> February 2009  
**Report of:** Governance Lead Officer  
**Title:** Joint Health Scrutiny Committees

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#### **1.0 Purpose of Report**

- 1.1 To recommend the establishment of a Joint Scrutiny Committee with Wirral Metropolitan Borough Council (MBC) in relation to the Cheshire and Wirral Partnership NHS Foundation Trust and agree the Authority's participation in the Joint Scrutiny Committee.

#### **2.0 Decision Required**

- 2.1 That the Authority agrees to participate in the joint arrangements with Wirral MBC to scrutinise the work of the Cheshire & Wirral Partnership NHS Foundation Trust and to appoint six representatives (with Deputies) to serve.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 There are no implications for Transition Costs, except the funding of appropriate Member development in view of the new roles and responsibilities involved.

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 To be considered as part of the overall support to be provided to the Scrutiny function.

#### **5.0 Information**

- 5.1 The attached report was considered by the Health and Adult Social Care Scrutiny Committee at its meeting on 20 January 2009. The Committee supported the recommendation that the Authority participates in joint arrangements with Wirral MBC to scrutinise the work of the Cheshire and Wirral Partnership NHS Foundation Trust and now the approval of this Committee is required to formally progress the establishment of the Joint Committee.

***For further information:***

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## CHESHIRE EAST COUNCIL

### HEALTH AND ADULT SOCIAL CARE SCRUTINY COMMITTEE

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**Date of meeting:** 20 January 2009  
**Report of:** Governance Lead Officer  
**Title:** Joint Health Scrutiny Committees

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#### **1.0 Purpose of Report**

- 1.1 To inform the Committee about Joint Health Scrutiny Committees and to recommend the establishment of a Joint Scrutiny Committee in relation to the Cheshire and Wirral Partnership Foundation NHS Trust.

#### **2.0 Decision Required**

- 2.1 That the Committee:
- (a) note the position regarding Joint Health Scrutiny Committees; and
  - (b) recommend the Governance Committee to formally agree to the participation of the Authority in the joint arrangements with Wirral MBC to scrutinise the work of the Cheshire & Wirral Partnership NHS Trust and to appoint six representatives (with Deputies) to serve.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 There are no implications for transition costs, except the funding of appropriate Member development in view of the new roles and responsibilities involved.

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 To be considered as part of the overall support to be provided to the Scrutiny function.

#### **5.0 Information**

- 5.1 Where there are proposals for substantial variation or developments to NHS services affecting more than one overview and scrutiny committee, the consulting NHS body has a duty to consult all the OSCs affected. The Secretary of State has made Directions stating that in such circumstances, all local authorities within the area must establish a joint committee for the purposes of responding to the consultation,

using the method most appropriate to the areas and the issues being considered.

- 5.2 Such proposals will normally arise at a sub-regional, regional or even at a national level. On being notified of an individual proposal, the Committee will need to do is to come to a view on whether the proposal will have a significant impact on a substantial number of Cheshire East residents (for example, the Committee might feel that it should take a particular interest in changes to Maternity Services or Cancer Services; the same may not apply in relation to other more Specialised Services); and, if so, whether or not to participate in any Joint Scrutiny arrangements. In agreeing to be part of joint arrangements, the Committee will in effect be delegating to the Joint Committee the formal powers and responsibilities of a statutory consultee; however, if an decision is taken not to participate, the consulting Trust is entitled to take the view that the Authority has no comments to make on the proposal.
- 5.3 The only Standing Joint Committee in existence covers the work of the Cheshire & Wirral Partnership Foundation NHS Trust - the provider of mental health, learning disability and drug/alcohol services across Cheshire and Wirral. At its inaugural meeting, this Committee noted and endorsed a resolution of the main Scrutiny Committee to “support the principle of continuing Joint Scrutiny arrangements (with Cheshire West & Chester Council and Wirral MBC) of the Cheshire and Wirral Partnership NHS Trust”. It is understood that Wirral MBC are also keen to see the continuation of the current arrangements. No response has been received from Cheshire West & Chester. The existing Committee meets three times per year. The positions of Chair and Vice-Chair have alternated annually between Cheshire County Council and Wirral MBC (with Secretarial services being supplied by the Authority providing the Chair). The Chair of the Joint Committee for 2008/09 is Councillor Dorothy Flude.
- 5.4 Draft terms of reference for a continuing Joint Committee are attached. At present, the County Council and Wirral MBC each appoint six representatives (with Deputies) to serve on the Joint Committee. Should this Committee be content to proceed, and in order to ensure that there is little or no hiatus from 1 April, it is suggested that a recommendation be made to the Governance Committee that Cheshire East Council participates in the proposed joint arrangements and that representatives be appointed to serve.

***For further information:***

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**DRAFT**

**CHESHIRE EAST COUNCIL/CHESHIRE WEST & CHESTER  
COUNCIL/METROPOLITAN BOROUGH OF WIRRAL  
JOINT SCRUTINY COMMITTEE**

**TERMS OF REFERENCE**

- 1 to undertake the Scrutiny of, and report on, any matter relating to the planning, provision and operation of services provided by the Cheshire and Wirral Partnership NHS Foundation Trust (including commenting on the annual “health check” of the performance of the Trust) within the areas of Cheshire East Council, Cheshire West & Chester Council and Wirral Metropolitan Borough Council
- 2 to consider and comment upon any proposals submitted by the Trust for substantial development or variation in the provision of its services
- 3 to consider any matters referred to the Joint Committee by Cheshire East Council Health & Adult Social Care Scrutiny Committee, or Cheshire West & Chester Scrutiny Committee, or the Metropolitan Borough of Wirral’s Social Care, Health and Inclusion Overview and Scrutiny Committee
- 4 to consider any matters referred to the Joint Committee by the appropriate Local Involvement Network (LiNK)

## CHESHIRE EAST COUNCIL

### GOVERNANCE AND CONSTITUTION

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**Date of meeting:** 9th February 2009  
**Report of:** Borough Solicitor  
**Title:** Planning and Development Control: Committee Structure and Delegations

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#### 1.0 Purpose of Report

To propose a Committee structure and scheme of delegation for discharging the Council's development control functions.

#### 2.0 Decision Required

To recommend to Full Council that development control functions are discharged by a Strategic Planning Board, supported by two Planning Committees and a scheme of delegation as detailed below.

##### A.

- creation of a Strategic Planning Board
- with the Terms of Reference set out at Appendix A
- served by a membership of 14 on a politically proportional basis (ie: Conservative 10, Liberal Democrat 2, Labour 1, Independent 1) including the two Portfolio Holders responsible for Development Management and the Local Development Framework
- with a quorum of 5
- comprising councillors to be nominated at full Council on 24<sup>th</sup> February
- meeting for the 1<sup>st</sup> time on [date to be fixed] then on a 3-weekly cycle
- operating as a Shadow Committee forthwith and as a fully operational Council committee from 1<sup>st</sup> April 2009
- included in the Shadow Council's Constitution forthwith and in the Constitution of Cheshire East Council with effect from 1<sup>st</sup> April 2009.

##### B.

- creation of two Planning Committees
- with the Terms of Reference set out at Appendix B
- served by a membership of 15 on a politically proportional basis (ie: Conservative 11, Liberal Democrat 2, Labour 1, Independent 1)
- with a quorum of 5
- comprising councillors to be nominated at the first meeting of the Strategic Planning Board
- meeting for the first time on [dates yet to be fixed] and then on a 3-weekly cycle

- operational from and included in the Constitution of Cheshire East Council from 1<sup>st</sup> April 2009

C

- adoption of the officer delegation scheme at Appendix C
- to be included in the Constitution of Cheshire East Council with effect from 1<sup>st</sup> April 2009

D

- authority be given to the Borough Solicitor to make such consequential changes to the Constitution as he considers necessary to give effect to the wishes of Council.

### **3.0 Financial Implications for Transition Costs**

None

### **4.0 Financial Implications 2009/10 and beyond**

Currently, the combined total of District and County Planning Committee meetings is 69 per year. The proposed Board and Committees will meet 52 times per year. Detailed costs have not been calculated but the arrangements should produce an overall saving.

### **5.0 Legal Implications**

- 5.1 The Council is under a statutory duty to determine planning applications and must have a decision-making structure in place and working from 1st April 2009.
- 5.2 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 reserve planning and development control to the Council, as opposed to the Executive. Decision-making power may be (and invariably is) delegated to Committees, Sub-Committees and officers.

### **6.0 Risk Assessment**

- 6.1 Applications not determined in time are deemed refused and may be appealed, with adverse costs consequences for the Council. Further, they reflect poorly on the Council's national performance indicators. The decision-making structure will need to incorporate a chain of delegation through Committees and officers, in order to process applications within deadlines.
- 6.2 In order to resist challenge by way of Judicial Review and/or complaints to the Local Government Ombudsman, the structure should produce a fair hearing for applications: for example; by reserving and delegating responsibility to appropriate levels, by reflecting government advice regarding good practice: by ensuring consistency of interpretation and approach.

### **7.0 Existing Arrangements**

All four Councils operate substantial planning delegation schemes. The County delegates around 80% of applications to Officers: the Districts around 91%. The

County's one committee meets every six weeks and can refer applications to Full Council. Congleton's one committee meets every four weeks. Crewe & Nantwich have one committee which meets every four weeks and can refer applications to Full Council. Macclesfield has one main and one sub committee: each meets every three weeks

## **8.0 Key Considerations**

- 8.1 To maintain the flow of decision-making and avoid a drop in performance after 1st April, the Council needs to set up a sufficient number of Committees which
- meet frequently
  - carry a manageable workload of appropriate complexity, and are
  - supported by a robust scheme of delegation.
- 8.2 Planning performance is judged against national targets. 60%, 65% and 80% of Major, Minor and Other applications should be decided within 8 or 13 weeks. It is essential that continuity and quality of service are maintained from 1st April. To achieve this, DCLG and the Audit Commission recommend that at least 90% of decisions should be delegated to officers.
- 8.3 DCLG's report, "Councillor Involvement in Planning Decisions" 2007 contains the following advice
- Full Council is too large a body to determine planning applications. Not all Members may have received planning training. There is a tendency for debate to follow subjective or constituency lines instead of focussing on material planning considerations, and to depart from planning policy for reasons other than robust planning ones. Council meetings tend to be infrequent, which will slow down the speed of decision-making. If Authorities wish to have more than one tier, they should consider instead a Strategic Planning Committee served by a smaller number of Members.
  - An appropriate balance must be achieved in the degree of delegation between Members and Officers. Increased delegation appears to lead to more predictable planning decisions, in line with adopted policy, but Councillors should remain involved in the more significant or controversial matters or cases where the issues are finely balanced.
  - Consider deferring decisions where Committees are minded to approve an application contrary to Officer recommendation.
  - Planning Committee Members should become more involved in the policy development process. DCLG guidance "New Council Constitutions" 2000 promotes effective two way communication between the Executive and Development Management. It suggests that the Portfolio Holder should sit on a Planning Committee, though not normally as the Chair. Executive should consult Development Control Committees regarding policy drafts:

this will result in Committee “ownership” of policy and in more consistent decisions.

- Planning training should be compulsory for all Planning Committee Members. It should include policy training and be offered to the wider Council membership too.
- Where a Council has more than one Planning Committee, it should consider whether those Committees should take applications from across the whole of its district instead of from defined areas.

8.4 DCLG drew on advice produced by I&DeA’s Planning Advisory Service (“PAS”) in its 2006 report “Area Based Decision Making” (“ABDM”). The PAS Report acknowledged advantages of ABDM including

- good use of Members local knowledge
- local public interest, ease of attendance, participation

but directed criticism at Committees based on small geographical areas and served by their own Ward Councillors. PAS identified several pitfalls of ABDM and recommended the controls summarised below

- Area based Committees can slow down the decision-making process. To guard against this
  - have a small number of Committees
  - amalgamate local areas to produce agendas of appropriate length
  - support Committees by a scheme of delegation to appropriate levels
  - convene often enough to meet the 8 and 13 week targets
  - supply Committees with adequate resources i.e. officer time
  - reduce or eliminate the right to call in applications or to refer them to a higher tier. This improves performance indicators and encourages ownership of and responsibility for the decision made.
- Separate Committees may develop inconsistencies in knowledge, expertise and general approach. To guard against this
  - provide regular, robust, compulsory training
  - monitor consistency
- ABDM can lead to parochialism. It can increase pressure on Councillors to act as community advocates instead of impartial arbiters, which also increases probity challenges. To guard against this
  - train all Committee Members
  - avoid small Committees served by all the Ward Councillors.

## 9.0 Proposed Structure: Background



- 9.1 In November 2008, Advisory Panel – Places set up a Development Management Task Group comprising experienced Planning Councillors and Development Managers, to develop a proposal for Planning Governance. The Group met three times and reported back to the Panel regarding various options on 27th January 2009. The Panel agreed with the Group's recommendation that the development management function should be discharged by one Strategic Planning Board, supported by two Planning Committees and a full scheme of officer delegation. Each tier is discussed below.
- 9.2 Terms of Reference for the three tiers were approved by the Panel. The Terms now attached as appendices incorporate subsequent amendments to the wording which have not changed their substantive content.

## **10.0 Strategic Planning Board**

- 10.1 The Board's Terms of Reference are set out in Appendix A. It has three roles:
- The determination of major applications
  - Overview and control of the workload and working practices of all three tiers
  - Consultation and feedback regarding Planning Policy
- 10.2 It will comprise 14 Members including the Portfolio Holders responsible for Development Management and the Local Development Framework and will meet every three weeks. This arrangement satisfies DCLG advice by
- allocating large scale applications to a Strategic Committee served by a relatively small number of trained Members who will develop expertise regarding complex applications
  - meeting often enough to maintain performance within deadlines
- 10.3 In its overview role, the Board will monitor consistency between the tiers and identify training needs. It will monitor performance in order to respond quickly and flexibly to the actual workloads which emerge over the next twelve months. For example, should it turn out that the three-weekly cycle is overstressing resources or that performance is slipping for some other reason, the Board will have power to vary arrangements. It may re-direct more work to one tier in order to ease the burden on another. It may adjust the size, number or frequency of the Committees.
- 10.4 Its overview role includes the adoption of working protocols. These documents are important to maintain quality and performance and to explain how the

Service works. The Board can adapt them quickly and flexibly as issues arise in practice e.g. protocols regarding Member's call-in procedure, public speaking rights, the conduct of site visits.

10.5 The overview role satisfies DCLG and PAS advice by

- ensuring that the three tiers continue to work well together, providing a speedy and efficient service
- delivering a thorough, ongoing training programme for Planning and other Members
- maintaining consistency of approach between the two Planning Committees.

10.6 By including the two Portfolio Holders among its membership and by discharging a consultation and feedback role, the Board will maintain links with the Planning Policy function, again in line with DCLG advice.

**11.0 The Planning Committees**

11.1 Terms of Reference are set out at Appendix B. The Committees will deal with applications which do not have strategic implications but which merit public consideration for some reason e.g. they are of medium scale: or, the applicant has a close Council connection. Cheshire East will generate around 5,000 applications per year. Delegating small-scale applications to Officers and reserving large-scale applications to the Strategic Planning Board, will leave around 400-500 applications for determination by Committee. With agendas of around 10-12 applications, it would take two Planning Committees, meeting every three weeks, to discharge this workload.

11.2 Currently, about 2,500 applications arise in the north of the new Borough and 2,500 in the south. There is sense in directing northern applications predominantly but not exclusively towards one Committee and southern applications predominantly but not exclusively towards the other. A northern/southern direction of applications will build up each Committee's local knowledge quickly. This will reduce the number of deferrals for site visits and help to maintain performance during this period of transition. It will be more convenient for the public and will promote local attendance and involvement.

11.3 The Committees will have in-built flexibility rather than a strict geographical remit. Able to consider applications from the whole Borough, each committee can assist meeting critical deadlines, smooth out variations in workloads and avoid parochialism. Mindful of PAS advice regarding consistency of approach between separate Committees, all Committee Members will undertake the same training and the Board will maintain oversight of the Committees' work.

11.4 The Committees also reflect PAS advice by being

- a reasonable size: 15 Members each,
- politically proportionate rather than Ward based
- few in number
- with agendas of appropriate length
- supported by a scheme of officer delegation
- convening often enough to meet performance targets

- 11.5 Complying with PAS advice regarding performance indicators and responsible ownership of decisions, referral up to the Strategic Planning Board is limited to circumstances where Committees are minded to approve applications involving a significant departure from policy.

## **12.0 Delegation Scheme**

The Scheme is set out at Appendix C. It complies with DCLG and PAS advice by directing a large number (90%) of smaller, routine applications towards Officers. The Scheme incorporates common checks and balances e.g. the Head of Planning and Policy cannot approve applications which would be a departure from policy. He has discretion to refer delegated items up to Committee if particular circumstances warrant. Members have the right to call applications in to Committee. Like other practical, working arrangements, the detail of the call-in procedure will be set out in a protocol to be approved by the Strategic Planning Board.

## **13.0 Dates and Deadlines**

- 13.1 In view of the short time left between now and April, it is suggested that the Strategic Planning Board meets as soon as possible in March to approve

- the membership and working arrangements of the two Planning Committees
- a series of Day 1 working protocols e.g. speaking rights at Committee, northern/southern direction of applications between the two Committees, call-in procedure.

From April, the two Committees will join in the 3-weekly cycle. Meeting dates need to be published as soon as possible for public information.

- 13.2 A full day's training for Planning Members has been organised, with a choice of either 17<sup>th</sup> or 19<sup>th</sup> March.

## **14.0 Reasons for Recommendation**

- 14.1 The proposed Structure and Scheme of Delegation offers a pragmatic approach which
- maintains performance targets of 60%, 65% and 80% for Major, Minor and Other applications within 8 and 13 week deadlines
  - maintains at least 90% delegation to Officers, with an appropriate division of responsibility above that level and with a set of checks and balances between the tiers
  - ensures a smooth transition over Day One with inbuilt flexibility to respond quickly to issues arising in practice over the forthcoming months
  - implements good practice guidance published by DCLG and PAS.
- 14.2 The Strategic Planning Board will review these structures and delegations during the first year of operation, to assess their synergy with other initiatives e.g. local area partnerships, and their long-term suitability.

***For further information:***

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Officer: Sheila Dillon  
Tel No: 01270 529725  
Email: [sheila.dillon@congleton.gov.uk](mailto:sheila.dillon@congleton.gov.uk)*

***Background Documents:***

*New Council Constitutions: DCLG 2000  
Councillor Involvement in Planning Decisions: DCLG 2007  
Area-Based Decision Making: PAS 2006*

*Documents are available for inspection at: Westfields, Sandbach*

### **Terms of Reference**

**1.** To oversee the division of the Council's Development Management functions and workload in order to ensure timely and consistent decision-making at the most appropriate level: and to that end

(a) to monitor the volume and type of applications determined; assessing the performance of the Development Management service, and, if appropriate

(b) to vary the number, size and working arrangements of the Planning Committees, to appoint their membership, to vary the division of functions and delegations between the Board, the Planning Committees and the Head of Planning & Policy

(c) to adopt working protocols and procedures: eg: protocols governing the direction of applications between the Planning Committees, public speaking rights, call-in procedure and others.

**2.** To exercise the Council's functions relating to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000. Most of these functions are delegated to the Planning Committees and then onwards to the Head of Planning & Policy but the following are reserved to the Board

(a) applications for Large Scale Major Development, defined from time to time by DCLG. Currently this includes

- residential developments of 200 dwellings or more, or 4 ha or more;

- 10,000 square metres or more, or 2ha. or more of retail, commercial or industrial or other floorspace.

(b) applications for major minerals or waste development

(c) applications requiring Environmental Impact Assessments

(d) applications involving a significant departure from policy which a Planning Committee is minded to approve.

(e) any other matters which have strategic implications by reason of their scale, nature or location.

(f) any other matters referred up to it at the discretion of the Head of Planning & Policy

(g) applications involving a significant departure from policy which a Committee is minded to approve

**3.** To exercise a consultation and advisory role, commenting upon the content of proposed planning policy and upon the effectiveness of existing policies employed in development control decisions

**Appendix B**

**Planning Committees**

**Terms of Reference**

**1.** To exercise the Council's functions relating to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges, set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000. Some applications have been reserved to the Strategic Planning Board: others are delegated on to the Head of Policy & Planning: the following are retained for the Planning Committees,

applications for Small Scale Major Development, defined from time to time by DCLG. Currently this includes

- residential developments of 10-199 dwellings or between 0.5 and 4ha
- retail or commercial/industrial or other floorspace of between 1,000 -9,999 square metres. or between 1ha – 2 ha.

**2.** To determine any other planning & development control matters

- (a) advertised as a departure from policy, which the Head of Planning & Policy is minded to approve.
- (b) submitted by a councillor, senior Council officer (tier 2 or above) or a member of staff employed within the Development Management and Policy service area; or by an immediate family member or partner of these.
- (c) involving the Council either as applicant or land owner. Unless the Head of Planning & Policy identifies some significant factor, this category will not normally include minor developments which accord with planning policy and to which no objection has been made.
- (d) referred up to them by a councillor in accordance with the Committees' call-in procedure.
- (e) referred up to them at the discretion of the Head of Planning & Policy.

The Committees will refer up to the Strategic Planning Board applications involving a significant departure from policy which they are minded to approve.

### **Delegation of Planning Functions to Officers**

**1.** Apart from matters reserved to the Strategic Planning Board and Planning Committees, all those Council functions set out in the Local Authorities (Functions & Responsibilities)(England) Regulations 2000 which relate to town & country planning & development control, the protection of important hedgerows, the preservation of trees and the regulation of high hedges are delegated to the Head of Planning & Policy.

Development control functions include decisions regarding planning applications, permitted development, certificates of lawful use & development, enforcement, listed buildings and conservation areas. The planning functions are to be construed purposively and broadly, to include anything which facilitates or is incidental to them. For example, the power to determine planning applications under s70 Town & Country Planning Act 1990 will include powers governing environmental impact assessments under the various TCP (Environmental Impact Assessment) Regulations. It will also include power to impose conditions, limitations or other restrictions or to determine terms to which approvals are subject, and to modify, vary or revoke approvals.

Where legislation is amended or replaced by new provisions or where new development control provisions are enacted, then the relevant authority delegated in this Scheme applies to those new provisions.

**2.** The Head of Planning & Policy will refer up to a Planning Committee or to the Strategic Planning Board any particular matter which they consider suitable for determination at that level.

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## CHESHIRE EAST

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting:** 9<sup>th</sup> February 2009  
**Report of:** Borough Solicitor  
**Title:** Planning Protocol of Conduct in relation to the Determination of Planning Matters

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#### **1.0 Purpose of Report**

- 1.1 This report attaches as Appendix 1 a proposed Planning Protocol for the consideration of planning matters. The Committee are asked to review and comment on the proposed Protocol.

#### **2.0 Decision Required**

- 2.1 That the Committee considers the Planning Protocol and recommends it for adoption by the Council as part of the Constitution

#### **3.0 Financial Implications for Transition Costs**

- 3.1 None

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 None

#### **5.0 Legal Implications**

- 5.1 There is a risk of legal challenge if robust and consistent procedures are not in place and Councillors are not fully informed as to how they should act in carrying out their duties relating to the consideration of planning matters.
- 5.2 There is also a risk of Local Government Ombudsman complaint being upheld if the Authority does not provide clear and consistent advice to Councillors.

#### **6.0 Risk Assessment**

- 6.1 A number of risks can be identified:
- Generally, a lack of advice aimed at ensuring the integrity of the planning system for those Councillors involved as Members of

the Board/Committees and for those involved as Local Ward Members

- Personal and prejudicial interests and fettering of discretion not being identified and declared at the required times
- Confusion amongst Councillors and members of the public over membership of Parish Councils and outside bodies and the effects this membership may have on the planning process and their involvement in it
- lack of, or inconsistent, advice concerning how Councillors respond to requests for any meetings with developers, applicants, neighbours, Parish/Town Councils
- lack of, or inconsistent, advice regarding lobbying of and by Councillors and how to react to this
- lack of appropriate advice, control and management of site inspections
- lack of general advice to Councillors on their involvement in the discussions concerning the benefits which may stem from particular development proposals through planning obligations
- lack of clarity and inconsistent procedures applied throughout Cheshire East with regard to decision making at Board/Committee meetings
- Complaints to the Local Government Ombudsman being upheld over conduct and matters that occur at Board/Committee meetings and during the conduct of planning applications.

6.2 The protocol does address each of these risks.

## **7.0 Background and Options**

7.1 Currently both Congleton Borough Council and Macclesfield Borough Council have comprehensive Councillors' planning protocols as part of their respective Council Constitutions. The County Council has a protocol that applies only to site visits.

7.2 It is essential that Councillors are aware of, and understand the constraints which they will have to operate within as part of their involvement in the development management process, and in particular in dealing with planning applications. This is in order to protect themselves and the Council from any challenge that may be made by a disgruntled member of the public, applicant or objector. It is also important that the planning system is seen to operate in a fair and open way.

- 7.3 A planning protocol provides consistent guidance for Councillors in dealing with planning applications and a useful reference document for them when dealing with situations that can arise during their day to day functions as a Councillor. It also provides a source of information for members of the public to help them understand the operation of the planning system and the Councillors involvement in such.
- 7.4 It is necessary that this protocol is in place prior to 1 April 2009 so that Cheshire East Council determines applications in a robust and consistent manner and that a quality service is delivered to all customers.
- 7.5 The Planning Protocol deals with the following matters:
1. Relationship to the Members Code of Conduct
  2. Development Proposals and Interests under the Members Code
  3. Fettering of Discretion in the Planning Process
  4. Membership of Parish Councils and Outside Bodies
  5. Cabinet Members
  6. Contact with Applicants, Developers and Objectors
  7. Lobbying of Councillors
  8. Lobbying by Councillors
  9. Site Inspections
  10. Public Speaking at Meetings
  11. Officers
  12. Decision Making
  13. Training
  14. Involvement in Section 106 Agreements
  15. Monitoring and Review
  16. Breaches of the Planning Protocol
- 7.6 This Planning Protocol has been presented to the Development Management Task Group and the Places Advisory Panel and their comments on the drafting have been incorporated into the version of the Protocol attached. The comments included mentioning the other protocols that are intended to be put in place by the Strategic Planning Board within this Protocol so that Councillors and members of the public are aware that they exist and that the training that is mentioned within the Protocol should be mandatory for all members of the Strategic Planning Board and Committees.
- 7.7 There were general discussions regarding Site Inspections and Public Speaking at Planning Board and Committee meetings and it was noted that the advice within this Protocol was general advice and that there was to be a more detailed Site Inspection protocol that dealt with specific issues of arranging and attendance at Site inspections and a more detailed public speaking procedure that set out who could speak, when and for how long.
- 7.8 As a general point it was considered that the Protocol could be put into a booklet format to make it easier and friendlier to view.

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

- 8.1 The adoption of a Planning Protocol is a day one issue. It can then be reviewed and amended as necessary throughout or at the end of year one.

## **9.0 Reasons for Recommendation**

- 9.1 It is vital that a Planning Protocol is in place as part of the new Council's Constitution prior to vesting day. This will provide clear guidance to Councillors in the undertaking of their roles and responsibilities in respect of their consideration of planning applications and other matters.

### ***For further information:***

*Portfolio Holder: Councillor Jamie Macrae*

*Officer: Nicky Folan*

*Tel No: 01625 504261*

*Email: n.folan@macclefield.gov.uk*

### ***Background Documents:***

Congleton Borough Council Protocol of Conduct in relation to planning functions

Macclesfield Borough Council Planning Protocol

Cheshire County Council protocol for Committee Site Visits for Planning Applications

*Documents are available for inspection at:*

At each of the respective Councils, or via each authorities Website

Appendix 1

**PLANNING PROTOCOL OF CONDUCT IN RELATION TO THE DETERMINATION OF PLANNING MATTERS**

This Planning Protocol of Conduct for the determination of planning matters ('the Planning Protocol') substantially follows the Model Code produced by the Association of Council Solicitors and Secretaries following consultation with the Audit Commission, the Local Government Ombudsman and the Standards Board for England.

The aim of the Planning Protocol is to give advice aimed at ensuring the preservation of the integrity of the planning system as open and fair to all parties. It is intended that the Planning Protocol will continue to engender public confidence in the planning system within Cheshire East, whilst avoiding procedural rules which are so rigid and overbearing that observance of them would become an end in itself at the expense of the consideration of the merits of an application.

**1 INTRODUCTION**

- 1.1 **The aim of this Planning Protocol** is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way.
- 1.2 **The key purpose of Planning** is to control development in the public interest.
- 1.3 **Your role as a Member of the Planning Authority** is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 1.4 **When the Planning Protocol applies:** this Planning Protocol applies at all times when Councillors are involved in the planning process. (This includes, where applicable, when part of decision-making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings.) It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.
- 1.5 **If you have any doubts about the application of this Planning Protocol to your own circumstances you should seek advice early, from the Monitoring Officer, and preferably well before any meeting takes place.**
- 1.6 In this Planning Protocol "Planning Meeting" covers all meetings of the Strategic Planning Board and the Planning Committees.

## **2 RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT**

- 2.1 **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with throughout the decision making process.
- 2.2 **Do** then apply the rules of this Planning Protocol, which seeks to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Planning Protocol you may put :-
- the Council at risk of proceedings on the legality or maladministration of the related decision; and
  - yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Committee.

## **3 DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE MEMBERS' CODE**

- 3.1 **Do** disclose the existence and nature of any interest, including any perceived interest, at any relevant meeting, including informal meetings or discussions with officers and other Councillors. This is your responsibility. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- 3.2 **Do** then act accordingly. **Where your interest is personal and prejudicial:-**
- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority. You must withdraw from the meeting room when the matter is discussed however please see paragraph 11 for your right to attend and make representations.
  - **Don't** try to represent local, Ward or Area views, get another Member to do so instead.
  - **Don't** get involved in the processing of the application.
  - **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the

public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with Officers or Councillors when other members of the public would not have the same opportunity to do so.

- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places greater limitations on you than would apply to a normal member of the public.

3.3 **Do** notify the Monitoring Officer and Head of Planning and Policy in writing of your own application, or if you are employed as an agent and note that:-

- notification to the Monitoring Officer and the Head of Planning and Policy should be made no later than submission of the application;
- the proposal will always be reported to the planning meeting and not dealt with by Officers under the scheme of delegation; and
- it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at the planning meeting (*where appropriate.*)
- you do have a right to make written representations to officers about the proposal and may address the planning meeting pursuant to the Public Speaking Protocol subject to certain additional restrictions (see para 11 below for more detailed advice on this point).

## 4 FETTERING DISCRETION IN THE PLANNING PROCESS

Given the requirement that Councillors of the planning meetings should exercise an independent mind and decide proposals in accordance with the relevant planning considerations, Councillors must not favour any person, company, group or locality or commit themselves to a particular point of view on a planning application prior to its full consideration at the Council's planning meetings.

4.1 **Don't** fetter your discretion and therefore your ability to participate in planning decision-making at this Council by making up your

mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and of your hearing the officer's presentation and evidence and arguments on both sides.

- 4.2 **Fettering your discretion** in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- 4.3 **Do** be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of dual membership, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- 4.4 **Do remember** that you are, of course, free to listen to a point of view about a planning proposal, give procedural advice and agree to forward any comments, but should then refer the person to the appropriate planning officer.
- 4.5 **Do not** use any political group meetings prior to the planning meeting to determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but decisions can only be taken after full consideration of the Planning Officer's report and information and consideration at the planning meeting.
- 4.6 **Don't** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
- 4.7 **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
- 4.8 **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member *where* you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do :



- advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area for the duration of that item; and
- ensure that your actions are recorded.

## **5 MEMBERSHIP OF PARISH COUNCILS AND OUTSIDE BODIES**

5.1 **Do** be aware that, whilst the Members' Code of Conduct provides for a presumption that you may regard yourself as not having a prejudicial interest in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case and where:

- you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of :
  - (a) another local or public authority of which you are a member; or
  - (b) a body to which you have been appointed or nominated by the Council as its representative; or
  - (c) you are a trustee or company director of the body submitting the proposal and were appointed by the Council
- you should always disclose a prejudicial as well as personal interest and withdraw.

5.2 **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example), provided:

- the proposal does not substantially affect the well-being or financial standing of the consultee body;
- you make it clear to the consultee body that:
  - (a) your views are expressed on the limited information before you only;
  - (b) you must reserve judgement and the independence to make up your own mind on each separate

proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Planning meetings and you hear all of the relevant information; and

(c) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the planning meeting; and

- you disclose the personal interest regarding your membership or role when the planning meeting comes to consider the proposal.

## **6 CABINET MEMBERS**

There is no Constitutional or legal reason why a Cabinet member should not also be a member of the planning meeting and take part in the decision-making processes which are not part of the executive function.

- 6.1 **Be** aware that you should not speak or vote on any matter which you have discussed at Cabinet unless you have demonstrated there and can do so at the relevant planning meeting that you have not predetermined the application.
- 6.2 **Do not** take part in any planning meeting on a matter in which you may have been seen as advocating a proposal as a Cabinet Member.

## **7 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS**

It is recognised that pre-application discussions can be of great benefit to the planning process provided that they take place within clear parameters and governance arrangements.

- 7.1 **Do** refer those who approach you for planning, procedural or technical advice to officers.
- 7.2 **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Head of Planning and Policy organise it. The officer will then

ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Planning meetings.

7.3 **Do** otherwise:

- follow the rules on lobbying;
- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the Head of Planning and Policy any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.
- ask relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other Councillors might vote.

7.4 **In addition in respect of presentations by applicants/developers:**

7.5 **Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers.

7.6 **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.

7.7 **Do** remember that a presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Planning meeting of the planning authority.

7.8 **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Councillors might vote.

## 8 **LOBBYING OF COUNCILLORS**

8.1 **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the planning meetings

decision-making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.

- 8.2 **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- 8.3 **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25.
- 8.4 **Do** copy or pass on any lobbying correspondence you receive to the Head of Planning and Policy at the earliest opportunity.
- 8.5 **Do** promptly refer to the Head of Planning and Policy any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 8.6 **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- 8.7 **Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Protocol through:
- listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
  - seeking information through appropriate channels; or
  - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up

your own mind having heard all the facts and listened to the debate.

## 9 LOBBYING BY COUNCILLORS

- 9.1 **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest and have to withdraw.
- 9.2 **Do** register your membership of any lobby group.
- 9.3 **Do** declare the existence and nature of your interest in any lobby group at Planning meeting meetings so that members of the public are informed about interests that may relate to your decisions. Often this will be a personal interest and you can continue to participate but note that it can sometimes be a prejudicial interest or lead to allegations of bias or predetermination and in those circumstances you must withdraw from the meeting.
- 9.4 **Do** not take part in any matter which relates directly to the lobby group of which you are a member rather than to the views it holds. If the Planning meeting is discussing a planning application submitted by the group you should consider that you have a prejudicial interest and should act accordingly.
- 9.5 **Do** weigh up the following factors where your lobby group has expressed a public view on a matter and consider whether a reasonable member of the public, knowing the relevant facts, would think that you appear biased. The factors are:
- the nature of the matter to be discussed
  - the nature of your involvement with the lobby group
  - the publicly expressed views of the lobby group
  - what you have said or done in relation to the particular issue
- 9.6 **Do not** become a member of an organisation whose primary purpose is to promote or oppose specific planning proposals or those within a limited geographical area, as you may be perceived as having fettered your discretion.
- 9.7 **Do** remember that if the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the management or decision making process of that organisation such as its Chairperson or a member of the planning meeting, it will become increasingly difficult to

demonstrate your ability to judge the matter with an open mind and you may appear biased and therefore you should consider whether it is appropriate for you to take part in the decision making process.

- 9.8 **Do not** publicly support a particular outcome on a proposal within your Ward or actively campaign for it if you wish to take part in the decision making process. It would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge. Again it is a question of maintaining the fine balance between a predisposition where your mind is not totally made up and a predetermination. This would, however, not prevent you from expressing the views of your constituents provided you are capable of determining the Application in accordance with the law.
- 9.9 **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the planning meeting that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 9.10 **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken. It is difficult to define "excessively" but you need to consider whether a member of the public, knowing the facts, would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest but had predetermined it.
- 9.11 **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Councillors should vote on a planning issue.

## 10 SITE INSPECTIONS

Site Inspections can play a legitimate part in the decision making exercise but must be limited to inspections by viewing and as a fact finding exercise. They are not to be used to determine a proposal prior to the meeting of the Planning meetings. It should be noted that this Section applies to Councillors requests for a Site Inspection and that the Head of Planning and Policy may arrange Site Visits Inspections without prior discussion where, in his professional opinion, there is a real benefit from viewing the site.

It is important to ensure that Councillors taking planning decisions are in possession of all the facts, including matters that may have been pointed out or come to light during a site visit. Attendance of Councillors will not only demonstrate that Councillors are fully informed but will also ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised. The expectation is that all Planning meeting Members will attend all formal site inspections and a record of attendance will be maintained and monitored.

The Council has a separate protocol that deals with Site Inspections in more detail, the advice contained within this planning protocol is general advice which is developed further by the Site Inspection Protocol.

10.1 **Do** try to attend site inspections organised by the Council where possible.

10.2 **Don't** request a site inspection unless you feel it is strictly necessary because:

- particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
- there are significant policy or precedent implications and specific site factors need to be carefully addressed; or
- details of the proposed development cannot be ascertained from plans and any supporting information to Councillors satisfaction at the planning meeting; or
- where design considerations are of the highest importance particularly in relation to the surrounding locality.

10.3 **Do** ensure that any information that you gained from the site inspection is reported back to the Planning meetings, so that all Councillors have the same information.

10.4 **Do** ensure that you treat the site inspection only as an opportunity to seek information and to observe the site.

10.5 **Do** ask the officers at the site inspection questions or seek clarification from them on matters which are relevant to the site inspection.

- 10.6 **Do** be prepared to listen to and ask questions of fact from the Applicant or other parties but do not be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind. The decision can only be made at the Planning meeting and you should make this clear to any applicant or other party and suggest that they make written representations or use of the Public Speaking arrangements and direct them to, or inform, the officer present.
- 10.7 **Don't** express opinions or views to anyone.
- 10.8 **Don't** enter a site, which is subject to a proposal other than as part of an official site inspection, even in response to an invitation, as this may give the impression of bias unless:
- you feel it is essential for you to visit the site other than through attending the official site inspection;
  - you have first spoken to the Head of Planning and Policy about your intention to do so and why (which will be recorded on the file) and
  - you can ensure you will comply with these good practice rules on site inspections.

## 11 PUBLIC SPEAKING AT MEETINGS

The Council has a separate protocol that deals with Public Speaking at meetings in more detail, the advice contained within this planning protocol is general advice which is developed further by the Public Speaking Protocol.

- 11.1 **Don't** allow members of the public to communicate with you during the planning meeting proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- 11.2 **Do** ensure that you comply with the Council's Protocol for Public Speaking at Planning Meetings.
- 11.3 All Councillors are entitled to speak at a planning meeting in accordance with the Public Speaking Protocol either as an individual, representative or ward member. However, where you might be regarded as having a personal and prejudicial interest in the application then you may attend and speak in accordance with the protocol but only for the purpose of making representations, answering questions or giving evidence relating to the matter in the same manner as would apply to a normal member of the public. Immediately after doing so you must leave the meeting room whilst



the meeting considers the proposal even though members of the public may remain.

## 12 OFFICERS

Councillors and officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst officers are responsible to the Council as a whole. Their relationship is based upon mutual trust and understanding and this must never be abused or compromised. Instructions to officers can only be given through a decision of the Council, the Cabinet, Board or Committee or under delegated powers and not by individual Councillors acting outside those powers.

- 12.1 **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Head of Planning and Policy, which may be incorporated into any committee report.)
- 12.2 **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the Head of Planning and Policy or those officers who are authorised by the Head of Planning and Policy to deal with the proposal at a Member level.
- 12.3 **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the planning meeting or its Councillors
- 12.4 **Do** be aware of the member/Officer Relations Protocol.

## 13 DECISION MAKING

The Council has a separate protocol that deals with the Call in of planning applications in more detail, the advice contained within this planning protocol is general advice which is developed further by the Call In Procedure.

- 13.1 **Do** ensure that, if you request a proposal to go before the planning meeting rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the planning meeting.

- 13.2 **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- 13.3 **Do** comply with section 54A of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 13.4 **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse the application.
- 13.5 **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- 13.6 **Do** have recorded the reasons for the planning meeting's decision to grant, refuse or defer any proposal.
- 13.7 **Do** delegate to the Head of Planning and Policy the drafting of conditions that the Planning meeting may wish to add or amend when considering an application, ensuring that an explanation of why the change or addition is required is given to the planning meeting.
- 13.8 **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.
- 13.9 **Do**, where necessary, consider the drafting of conditions for sensitive applications that the planning meeting wish to approve against Officer recommendation at the next meeting of the planning meeting to allow Officers to formulate appropriate conditions and provide the planning meeting with any relevant further information.

## **14 TRAINING**

- 14.1 **Don't** participate in decision-making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- 14.2 **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the

Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

## 15 INVOLVEMENT IN SECTION 106 AGREEMENTS

The guidance in respect of planning obligations is similar to that of planning conditions in that they must be relevant to planning and directly related to the proposed development if they are to be taken into account in making a decision on a planning application. Local Planning Authorities should not grant planning permission for unacceptable development because of unrelated benefits offered by the applicant and should not be unduly influenced by any benefits offered.

- 15.1 **Do** remember that requirements to be included within Section 106 Agreements should be considered and discussed at pre-application stage. The Officers will provide advice on general requirements, but if you are aware of any additional potential requirements please refer these to the Head of Planning and Policy as soon as you become aware of them.
- 15.2 **Do** remember that the purpose of Section 106 Agreements is to help make acceptable, development which would otherwise be unacceptable in planning terms, by prescribing the nature of the development, or compensating for loss or damage created by the development, or to mitigate a developments impact. They must therefore be relevant to planning and relate fairly and reasonably to the development.
- 15.3 **Do** include the content of Section 106 Agreements in the debate that takes place at planning meetings, whether you are a member of the planning meeting or a visiting Member who wishes to speak on the application.
- 15.4 **Don't** hold formal or informal meetings with Applicants, Developers and Objectors over the contents of potential Section 106 agreements. If you feel that a meeting would be useful to clarify the issues, you should ask the Head of Planning and Policy to arrange such a meeting. In this way the relevant Officers can be at the meeting, and those present can be made aware that the discussions will not bind the authority, and that the meeting can be properly recorded on the application file and the record of the meeting disclosed when the application is considered.
- 15.5 **Do** remember **that it is imperative that** a Ward Councillor's role continues after the completion of the Section 106 Agreement, by assisting Officers in ensuring that Section 106 Agreements are complied with. This includes noting when development is being undertaken and assisting Officers in ensuring triggers within Section 106 Agreements are complied with. Ward Councillors

should contact Officers for any information on completed Section 106 Agreements.

## **16 MONITORING AND REVIEW**

- 16.1 The Head of Planning and Policy will report annually to the Standards Committee regarding whether the arrangements set out in this Planning Protocol have been complied with and will include any proposals for amendment in the light of any issues that have arisen during the year.
- 16.2 In particular, the Head of Planning and Policy shall monitor the following:-
- (a) the number of complaints made about breaches of the Planning Protocol and the outcome of those complaints;
  - (b) the number of appeals upheld;
  - (c) any external inspection reports in respect of relevant issues;
  - (d) the level of awareness of the Planning Protocol among Councillors and Officers; and
  - (e) the number of Ombudsman reports finding maladministration by Councillors in the conduct of planning issues.

## **17 BREACHES OF THE PLANNING PROTOCOL**

Maintaining high ethical standards enhances the general reputation of the Council, its Councillors and its officers. Open and transparent decision making enhances local democracy and should lead to better informed citizens. This Planning Protocol, along with Cheshire East's Members Code of Conduct are intended to promote these standards.

- 17.1 **Do** be aware of your responsibilities under this Code and the Members Code of Conduct.
- 17.2 **Do** report any apparent breaches of either the Code of Conduct or the Planning Protocol to the Monitoring Officer.
- 17.3 **Do** seek advice if you are in doubt.
- 17.4 Failure to comply with the Members Code of Conduct may lead to a complaint to the Standards Committee who can, in certain circumstances disqualify a Councillor. Failure to comply with this Planning Protocol may lead to a finding of Maladministration by the Ombudsman or could lead to a decision being challenged in the courts.

- 17.5 Allegations on any breach of this Planning Protocol by Members may be referred to the Monitoring Officer for referral to the Standards Committee, the relevant Leader and/or Chief Whip of the political group.

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## CHESHIRE EAST COUNCIL

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting:** 9 February 2009  
**Report of:** Borough Solicitor  
**Title:** Public Questions/Speaking - Licensing Committee and Scrutiny Committees

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#### **1.0 Purpose of Report**

- 1.1 To consider issues surrounding public questions/speaking at Licensing Committee and Scrutiny Committees.

#### **2.0 Decision Required**

- 2.1 To consider the request referred to it from the Licensing Committee that Committee Procedure Rule 35 (relating to public questions/speaking) be waived in relation to meetings of the Licensing Committee and Licensing Sub-Committees.
- 2.2 To consider the requests referred to it both from the Scrutiny Committee and the Health and Adult Social Care Scrutiny Committee that Committee Procedure Rule 35 (relating to public questions/speaking) be waived in relation to meetings of each of these Scrutiny Committees.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 None

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 None

#### **5.0 Legal Implications**

- 5.1 As set out within the report.

#### **6.0 Risk Assessment**

There is a risk that the Licensing Committee could be challenged on its rules of procedure; as the rules adopted by the Licensing Committee accord with the provisions of the relevant legislation and ensure that the rules of natural justice are followed, it is suggested that the risk is minimal.

## **7.0 Background and Options**

7.1 On 1 December 2008 Governance and Constitution Committee considered a report in relation to the adoption of Council and Committee Procedure Rules. The decision of the Committee was to recommend to Council the adoption of the Procedure Rules.

7.2 Rule 35 within Part B, dealing with Committee Procedure Rules, states as follows:

35.1 The Council has a procedure to enable members of the public to submit questions at ordinary meetings of its Committees and Sub-Committees.

A copy of the procedure relating to questions submitted by members of the public is reproduced at Appendix 1.

7.3 At the meeting of the Licensing Committee on 14<sup>th</sup> January 2009 the Members resolved to request that the Governance and Constitution Committee consider an amendment to Procedure Rule 35 to waive the provision for members of the public to ask questions/speak at the commencement of meetings of the Licensing Committee.

7.4 In making this resolution the Licensing Committee noted that when considering applications it was acting in a quasi-judicial nature and as such provision was already made within its own procedure rules adopted in accordance with the provisions of the relevant legislation (namely the Licensing Act 2003 (Hearings) Regulations 2005 and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees)(Premises Licences and Provisional Statements)(England and Wales) Regulations 2007). A copy of the procedure adopted by the Licensing Committee in relation to hearings under the Licensing Act 2003 is attached as Appendix 2 for information. Members also noted that statutory provision is made for an appeal to the Magistrates Court<sup>1</sup> against any decision they may make on an application.

7.5 At the meeting of the Scrutiny Committee on 21<sup>st</sup> January 2009 the Members resolved to request that Governance and Constitution Committee consider the removal of public speaking/open session from the rules of procedure for the Scrutiny Committee. The Health and Adult Social Care Scrutiny Committee made a similar resolution at its meeting on 20<sup>th</sup> January. In making these resolutions Members questioned whether it was appropriate to include public speaking/questions within the agenda of a Committee which is not itself a decision-making body.

## **8.0 Conclusions and Recommendation**

8.1 On the basis of the provision already made for public speaking at meetings of the Licensing Committee, the Committee felt that it was unnecessary to include

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<sup>1</sup> With the exception of the refusal of a hackney carriage vehicle licence which is appealed directly to the Crown Court.



additional provision for public speaking as required within Procedure Rule 35. The Committee therefore requested that the Governance and Constitution Committee consider the waiver of this rule in relation to Licensing Committee meetings.

- 8.2 On the basis that Scrutiny Committees are not decision-making bodies, the Committees felt that it was unnecessary to include provision for public speaking as required within Procedure Rule 35. The Committees therefore requested that the Governance and Constitution Committee consider the waiver of this rule in relation to Scrutiny Committee meetings.

***For further information:***

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***Background Documents:***

None

**APPENDIX 1**

**PROCEDURE RULES RELATING TO COUNCIL MEETINGS,  
COMMITTEES AND SUB-COMMITTEES: PROCEDURE RULES NO 11  
AND 35**

1. A total period of 15 minutes will be allocated for members of the public to speak at Council meetings.
2. A total period of 10 minutes will be allocated for members of the public to speak at meetings of the Cabinet, committees and sub committees.
3. Members of the public may speak on any matter relating to the work of the Council.
4. Members of the public will normally be allowed up to 5 minutes each to speak, but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.
5. During public speaking time, members of the public may ask questions of the appropriate Cabinet member or Chairman of the committee or sub committee which has responsibility for the matter in question.
6. The Member responding to the question may answer the question, may decline to do so, may agree to reply at a later date or may refer the question to an appropriate committee, or to the Cabinet. Questions will be asked and answered without discussion.

## PROCEDURE FOR HEARINGS – LICENSING ACT 2003

### The Licensing Committee

The full Licensing Committee consists of fifteen elected Members of the Council. From this full Committee will be drawn sub-committees of three members to deal with licensing functions under the Licensing Act 2003. The Chairman and Vice Chairman of the full Committee have the discretion to refer to the full Licensing Committee matters which would ordinarily be delegated to a Licensing Sub-Committee but which are significant or controversial in nature.

### Officers at Hearings

- **The Committee Officer** introduces all parties and records the proceedings
- **The Legal Adviser** provides independent advice to the Members on legal matters and procedure.
- **The Licensing Officer** will introduce the matter and outline the application; the officer will also answer any questions Members may have.

### PROCEDURE

**NOTE:** If the Sub-Committee has not already elected a Chairman, that will be the first item of business.

1	<b>Chairman</b>	The Chairman will: (i) call the matter to be considered; (ii) call for any declarations of interest; (iii) ask all parties to introduce themselves; (iv) summarise the procedure to be followed at the hearing; (v) will consider any request made by a party for another person to appear at the hearing; (v) will advise the parties of any maximum period of time in which it has to present its case (if a maximum is imposed this shall be equal for all parties).
2	<b>Licensing Officer</b>	Will introduce and summarise the application, highlighting areas of contention or dispute.
3	<b>Committee Members</b>	May ask questions of the Licensing Officer
4	<b>Applicant</b>	Will present his/her case, calling witnesses, as appropriate.  <i>(If necessary, applicant will produce any notices required by law. Legal Adviser will draw attention to this if required.)</i>
5	<b>Responsible Authorities (who have made representations)</b>	Each in turn may ask <u>questions</u> of the applicant, by way of clarification.
6	<b>Local residents</b> (ie. defined as “interested parties”)	To be invited to ask <u>questions</u> of the applicant, by way of clarification.  <i>It is normal practice for a spokesperson only to speak on behalf of a group of residents.</i>
7	<b>Committee Members</b>	Each in turn may ask <u>questions</u> of the applicant.
8	<b>Applicant</b>	May make a <u>statement</u> or ask his witnesses to clarify any matters

		which he feels are unclear, or may have been misunderstood.
9	<b>Responsible Authorities</b>	Will make their representations.
10	<b>Applicant</b>	Or his representative or witnesses to ask <u>questions</u> of Responsible Authorities represented at the meeting, by way of clarification.
11	<b>Local residents</b> (ie. defined as "interested parties")	May ask <u>questions</u> of the Responsible Authorities represented at the meeting, by way of clarification.  <b>(Note: This is not the point at which local residents should be stating their objections.)</b>
12	<b>Committee Members</b>	May ask <u>questions</u> of the Responsible Authorities represented at the meeting
13	<b>Local residents</b> (ie. defined as "interested parties")	The local residents who are objecting to the application will be invited <b><u>to make observations on the application</u></b> and present the bases of their objections.
15	<b>Applicant</b>	Or his representative or witnesses may ask <u>questions</u> of the Local Residents, by way of clarification.
16	<b>Committee Members</b>	May ask <u>questions</u> of the Local Residents.
17	<b>Chairman</b>	To invite both <b>Responsible Authorities</b> and <b>Local Residents</b> to make their closing addresses.
18	<b>Applicant</b>	Or his representative will <u>briefly summarise the application</u> and comment on the observations and any suggested conditions.
19	<b>Committee</b>	<u>Will retire</u> to consider the application. The Committee may request the Legal Advisor to advise on legal issues.
20	<b>Committee</b>	Will return to <u>give its decision</u> , with reasons, which will be announced by the Chairman and subsequently confirmed in writing to the applicant and to all the parties that made representations.  In cases where a decision cannot be given at the end of the hearing, parties will be advised of the decision within five working days.

### Notes

1. The hearing shall normally be held in public. There may be occasions on which the Committee find it necessary to exclude members of the press and public; any such decision will be taken on the basis that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing taking place in public.
2. The Chairman may require any person behaving in a disruptive manner to leave the hearing and may (a) refuse to permit that person to return, or (b) permit him/her to

return only on such conditions as the authority may specify, but any such person may submit in writing any information which they would have been entitled to provide orally if they had not been required to leave.

3. Prior to the hearing each party shall have given notification and served documentation (eg statements of witnesses or reports of experts) as required. Late representations and evidence will only be considered with the agreement of all parties.
4. Anyone entitled to be heard may be represented by any person, whether or not that person is legally qualified.
5. Hearsay will be permitted but the Sub-Committee will be reminded to give it appropriate weight.
6. Due note shall be taken of the provisions of the Hearings Regulations 2005.
7. The Chair may, in the interests of expediency or convenience of the parties, vary the procedure from time to time, provided notice is given to the parties and the rules of natural justice are observed.

### SUMMARY OF PROCEDURE

- 1 Chairman appointed (if this has not been done previously).
- 2 Chairman to call for declarations of interest and request that all parties introduce themselves.
- 3 Chairman summarises the procedure for the hearing
- 4 The Licensing Officer summarises the application
- 5 Applicant to present his/her case.
- 6 Applicant to be questioned by all parties (to clarify points only) following which, he/she can clarify any other matters which he/she feels may have been misunderstood when the application was presented.
- 7 Applicant to be questioned by the Committee.
- 8 Responsible Authorities to make their representations following which they can be questioned by all parties by way of clarification.
- 9 **Local residents** (defined as interested parties) will be invited to present the bases of their objections, following which they can be questioned by all parties by way of clarification.
- 10 The applicant will be invited to sum up his/her case
- 11 Committee/Sub-Committee withdraws to make its decision
- 12 Committee/Sub-Committee returns to announce its decision to all present.

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## CHESHIRE EAST COUNCIL

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting:** 9 February 2009  
**Report of:** Borough Solicitor  
**Title:** Delegation of Non-Executive Functions – Licensing and Environmental Health

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#### **1.0 Purpose of Report**

- 1.1 To consider the proposals for delivering non-executive Licensing and Environmental Health functions from 1 April 2009.

#### **2.0 Decision Required**

- 2.1 Governance and Constitution Committee is asked to recommend to Council the delegation to Committee and Officers of non-executive Licensing and Environmental Health functions as set out in the Appendices to this report.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 None

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 None

#### **5.0 Legal Implications**

- 5.1 In order to reduce the potential for challenge of decisions taken by the Authority it is vital to ensure that the Constitution clearly sets out how its non-executive functions are to be delivered.

#### **6.0 Risk Assessment**

- 6.1 The main risk relating to the delegation of non-executive functions is that decisions taken are challenged on the basis that the line of delegation is not clear.

#### **7.0 Background and Options**

- 7.1 Section 13 of the Local Government Act 2000 makes provision for determining which functions of a local authority are to be the responsibility of the Executive of the Council. The Local Authorities (Functions and Responsibilities)(England) Regulations 2000 sets out, by reference to a list within Schedule 1, those

functions which are not to be the responsibility of the Executive. These functions must therefore be dealt with through a scheme of delegation from Council or a Committee of the Council.

- 7.2 Included within Schedule 1 of the Regulations are a number of functions relating to Licensing and Environmental Health matters. Attached as Appendix 1 is a table summarising the proposed delegation of these functions to Licensing Committee and Officers. Appendix 2 sets out the proposed delegations to the Head of Safer and Stronger Communities.
- 7.3 Members will note that the delegation of Licensing functions to the Head of Safer and Stronger Communities is subject to a number of exceptions where matters are referred to the Licensing Committee or Sub-Committee. With the exception of the power to designate alcohol disorder zones, which is proposed to rest with the full Licensing Committee, the Licensing delegations have already been approved by the Licensing Committee and are included here for the sake of completeness.
- 7.4 The Governance and Constitution Committee has already considered reports relating to the delegation of Executive functions and 'Local Choice' functions. The Local Choice functions include certain Environmental Health matters such as the service of noise abatement notices and functions relating to contaminated land.

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

- 8.1 The requirement to have a scheme of delegation of non-executive functions is a Day One requirement.

## **9.0 Conclusions and Recommendation**

- 9.1 The Committee is requested to consider the proposed delegations and to make a recommendation to Council upon the delegations which will form part of the Constitution from 1 April 2009.

### ***For further information:***

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### ***Background Documents:***

None



## Appendix 1

**SECTION 2A - Council (Non-Executive) Functions – Summary of Responsibilities**

<b>Function</b>	<b>Decision making body</b>	<b>Delegation (to the extent set out in Section 2C)</b>
Taxi and miscellaneous licensing <sup>1</sup> (i.e. functions relating to licensing and registration other than in relation to Licensing Act 2003, Gambling Act 2005, highways, marriage premises, village greens, trading standards functions and fire safety/safety at sports grounds)	Licensing Committee	Head of Safer and Stronger Communities
Functions relating to licensing under the Licensing Act 2003 and the Gambling Act 2005 <sup>2</sup>	Licensing Committee	Head of Safer and Stronger Communities
Power to institute criminal proceedings under the Gambling Act 2005 <sup>3</sup>	Licensing Committee	Borough Solicitor
Power to resolve not to issue a casino premises licence <sup>4</sup>	Council	
Health and Safety Functions (otherwise than in the authority's capacity as an employer) <sup>5</sup>	Licensing Committee	Head of Safer and Stronger Communities
Functions in relation to smoke-free premises <sup>6</sup>	Licensing Committee	Head of Safer and Stronger Communities
Designated Public Places Orders <sup>7</sup>	Licensing Committee	
Alcohol Disorder Zones <sup>8</sup>	Licensing Committee	

<sup>1</sup> Items 1-5, 15-18, 20, 24-25, 29-33, 39, 40, 57 –60, 62-68, 71 of paragraph B of Schedule 1 of the Local Authorities (Functions and Responsibilities)(England) Regulations 2000

<sup>2</sup> Item 14A and items 14AA – 14AC, 14C, 14CA, 14E-14G of paragraph B of Schedule 1 of the 2000 Regulations together with section 154 and 232, Schedule 10 paragraph 6, Schedule 12 paragraph 28, Schedule 13 paragraph 3 and Schedule 14 paragraph 7 of the Gambling Act 2005

<sup>3</sup> Item 14D of paragraph B of Schedule 1 of the 2000 Regulations

<sup>4</sup> Item 14B of paragraph B of Schedule 1 of the 2000 Regulations

<sup>5</sup> Paragraph C of Schedule 1 of the 2000 Regulations

<sup>6</sup> Paragraph FA of Schedule 1 of the 2000 Regulations

<sup>7</sup> Item 49 of paragraph I of Schedule 1 of the 2000 Regulations

<sup>8</sup> Item 50 of paragraph I of Schedule 1 of the 2000 Regulations

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## Appendix 2

**SECTION 2C – Council (Non-Executive) Functions – Officer Delegations Scheme****HEAD OF SAFER AND STRONGER COMMUNITIES**

Subject to the exceptions listed below, the Head of Safer and Stronger Communities is authorised to discharge the following Council (non-executive) functions.

**Licensing Functions**

(a)	Power to licence hackney carriages and private hire vehicles	Hackney carriages: Town Police Clauses Act 1847; section 47, 57, 60 & 79 Local Government (Miscellaneous Provision) Act 1976  Private Hire Vehicles: sections 48, 57, 60 & 79 Local Government (Miscellaneous Provision) Act 1976
(b)	Power to suspend hackney carriage and private hire vehicle licences	Hackney carriages: Town Police Clauses Act 1847; section 58 & 60 Local Government (Miscellaneous Provision) Act 1976  Private Hire Vehicles: sections 58 & 60 Local Government (Miscellaneous Provision) Act 1976
(c)	Power to suspend hackney carriage and private hire vehicle licences pending inspection	Section 68 Local Government (Miscellaneous Provision) Act 1976
(d)	Power to licence operators licences	Sections 55 – 58 & 79 Local Government (Miscellaneous Provision) Act 1976
(e)	Power to suspend operators licences	Section 62 Local Government (Miscellaneous Provision) Act 1976
(f)	Power to licence hackney carriage and private hire drivers	Hackney carriages: Town Police Clauses Act 1847; section 53, 54, 57, 59, 61 & 79 Local Government (Miscellaneous Provision) Act 1976  Private Hire: sections 51, 53, 54, 61 & 79 Local Government (Miscellaneous Provision) Act 1976
(g)	Power to suspend hackney carriage and private hire drivers licences	Section 61 Local Government (Miscellaneous Provision) Act 1976
(h)	Power to renew or transfer licences for sex shops and sex cinemas [Where (i) there has been no material change to the character of the relevant locality or to the use to which any premises in the vicinity are put or to the layout, character or condition of the premises in respect of which the application is made; and (ii) no objections have been received, or those that have been received should in the officer's opinion be set aside on the ground that the Council could not lawfully take them into account]	Local Government (Miscellaneous Provisions) Act 1982, section 2 and Schedule 3.

(i)	Power to licence street collections	Section 5 Police, Factories etc (Miscellaneous Provisions) Act 1916
(j)	Power to licence House to House collections	Section 2 House to House Collections Act 1939
(k)	Power to issue street trading consents	Section 3 and Schedule 4 Local Government (Miscellaneous Provisions) Act 1982
(l)	Power to licence performances of hypnotism	Hypnotism Act 1952
(m)	Licensing functions under the Licensing Act 2003 and the Gambling Act 2005 (subject to the exceptions below)	Licensing Act 2003 and Gambling Act 2005

### **Exceptions**

#### **Licensing Functions ('General')**

(i) The determination of applications for hackney carriage or private hire vehicles where the vehicle does not meet the Council's vehicle conditions or does not pass the vehicle inspection be referred to the Licensing Sub-Committee\*.

(ii) The determination of applications for operators licences where the Council's requirements are not met be referred to the Licensing Sub-Committee\*.

(iii) The determination of applications for hackney carriage or private hire drivers licences where the applicant does not meet the Council's requirements be referred to the Licensing Sub-Committee\*.

(iv) The determination of applications for the renewal or transfer of licences for sex shops and sex cinemas where there are objections which are not be withdrawn and cannot be dealt with under the authority delegated to officers be referred to the Licensing Committee.

(v) The determination of requests for waiver of the Council's street collection regulations (with the exception of the regulation in relation to processions) shall be referred to the Licensing Sub-Committee\*.

(vi) The determination of applications for street trading consents where representations have been received and not withdrawn be referred to the Licensing Sub-Committee\*.

(vii) The decision to designate streets (section 3 and Schedule 4 Local Government (Miscellaneous Provisions) Act 1982) shall be reserved to the Licensing Committee.

(viii) The power to set fees in relation to hackney carriages and private hire vehicles, operators and drivers, sex establishments and street trading shall be reserved to the Licensing Committee.

#### **Licensing Functions (Licensing Act 2003 and Gambling Act 2005)**

(i) Any licensing function under the Licensing Act 2003 and the Gambling Act 2005 reserved to full Council (i.e the determination of the three year statement of principles and the decision not to licence casinos under the 2005 Act);

(ii) The determination of an application under the Licensing Act 2003 or Gambling Act 2005 where relevant representations have been received and are not withdrawn shall be referred to the Licensing Sub-Committee\*.

(iii) The determination of review applications (under sections 52, 88 and 167 of the Licensing Act 2003) shall be referred to the Licensing Sub-Committee\*.

(iv) The determination of review applications (under section 201 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.\*

(v) The decision to object when the local authority is a consultee and not the relevant authority considering an application under the Licensing Act 2003 shall be referred to the Licensing Sub-Committee.\*

(vi) The consideration of representations in relation to the proposed rejection of a club gaming permit or club machine permit (schedule 12 of the Gambling Act 2005) is reserved to the Licensing Sub-Committee\*

(vii) The decision to cancel a club gaming/club machine permit (schedule 12 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.\*

(vii)The decision to give a counter notice to a temporary use notice (section 224 of the Gambling Act 2005) shall be referred to the Licensing Sub-Committee.\*

(viii) The decision to make an order disapplying section 279 or 282(1) of the 2005 Act in relation to specified premises where representations have been made by the licensee shall be referred to the Licensing Sub-Committee.\*

(ix) The decision to revoke a personal licence where convictions come to light after grant or renewal (under section 124 of the Licensing Act 2003) shall be referred to the Licensing Sub-Committee.\*

(x) The decision to set fees under the Gambling Act 2005 shall rest with the Licensing Committee.

(xi) The power to institute criminal proceedings under the Gambling Act lies with the Borough Solicitor.

\*The Chairman and Vice Chairman of the Licensing Committee have the discretion to refer matters from the Licensing Sub-Committee to the full Licensing Committee if the matter is significant or controversial in nature.

## **Environmental Health Functions**

(a)	Power to issue licences authorising the use of land as a caravan site.	Section 3(3) of the Caravan Sites and Control of Development Act 1960
(b)	Power to licence the use of moveable dwellings and camping sites	Section 269(1) of the Public Health Act 1936
(c)	Power to license premises for acupuncture, tattooing, ear piercing and electrolysis	Sections 13 to 17 of the Local Government (Miscellaneous Provisions) Act 1982
(d)	Power to licence pleasure boats and pleasure vessels	Section 94 of the Public Health Acts Amendment Act 1907
(e)	Power to licence scrap yards	Section 1 Scrap Metal Dealers Act 1964
(f)	To register motor salvage operators	Part 1 of the Vehicles (Crime) Act 2001
(g)	To register and licence premises for the preparation of food	Section 19 of the Food Safety Act 1990
(h)	Power to licence premises for the breeding of dogs	Section 1 Breeding of Dogs Act 1973 and Section 1 of Breeding and Sale of Dogs (Welfare Act) 1999
(i)	Power to licence pet shops and other establishments where	Section 1 of Pet Animals Act 1951, Section 1 Animal Boarding Establishments Act 1964 and 1970, Section

	animals are bred or kept for the purposes of carrying on a business	1 of Breeding of Dogs Act 1973 and Sections 1 & 8 of Breeding and Sale of Dogs Act (Welfare) Act 1999.
(j)	To register animal trainers and exhibitors	Section 1 of Performing Animals (Regulation) Act 1925.
(k)	Power to licence zoos	Section 1 of the Zoo Licensing Act 1981
(l)	To licence dangerous wild animals	Section 1 Dangerous Wild Animals Act 1976
(m)	To grant consent for the operation of a loudspeaker	Schedule 2 to the Noise and Statutory Nuisance Act 1993
(n)	To approve meat product premises	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(o)	To approve premises for the production of minced meat or meat preparations	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(p)	To approve dairy establishments	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(q)	To approve fish products premises	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(r)	To approve dispatch or purification centres	Regulation (EC) 853/2004 (as enforced under the Food Hygiene Regulations 2006)
(s)	Power to register fishing vessels on board which shrimps or molluscs are cooked	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(t)	Power to approve factory vessels and fishery product establishments	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(u)	To register auction and wholesale markets	Regulation (EC) 853/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(v)	To keep a register of food business premises	Regulation (EC) 852/2004 (as enforced under the Food Hygiene (England) Regulations 2006)
(w)	Duty to enforce Chapter 1 and regulations made under it	Section 10(3) of the Health Act 2006
(x)	Power to authorise officers	Section 10(5) of and paragraph 1 of Schedule 2 to the Health Act 2006
(y)	Functions relating to fixed penalty notices	Paragraphs 13, 15 and 16 of Schedule 1 to the Health Act 2006.
(z)	Power to transfer enforcement functions to another enforcement authority	Smoke Free (Premises and Enforcement) Regulations 2006 (SI 2006/3368)
(aa)	Functions relating to health and safety at work (to the extent that those functions are discharged otherwise than in the authority's capacity as an employer)	Part 1 Health and Safety at Work etc Act 1974

## CHESHIRE EAST COUNCIL

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting:** 9<sup>th</sup> February 2009  
**Report of:** Borough Solicitor  
**Title:** Local Environmental Quality Strategy

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#### **1.0 Purpose of Report**

- 1.1 This report attaches as Annex 1 a proposed Local Environmental Quality Strategy which will provide guidance for community wardens and environmental enforcement officers and their managers as to how they should tackle local environmental quality issues such as litter, dog fouling, graffiti, fly posting and fly tipping (sometimes called environmental crimes).

#### **2.0 Decision Required**

- 2.1 That the Committee considers the Local Environmental Quality Strategy and recommends it for adoption by the Council.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 The cost of warden uniforms, change of livery for vehicles and fixed penalty notice documentation has been reported to the Places Group and Places Advisory Panel.

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 The Strategy includes levels of fixed penalties to be imposed until the service can be reviewed after a meaningful period of operation.

#### **5.0 Legal Implications**

- 5.1 There is a risk of legal challenge if robust and consistent procedures are not in place and officers are not given clear guidance as to how they should act when carrying out their duties.
- 5.2 There is also a risk of Local Government Ombudsman complaints being upheld if the Council does not provide clear and consistent guidance to officers.

## **6.0 Risk Assessment**

6.1 A number of risks can be identified:-

- A lack of clear and consistent guidance to officers leaving officers with too much discretion to exercise in difficult situations in the street and may produce inconsistencies in their approach to enforcement;
- Complaints to the Local Government Ombudsman being upheld if no clear guidance has been issued to officers and the service is operated in an inconsistent manner.

6.2 The Strategy addresses these risks.

## **7.0 Background and Options**

7.1 Currently Macclesfield have an adopted Strategy similar to that in Annex 1 and Crewe and Nantwich and Congleton have established operating procedures. The general thrust of the approach to environmental enforcement has been considered by the Places Group. The enforcement described in Annex 1 should not be confused with enforcement that may be undertaken by environmental health officers and for which a separate policy will be required.

7.2 The Council's constitution is to include delegated powers for a director or head to authorised wardens to issue fixed penalty notices. Guidance should therefore be given to ensure they are issued consistently and fairly.

7.3 The Strategy provides clear and consistent guidance for officers and their managers as to how environmental crimes should be discouraged and enforced. It also provides a useful reference document for them as to how matters arising in the operation of the service should be dealt with.

7.4 The Strategy should be in place by 1 April 2009 so that the education and enforcement service currently operated in the 3 districts can continue across Cheshire East in a consistent manner.

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

8.1 The adoption of the Strategy is a day one issue. It can be reviewed and amended as necessary during or at the end of year one once the service has had opportunity to bed in.

## **9.0 Reasons for Recommendation**

9.1 It is important that the Strategy is in place and adopted by the Council in time for vesting day so that clear and consistent guidance is given to officers as to how they should undertake their roles from 1 April 2009.



***For further information:***

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***Background Documents:***

*Documents are available for inspection at:*

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**ANNEX 1**

**CHESHIRE EAST UNITARY COUNCIL**

**LOCAL ENVIRONMENTAL QUALITY STRATEGY**

**JANUARY 2009**

## 1. INTRODUCTION

- 1.1 The public demand clean places to live. The Best Value User Satisfaction Survey 2006, drawing on data from Cheshire County Council and the 6 existing district councils at that time, shows that public concerns about clean streets figured as the third most important priority, with 44% of respondents putting this in their top 5 priorities for making the county a good place to live.
- 1.2 This concern, along with the interlinked issues of anti-social behaviour, sustainable management of waste resources and the challenge of climate change, is reflected in the Consolidated (Interim) Sustainable Community Strategy (SCS) for Cheshire East drawn up in August 2008. The SCS being the tool for promoting or improving the economic, social and environmental well-being of the area and contributing to the achievement of sustainable development in partnership with local delivery agencies and communities.
- 1.3 These prioritisations recognise our responsibility to tackle 'local environmental quality' issues such as litter, dog fouling, graffiti, fly-posting and fly-tipping across the diverse local environments of Cheshire East. A cleaner and safer environment will, therefore, help improve the quality of life for all those who live in, work in and visit the area.
- 1.4 The presence of dumped waste, litter, graffiti and abandoned vehicles, for example, contribute to people's fear of crime. Another of the Council's corporate priorities is about *delivering safer street and neighbourhoods*, so clearly local environmental quality issues have a role to play in creating environments in which people are safe and feel safe, both day and night.
- 1.5 The Council, as a litter authority, has a responsibility under the Environmental Protection Act 1990 to keep relevant land free from litter and detritus.
- 1.6 This local environmental quality strategy details how the Council will target acts of environmental crime and anti-social behaviour.
- 1.7 Several departments of the Council are responsible for tackling the results of environmental crime in their roles as landowners, service providers, community leaders and enforcing authorities. The key Council provision for environmental crime issues will be the Warden Service. This Service will work closely with the division responsible for collecting household waste (whether it is recyclable or non-recyclable), removing fly-tipping, sweeping the streets, emptying litter bins and maintaining Parks and open spaces – these are the key services that encounter the consequences of environmental crimes.
- 1.8 In line with the Council's responsibilities to maintain and enhance a clean and pleasant locality, this Strategy recognises the community's responsibility in this area. Enforcement plays a vital role in maintaining a clean and safe environment by educating, informing and advising individuals and businesses regarding regulations and duties. Enforcement ensures that those individuals and/or businesses that spoil local environments are made accountable for their actions through legislative processes.
- 1.9 The Clean Neighbourhoods and Environment Act (CNEA) 2005 saw the introduction of new powers for local authorities to help tackle local environmental quality problems. The Act introduced effective powers and tools to tackle poor environmental quality and anti-social behaviour, such as litter, dog control, graffiti, waste and abandoned vehicles. This Strategy sets out how we will use these new powers alongside existing powers to ensure an effective, consistent and clear approach to enforcement. The provisions of the CNEA cover offences committed on private as well as public land so enforcement work can and will extend beyond public land.

## **2. AIMS**

2.1 Enforcement is necessary to protect and improve the physical quality of the places in which we live, work, invest and/or visit. Cheshire East Council fully supports the use of enforcement measures to improve local environmental quality and reduce antisocial behaviour. The intention of the Council is to carry out environmental enforcement to nationally agreed standards and this enforcement will be complemented by appropriately targeted educational campaigns and awareness raising with the ultimate aim to achieve compliance with legislation through the public changing their attitudes and behaviour towards environmental crime.

2.2 The Council believes in firm but fair regulation. Underlying this are the principles set out in the Enforcement Concordat which is a set of enforcement principles adopted by central and local government and published by central Government. The Concordat states that good enforcement practice should set clear standards, be carried out in an open, helpful manner, have a proportionate and consistent approach together with a clear complaints service.

### **2.3 Proportionality**

The enforcement action taken by the Council will be proportionate to the risks posed and to the seriousness of the breach bearing in mind the cost of environmental crime to the Council and the public purse.

### **2.4 Consistency**

The Council aims to carry out its duties in a fair, equitable and consistent manner. Consistency does not mean simple uniformity. The Council will, on occasions, need to exercise judgement and discretion according to the circumstances of individual cases.

### **2.5 Transparency**

Transparency is important in maintaining public confidence in the Council's ability to regulate. It means helping those regulated and others to understand what is expected of them and what they should expect from the Council. It also means making it clear why the Service intends to or has taken enforcement action. The Council trains its staff and has procedures to ensure that where remedial action is required it is clearly explained (in writing in most cases), why the action is necessary, when it must be carried out and that a clear distinction is made between best practice and legal requirements. Where appropriate, opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken unless urgent action is required e.g. to protect the environment, to remove risks to health and safety or to prevent evidence being destroyed as soon as practicable after the event. Written explanation is given of any rights of appeals against formal enforcement action at the time the action is taken.

### **2.6 Targeting**

Targeting means making sure that efforts are directed primarily towards those whose activities are likely to give rise to the most serious breaches of legislation. The Council has systems for prioritising regulatory effort. They include responding to complaints from the community about regulated activities, tasking in conjunction with external agencies and the gathering and acting on intelligence about prohibited activities.

2.7 To contribute to the Council's priorities this strategy will achieve the following objectives :-

- Raise awareness of litter control, dog control, good waste management and other local environmental quality issues;

- Educate and advise residents, businesses and visitors about their duties and responsibilities in these areas and inform them of what constitutes an offence;
- Undertake any enforcement action as necessary, in a reasonable, equitable and proportionate manner;
- In appropriate circumstances take enforcement action without education and advice when the severity of the situation dictates.

2.8 This approach will ensure that :-

- Enforcement is carried out in a fair and equitable way;
- We assist residents, businesses and others in meeting their legal obligations;
- We foster changing attitudes and focus on prevention rather than cure;
- Take firm action against those who break the law.

### **3. SCOPE OF THIS STRATEGY**

- 3.1 All of the issues highlighted in this strategy are of great importance to residents – this is evidenced through the responses to various surveys and public consultations.
- 3.2 We seek, however, to prioritise work on certain issues in order to approach enforcement work in a structured way, targeting the principal issues affecting the Council's environment.
- 3.3 The strategy's priority areas are driven by both quantitative (local environmental quality survey results) and qualitative information such as public reports, intelligence gathering and officer visits.
- 3.4 The Council's areas for priority action to be set out in the Warden Service Delivery Plan 2009-10 are as follows :-
- Litter in urban and rural areas;
  - Irresponsible dog ownership;
  - Fly-tipping of waste on public and private land;
  - The responsible and legal management of household and commercial waste;
  - Abandoned and nuisance vehicles;
  - Graffiti and illegal advertising on building and structures.
- 3.5 A summary of the issues, legislation and remedies is contained in the following table.

Priority	The Legislation	The remedies
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<p><b>Litter</b></p> <p>Data from inspections of areas carried out for a nationwide performance indicator suggest that the Cheshire East is a clean place to live. However, litter is still dropped and this defaces both our urban and rural areas.</p>	<p>The Environmental Protection Act 1990 (section 87) states that if anything is dropped, thrown, left or deposited by a person as to cause defacement by litter, in any public place including anything thrown from the street into a private garden or watercourse, they shall be guilty of an offence.</p> <p>Litter is wide enough in its definition to include synthetic materials often associated with smoking, eating and drinking, including cigarette butts and chewing gum.</p>	<p>In order to keep the area a clean place, residents and visitors should use litter bins for their litter. If there is not a litter bin near by individuals should keep hold of their litter until they find a bin, or take it home.</p> <p>Dropping litter is an offence. We will take a dual approach to reducing littering by :-</p> <ul style="list-style-type: none"> <li>• undertaking general litter education and awareness raising across the Council's area on the consequences of unlawful littering;</li> <li>• using enforcement to tackle those guilty of littering.</li> </ul> <p>The Council will use its powers where necessary to tackle the distribution of free literature and to hasten the clearance of litter and waste from private property.</p>
<p><b>Waste</b></p> <p>1.) Irresponsible management of waste (whether it is by businesses or householders) can result in a number of problems – not only visual but potentially environmental too. The highest profile concern is fly-tipping (the dumping of waste which can include sacks of household refuse). This can result from businesses or householders not fulfilling their obligations when hiring a contractor (for example) to remove their rubbish.</p> <p>2.) Failing to comply with specified collection directions on the presentation of household waste.</p>	<p>Everyone (whether they are a business or a householder) has a duty to ensure that only registered carriers of waste remove the rubbish they have been hired to collect. Businesses or householders must be sure that their waste is transferred to a company authorised to take it and transport, recycle or dispose of it safely. This transfer of waste must be officially recorded on a controlled waste transfer note. A copy of the note from their authorised waste company must be kept and stored for 2 years.</p> <p>Information regarding registered waste carriers can be obtained from the Environment Agency.</p> <p>The traditional simple weekly collection of whatever waste a resident cares to put out has just about disappeared. Rising volumes of waste, increasing disposal costs, statutory recycling targets and increasing concern over environmental issues means that the waste services provided to residents are increasingly complex. Residents are now required to think about what they do with their waste.</p>	<p>Fly-tipping waste is an offence and anyone traced and not in possession of the required documentation can receive a fixed penalty notice for the offence or be prosecuted, facing a fine of up to £50,000 or a term in prison.</p> <p>If you transport waste as part of your business (including charity and voluntary organisations) or otherwise for profit, you must register with the Environment Agency as a waste carrier, unless you are carrying your own waste and it is not construction or demolition waste. Failure to produce a waste carrier's license or a controlled waste transfer note can result in a FPN or prosecution and the seizure of the unregistered vehicle.</p> <p>In appropriate circumstances we will take enforcement action without education and advice when the severity of the situation dictates.</p> <p>If waste is presented incorrectly or it is put out for collection at the wrong time householders and businesses can be served with a notice to confirm the Council's collection arrangements. Failure to comply with such a notice can lead to the issuing of a FPN or following a successful prosecution a fine of up to £1,000.</p>

<p><b>Dog Control</b></p> <p>Dog ownership is popular and the walking of dogs is an important part of the daily lives of many people. Dog fouling is one of the biggest local environmental quality complaints in the area and it is easily preventable if dog owners are responsible.</p>	<p>The CNEA allows the Council to introduce or amend Dog Control Orders to cover the following offences :-</p> <ul style="list-style-type: none"> <li>• Failing to remove dog faeces;</li> <li>• Restricting the number of dogs walked by 1 person at any one time;</li> <li>• Permitting a dog to enter land from which dogs are excluded ;</li> <li>• Not putting, and keeping, a dog on a lead when directed to do so by an authorised officer.</li> </ul> <p>In respect of the Order for excluding dogs, a list of sites to be covered within the old Macclesfield Borough Council area is attached to the Order as an appendix. These sites are currently either owned or managed by the Borough Council and are mainly children's playing areas which are clearly marked out by perimeter rails. There is a future programme to enclose other sites with perimeter rails and these will be included in the Order at a later stage. Other sites include cemeteries and land where previous dog exclusion byelaws applied. It is recommended that a similar process be carried out in relation to suitable areas of the Congleton and Crewe and Nantwich Councils.</p>	<p>Cheshire East Council supports responsible dog ownership. General education and awareness raising has taken place across the Council's area on the consequences of not picking up after your dog. It is illegal to let your dog foul on publicly accessible land and not clear up after it. The existing Council's have used their enforcement powers under the Dogs (Fouling of Land) legislation to bring this message home in the past and will continue to do so.</p> <p>In many popular dog-walking areas dog waste bins are located and owners should use these or litter bins where available. Failing that, owners should dispose of the dog faeces at home.</p>
<p><b>Defacement</b></p> <p>Whether it is fly-posting or graffiti, defacement can make areas look uncared for and run-down. Graffiti is a problem that seems to be increasing nationally and needs to be tackled.</p> <p>Graffiti is criminal damage, costly to remove and defined as any informal or illegal marks, drawings or paintings</p>	<p>Both committing defacement and allowing 'old' defacement to remain can be dealt with through the use of defacement removal notices (as a last resort).</p> <p>Those found writing graffiti or fly-posting in the area can be issued with a FPN or be prosecuted resulting in a fine of up to £5,000. Many methods can be employed to identify 'graffiti offenders' (including working closely with schools for example) and these will be used to catch offenders.</p>	<p>Enforcement action and the message this sends is an important part of preventing defacement. However, the removal of defacement is another important deterrent as this can discourage future actions if the perpetrators know the defacement will be removed quickly.</p> <p>A policy on how the Council tackles defacement on buildings other than those in its ownership will be drafted. The Council is not necessarily responsible for removing graffiti and fly posting from private property and a notice may be served on property owners to remove defacement. The Council's Street Cleansing Service (<b>correct title to be added here</b>) will remove racist and offensive graffiti within 48 hours of it being reported.</p>

<p>that have been deliberately made by a person or persons on any physical element in the outdoor environment.</p> <p>Fly posting is a form of unauthorised advertising and defined as any printed material and associated remains informally or illegally fixed to any structure. It includes any size of material from small stickers up to large posters.</p>	<p>For fly-posting the organisers of the events being illegal advertised can be found liable for the offence. The Council will use relevant powers to prosecute any person (which includes businesses) found to be responsible for fly posting or anyone benefiting from unauthorised advertisements.</p>	
<p><b>Abandoned Vehicles</b></p> <p>It is an offence to abandon a vehicle, or part of a vehicle, on a highway or on any land in the open air.</p>	<p>There is no legal definition of 'abandoned'. Officers use their judgment based on a number of factors when making decisions of whether a vehicle is abandoned. The Council has arrangements in place for the removal of vehicles it considered to be abandoned. Charges will apply for the storage and release of vehicles if they are claimed.</p> <p>Broken down or obstructive vehicles cannot be removed by the Council.</p>	<p>The Council only has powers to remove abandoned vehicles and individual councils have been using them for a significant time.</p> <p>In general, if a vehicle is deemed to be abandoned the vehicle will be removed and a removal notice will be sent to the owner. Consideration should also be given to issuing a FPN to the registered keeper/owner of the vehicle.</p> <p>Further work is currently being undertaken with DVLA in respect of untaxed vehicles which may see the Council taking responsibility for them.</p>
<p><b>Nuisance Vehicles</b></p> <p>The way people 'manage' cars on the highway can cause inconvenience to neighbours and environmental problems.</p> <p>The CNEA creates two new offences in relation to nuisance vehicles – businesses selling two or more vehicles on a road or roads, within 500 metres of each other and similarly repairing vehicles on a road.</p>	<p>A person found guilty of selling vehicles on the highway can face a fine of up to £2,500.</p> <p>Those businesses and individuals attempting to use the road as a workshop in contravention of the CNEA may be liable to a fine of up to £2,500.</p>	<p>Enforcement action and the message this sends is an important part of preventing this type of nuisance.</p> <p>FPNs can be issued for both of these offences.</p>

#### 4. OUR ENFORCEMENT APPROACH

- 4.1 The word 'enforcement' covers all actions that the Council undertakes to secure compliance with the aforementioned pieces of legislation and will include education, advisory visits and assisting with compliance as well as formal action such as the issuing of Fixed Penalty Notices and prosecution.
- 4.2 The majority of residents, visitors and businesses recognise that the types of 'enviro-crimes' covered by this strategy are not socially acceptable. However, there will be those who continue to have little respect for their surroundings and this is where appropriately targeted enforcement action is necessary.
- 4.3 Whilst prevention, through a process of education and advice, are important tools of the Service, it is underpinned by enforcement. Court actions in the form of prosecutions may be taken against offenders who refuse to pay the FPNs provided there is sufficient evidence of the offence.
- 4.4 Prosecution is the ultimate sanction in all cases and the guidelines of the Enforcement Concordat should be strictly adhered to. It is expected that the vast majority of businesses and residents will comply with the law when treated respectfully but firmly.
- 4.5 A vital tenet of the whole enforcement strategy is that the Council should be in a position to rigorously progress prosecution cases, as and when appropriate and necessary, in order to show the local communities that the issue of environmental crime is taken seriously. Appropriate legal action may be taken where a fixed penalty has not been paid in the prescribed period and there is sufficient evidence of the offence.
- 4.6 Awareness raising and education initiatives have a major role to play in changing people's attitudes to their local environments and the Service is committed to providing regular educational inputs within local schools, colleges and Junior Neighbourhood Warden schemes as well as to local interest groups.
- 4.7 The Council recognises the importance of ensuring that all enforcement decisions are consistent, proportionate, clearly explained and relate to common standards to ensure the public is adequately protected.
- 4.8 The following basic enforcement options may be used by the Council depending on the seriousness of the offence :-
  - **Fixed Penalty Notice (FPN)** - Authorised Officers can offer FPNs for certain environmental crime offences (listed in Appendix 1). FPNs are used as an alternative to prosecution and the alleged offender being taken to court. Further information relating to FPNs can be found below.
  - **Written Warning** – Where a FPN is challenged and the mitigating circumstances mean a prosecution is not in the public interest, the Service has the option to serve the recipient of the FPN with a written warning. The warning will note that no formal action will be taken, but if necessary it will stay on file for 12 months and can be used as a factor in any future assessment where a similar offence occurs.

- **Serving a Statutory Notice** - Some offences require the serving of a formal notice on businesses and individuals requiring them to carry out specific legal requirements. Offences of this type include (but are not limited to) street litter control, unauthorised advertising, willful obstruction of the highway and abandoned vehicles.

The notice will explain what is wrong, what is required to put things right and what the consequences are if the notice is not complied with.

- **Prosecutions** - Court actions in the form of prosecutions will be taken against offenders who refuse to pay the FPNs where there is sufficient evidence of the offence. Fair and effective prosecution is essential and the decision to prosecute an individual is a serious step.

#### 4.9 **The use of Fixed Penalty Notices (FPNs)**

A number of offences listed in this Strategy can be dealt with through the use of FPNs. FPNs may be issued when an authorised officer believes that an offence has been committed. The FPN gives the alleged offender an opportunity to avoid prosecution by payment of the penalty. The standard of evidence required for the issue of a FPN is exactly the same as for a prosecution at court. It is essential, therefore, that FPNs are only issued where an authorised officer believes there is adequate evidence to support a prosecution if a notice is not paid, and that unpaid notices are followed up.

4.10 The Council sees the issues covered by FPNs under the various Acts covering 'enviro-crime' as important to individuals' quality of life and wants to send out a strong message, through their usage, to those who deface the Council's environment.

4.11 The FPN must be paid within 14 days of it being served. If the FPN is not paid the case will be considered for prosecution in the Magistrates' Court.

4.12 The use of FPNs is one of the powers we shall use to meet the strategy's aim in an effective and efficient manner. The Council will retain any funds accrued from the serving of FPNs. These funds will be used to help offset the costs of the enforcement function, by helping fund, for example, educational initiatives and publicity.

4.14 Any FPN **must by law** state the following :-

- the full amount of the fixed penalty;
- that no proceedings for the offence will be taken if it is paid within 14 days;
- the name and address to whom payment may be made by post (without ruling out other methods of payment).

4.15 A FPN is an auditable document. As such, the FPNs will need to be managed by the Service's software system which enables all notices to be tracked and monitored. A FPN which is defective may be cancelled by the Service Manager.

#### 4.16 **Issuing Fixed Penalty Notices to Juveniles**

In law, a FPN can be issued to anyone over the age of 10. However, this Council has taken the decision that they should not be served on persons under the age of 16. There is no upper limit.

## 4.17 **Dog Control Orders**

The Cheshire East Council will use the existing dog fouling enforcement powers, granted to the old District Councils under the Dogs (Fouling of Land) Act 1996 and the dog control orders made by Macclesfield Borough Council.

When issuing FPNs for Dog Control Order offences the Council's paperwork must specify the actual Order that created the offence. Failure to do so might result in challenge in court.

## 4.18 **Investigations**

All investigations will be carried out in accordance with the Police and Criminal Evidence Act 1984 Code of Practice and with strict adherence to the Regulation of Investigatory Powers Act 2000 as and when required.

## 5. IMPLEMENTATION OF THE STRATEGY

### 5.1 Resources

The Service has been created from existing resources across the three Boroughs. This Service will investigate the environmental crimes covered by this strategy and take the necessary actions. The Service also incorporates the Council's Dog Warden duties. These Wardens and others within the Directorate will be authorised under the relevant legislation.

5.2 Along with enforcement, the Service will continue to deliver its current remit on National Indicators, anti-social behaviour, community cohesion and waste management, these being accommodated within the new structure by existing staff continuing to deliver their respective responsibilities.

5.3 Training will be provided to ensure all authorised personnel have the skills and knowledge required to undertake their enforcement duties and to ensure a consistent approach.

### 5.4 Awareness Raising and Education

Awareness and education are fundamental to the success of any enforcement strategy. The community must know and understand what standards are expected of them so that they can operate to these levels. We aim to carry out this element of enforcement by providing consistent advice and guidance about relevant duties and responsibilities through face-to-face operations, leaflets, the Service's webpage, local press, educational talks, specific campaigning and work alongside our partners and stakeholders.

5.5 Over and above the targeted awareness raising and education work, specific focused campaigns will be developed to highlight certain local environmental quality problems to a certain group or within a certain area. Through the strategy we will, where resources allow, support any appropriate regional and national campaigns.

### 5.6 Partnership Working

The Council will work closely with the Police, Fire and Rescue Service, town and parish councils, educational establishments, the Environment Agency, resident's organisations, local housing service providers, business groups, utility companies, community groups, other Council departments and other public bodies. Through partnership working the aims of the strategy can be met in a shared and efficient manner.

5.7 The partners involved in this strategy will help raise awareness, through consistent information and advice, to assist in the education of the community regarding their responsibility to help maintain and enhance a clean and pleasant area.

**6. REPORTING, MONITORING AND REVIEWING THIS STRATEGY**

- 6.1 The Service will utilize the IT system to record ongoing workload. This system has the capability of providing a full historical record for all entries, which allows persons, properties, and businesses with which we have occasion to deal with to be accurately recorded, with all correspondence being attached to the relevant files. This will allow the Service to accurately monitor each case and in turn will provide the audit trail for all enquiries.
- 6.2 The system would also afford an easy monitoring facility to provide statistics as and when required to show the work of the Service.
- 6.3 The implementation of this strategy will be periodically reported to the Council. The Council can then publicise the actions it has taken to tackle environmental crime in the area.
- 6.5 The strategy will be reviewed annually from its date of adoption.



## 7. Human Rights

- 7.1 In carrying out its duties, the Council will respect the rights and freedoms guaranteed to individuals under the Human Rights Act 1988.
- 7.2 Consideration has been given to the compatibility of this strategy and its related procedure, with the Human Rights Act 1988. Particularly with references to the legal basis of its precepts; the legitimacy of its aims; the justification and proportionality of the actions intended by it; that it is the least intrusive and damaging option necessary to achieve the aims; and that it defines the need to document the relevant decision making processes and outcomes of action.

	<b>QUESTION:</b>	<b>RESPONSE/EVIDENCE:</b>	<b>REFERENCE:</b>
1.	Is there within this Strategy (or any attendant powers, authorities or directions within it) potential to interfere or infringe an individual's convention rights?	No – Where information is gained about individuals who are not connected with the enquiry going about their lawful business such information will be ignored.	Section 5
2.	Is there within this Strategy, any potential for it to be discriminatory in relation to the application or provision of such rights?	No	Section 5
3.	Does the Strategy provide a statement or clear guidance on establishing :- The legal basis for any infringement of rights authorised by it?	Yes	Section1
4.	Does the Strategy provide a statement or clear guidance on establishing :- A legitimate aim(s) in respect of its potential to interference of rights?	Yes	Section 3
5.	Does the Strategy provide a statement or clear guidance on establishing :-  Whether the actions are justified and proportionate/ least intrusive and damaging in seeking to achieve the legitimate aim(s)?	Yes	Section 5

**8 Race Relations Amendment Act 2001**

8.1 In 2001, the Race Relations Act was amended to give public authorities a new statutory duty to promote race equality. The aim is to help public authorities to provide fair and accessible services, and to improve equal opportunities in employment.

8.2 The legislation helps ensure public authorities become more accountable to the people they serve and allows everyone the opportunity to give their views about the services that affect them. That means it helps provide the kind of public functions and services all of us need, want and deserve as well as helping to further equality of opportunity and better race relations.

8.3 The general duty applies to all public authorities listed in Schedule 1A of the Act. It requires them :-

- To eliminate unlawful racial discrimination;
- To promote equality of opportunity between persons of different racial groups;
- To promote good relations between persons of different racial groups.

**Does the strategy have a positive or negative impact upon the duty to eliminate discrimination?**

**NO**

**Could the strategy have a positive or negative impact upon the duty to eliminate discrimination?**

**NO**

**Does the strategy have a positive or negative impact upon the duty to promote equality of opportunity?**

**NO**

**Could the strategy have a positive or negative impact upon the duty to promote equality of opportunity?**

**NO**

**Does the strategy have a positive or negative impact upon the duty to promote good race relations?**

**NO**

**Could the strategy have a positive or negative impact upon the duty to promote good race relations?**

**NO**

## **9 Crime and Disorder Implications**

- 9.1.1 Section 17 Crime and Disorder Act places a duty on responsible authorities to exercise their various functions, with due regard to the likely effect of the exercise of those functions and the need to do all that it reasonably can to prevent, crime and disorder in it's area.
- 9.2 Currently the three districts have corporate strategies that address community safety issues. It is anticipated that such a strategy will be developed for Cheshire East. In the meantime the CDRP strategic assessment and consultation on the priorities identified in the assessment, CDRP tasking and co-ordination process and local community action meeting processes will provide an ongoing process for auditing needs and demands for crime and disorder reduction within the local community.

**APPENDIX 1****FIXED PENALTY NOTICE OFFENCES AND AMOUNTS**

<b>DESCRIPTION OF THE OFFENCE</b>	<b>LEGISLATION</b>	<b>FPN AMOUNT</b>
Dog Fouling	Section 3 Dog Fouling of Land Act 1996	£50
Nuisance parking	Section 6(1) CNEA 2005	£100
Abandoning a vehicle	Section 2A(1) Refuse Disposal Amenity Act 1978	£200
Littering	Section 88(1) Environmental Protection Act 1990	£75 *
Breach of a Street Litter Control or Litter Clearing Notice	Section 94A(2) Environmental Protection Act 1990	£100 *
Unauthorised distribution of literature on designated land	Section 3A paragraph 7(2) Environmental Protection Act 1990	£75 *
Defacement – graffiti and fly-posting	Section 43 Anti-social Behaviour Act 2003	£75 *
Failure to produce a controlled waste transfer note	Section 5B(2) Control of Pollution (Amendment) Act 1989	£300
Failure to present a Waste Carrier's Licence	Section 34(2) Environmental Protection Act 1990	£300
Offence in relation to waste receptacles	Section 47ZA(2) Environmental Protection Act 1990	£100 *
Breach of Dog Control conditions	Section 59(2) CNEA 2005	£75 *

\* Indicates a minimum default amount specified by statute but where the Council would have power to charge a different amount if it wished.

**APPENDIX 2****SUPPORTING DOCUMENTS**

Enforcement Concordat

\*Guidance on the Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act 2005 and related legislation covering:

- Dog Control Orders
- Abandoned Shopping Trolley and Luggage Trolleys
- Noise
- Litter and Refuse
- Statutory Nuisance from Insects and Artificial Light
- Fixed Penalty Notices Issuing Fixed Penalty Notices to Juveniles
- Defacement Removal Notices
- Nuisance Parking Offences and Abandoned Vehicles
- Code of Practice on Litter and Refuse
- Waste

Preventing Cigarette Litter in England – Guidelines for Local Authorities

Guidance on the Management of Shopping Trolleys

Getting to grips with the Clean Neighbourhoods and Environment Act 2005 – a parish council guide to environmental enforcement

Tackling drug related litter - Guidance and good practice

Reducing litter caused by 'food on the go' - A Voluntary Code of Practice for local partnerships

Circular 03/07 Town and Country Planning Act – Control of Advertisement Regulations

Human Rights Act 1998

Race Relations Amendment Act 2000

Crime and Disorder Act 1998

Anti-Social Behaviour Act 2003

Police and Criminal Evidence Act 1984

Regulation of Investigatory Powers Act 2000

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## CHESHIRE EAST COUNCIL

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of the meeting:** 9th February 2009

**Report of:** Borough Treasurer and Head of Assets

**Title:** Adoption of Finance and Contract Procedure Rules

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#### **1.0 Purpose of Report**

- 1.1 For the Committee to make recommendations to Council upon the Council's Finance and Contract Procedure Rules which will apply with effect from 1<sup>st</sup> April 2009.

#### **2.0 Decision Required**

- 2.1 That, having considered the issues raised in this report, a recommendation be made to Council to adopt Finance and Contract Procedure Rules which will form part of the Council's Constitution (in the format contained in Appendix 2 to this report) which will take effect on 1<sup>st</sup> April 2009.
- 2.2 That, Council be recommended to authorise the Borough Solicitor to make such amendments and additions to the Constitution as are necessary to give effect to the Council's wishes.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 There are no financial implications for transition costs.

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 There are no direct financial implications in the adoption of Finance and Contract Procedure Rules. However in exercising those Rules post vesting day, members and officers will be taking decisions that have significant financial implications.

#### **5.0 Legal Implications**

- 5.1 It is essential that the Council has robust Finance and Contract Procedure Rules in place to enable the Council's financial affairs to be managed post vesting day. In exercising the responsibilities identified in the Rules, post vesting day, members and officers will be taking decisions that have significant legal implications.

#### **6.0 Risk Assessment**

- 6.1 Without a robust set of Rules, members and officers will be unable to properly manage the authority's financial affairs. The likelihood of this occurring is low and the mitigation is to ensure that the Rules are adopted and in effect from 1<sup>st</sup> April 2009.

## **7.0 Background**

- 7.1 It is a legal requirement to have a formal set of Finance and Contract Procedure Rules to enable members and officers to manage the authority's financial affairs. Finance and Contract Procedure Rules form part of the Council's Constitution. A robust and thorough set of Rules aids the efficient financial running of the Council.
- 7.2 The demising Authorities' various Rules have been reviewed alongside the CIPFA best practice 'model set' to produce a set of Rules for the Council. The draft documents have been reviewed and approved by Governance Group and Finance Managers Group. They have also been reviewed and agreed by the Borough Treasurer and Head of Assets and Borough Solicitor and Monitoring Officer. However, it is anticipated that further changes and refinements will be required.
- 7.3 Appendix 1 sets out the Key Issues taken from the Finance and Contract Procedure Rules. A report is to be considered by Cabinet on the 3<sup>rd</sup> February 2009 so that the approach to these key issues can be agreed. Members will be updated with the outcome of the Cabinet meeting.
- 7.4 The Rules are attached as Appendix 2.

## **8.0 Day One, Year One and Term One Issues**

- 8.1 The Rules must be in place and approved as part of the Council's Constitution.
- 8.2 The Rules will need to be monitored and reviewed during the first year of the council.

## **9.0 Reasons for Recommendations**

- 9.1 To agree the framework for managing the Authority's financial affairs.

### ***For further information:***

*Portfolio Holder: Councillor Frank Keegan*

*Officer: Lisa Quinn, Borough Treasurer and Head of Assets*

*Tel No: 01270 529628*

*Email: Lisa.Quinn@cheshireeast.gov.uk*

### ***Background Documents:***

*Documents are available for inspection at County Hall, Chester, Cheshire, CH1 1SF*



## Key Issues from Finance and Contract Procedure Rules

### 1 Virements

A virement constitutes the movement of existing approved budgets from one area to another and is not an increase in overall budgets through the addition of new monies.

Approval limits for virements are as follows:

Approval Level	Virement Amount/Percentage
Head of Service	Up to £100,000 or 10% of a net Service budget, whichever is the lowest. (Revenue)
Chief Officers	<p>Greater than 10% of a net Service budget but less than £100,000 (Revenue)</p> <p>Up to £100,000 between net Service budgets (Revenue)</p> <p>Up to £100,000 funded from underspends within the approved Service budget (Capital)</p>
Chief Officers in consultation with relevant Cabinet Member and Cabinet Member for Resources	Over £100,000 and up to and including £500,000 (Revenue/Capital)
Cabinet	Over £500,000 and up to and including £1,000,000 (Revenue/Capital)
Council	<ul style="list-style-type: none"> <li>▪ £1,000,000 or more; and/or</li> <li>▪ Significant ongoing financial implications; and/or</li> <li>▪ Significant policy change.</li> </ul> <p>(Revenue/Capital)</p> <p>“Significant” to be defined by the Borough Treasurer and Head of Assets or their representative.</p>

No virements are permitted from ringfenced budgets.

## 2 Supplementary Estimates

Where services wish to undertake an activity not originally identified in the budget or extend an existing capital scheme where additional income becomes available in year, approval must be sought for a fully funded supplementary capital or revenue estimate.

Approval Level	Supplementary Estimate Amount
Chief Officers	Up to £100,000
Chief Officers in consultation with relevant Cabinet Member and Cabinet Member for Resources	Between £100,000 and £500,000
Cabinet	Between £500,000 and £1,000,000
Council	Over £1,000,000

## 3 Treatment of Year End Balances

The full Council is responsible for agreeing procedures for carrying forward under and overspendings on budget headings.

Any revenue overspending on a Service budget will be carried forward as the first call on the following year's budget.

Any revenue underspending at the year end may be carried forward, subject to the agreement of the Cabinet on the advice of the Cabinet Member for Resources, except where any specific approval has already been given or where there is a specific grant condition requirement. All carryforward proposals must be supported by an appropriate business case demonstrating that the underspend was planned and that the resources carried forward will be earmarked for a specific purpose or issue. Chief Officers should include provisional indications of likely carry forward requests in their reports on the mid-year and three-quarter review of performance.

Capital block provisions are allocations within which the full "starts value" of approved schemes must be contained. Any uncommitted sum at the year end may, exceptionally, be carried forward subject to consideration by the Cabinet Member for Resources of the business case supporting the proposal. Any uncommitted sum which is not justified on this basis will be returned to Council balances. Equally, any overspending will be carried forward as the first call on the following year's provision.

## 4 Capital Approvals

Capital expenditure is broadly defined as expenditure in excess of £10,000, on the acquisition of a tangible asset, or expenditure which adds to (rather than merely maintains), the value of an existing asset and/or extends the useful life of an asset and increasing usability, provided that the asset yields benefits to the Council and the services it provides is for a period of more than one year.

Limits/treatment:

- Capital items estimated to cost in excess of £250,000 will be treated as separate schemes or provisions.
- An Option Appraisal in the form of a detailed Business Case template will be required for all schemes over £250,000.
- A summarised version of the Business Case template will be required for approvals being sought for over £100,000 and up to £250,000.
- A cost estimate and brief description of the nature of expenditure will be required for approvals being sought for over £10,000 and up to £100,000.

## 5 Generating Income

Charges for goods or services must be based on the principle of full-cost recovery, including all service and corporate overheads. Detailed guidance on costing and charging for services is set out in the detailed guidance. Where Chief Officers wish to charge more or less than the full cost, or where the proposal constitutes a new policy or a variation on previous practice the Borough Treasurer and Head of Assets must be consulted in advance.

The following approval levels apply:

Approval Level	Financial Impact of Change in Charges
Chief Officer	Up to and including £100,000
Borough Treasurer and Head of Assets in consultation with relevant Cabinet Member and Cabinet Member for Resources	More than £100,000 and up to and including £500,000
Cabinet	Over £500,000 and up to and including £1,000,000
Council	£1,000,000 or more

## 6 Bad Debts

Bad debts may be written off as follows:

Approval Level	Bad Debt Amount
Chief Officers and Heads of Service, or Authorised Officer as contained in the Scheme of Delegation, in consultation with the Borough Treasurer and Head of Assets.	Up to and including £2,500
Chief Officers and Heads of Service, in consultation with the Borough Treasurer and Head of Assets and Borough Solicitor.	Over £2,500 and up to and including £5,000.
Chief Officers and Heads of Service, in	Over £5,000 and up to and including

consultation with the Borough Treasurer and Head of Assets and Borough Solicitor and Cabinet Member.	£10,000.
Chief Officers and Heads of Service, in consultation with the Borough Treasurer and Head of Assets, Borough Solicitor, relevant Cabinet Member, and Cabinet Member for Resources.	Over £10,000 and up to and including £50,000.
Cabinet.	Over £50,000.

## 7 Contract Procedures

The table below summarises the procedures must be followed for different contract values.

The Total Value of the contract is the yearly contract value multiplied by the contract period (including any potential extension).

	<b>Total Value</b>	<b>Procedure to follow where no Contract exists</b>
<b>Informal</b>	Below £10,000	E-mail / telephone quotation(s)
	Above £10,000 but below £50,000 for goods, services and works	Comparison of written quotations from at least 3 bidders
<b>Formal</b>	Above £50,000 but below The EU threshold for goods, services and works	Formal tender process to secure tenders from at least 3 suppliers
	Above the EU threshold for goods, services and works	Tender process in accordance with EU Procurement Rules

## 8 Partnerships and Jointly Funded Projects

Legally a partnership is an arrangement entered into under the Partnership Act, and is heavily regulated as to the liabilities of partners. However, the majority of the partnerships entered into by the Council are more correctly called partnership arrangements and are, at their simplest, where the Council agrees to work with one or more external agencies to deliver common aims and objectives. These partner agencies could potentially be from a government department, any public, private, community or voluntary sector body or related party.

**Accredited Body**

All public sector bodies that have a proven track record of successful working in collaboration with the Council in various partnership arrangements have been identified as 'Accredited Partners', a list of which is held by the Borough Treasurer and Head of Assets. It is the responsibility of the Borough Treasurer and Head of Assets to maintain this list and review it on an annual basis. Any subsequent changes, including additions and deletions will need approval from the Cabinet.

**Non-Accredited Body**

Non Accredited partners include public bodies not specifically identified on the accredited list or private sector organisations. Where the Head of Service wishes to enter into a partnership or jointly funded project with another body not on the accredited list then he/she is required to consult with the Borough Treasurer and Head of Assets, the Borough Solicitor, the Procurement Manager, and the Head of Human Resources and Organisational Development, before following the approval route specified below.

**Accredited Body**

The following can approve partnership proposals:

<b>Approval level</b>	<b>Amount (within budget)</b>
Chief Officers	Up to and including £100,000
Chief Officer In consultation with relevant Cabinet Member	Over £100,000 and up to £500,000
Cabinet	Over £500,000 and up to and including £1,000,000;
Council	Over £1,000,000.

**Non-Accredited Body**

The following can approve partnership proposals:

<b>Approval level</b>	<b>Amount (within budget)</b>
Chief Officer in consultation with Cabinet Member for Resources	Up to and including £250,000
Cabinet	Over £250,000 and up to and including £500,000
Council	Over £500,000

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## CHESHIRE EAST

### GOVERNANCE AND CONSTITUTION COMMITTEE

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**Date of meeting:** 9 February 2002  
**Report of:** Borough Solicitor  
**Title:** Access to Information Rules

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#### **1.0 Purpose of Report**

- 1.1 For the Committee to consider the Access to Information Rules appended to this report

#### **2.0 Decision Required**

- 2.1 For the Committee to recommend to Council that the Access to Information Rules appended to this report be incorporated into the Constitution of Cheshire East Council.
- 2.2 That Council be recommended to authorise the Borough Solicitor to make such changes to the Rules, and such consequential changes to the Council's Constitution, as he considers necessary to give effect to the intentions of Council.

#### **3.0 Financial Implications for Transition Costs**

- 3.1 None.

#### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 None

#### **5.0 Legal Implications**

- 5.1 The Local Government Acts of 1972 and 2000 and regulations made under them require the rights of the public to access to information to about the Council's activities be included in its Constitution. The information that the public must have access to is also prescribed in statute.
- 5.2 Members have some statutory rights to information (in addition to the common law 'need to know' rights);these statutory rights are included in the Rules

#### **6.0 Risk Assessment**

- 6.1 There is risk of challenge to decisions made by the Council, Cabinet, Committees and Officers if the rights to access to information are not set out in

its Constitution and adhered to.

## **7.0 Background and Options**

- 7.1 The law requires that the public and members of the Council have access to information concerning the Council's decision making processes and affords them access to meetings and to the reports including background information) and minutes relating to Committee meetings and to some officer decisions. (These rights are in addition to the general rights to access to information under the Freedom of Information and Data Protection legislation)
- 7.2 Members of the Council have limited additional rights to some information and these are set out at Rules 20.
- 7.3 Special rules apply to meetings of the Cabinet when a Key Decision is made (or in some circumstances merely discussed). These are set out in Rules 11 to 18. These rules also apply when an individual Member makes an executive decision or an Officer makes a key decision.
- 7.4 Access to information may be denied when exempt information (as defined at Rule 10 in the Appendix) would be disclosed and must be denied when confidential information (at Rule 9) would be disclosed.
- 7.5 These Rules have been drafted on the assumption that all meetings of the Cabinet or its Committees will be held in public (unless an exemption applies)
- 7.6 To allow for changes in the Council's emerging Constitution in relation to Committee procedure matters, Committee is asked to recommend to Council that the Borough Solicitor be authorised to make such changes to the Rules, and any consequential changes to the Council's Constitution, as he considers necessary to give effect to the intentions of Council.
- 7.7 The recommendation of the Committee will be reported to Full Council at its meeting on 24 February. Following the decision of the Council the Access to Information Rules will be incorporated into the Council's Constitution to take effect on Vesting Day.

### ***For further information:***

*Officer: Sheela Dutton*

*Tel No 01270 529724*

*Email: [Sheela.Dutton@congleton.gov.uk](mailto:Sheela.Dutton@congleton.gov.uk)*

***Background Documents: None***



**ACCESS TO INFORMATION PROCEDURE RULES****INTRODUCTION**

The Access to Information Rules which apply to Council meetings and Committees of the Council are set out in sections 100A-H and Schedule 12A of the Local Government Act 1972. As the Council is functioning under an executive form of governance it is bound by further Access to Information Rules contained in The Local Government Act 2000 and The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended). These rules comply with those statutory provisions.

**1.0 SCOPE**

- 1.1 These rules cover all meetings of the Council and its Committees, Sub-Committees, Cabinet and any other executive decision making body of the Council (together called meetings). Where specified, they will also apply to any executive decision made by individual Members and Key Decisions made by Officers.
- 1.2 These rules also cover Members' statutory rights of access to information.
- 1.3 These rules do not cover rights of access to information under the Freedom of Information Act 2000, and the Data Protection Act 1998. A summary of these rights can be found on the Council's website or obtained from the Information Officer of the Council
- 1.4 These rules do not affect any more specific right to information contained elsewhere in this Constitution or in any Act.

**2.0 PUBLIC ACCESS TO MEETINGS**

- 2.1 Members of the public may attend all meetings subject only to the exceptions in these rules.

**3.0 NOTICE OF MEETINGS**

- 3.1 The Council will give at least five clear days notice of any meeting by posting details of the meeting at Westfields, Middlewich Road, Sandbach, CW11 1HZ (the designated office) and on its website. The notice will specify the business proposed be transacted at the meeting.
- 3.2 Members entitled to attend a meeting, will receive a summons giving five clear days notice to attend and specifying the business proposed to be transacted at the meeting. Except in the case of business required by law to be transacted at the annual meeting, or other business brought before the meeting as a matter of urgency in accordance with the Constitution, no business shall be transacted at a meeting other than that specified in the summons.

**4.0 PUBLIC ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

- 4.1 The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear days before the meeting, except that where a meeting is convened at shorter notice, the copies of the agenda and reports shall be open to inspection from the time the meeting is convened.
- 4.2 Where an item is added to the agenda, and the report is open to the public, copies of any report for the meeting relating to the item, and the revised agenda shall be available for inspection from the time the item is added to the agenda.
- 4.3 Where copies of the agenda and reports open to the public are not made available for inspection in this way, an item of business will not be considered unless by reason of special circumstances, which shall be specified in the minutes, the chair of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency

**5.0 PUBLIC ACCESS TO COPIES****5.1 The Council will supply copies of:**

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) if the Proper Officer thinks fit, copies of any other documents supplied to Members in connection with an item to any person on payment of a charge for postage, copying and any other costs.
- (d) copies of the agendas of Cabinet meetings will be circulated to all Members

- 5.2 The Council will make available for the use of members of the public present at meetings, a reasonable number of copies of the agenda and of those reports which are open to the public.

**6.0 PUBLIC ACCESS TO MINUTES ETC AFTER THE MEETING**

- 6.1 The Council will make available for inspection copies of the following for six years after a meeting:
- (a) the minutes of the meeting excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information (as defined in Rules 9 and 10);

- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public

## **7.0 PUBLIC ACCESS TO BACKGROUND PAPERS**

### **7.1 List of background papers**

The Proper Officer will compile a list to be included in reports which sets out a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report

but this does not include published works or those which disclose exempt or confidential information (as defined in Rules 9 and 10), nor in respect of executive reports, does this include the advice of a political adviser, or any draft report or document.

### **7.2 Public inspection**

- (a) A copy of each of the documents listed will be available for inspection at the same time as the report is available for public inspection.
- (b) The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

## **8.0 EXCLUSION OF PUBLIC ACCESS TO REPORTS**

- 8.1 The Proper Officer will exclude access by the public to reports which in his opinion contain confidential information, (as defined in Rule 9).
- 8.2 If the Proper Officer thinks fit, access by the public may also be excluded to reports which in his opinion relate to items during which, in accordance with Rule 10 (Exempt Information) the meeting is likely not to be open to the public.
- 8.3 Such reports will be marked "Not for publication" together with "confidential information" or the exemption relied upon.
- 8.4 Where an exemption is relied upon, any such report must contain the reasons why, as in all in the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**9.0 CONFIDENTIAL INFORMATION – REQUIREMENT TO EXCLUDE PUBLIC ACCESS**

9.1 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

9.2 Confidential information means

- (a) information given to the Council by a Government Department on terms which forbid its public disclosure or
- (b) information the disclosure of which to the public is prohibited by or under another Act or by a Court of Law.

**10.0 EXEMPT INFORMATION – DISCRETION TO EXCLUDE PUBLIC ACCESS TO MEETINGS**

10. 1 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed provided:

- (a) the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies, and
- (b) that resolution states, by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (paragraph 10.4 below) the description of the exempt information giving rise to the exclusion of the public.
- (c) that resolution states, by reference to reasons given in a relevant report or otherwise, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

10.2 In these circumstances, public access to reports, background papers and minutes will also be excluded.

10.3 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

10. 4 Exempt information means information falling within the following categories (subject to any condition):

Category	Condition
1. Information relating to any individual.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
2. Information which is likely to reveal the identity of an individual.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
<p>3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).</p> <p>“Financial or business affairs” includes contemplated, as well as past or current, activities</p>	<p>Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information</p> <p>Information within paragraph 3 is not exempt if it must be registered under</p> <ul style="list-style-type: none"> <li>(a) the Companies Act 1985;</li> <li>(b) the Friendly Societies Act 1974;</li> <li>(c) the Friendly Societies Act 1992;</li> <li>(d) the Industrial and Provident Societies Acts 1965 to 1978;</li> <li>(e) the Building Societies Act 1986; or</li> <li>(f) the Charities Act 1993.</li> </ul>
<p>4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or officer-holders under the authority.</p> <p>“Labour relations matter” are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Unions and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute within the meaning of that Act or any dispute about any such matter</p>	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

Category	Condition
6. Information which reveals that the authority proposes – (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

**EXCEPT THAT**

Information falling within any of paragraphs 1-7 is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission under regulation 3 of the Town and Country Planning General Regulations 1992.

The following will also be exempt information for some meetings of the **Standards Committee or a Sub-Committee of it**<sup>1</sup>

Category	Condition
7A. Information which is subject to any obligation of confidentiality.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
7B. Information which relates in any way to matters concerning national security.	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information
7C. Information presented to a standards committee, or to a sub-committee of a standards committee, set up to consider any matter under regulations 13 and 16 to 20 of the Standards Committee (England) Regulations 2008, (referrals to and references from Monitoring Officers) or referred under section 58(1)(c) of the Local Government Act 2000 (failure to comply with Code of Conduct).	Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

<sup>1</sup> Where a Standards Committee is convened to consider a matter referred under regulations 13 or 16 to 20 of the Standards Committee (England) Regulations 2008 or referred under section 58 (1)(c) of the Local Government Act 2000.

## 10.5 Procedure at Standards Committee (Complaints and reviews)

When a meeting of a Sub-Committee of the Standards Committee is convened to consider a written complaint<sup>1</sup> or to review a decision of the<sup>2</sup> then Part 5A of the Local Government Act 1972 does not apply to those meetings. Regulation 8 of the Standards Committee (England) Regulations 2008 applies to those meetings generally and Regulation 8(5)(a) governs the production and publication of a written summary of the sub-committees decision.

## 10.6 Disorderly Conduct – discretion to exclude public

The public may also be excluded from meetings, where the meeting so resolves, in the exercise of a lawful power of exclusion in order to maintain orderly conduct or to prevent misbehaviour at a meeting

## 11.0 PUBLIC ACCESS TO CABINET MEETINGS

- 11.1 All meetings of the Cabinet and its Committees, are to be held in public. Rules 1-10 apply to all public meetings and also apply when an individual Member makes an executive decision in public. Rules 17 and 18 apply to the written record of all executive decisions.

If Cabinet or its Committees are to make a Key Decision the meeting must be held in public unless Rules 9 or 10 apply to all or part of the meeting (confidential or exempt information is likely to be disclosed) or the advise of a political adviser is likely to be disclosed.

- 11.2 If a **Key Decision** is to be made by the Cabinet, an individual Member or an Officer Rules 11 -16 also apply

A "Key Decision" means an executive decision which, is likely

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.

- 11.3 If the Cabinet or its Committees meet and a Key Decision that is due to be taken collectively is discussed and

- a) an Officer (other than a political adviser) is present at the discussion

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<sup>1</sup> Received under Section 57A(1) of the Local Government Act 2000

<sup>2</sup> Under Section 57B of the Local Government Act 2000

- b) the discussion is within 28 days of the date by which, according to the Forward Plan, the decision is to be made

then Rules 1 – 10 must be complied with unless;

- (i) Rule 15 (general exception) or Rule 16 (special urgency) applies or
- (ii) the principal purpose of the meeting is for the Officer to brief the decision maker on matters connected with the Key Decision.

## **12.0 PROCEDURE BEFORE TAKING KEY DECISIONS**

Subject to Rule 14 (general exception) and Rule 15 (special urgency), a Key Decision may not be taken unless:

- (a) a notice (called here a Forward Plan) has been published in connection with the matter in question;
- (b) at least 5 clear days have elapsed since the publication of the Forward Plan; and
- (c) where the decision is to be taken at a meeting of the Cabinet or its Committees, notice of the meeting has been given in accordance with Rules

## **13.0 THE FORWARD PLAN**

### **13.1 Period of Forward Plan**

Forward plans will be prepared by the Leader to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan. They will contain outstanding matters from the previous forward plan.

### **13.2 Content of Forward Plan**

- 13.2.1 The Forward Plan will contain matters which the Leader has reason to believe will be subject of a Key Decision to be taken by the Cabinet, a Committee of the Cabinet, Officers, Area Committees or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. The Forward Plan must be published at least 14 days before the start of the period covered and made available to the relevant Scrutiny Committees. It will describe the following particulars in so far as the information is available or might reasonably be obtained

- (a) the matter in respect of which a decision is to be made;



- (b) where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

13.2.2 The Proper Officer will publish once a year a notice in at least one newspaper circulating in the area, stating:

- (a) that Key Decisions are to be taken on behalf of the Council;
- (b) that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;
- (c) that the plan will contain details of the Key Decisions to be made for the four month period following its publication;
- (d) that each plan will be available for inspection at reasonable hours free of charge at the Council's offices;
- (e) that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the Key Decisions on the plan;
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts

from, any document listed in the forward plan is available;

- (g) that other documents may be submitted to decision takers;
- (h) the procedure for requesting details of documents (if any) as they become available; and
- (i) the dates on each month in the following year on which each forward plan will be published and available to the public at the Council's offices.

13.2.3 Exempt information (as defined in Rule 10) and the advice of political advisers need not be included in a forward plan and confidential information (as defined in Rule 9) cannot be included, but the Forward Plan should contain particulars of the matter.

## **14.0 GENERAL EXCEPTION**

14.1 If a matter which is likely to be a Key Decision has not been included in the Forward Plan, then subject to Rule 15 (special urgency), the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next forward plan and until the start of the first month to which the next Forward Plan relates;
- (b) the Proper Officer has informed the chair of a relevant Scrutiny Committee, or if there is no such person, each member of that committee in writing, by notice, of the matter to which the decision is to be made;
- (c) the Proper Officer has made copies of that notice available to the public at the offices of the Council; and
- (c) at least five clear days have elapsed since the Proper Officer complied with (b) and (c).

14.2 Where such a decision is taken collectively, it must be taken in public.

## **15.0 SPECIAL URGENCY**

- 15.1.1 If by virtue of the date by which a decision must be taken Rule 14 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the chair of the body making the decision, obtains the agreement of the chair of a relevant Scrutiny Committee that the taking of the decision cannot be reasonably deferred and the decision is urgent. If there is no chair of a relevant Scrutiny Committee, or if the chair of the relevant Scrutiny Committee is unable to act, then the agreement of the Lord Mayor of the Council, or in his/her absence the Deputy Lord Mayor will suffice.

## **16.0 REPORTS TO COUNCIL**

### **16.1 When a Scrutiny Committee can require a report**

Where an executive decision has been made and was not treated as a Key Decision and a relevant Scrutiny Committee thinks that it should have been treated as a Key Decision the Scrutiny Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Scrutiny Committee specifies. The power to require a report rests with the Committee but is also delegated to the Chief Executive who shall require such a report on behalf of the Committee when so requested by the Chair of the Committee or any five Members. Alternatively, the requirement may be raised by resolution passed at a meeting of the relevant Scrutiny Committee.

### **16.2 The Cabinet's report to Council**

The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven days of receipt of the resolution of the Scrutiny Committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and if the leader is of the opinion that it was not a key decision, the reasons for that opinion.

### **16.3 Quarterly reports on special urgency decisions**

In any event the Leader will submit quarterly reports to the Council on the executive decisions taken in the circumstances set out in Rule 15 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

**17.0 PUBLIC ACCESS TO CABINET DECISIONS - RECORD OF DECISIONS**

- 17.1 After any meeting of the Cabinet or any of its Committees, the Proper Officer or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as reasonably practicable and make it available for inspection by the public. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

**18.0 DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET OR OFFICERS****18.1 Public access to reports intended to be taken into account**

Where an Individual Cabinet Member or Officer receives a report which he/she intends to take into account in making any Key Decision, then he/she will not make the decision until the report has been available for public inspection for at least five clear days.

**18.2 Provision of copies of reports to Scrutiny Committees**

On giving such a report to an individual decision maker, the person who prepared the report will give a copy of it to the chair of every relevant Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

**18.3 Public access to record of individual decision**

As soon as reasonably practicable after any executive decision has been made by an individual Member of the Cabinet or a Key Decision has been taken by an Officer, he/she will prepare, (or the Member may instruct the Proper Officer to prepare), a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of Rules 6 and 7 (inspection of documents after meetings) will also apply to the making of Key Decisions by Directors. This does not require the disclosure of draft reports, exempt or confidential information, or advice from a political adviser or assistant.

**19.0 MEMBERS ACCESS – ADDITIONAL STATUTORY RIGHTS**

- 19.1 All Members will be entitled to inspect any document which is in the possession or under the control of the Council and contains material relating to

(a) any future business to be transacted at a public meeting or

(b) any business which has previously been transacted at any private meeting or

(c) any executive decision previously made by an individual Member or

(d) a Key decision previously made by an Officer

19.2 Members have no right to inspect a document which discloses:

(a) exempt information, unless it relates to category 3 (and is not information relating to terms proposed by or to the Council in the course of negotiation for a contract) or category 6 in paragraph 10.4; or

(b) the advice of a political adviser or assistant

## **20.0 SCRUTINY MEMBERS ACCESS– ADDITIONAL STATUTORY RIGHTS**

20.1 Subject to the limits below, a member of a Scrutiny Committee (including its Sub-Committees) will be entitled to copies of any document which is in the possession or control of the Cabinet or its Committees and contains material relating to

(a) business transacted at any meeting of the Cabinet or its committees; or

(b) any executive decision made by an individual member

(c) a Key Decision made by an Officer

20.2 A Scrutiny member will not be entitled to:

(a) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or

(b) the advice of a political adviser or assistant.

## **21. NATURE OF ADDITIONAL RIGHTS**

The members rights of access in Rules 19 and 20 are additional to the common law right they have to access information on a 'need to know' basis in order assist in the proper discharge of their duties as a member of the Council.

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