

Constitution Committee

Agenda

Date: Thursday, 14th July, 2011
Time: 2.00 pm
Venue: Committee Suite 1,2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

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 period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the meeting. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

4. **Minutes of Previous meeting** (Pages 1 - 8)

To approve the minutes of the meeting held on 2nd June 2011.

Contact: Paul Mountford, Democratic Services
Tel: 01270 686472
E-Mail: paul.mountford@cheshireeast.gov.uk with any apologies

5. **Appointment of Appeals Sub-Committee** (Pages 9 - 12)
To review the arrangements for the appointment of an Appeals Sub-Committee.
6. **Whistleblowing Policy** (Pages 13 - 24)
To consider a revised Whistleblowing Policy.
7. **Appointment to Sandbach Town Plan Steering Group** (Pages 25 - 26)
To consider the addition of Sandbach Town Plan Steering Group to the list of approved Category 2 outside organisations and to appoint Councillor Barry Moran as the Council's representative.
8. **Review of the Constitution - Work Programme 2011/12** (Pages 27 - 32)
To consider a timetable of work for the Committee for the review of the Council's Constitution.
9. **Executive Arrangements and Cabinet Procedure Rules** (Pages 33 - 44)
To recommend proposed changes to the Executive and Council Procedure Rules as part of the review of the Council's Constitution.
10. **Proposed Amendments to the Council's Contract Procedure Rules** (Pages 45 - 76)
To consider proposed amendments to the Council's Contract Procedure Rules.
11. **Overview and Scrutiny Committees - Terms of Reference** (Pages 77 - 88)
To make a recommendation to Council to adopt new Terms of Reference for the new structure of six Overview and Scrutiny Committees.
12. **Director of Peaks and Plains Housing Trust** (Pages 89 - 90)
To consider a report on the proposal for the Mayor to continue to serve as a Director of Peaks and Plains Housing Trust.

The Chairman is of the opinion that this matter constitutes urgent business and may be dealt with at the meeting in accordance with Committee Procedure Rule 37.2. The reason for urgency is:

"A decision is required to be made as soon as possible and cannot wait until the next meeting of the Civic Sub Committee. The Constitution Committee as parent Committee of the Civic Sub Committee is able to determine this matter."

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Constitution Committee**
held on Thursday, 2nd June, 2011 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor A Martin (Chairman)
Councillor D Marren (Vice-Chairman)

Councillors G Baxendale, S Corcoran, P Groves, S Jones, W Livesley,
A Moran, B Murphy, A Thwaite, D Topping, P Whiteley, R Cartlidge (for Cllr
Newton) and B Silvester (for Cllr Druce)

Officers

Caroline Elwood, Borough Solicitor
Brian Reed, Democratic and Registration Services Manager
Paul Jones, Democratic Services Team Manager
Lindsey Parton, Elections and Registration Team Manager
Paul Mountford, Democratic Services
Carol Jones, Democratic Services

Apologies

Councillors D Druce and D Newton

1 DECLARATIONS OF INTEREST

Councillors Andrew Martin, David Marren and Arthur Moran declared personal, non-prejudicial interests in agenda item 6 insofar as it related to a request by Nantwich Town Council for Cheshire East Council to hand over regalia held by the former Crewe and Nantwich Borough Council. All three Councillors were members of Nantwich Town Council.

2 PUBLIC SPEAKING TIME/OPEN SESSION

Mrs Dorothy Flude, Mr Terry Beard and Honorary Alderman Peter Kent attended and spoke regarding proposed community governance arrangements for Cheshire East Borough.

Mrs Flude felt that the newly-appointed service delivery committee for the unparished area of Crewe was not representative of the area and that the Council should look again at a town council for Crewe.

Honorary Alderman Kent felt that the changes to the community governance arrangements introduced by the Local Government and Public Involvement in Health Act 2007 had not anticipated a situation such as that of Crewe which was politically different from the Borough as a whole. He

added that any proposed community governance arrangements for Crewe should be decided by a vote of the local electorate and not merely by consultation with key stakeholders.

Mr Beard urged that a further community governance review of the unparished area of Crewe be undertaken at the earliest opportunity and that local Members be involved.

3 MINUTES OF PREVIOUS MEETING

RESOLVED

That the minutes of the meeting held on 24th March 2011 be approved as a correct record.

4 INTRODUCTION TO THE WORK OF THE COMMITTEE

The Democratic and Registration Services Manager briefly outlined the work of the Committee for the benefit of new Members.

Members had before them the Committee's terms of reference.

RESOLVED

That the work of the Committee and its terms of reference be noted.

5 HOLISTIC BOROUGH-WIDE REVIEW OF COMMUNITY GOVERNANCE ARRANGEMENTS

The Committee considered proposals for a Borough-wide review of community governance arrangements.

The Council at its meeting on 14th October 2010 had considered a Notice of Motion submitted by Councillor D Flude proposing that the Constitution Committee be asked to undertake a further Community Governance Review for Crewe. The Council referred the Motion to the Constitution Committee. The Constitution Committee on 18th November 2010 resolved that further consideration of the Motion be deferred until after the May 2011 elections, at which time the Council be asked to consider undertaking a holistic Borough-wide review of community governance arrangements in Cheshire East.

The Council had since received a letter from the Macclesfield Civic Society, requesting that the Constitution Committee consider a governance review for Macclesfield at the first opportunity.

Community Governance Reviews were conducted under the provisions of the Local Government and Public Involvement in Health Act 2007. The 2007 Act provided for a principal council to conduct a Community Governance Review at any time.

RESOLVED

That

- (1) a Borough-wide review of community governance arrangements for Cheshire East be conducted to consist of the following areas, and be undertaken in order of priority as listed:
 - (a) a review of the unparished areas of Crewe in accordance with the Notice of Motion to Council on 14th October 2010;
 - (b) a review of the unparished areas of Macclesfield in response to the representations made by the Macclesfield Civic Society;
 - (c) a review of parishes in the Borough, with particular focus on areas where there is evidence that parish councils are not fully functional or not operating effectively due to a lack of parish councillors being elected; or where very small parishes exist which may benefit from a grouping arrangement to facilitate the Localism agenda;
- (2) a sub-committee of six members be appointed (4 Con; 1 Lab; 1 Ind) with delegated authority to conduct the review; and
- (3) Macclesfield Civic Society be informed of the Committee's decision regarding the scope of the review.

6 WORK OF THE CIVIC SUB-COMMITTEE

The Democratic Services Team Manager outlined the work of the Civic Sub-Committee.

The Sub-Committee had been appointed with the following terms of reference:

- reviewing and making recommendations to the Constitution Committee on the Mayoralty, including the Mayoral Code of Practice;
- reviewing and making recommendations to the Constitution Committee on all matters relating to Honorary Aldermen and Freemen, including upon the benefits, rights and privileges to which they should be entitled;
- determining all matters relating to nationally significant events except for those matters which the Sub-Committee considers it appropriate to refer to the Constitution Committee for determination; and
- reviewing and making recommendations to the Constitution Committee on civic matters such as the Council's flag flying policy and civic regalia.

There were currently three matters for the Sub-Committee to consider:

1. arrangements for the Queen's Diamond Jubilee celebrations in June 2012. Local authorities in conjunction with their Lord Lieutenants would be expected to provide details of any planned activities in their areas.
2. which of the former members of Cheshire East Council might be eligible to be receive the title of Honorary Alderman and the arrangements for this to take place.
3. a request from the Clerk to Nantwich Town Council that Cheshire East Council hand over possession of certain Regalia held by the former Crewe and Nantwich Borough Council.

A meeting of the Sub-Committee to consider these matters would be convened shortly.

RESOLVED

That the work of the Civic Sub-Committee be noted.

7 REVIEW OF THE CONSTITUTION

The Committee considered a report reviewing progress to date with a review of the Constitution.

The Council's Constitution had been prepared within a narrow timeframe but was considered robust and fit for purpose. Whilst the Constitution continued to serve the Council well, the Constitution Committee had initiated a review of the Constitution to secure further improvements. A programme of work for the review had been adopted but two additional matters had since been included:

1. The Overview and Scrutiny Committee Chairmen had asked the Borough Solicitor to report on potential revisions to the Council Procedure Rules in respect of urgency procedures; and
2. At the Annual Council meeting provisional changes had been made to the number and functions of the Overview and Scrutiny Committees. This Committee was asked to make recommendations on these matters.

The Committee considered progress to date:

A review of the Council's executive arrangements, including executive procedure rules, decision-making by individual Cabinet Members, the Forward Plan and the definition of "key decisions", had been deferred to the start of the Municipal Year at the request of the Cabinet.

An Officer Group had produced revised Finance and Contract Procedure Rules together with associated guidance and were consulting on the impact of the revised arrangements.

Revised departmental structures had now been established and the scheme of officer delegation was being revised to reflect changes since Vesting Day as well as any potential changes in the Finance and Contract Procedure Rules.

RESOLVED

That a full work programme for reviewing the Council's Constitution be drafted with a view to the Committee determining its priorities at the next meeting.

8 QUESTIONS AT COUNCIL MEETINGS

Following comments made by the Mayor at the Annual Council meeting, and discussions with officers, the Chairman had agreed that a report be considered at this meeting regarding questions at Council meetings.

Concerns had been expressed at the Annual Council meeting about the way in which the item permitting questions to be asked of Chairmen and Cabinet Members was used. The Mayor had commented that Members who had legitimate questions should make efforts to resolve these personally before resorting to the Council "question-time" facility.

RESOLVED

That a review of the procedure for questions at Council meetings be included in the work programme for reviewing the Constitution to be considered at the next meeting.

9 REVIEW OF POLLING DISTRICTS AND POLLING PLACES

The Committee considered a report on a proposed review of polling arrangements for Cheshire East.

The Electoral Administration Act 2006 had introduced a statutory duty for local authorities to carry out a review of their parliamentary Polling Districts and Polling Places by 31 December 2007; and at least every four years thereafter.

The first stage of the process involved giving notice of the Review. It was intended that a notice would be published at the end of June 2011.

The Authority had to devise a proposal for the new Polling District and Polling Place arrangements, although there was no requirement to change any existing arrangements.

The consultation stage sought representations and comments on the local authority proposals for Polling Districts and Places.

Following the consultation stage, the Authority had to make its final decisions on the review, taking into account all the representations received.

Delegating the power to conduct the Review to a Sub-Committee of the Constitution Committee was considered the most effective way for the Review to be conducted and would ensure that representations received could be fully considered. It would also ensure that the final decision could be made and published prior to publication of the Register of Electors on 1st December 2011. The final decision would be made by full Council in November. The proposed timetable was set out in Appendix A to the report.

RESOLVED

That

- (1) the publication of the notice of the Polling Districts and Polling Places Review be authorised; and
- (2) a sub-committee of six members be appointed (4 Con: 1 Lab: 1 Ind) with delegated powers to undertake the Review of Polling Districts and Polling Places as required by the Electoral Administration Act 2006.

10 APPOINTMENTS TO OUTSIDE ORGANISATIONS 2011-2015

The Committee considered a report on nominations to Category 2 bodies following the Council elections.

A revised list of nominations to outside bodies was circulated at the meeting together with a revised list of bodies where it was considered appropriate for the local town or parish council to nominate representatives.

In reviewing the appointments to outside bodies, the Outside Organisations Sub-Committee had taken into account the following:

- the effectiveness and appropriateness of representation;
- term of office of appointees;
- political proportionality, where appropriate;
- continuity of representation and Members' interests
- the finalising of the legal guidance for Members
- Officer support for Members appointed to outside organisations

RESOLVED

That

- (1) the nominations to the bodies listed in the revised Appendix A as circulated at the meeting be approved subject to the following:
 - (a) Councillor D Topping be appointed to the Astbury Mere Trust;
 - (b) Councillors J Jackson, W Livesley and G Barton be appointed to the Bollin Valley Steering Committee;
 - (c) the nomination of Councillor A Thwaite to Community Transport (Macclesfield) be deleted and the Conservative Group Whip be asked to submit an alternative nomination;
 - (d) Councillor Rachel Bailey be nominated to the Fairtrade Steering Group;
 - (e) a decision on the nomination to the Sandbach Park Steering Group be deferred to enable additional information to be sought and the Democratic and Registration Services Manager be authorised in consultation with the Chairman to determine the final nomination;
- (2) the appointments be made until such time as representation is reviewed following the election of the new Council in 2015;
- (3) notwithstanding (2) above, the Council retains the right to review the representation on any outside organisation at any time;
- (4) the organisations listed in the revised Appendix B as circulated at the meeting be referred to the appropriate town or parish council and deleted from the Borough Council's schedule of outside bodies; and
- (5) the Friends for Leisure Advisory Committee and Greater Manchester Integrated Transport Authority be deleted from the schedules as representation is no longer appropriate.

The meeting commenced at 2.00 pm and concluded at 4.00 pm

Councillor A Martin (Chairman)

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 14th July 2011
Report of: Democratic and Registration Services Manager
Subject/Title: Appointment of Appeals Sub-Committee

1.0 Report Summary

1.1 This report sets out proposals for the appointment of an Appeals Sub-Committee.

2.0 Recommendations

2.1 That Council be recommended that

(1) an Appeals Sub-Committee be appointed with full delegated powers to hear and determine the following:

- appeals lodged under the Marriage Acts.
- 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).
- appeals lodged with the Council in respect of school transport.
- appeals from bus contractors in accordance with contract procedures.
- any appeals lodged with the Council as Social Services Authority, and as authorised under all relevant social services legislation.

(2) the Sub-Committee comprise 5 members (3 Con; 1 Lab; 1 Ind) to be nominated by the Political Groups;

(3) the Officers arrange suitable training for the members appointed to the Sub-Committee; and

(4) the Appeals Sub-Committee's meetings be held, wherever possible, on those dates already scheduled in the calendar of meetings for the former Appeals Committee.

3.0 Reasons for Recommendations

3.1 To provide a mechanism for determining appeals.

4.0 Wards Affected

4.1 N/A

5.0 Local Ward Members

5.1 N/A

6.0 Policy Implications (including Carbon Reduction and Health)

6.1 None identified.

7.0 Financial Implications

7.1 None identified.

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 The Council has a legal duty to consider a range of appeals in relation to its services and contractual arrangements.

9.0 Risk Management

9.1 Failure to have proper arrangements in place to consider appeals puts the Council at risk of not fulfilling its statutory obligations.

10.0 Background and Options

10.1 The Council at its Annual Meeting on 18th May 2011 reviewed the Council's committee structure and in doing so decided not to appoint an Appeals Committee as a standalone body. The former Appeals Committee had been responsible for the following functions:

- Hearing and determining appeals lodged under the Marriage Acts.
- 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).
- Hearing and determining any appeals lodged with the Council in respect of school transport.
- Hearing and determining appeals from bus contractors in accordance with contract procedures.
- Hearing and determining any appeals lodged with the Council as Social Services Authority, and as authorised under all relevant social services legislation.

10.2 The Council transferred these functions to the Audit and Governance Committee.

10.3 The Officers have now given further consideration to these arrangements and in particular to whether the Audit and Governance Committee is the appropriate body

to consider appeals. The Audit and Governance Committee was established to raise the profile of internal control, risk management and financial reporting within the organisation. CIPFA best practice suggests that these functions are best delivered by a committee separated from other key functions of the Council and that such committees are likely to be more effective by focussing on their own defined areas of business rather than on a broader remit. The Committee is therefore advised that it would be appropriate for another decision-making body to perform the appeals role and is asked to review the arrangements with a view to making suitable recommendations to Council.

- 10.4 Meetings of the former Appeals Committee were scheduled on a monthly basis but over the last twelve months 7 meetings were held, dealing with a total of 9 appeals. The amount of time involved in preparing for and then hearing appeals, and the procedures involved, would make it inappropriate for the Committee itself to deal with appeals. In addition, the former Appeals Committee, which comprised 7 members, was considered to be too large.
- 10.5 It is therefore proposed that the Committee appoint an Appeals Sub-Committee of 5 Members on a politically-proportionate basis. Such an arrangement has already been agreed on an interim basis by the Audit and Governance Committee, which currently has responsibility for the appeals function, pending this Committee's consideration of the longer term arrangements.
- 10.6 In order to consider appeals, Members need to receive appropriate training and the Officers would need to arrange this for the Members concerned. Members of the Sub-Committee need not be members of the parent committee.
- 10.7 It is proposed that wherever possible, the Sub-Committee's meetings would be held on those dates already scheduled in the calendar of meetings for the former Appeals Committee.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of meeting: 14th July 2011
Report of: Head of Policy & Performance
Title: Whistleblowing Policy

1.0 Report Summary

- 1.1 This report advises the Committee on the content of the revised Whistleblowing Policy which was endorsed by the Audit and Governance Committee on 30 June 2011.

2.0 Recommendation

- 2.1 That the revised Whistleblowing Policy as set out in the Appendix be recommended to Council for adoption and inclusion in the Constitution.

3.0 Reasons for Recommendation

- 3.1 In November 2010 the Audit and Governance Committee received and endorsed a number of proposed changes to the Council's Whistleblowing Policy following a review of the document against the *Whistleblowing Arrangements Code of Practice Publicly Available Specification 1998:2008*. Consultation with the unions took place prior to the Policy being endorsed by the Audit and Governance Committee.
- 3.2 The Whistleblowing Policy forms part of the Constitution and therefore needs to be endorsed by the Constitution Committee prior to its referral to Full Council for final approval and adoption.

4.0 Wards Affected

- 4.1 All wards.

5.0 Local Wards Affected

- 5.1 Not applicable.

6.0 Policy Implications (including Climate Change and Health)

6.1 Not applicable.

7.0 Financial Implications

7.1 Unless employees have confidence in the Council's whistleblowing arrangements, they are likely to stay silent where there is a threat to the employer or the wider public interest. Such silence denies the organisation the opportunity to deal with a potentially serious problem before it causes real damage. The costs of such a missed opportunity can be great in terms of fines, compensation or higher insurance premiums.

8.0 Legal Implications

8.1 The Public Interest Disclosure Act 1998 protects employees against detrimental treatment or dismissal as a result of any disclosure of normally confidential information in the interests of the public. The Act only covers protected disclosures under six categories, namely: crime, illegality, miscarriage of justice, damage to health and safety, damage to the environment, and 'cover-ups' about these issues.

8.2 To obtain protection, employees must first disclose the information to the employer or to a body prescribed by the Secretary of State for the purposes of receiving such information. A list of the prescribed bodies is available on the government's website, along with a useful Guide on the Act.

8.3 The Council will introduce this Whistleblowing Policy in line with the Act.

9.0 Risk Assessment

9.1 Without clear arrangements which offer employees safe ways to raise a whistleblowing concern, it is difficult for an organisation to effectively manage the risks it faces.

10.0 Background and Options

10.1 Employees are often the first to realise that there may be something seriously wrong within an organisation. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the organisation. They may also fear harassment or victimisation.

- 10.2 In order to mitigate this risk the Council introduced a whistleblowing policy that is intended to encourage and enable all to raise serious concerns within the organisation rather than overlooking a problem.
- 10.3 The Public Interest Disclosure Act (PIDA) provides that employers should not victimise any worker who blows the whistle in one of the ways set out in the legislation. Although there is no statutory requirement in the PIDA for organisations to have a whistleblowing policy the Government expects public bodies to have a policy in place and the whistleblowing schemes in local authorities in England are assessed regularly as part of their external audit and review.
- 10.4 Furthermore, it should also be noted that, under PIDA, the adequacy of an organisation's whistleblowing arrangements is one of the factors that tribunals and courts look at when they consider whether a wider public disclosure is protected under the legislation.
- 10.5 Finally, and importantly, regulators and the courts are increasingly looking at the adequacy of whistleblowing and other risk management arrangements to determine whether an offence has been committed by an organisation under regulatory or criminal laws, and is also a factor when determining the level of fine or penalty.
- 10.6 It is, therefore, necessary to regularly review the Council's Policy to ensure that it remains compliant with best practice. As such the Policy has been revised in accordance with the Publicly Available Specification (PAS) which sets out good practice for the introduction, revision, operation and review of effective whistleblowing arrangements. This is because the recommendations and guidance in the PAS are of particular relevance to public bodies. Members are referred to the Policy contained in the Appendix which was endorsed by the Audit and Governance Committee on 30th June 2011.
- 10.7 The Whistleblowing Policy includes a series of measures designed to encourage staff to raise concerns and the steps to be taken to investigate such concerns. The Committee is asked to endorse the Policy prior to final approval by Full Council.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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CHESHIRE EAST COUNCIL WHISTLEBLOWING POLICY

1. INTRODUCTION

- 1.1 Employees are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear harassment or victimisation. In these circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.
- 1.2 Cheshire East Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we encourage employees, and others who work with us, with serious concerns about any aspect of the Council's work to come forward and voice those concerns. This policy makes it clear that this can be done without fear of victimisation, discrimination or disadvantage.
- 1.3 This whistleblowing policy is intended to encourage and enable employees to raise serious concerns **within** the Council rather than overlooking a problem or 'blowing the whistle' outside as premature or unnecessary publicity may damage the Council's reputation, impede proper investigations, or hurt individuals unnecessarily.
- 1.4 The policy applies to all employees, Members, contractors, suppliers and consultants and provides them with a secure basis for reporting suspicions of impropriety, in the knowledge that if requested the matter will be treated confidentially.
- 1.5 The procedures contained within this policy are in addition to the Council's complaints process and any other statutory reporting procedure that applies within individual departments.
- 1.6 This policy has been discussed with the relevant trade unions and has their support.

2. AIMS AND SCOPE OF THIS POLICY

- 2.1 The Whistleblowing Arrangements Code of Practice Publicly Available Specification developed by the British Standards Institute and Public Concern at Work defines whistleblowing as;

The popular term used when someone who works for or in an organisation raises a concern about a possible fraud, crime, danger or other serious risk that could threaten customers, colleagues, shareholders, the public or the organisation's own reputation.

- 2.2 Whistleblowing can therefore be described in simple terms as a disclosure made by an employee who has concerns about a danger or illegality that has a public interest to it, usually because it threatens others.
- 2.3 A grievance or private complaint is, by contrast, a dispute about an employee's own employment position and has no public interest to it.
- 2.4 This Whistleblowing Policy has been developed in line with best practice as described in the code of practice and aims to:
- encourage you to feel confident in raising serious concerns and to question and act upon concerns about practice
 - provide avenues for you to raise those concerns and receive feedback on any action taken
 - provide reassurance that you will be protected from possible reprisals or victimisation if you have a reasonable belief that you have made any disclosure in good faith.
- 2.5 The whistle-blowing policy is intended to cover major concerns that fall outside the scope of other procedures. These include:
- conduct which is an offence or a breach of law
 - health and safety risks, including risks to the public as well as other employees
 - damage to the environment
 - the unauthorised use of public funds
 - possible fraud and corruption
 - sexual or physical abuse of clients, or
 - other unethical conduct
- 2.6 If your concerns relate to your own employment then they do not fall under the scope of this policy and should be raised via the Grievance Procedure or Dignity at Work Policy.
- 2.7 This policy does not cover members of the public and any report received will be dealt with under the corporate comments, compliments and complaints policy or as a tip off via the Anti Fraud and Corruption Strategy.
- 2.8 Staff in schools should report any concerns that they may have through their school's own whistleblowing policy.
- 3. SAFEGUARDS**
- 3.1 Cheshire East Council is committed to good practice and high standards and wants to be supportive of employees.

- 3.2 We recognise that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice.
- 3.3 As a result, we will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect you when you raise a concern in good faith.
- 3.4 If someone is found to have subjected a bona fide whistleblower to any form of victimisation or harassment this will be dealt with under the council's disciplinary procedure.
- 3.5 Please be aware however, that should you already be the subject of disciplinary or redundancy procedures, the procedures will not be halted as a result of the whistleblowing report.

4. OPEN DISCLOSURES

- 4.1 The best culture is one where employees have sufficient faith in the whistleblowing arrangements and culture of the council to allow them the confidence to make open disclosures. This is where those involved know what the issues are along with who raised them.
- 4.2 This is the aim for Cheshire East Council and it is hoped that any employee with a whistleblowing concern will feel able to raise their issues openly
- 4.3 This openness makes it easier to assess the report, gather additional information and carry out an investigation.
- 4.4 It also allows any hidden agendas to be identified, helps to prevent witch hunts and reduces the risk of mistrust and paranoia developing within the area being investigated.

5. CONFIDENTIALITY

- 5.1 It is, however, recognised that some employees may not feel that they can make such a report. Where this is the case the policy provides the whistleblower with the option of requesting that their name remains confidential.
- 5.2 Where confidentiality is requested we will do our best to ensure that your name is not revealed. This cannot, however, be guaranteed as there are certain circumstances where the name of the whistleblower may be made known. For example:
 - The report is found to be clearly false or malicious, or
 - Disclosure is ordered by the courts.
 - A formal statement is required as part of a police investigation.

- 5.3 Whilst it is possible to keep the name of a whistleblower confidential, it is not possible to prevent others from trying, often successfully, to work out the source of a report. This can lead to speculation and an unpleasant atmosphere that could have been avoided by making an open disclosure.

6. ANONYMOUS ALLEGATIONS

- 6.1 This policy encourages you to put your name to your allegation whenever possible and actively discourages anonymous reports.
- 6.2 Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Council.
- 6.3 In exercising this discretion the factors to be taken into account would include:
- the seriousness of the issues raised
 - the credibility of the concern; and
 - the likelihood of confirming the allegation from attributable sources.
- 6.4 Anonymous reports also raise a specific problem with regard to the legal requirement that personal data should only be collected fairly.
- 6.5 In addition, people making anonymous reports are not covered by the safeguards put in place to protect named whistleblowers.

7. UNTRUE ALLEGATIONS

- 7.1 If you make an allegation in good faith, but it is not confirmed by the investigation, no action will be taken against you.
- 7.2 If, however, you make malicious or vexatious allegations, then disciplinary action may be taken against you.

8. HOW TO RAISE A CONCERN

- 8.1 As a first step, you should normally raise concerns with your immediate manager or their superior. However, depending upon the seriousness and sensitivity of the issues involved and who is suspected of the malpractice, this may not be appropriate.
- 8.2 Where this is the case the following officers are identified as appropriate contacts within this policy;
- The Chief Executive
 - The Borough Solicitor who is also the Monitoring Officer
 - The Internal Audit Manager
- 8.3 There are two ways to formally make a whistleblowing disclosure;

- Verbally, either face to face or by telephone, or
 - In writing, either by sending a letter to one of the named contacts or by emailing whistleblowing@cheshireeast.gov.uk.
- 8.4 It is preferable for concerns to be raised in writing and where this is the case the following details are requested;
- Your name and contact details
 - background information and history including details as to why you are concerned
 - whether the issue has already been reported to management and the outcome of this
 - whether you wish your name to remain confidential
 - whether you want feedback
 - the names and jobs of any other employees/Members who may support your concern.
- 8.5 Where reports are made verbally to one of the named officers they should attempt to ascertain the same information.
- 8.6 The earlier you express the concern the easier it is to take action.
- 8.7 Although you are not expected to prove beyond doubt the truth of an allegation, you will need to demonstrate to the person contacted that there are reasonable grounds for your concern.
- 8.8 Should you wish to obtain independent advice in relation to a potential whistleblowing report then Public Concern at Work operate a confidential helpline 02074046609. Further advice and guidance can also be found on their website www.pcaaw.co.uk .
- 8.9 You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two (or more) of you who have had the same experience or concerns.
- 8.10 You may invite your trade union, professional association representative or a friend to be present during any meetings or interviews in connection with the concerns you have raised.

9. HOW THE COUNCIL WILL RESPOND

- 9.1 The Council will respond to your concerns. Do not forget that testing out your concerns is not the same as either accepting or rejecting them.
- 9.2 As part of this process contact will be made with you to clarify your concerns and obtain any further information that you may have. You

will also be provided with details of who to contact should you require further support.

- 9.3 Where appropriate, the matters raised may:
- be investigated by management, internal audit, or through the disciplinary process
 - be referred to the police
 - be referred to the external auditor
 - form the subject of an independent inquiry.
- 9.4 In order to protect individuals and those accused of misdeeds or possible malpractice, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. The overriding principle which the Council will have in mind is the public interest. Concerns or allegations which fall within the scope of specific procedures (for example, child protection or discrimination issues) will normally be referred for consideration under those procedures.
- 9.5 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.
- 9.6 The amount of contact between the officers considering the issues and you will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, the officer will seek further information from you.
- 9.7 Where any meeting is arranged, off-site if you so wish, you can be accompanied by a union or professional association representative or a friend.
- 9.8 The Council will take steps to minimise any difficulties which you may experience as a result of raising a concern. For instance, if you are required to give evidence in criminal or disciplinary proceedings the Council will arrange you to receive advice about the procedure.
- 9.9 The Council understands that you may wish to be assured that the matter has been properly addressed. Therefore, subject to legal constraints, if requested we will inform you of the outcome of any investigation.

10. THE RESPONSIBLE OFFICER

- 10.1 The Council's Monitoring Officer has overall responsibility for the maintenance and operation of this policy. That officer will maintain a record of concerns raised and the outcome and will report as necessary to the Council.

- 10.2 If requested the Monitoring Officer will do everything that can lawfully be done to protect your identity but you should be aware that it may need to be disclosed to the police or courts as part of an investigation or subsequent prosecution.

11. HOW THE MATTER CAN BE TAKEN FURTHER

- 11.1 This policy is intended to provide you with an avenue to raise concerns within the Council and it is hoped that you will utilise it. However, should you feel unable to raise your concerns internally, the following are possible alternative contact points:

- Public Concern at Work 020 7404 6609
- the external auditor
- UNISON whistleblower's hotline 0800 597 9750
- Audit Commission whistleblower's hotline 0845 052 2646
- the police.

- 11.2 It is stressed that this list is not exhaustive and you are free to contact any organisation that you feel will be able to deal properly with your concerns. This may include;

- your local Councillor
- your solicitor
- other relevant professional or regulatory bodies.

You are encouraged, however, to take further advice before reporting an issue to a body other than those specified above to ensure that you are making a protected disclosure.

- 11.3 You will be protected under the Public Interest Disclosure Act 1988 if you raise your concerns with any of the above, provided that;

- you make the disclosure in good faith
- you reasonably believe that the information disclosed, and any allegation contained in it, are substantially true
- you do not make the disclosure for personal gain.

- 11.4 If you do take the matter outside the Council, you should ensure that you do not disclose confidential information.

12. THE LAW

- 12.1 This policy has been written to take into account the Public Interest Disclosure Act 1988, which protects workers making disclosures about certain matters of concern, where those disclosures are made within the act's provisions. The Act is incorporated into the Employment

Rights Act 1996, which already protects employees who take action over, or raise concerns about, health and safety at work.

13. EQUALITY

13.1 Cheshire East Council will ensure that, when implementing the Whistleblowing Policy, no employee will be disadvantaged on the basis of their gender or transgender, marital status or civil partnership, racial group, religion or belief, sexual orientation, age, disability, pregnancy or maternity, social or economic status or caring responsibility. This means that the Policy may need to be adjusted to cater for the specific needs of an individual including the provision of information in alternative formats where necessary.

14. MONITORING

14.1 Data relating to Whistleblowing cases will be collated and monitored regularly to ensure that the Policy is operating fairly, consistently and effectively. Issues that are identified from the data will be dealt with appropriately.

15. REVIEW

15.1 The policy will be reviewed in the light of operating experience and/or changes in legislation.

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 14th July 2011
Report of: Democratic Services Manager
Subject/Title: Appointment to Sandbach Town Plan Steering Group

1.0 Report Summary

The report invites the Constitution Committee to add Sandbach Town Plan Steering Group to the list of approved Category 2 outside organisations and to appoint Councillor Barry Moran as the Council's representative.

2.0 Recommendation

- 2.1 That Sandbach Town Plan Steering Group be added to the Category 2 list of approved organisations and Councillor Barry Moran be appointed as the Council's representative.

3.0 Reasons for a Decision

- 3.1 It is important for Cheshire East Council to appoint to outside organisations to ensure that it continues to represent the interests of the Authority and the wider community.

4.0 Wards Affected

- 4.1 Sandbach Wards

5.0 Local Ward Members

- 5.1 Not applicable.

6.0 Policy Implications

- 6.1 None identified.

7.0 Financial Implications

- 7.1 None identified.

8.0 Legal Implications

- 8.1 Whilst membership of outside bodies carries with it the potential for personal liability for elected Members undertaking such roles as

ancillary to their status as a Councillor, particularly in respect of trusteeships, Cheshire East Borough Council has already resolved to put in place for elected Members the maximum indemnity which is allowed by law.

9.0 Risk Management

No risks identified other than as referred to in paragraph 8.1 above.

10.0 Background

- 10.1 At its meeting held on 27 June 2011, the Outside Organisations Sub-Committee considered a request from the Chairman of the Sandbach Town Plan Steering Group ("The Group"). The Group is in the process of producing a town plan for Sandbach and to achieve this has established a Steering Group.
- 10.2 The formal request for a Cheshire East Councillor to sit on this Group is on the basis that the Member would be able to offer support and give guidance on emerging Cheshire East policies and will act as an interface between the Steering Group and Cheshire East Council.
- 10.3 The Sub-Committee took into account the criteria to be adopted when deciding whether or not an organisation should be added to the list of approved outside bodies, and agreed that it was appropriate for its inclusion.
- 10.4 The Sub-Committee then considered whether it should be a Category 1 organisation (to be appointed by Cabinet) or a Category 2 (for appointment by the Constitution Committee). Members agreed that it was more appropriate for it to be included as a Category 2.
- 10.5 Councillor Barry Moran has played an active role in the process to date, and in the interests of continuity, the Group has requested that he be appointed as the Council's representative.
- 10.6 The Sub-Committee recommends the inclusion of the Steering Group as a Category 2 outside organisation and that Councillor Barry Moran be appointed as the Council's representative.

11.0 Access to Information

The background reports can be inspected by contacting the report Author:

Contact Officer: Carol Jones
Designation: Democratic Services Officer
Tel: 01270 686471
E-mail: carol.jones@cheshireeast.gov.uk

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 14th July 2011
Report of: Democratic and Registration Services Manager
Subject/Title: Review of the Constitution – Work Programme 2011/12

1.0 Report Summary

- 1.1 To consider a timetable of work for the Committee for the review of the Council's Constitution.

2.0 Decision Requested

That the Committee

- (1) note the content of the report; and
- (2) agree the timetable of work for the review of the Constitution as set out in the Appendix to this report.

3.0 Wards Affected

- 3.1 All Council Wards are affected by the Constitution, which has application across the Borough.

4.0 Local Ward Members

- 4.1 All local Ward Members are affected for the reasons set out in paragraph 3.1.

5.0 Policy Implications

- 5.1 The Constitution sets out the procedures by which Council policy is set. Any proposed changes to the Constitution would need to align with the requirements of legislation which often stipulates the Council decision-making route associated with the adoption of policies.

6.0 Financial Implications

- 6.1 There are no financial implications associated with the proposed review.

7.0 Legal Implications

- 7.1 Any changes to the Constitution would need to be agreed by Council, following a recommendation from the Constitution Committee. Proposed changes would need to align with any statutory requirements.

8.0 Risk Management

- 8.1 There would appear to be no risks associated with this element of review of the Constitution. The review will provide an opportunity to ensure that all elements of the document are consistent with one another.

9.0 Background

- 9.1 The Constitution is a document of significant size and critical importance to the work of the Council. In its 458 pages, it provides important information about the Council, its Members and officers. It also provides a record of the officer and Member processes which underpin all decisions made by the Council. The rules by which Council, Committee and Cabinet business are conducted are recorded in the Constitution.
- 9.2 This information is not only of great importance to Members, officers and members of the public, in order for them to understand the Council's decision-making processes and rules; it is also of critical importance in directing the way in which decisions are made. Failure to follow the procedural requirements of the Constitution could invalidate decisions made.
- 9.3 The Constitution is published on the Council's website, and is available to all Members. It ensures transparency of decision-making and enables all who are interested in doing so, to check that procedures have been followed properly. Members of the public and other interested parties are able to influence decisions made by reference to the procedures and mechanisms set out in the Constitution.
- 9.4 Whilst the Constitution is robust and fit for purpose, it is essential to review content from time to time. The Constitution Committee has agreed that a review of the Constitution should take place. It has previously agreed a schedule to help manage the process.
- 9.5 At the last meeting of the Committee an update on the review was given together with additional matters that need to be included. The Committee resolved that a full work programme for reviewing the Council's Constitution be drafted with a view to the Committee determining its priorities at this meeting.
- 9.6 Separate reports have been prepared in respect of several items referred to at the last meeting. These are the Council's Executive and Cabinet Procedure Rules, the Contract Procedure Rules and the terms of reference of the new Health and Well Being Overview and Scrutiny Committee. These are included elsewhere on the Agenda.

9.7 The following items may form the basis of the Committee's approach during the remainder of 2011/12:

1. Finance Procedure Rules
2. Scheme of Delegation
3. Urgency Provisions
4. Questions at Council meetings
5. Budget and Policy Framework
6. Scrutiny Procedure Rules
7. Staff Employment Procedure Rules
8. Size and Layout of the Constitution

9.8 The Appendix to this report is a suggested timetable of work which, if the Committee considers appropriate in approach, can form the basis of the proposed task over the remainder of the municipal year.

10.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Brian Reed

Designation: Democratic and Registration Services and Manager

Tel No: 01270 686670

Email: Brian.reed.@cheshireeast.gov.uk

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Appendix

Date of Meeting	Material to be reviewed	Comments
Thursday 22 nd Sep 2011	<p>Finance Procedure Rules</p> <p>Scheme of Delegation</p> <p>Urgency Provisions</p> <p>Questions at Council Meetings</p>	<p>The Borough Treasurer has begun a review of the Finance Procedure Rules to ensure they remain fit for purpose.</p> <p>The Scheme of Delegation needs to be updated to reflect changes in the officer structure of the Council and changes in the Contract and Finance Procedure Rules. (This is in addition to changes arising from the senior management restructuring.)</p> <p>The Overview and Scrutiny Chairmen have requested that the Borough Solicitor report to the Corporate Overview and Scrutiny Committee on this matter.</p> <p>At its meeting on 2nd June 2011, the Committee considered a report on questions at Council following concerns about the way in which the current arrangements were being used. The Officers are undertaking a survey of questions procedures used by other local authorities and will submit a report to the September meeting.</p>
Thursday 17 th Nov 2011	<p>Budget and Policy Framework</p> <p>Scrutiny Procedure Rules</p>	<p>The Budget and Policy Framework is a list of plans and strategies that must be approved by full Council. Corporate Management Team and Cabinet will be asked to review the list and make recommendations to this Committee on any changes that may be required.</p> <p>The Overview and Scrutiny Chairmen are reviewing the Scrutiny Procedure Rules.</p>
Thursday 26 th Jan 2012	Staff Employment Procedure Rules	The Head of HR and Organisational Development has been requested to review these rules.
Thursday 22 nd Mar 2012	Size and Layout of the Constitution	The Monitoring Officer will review the size and layout of the Constitution to make it as 'user friendly' as possible.

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 14th July 2011
Report of: Democratic Services and Registration Services Manager
Subject/Title: Executive Arrangements and Cabinet Procedure Rules

1.0 Report Summary

- 1.1 To recommend proposed changes to the Executive and Council Procedure Rules as part of the review of the Council's Constitution.

2.0 Recommendation

- 2.1 That the Committee consider the proposals set out in the report, together with any other matters raised by Members, and where it considers appropriate, make recommendations to Council.

3.0 Wards Affected

- 3.1 All Council Wards are affected by the Constitution, which has application across the Borough.

4.0 Local Ward Members

- 4.1 All local Ward Members are affected for the reasons set out in paragraph 3.0.

5.0 Policy Implications

- 5.1 The Constitution sets out the procedures by which Council policy is set. Any proposed changes to the Constitution would need to align with the requirements of legislation which often stipulates the Council decision-making route associated with the adoption of policies.

6.0 Financial Implications

- 6.1 There are no financial implications associated with the proposed review.

7.0 Legal Implications

- 7.1 Any changes to the Constitution would need to be agreed by Council, following a recommendation from the Constitution Committee. Proposed changes would need to align with any statutory requirements.

8.0 Risk Management

- 8.1 There would appear to be no risks associated with this element of review of the Constitution. The proposed review will provide an opportunity to ensure that all elements of the document are consistent with one another.

9.0 Background

- 9.1 The Constitution contains both Executive Procedure Rules (pages 183 – 188) and Cabinet Procedure Rules (pages 215 – 220). Both contain similar or duplicate information and a consolidated Cabinet Procedure Rules Section has been produced for consultation with the Cabinet and are attached at Appendix 1.
- 9.2 Cabinet Members and Directors have been consulted and no specific matters have been raised.

10.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Brian Reed

Designation: Democratic Services Manager

Tel No: 01270 686670

Email: Brian.reed.@cheshireeast.gov.uk

PART C – EXECUTIVE ARRANGEMENTS AND CABINET PROCEDURE RULES

Introduction

This Part describes the Council's executive arrangements and sets out the Cabinet Procedure Rules. It should be read in conjunction with the appropriate paragraphs of Part 1 of this Constitution, the Budget and Policy Framework Procedure Rules, Part 3 Responsibility for Functions and the Access to Information Procedure Rules.

Description of Executive Arrangements

As provided by Section 11(3) and (8) of the Local Government Act 2000, and pursuant to the requirements of the Local Government and Public Involvement Act 2007 the Council has resolved to have an executive model of leadership that consists of a strong leader with a cabinet form of governance. With effect from May 2011 the Council will appoint a Leader for a four year term of office.

The Leader shall appoint a Deputy and up to eight other Members to the Cabinet and shall determine their responsibilities. The Leader may vary the membership of the Cabinet or the responsibilities of Cabinet Members and fill any vacancies on the Cabinet which may arise from time. The Leader and Deputy Leader may take a portfolio responsibility as determined by the Leader. Any changes to the membership or portfolios of the Cabinet shall be notified to the Council.

A member of the Cabinet can only be removed from office by the Leader. This does not preclude an office holder from resigning his/her position at any time. Where there is a delay between a resignation being tendered and the date of the next Council meeting, in the case of the Leader's resignation, the Deputy Leader will chair Cabinet meetings. Where both the Leader and the Deputy Leader resign, the Monitoring Officer in consultation with the Chairman of the Council will call a special meeting of the Council to appoint a new Leader. Where a Member of the Cabinet resigns and holds a portfolio responsibility, the Leader may reallocate the responsibilities of that Member or appoint a replacement.

For the time being, the Cabinet's responsibilities will consist of the following portfolios:

- Leader and Resources
- Deputy Leader and Adult Services
- Children and Family Services
- Health and Wellbeing
- Environmental Services
- Prosperity
- Procurement, Assets and Shared Services
- Performance and Capacity
- Safer and Stronger Communities

The executive functions will comprise the executive responsibilities under the Local Government Act 2000, and associated legislation and the role and responsibilities of the Cabinet are set out in more detail in Part 3 of the Council's Constitution.

Cabinet Procedure Rules

40 Appointing the Cabinet and Responsibility for Functions

- 40.1 At the Annual Meeting of Council, the Leader will present to the Council a written record of delegations made by him for inclusion in the Council's scheme of delegation at Part 3 of this Constitution. The document presented by the Leader will contain the following information about executive functions in relation to the coming year:
 - 40.2. the names, addresses and wards of the people appointed to the Cabinet by the Leader;
 - 40.3 the extent of any authority delegated to Cabinet Members individually, including details of the limitation on their authority;
 - 40.4 the terms of reference and constitution of such Cabinet committees as the Leader appoints and the names of Cabinet Members appointed to them;
 - 40.5 the nature and extent of any delegation of executive functions to area committees, any other authority or any joint arrangements, and the names of those Cabinet Members appointed to any joint committee for the coming year; and
 - 40.6 the nature and extent of any delegation to officers with details of any limitation on that delegation, and the title of the officer to whom the delegation is made.
 - 40.7 Where the Cabinet, a committee of the Cabinet, or an individual Member of the Cabinet is responsible for an executive function, they may delegate further to a committee of the Cabinet, an area committee, joint arrangements, or an officer.
 - 40.8 Even where executive functions have been delegated, that does not prevent the discharge of delegated functions by the person or body who delegated them.

41 The Law and Executive Functions

- 41.1 Those responsible for discharging executive functions will ensure that they are acting within the law and this Constitution.

41.2 The functions in question are set out in Part 3 of this Constitution. This also sets out the body or individual responsible for taking decisions in respect of executive functions.

41.3 The Cabinet, and any individual member or committee thereof, must ensure, and be satisfied, that they have appropriate and adequate legal, financial and other relevant professional advice from officers before taking a decision on any matter before them. Advice from the Council's Monitoring Officer and Chief Finance Officer should always be obtained where there is doubt about vires or probity.

42 Conflicts of Interest

42.1 Where the Leader or any Cabinet Member has a conflict of interest, he will follow the requirements of the Council's Code of Conduct for Members.

42.2 If all (or a majority) of the Members of the Cabinet present have a conflict of interest then consideration will be given to applying to the Standards Committee for a dispensation from the provisions of the Code.

42.3 If the discharge of an executive function has been delegated to another body or individual and a conflict of interest arises, then it will fall to the body or individual who delegated the matter to take the decision. Where that body or individual also has a conflict of interest, then the action set out in 42.2 shall be considered.

43 Meetings of the Cabinet

43.1 The Cabinet will meet as indicated in the Council's programme of meetings. The Cabinet or the Leader may agree to change the date of any programmed meeting, to cancel a meeting or to arrange additional meetings as it/he sees fit. Locations of meetings will be published in the calendar of meetings.

43.2 The Cabinet may meet in public or in private, subject to legal requirements and the Access to Information Procedure Rules contained in the Constitution.

43.3 The Leader will preside at meetings of the Cabinet. If the Leader is absent then the Deputy Leader will preside. Where both the Leader and Deputy Leader are absent, the Cabinet Members present shall appoint one of their number to chair that meeting.

43.4 All Members of the Cabinet shall be entitled to attend meetings of the Cabinet unless the Cabinet determine otherwise.

43.5 Attendance by other Members of the Council or the public shall be in accordance with the Access to Information Procedure Rules, by invitation, or as set out in paragraphs 45.1 to 45.4 below.

44 Quorum at Cabinet Meetings

- 44.1 The quorum at a meeting of the full Cabinet, or a Committee or Sub-Committee established by the Cabinet, shall be 50% of its voting membership.

45 Attending and speaking at Cabinet Meetings

- 45.1 The Chairmen and Spokesmen of the Council's Scrutiny Committees shall be entitled, at any formal public meeting of the Cabinet, to speak to any matter on the agenda for that meeting.
- 45.2 Other Members not previously described above may also speak at such meetings with the permission of the Leader or person presiding in his/her absence.
- 45.3 Members wishing to ask a question at a Cabinet meeting must submit their question in writing to the Monitoring Officer at least three clear working days before the meeting.
- 45.4 The Cabinet may invite any person to its meetings to discuss matters of mutual interest or concern or to advise. Such persons may only be given access to confidential and/or exempt information on terms to be decided by the Monitoring Officer so as to ensure that the Council's obligations under the Local Government Acts in respect of Access of Information are observed.

46 Business at Cabinet Meetings

- 46.1 The business to be transacted at a meeting of the Cabinet will be set out in an Agenda for that meeting, subject to any requirements or exemptions under the Access to Information Procedure Rules.
- 46.2 The Agenda may be supported by additional papers prepared by the Officers or by or on behalf of other bodies, subject to requirements about disclosure of confidential or exempt information. Full agendas for meetings of the Cabinet will be made available, electronically, in advance of the respective meeting, to all Members of the Council and in accordance with the Council's current policy.
- 46.3 The Cabinet is obliged to consider matters referred to it by a Scrutiny Committee, or by the Full Council, for consideration under the Scrutiny Rules.
- 46.4 The Cabinet will, at each formal meeting, confirm the record of decisions taken at its previous meeting as a correct record.
- 46.5 The Monitoring Officer, or his/her nominated officer, shall be responsible for preparing and distributing the Agenda for Cabinet meetings, attending

meetings for the purpose of advising the Cabinet on matters within his/her area of responsibility and recording decisions as required under this Constitution.

- 46.6 In taking decisions, the Cabinet must satisfy itself that it has before it adequate and appropriate advice from the relevant service, and from legal and financial advisers who shall, where appropriate, be present at any meeting where a decision is being taken and that that advice is taken into consideration in determining the matter. Where there is any doubt about vires or probity then advice must be obtained from the Monitoring Officer and the Chief Finance Officer.
- 46.7 Meetings of the Cabinet will be programmed into the Council diary prepared under Procedure Rule 1.1. The Cabinet can agree to change the date of any programmed meeting, to cancel a meeting or to arrange additional meetings as it sees fit.
- 46.8 The order of business at Cabinet meetings is a matter for the Cabinet to determine.
- 46.9 Any Member of the Cabinet may require the Monitoring Officer to place an item on the Agenda for a stipulated meeting of the Cabinet.
- 46.8 Any Member of the Council may request the Leader to place an item on the Agenda of a meeting of the Cabinet. The Leader shall have sole discretion as to whether or not to accede to such a request and, if such a request is granted, whether the Member in question can speak to the item at the meeting in question.
- 46.10 The Head of the Paid Service, the Monitoring Officer and/or the Chief Finance Officer can include an item for consideration on the Agenda of a Cabinet Meeting. In pursuance of their statutory duties they can require that a special meeting of the Cabinet be convened.
- 46.11 Except where it is urgent, business cannot be conducted at formal meetings of the Cabinet unless it is included in the Agenda for the meeting. an item of business which is not included on an agenda for a Cabinet meeting may not be considered unless the Leader or person presiding is of the opinion that the matter is urgent and cannot await another meeting, and unless the requirements of the Access to Information Procedure Rules have been complied with. This shall also apply to any committee of the Cabinet or to an individual Portfolio Holder.
- 46.12 The Cabinet will report to the Council, as required under the Access to Information Procedure Rules, on any matter which is classified as a key decision and which is dealt with under special urgency procedures.
- 46.13 Subject to 3 clear working days' notice being provided to the Monitoring Officer, questions can be submitted by members of the public at

meetings of the Cabinet, in accordance with Council Procedure Rule No. 35 and Appendix 7 of the Procedure Rules.

- 46.14 Cabinet decisions, including those taken under delegated powers, shall not take effect until they have been recorded in writing, as required under the Council's procedures, and shall not be implemented where the right of call-in applies and has been exercised until the call-in process has been concluded. Where the right of call-in applies but is not exercised, a Cabinet decision may be implemented immediately after the expiry of the call-in period.
- 46.15 A written record of all Cabinet decisions will be kept by the Monitoring Officer and these will be made available publicly as soon as practicable after the decision has been taken (excluding the disclosure of confidential and exempt information and in accordance with the Scrutiny Procedure Rules). In recording decisions of the Cabinet, the Monitoring Officer will set out the decision, the reasons for the decision and alternative options considered as required under the Access to Information Procedure Rules in the Constitution.

47 Voting at Cabinet Meetings

- 47.1 Voting at Cabinet meetings will be by a show of hands and any Member may require, immediately after the vote is taken, that the Minutes of the meeting record how he/she voted or that he/she abstained. Where there are equal votes cast and the Leader or person presiding has voted, the Leader or person presiding will have a second or casting vote. Voting for any office or appointment, including any paid appointment, where more than one person is nominated shall be by secret ballot conducted in accordance with Council Procedure Rules.

48 Cabinet Committees/Sub-Committees and Task Groups

- 48.1 The Leader or the Cabinet may appoint such Committees or Sub-Committees as are considered necessary and appropriate to assist in the discharge of executive functions. In making such appointments, the name of the Committee/Sub-Committee must be specified, along with its membership (including its Chairman and, if appropriate, Vice-Chairman) and its powers.
- 48.2 The Cabinet may also appoint whatever task or advisory groups it deems necessary, comprising some or all of its own membership, any other member or non-member of the Council.

49 Decision Making By Individual Portfolio Holders

- 49.1 Where the Leader has delegated decision making powers to individual Portfolio Holder they will exercise their powers and duties in accordance with these rules and Part 3 of this Constitution.

50 Motion Under Standing Order 12

50.1 A mover of a motion under Standing Order 12 which has been referred to the Cabinet for consideration may attend the meeting of the Cabinet when his/her motion is under consideration and explain the motion. The mover of the motion will be advised of the date and time of the meeting when the matter is to be considered and he/she will be sent a copy of the relevant papers. This does not affect the right of the mover or seconder of the motion to attend a Scrutiny body when his/her motion is being considered.

51 Resolving Disputes

51.1 In the case of any dispute during the proceedings of the Cabinet the relevant parts of this Constitution will apply and, after considering the application of the relevant provisions, the person presiding at the meeting will rule on the issue in question and his/her ruling will be final.

52 Reserves/substitute members

52.1 There shall be no reserve or substitute members of the Cabinet.

53 Approval of Urgent Business

53.1 Where any matter is urgent and cannot await the next meeting of the relevant executive body or Portfolio Holder, the Chief Executive may take the necessary action, provided that she has first consulted the appropriate members as set out in Appendix 4 of the Council Procedure Rules .

54 The Forward Plan and Key Decisions

54.1 The Leader will ensure that the requirements of the Access to Information Procedure Rules are met in relation to the publication of the Cabinet's Forward Plan of Key Decisions.

54.2 Those decisions which are Key Decisions are defined in Chapter 13, paragraph 4 of this Constitution.

54.3 Where the Cabinet as a body is making Key Decisions, that meeting shall be held in public. Where a matter is to be considered and Regulation 7 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 is applicable then the meeting will be held in public. In both cases the public may be excluded from the meeting where confidential or exempt information is likely to be disclosed. This also applies to any body or Portfolio Holder to whom the relevant executive powers have been delegated.

54.4 Where an officer exercising an executive function under delegated powers receives a report which he/she intends to take into consideration

when making a Key Decision that decision shall not be taken until the report has been made available for inspection by the public for five clear working days following receipt of the report by the decision taker. A copy of such report must be supplied as soon as reasonably practicable to the Chairman of the relevant Scrutiny Committee or, in his/her absence, the Vice-Chairman of the Committee. The report must also list any background papers.

54.5 Where the inclusion of a matter in the Forward Plan is impracticable and the matter would be a Key Decision, that decision shall only be made:-

- (a) where the Monitoring Officer has notified the Chairman of the relevant Scrutiny Committee, or in his/her absence the Vice-Chairman of the Committee, of the matter about which the decision is to be made;
- (b) where the Monitoring Officer has made available for public inspection a copy of the notice given under (a) above; and
- (c) where a period of five clear working days has elapsed since the Monitoring Officer made available the notice referred to in (b) above.

54.6 Where the date by which a Key Decision must be made makes compliance with the requirements under 54.5 above impracticable, the decision shall only be made where the decision maker has obtained agreement from:

- (a) the Chairman or, in his/her absence, the Vice-Chairman of the relevant Scrutiny Committee; or
- (b) if there is no Chairman or Vice-Chairman of the relevant Scrutiny Committee, or if neither is able to act, the Mayor or, in his/her absence, the Deputy Mayor

that the making of the decision is urgent and cannot reasonably be deferred. Such decisions when made are not subject to the provisions relating to call-in. All Members will be sent electronic notification of the agreement reached that compliance with the requirements of Rule 54.5 above was impractical.

54.7 The Leader shall submit a quarterly report to the Full Council containing details of each Key Decision taken during the preceding three months under 54.6 above and agreed as urgent. The report will include particulars of each such Key Decision and a summary of the matters in respect of which each decision was made.

54.8 Where an executive decision which was not classified as being a Key Decision has been made and the relevant Scrutiny Committee is of the opinion that the decision should have been so classified, that Committee

may require the Cabinet to submit a report to the Full Council within such reasonable period as the Committee may specify, containing the following details:-

- (i) the decision and the reasons for it;
- (ii) the decision maker; and
- (iii) if the Cabinet is of the opinion that the decision is not a Key Decision, the reasons for this view.

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting:	14 th July 2011
Report of:	Borough Solicitor and Borough Treasurer & Head of Assets
Subject/Title:	Proposed Amendments to the Council's Contract Procedure Rules

1.0 Report Summary

- 1.1 The purpose of this report is to propose amendments to the Council's Contract Procedure Rules (the Rules) and to seek the approval of the Committee and a recommendation from it to the Council that the amendments be made.

2.0 Recommendations

- 2.1 That

(1) the amendments to the Council's Contract Procedure Rules (as set out in the Appendix to this report) be recommended to the Council for approval and the Constitution be amended accordingly; and

(2) a further report be brought to a future meeting reviewing and amending the Finance element of the Finance and Contract Procedure Rules.

3.0 Reasons for Recommendations

- 3.1 The Rules form part E of the Council's Finance and Contract Procedure Rules, within the Council's Constitution. The amendments are proposed to reflect best practise developed by the Procurement Unit, including clarification on the use of Delegated Decisions by Chief Officers. Amendments are also proposed to take into account new legislation and the Councils ability to receive electronic tenders, as well as to clarify and remove parts of the Rules which are no longer applicable. There is also a proposal to increase the financial threshold at which the Rules require a formal tendering procedure from £50,000 to £75,000 which it is anticipated will make it easier for SMEs to engage in business with the Council.

4.0 Wards Affected

- 4.1 Not applicable.

5.0 Local Ward Members

- 5.1 Not applicable.

6.0 Policy Implications

6.1 None identified.

7.0 Financial Implications

7.1 None identified.

8.0 Legal Implications

8.1 Any changes to the Constitution need to be agreed by the Council following a recommendation from the Constitution Committee. Any changes which are proposed also need to comply with the relevant statutory requirements.

8.2 The Purchase of goods, services and works by the Council as a public sector body is regulated by the Public Contracts Regulations 2006 (the Regulations) which implement into English law the EU procurement regime currently in place throughout the EU.

8.3 It is important to note that the Regulations only apply to contracts with a value that exceeds the relevant thresholds. The current thresholds that apply to local authorities are as follows:

SUPPLIES (GOODS)	SERVICES	WORKS
£156,442	£156,442	£3,927,260

8.4 However, in undertaking any procurement (including those below the EU threshold) a contracting authority must also comply with the following key principles (derived from the Treaty on the Functioning of the European Union (TFEU) and the fundamental freedoms of the EU):

- Proportionality
- Mutual recognition
- Transparency
- Non-discrimination
- Equal treatment

8.5 In simple terms, the Council is required to act in a transparent way, treating all potential providers equally and in a non-discriminatory way. There are also detailed requirements in relation to the drafting of technical specifications, the requirement to publish contract award notices and submission of returns to the Office of Government Commerce (OGC).

- 8.6 As third parties have a right to take court action for financial loss if there is any failure to comply with the principles, it is extremely important that the Council does comply with the key Principles set out in paragraph 8.4.

9.0 Risk Management

- 9.1 Increasing the threshold beyond which a formal tendering exercise is undertaken potentially exposes the Council to the risk of challenge if the principles within the Treaty of Rome are breached and it is therefore imperative that if an increase is made the Procurement Unit introduce mechanisms to ensure that officers involved in the procurement process are fully aware of the relevant requirements. These officers will be identified by way of a skills audit and delivery of appropriate training.

10.0 Background and Options

10.1 Contract Procedure Rules - Amendments

Since vesting day, the Council has approved a number of amendments to the Constitution. As new legislation comes into force, and as the Council finds better ways of doing things, building upon experience and best practice, the Constitution will continue to need to be amended. The proposed amendments to the Contract Procedure Rules reflect the above. In addition, the opportunity has been taken to make it easier for SMEs to do business with the Council by raising the financial threshold, so that a formal tender process is only required for goods works and services in excess of £75,000 from the current threshold of £50,000.

The Contract Procedure Rules form part of the Finance and Contract Procedure Rules and a separate report will be brought to a future meeting to review and amend the finance element of the Rules.

10.2 Electronic Tendering

Electronic Tendering was introduced by the Procurement Unit in order to achieve a more efficient, more transparent and more accessible to the market method of procurement. This has a number of benefits for the Council and also the Business community. The use of e tendering allows suppliers to be notified of an opportunity, to express an interest, to pre qualify, download tender documents and submit a response. This increases the awareness of our opportunities to the supplier community and also the likelihood of increased value for money for the Council. This promotes competition for the tender, and provides a process that is efficient for both the council and suppliers and a selection process that is transparent to bidders. It is proposed that Rule E55 is amended to incorporate this process.

10.3 Knowledge Map

It is recommended that the Rules be amended to incorporate appropriate references to the Council's Knowledge Map which has been launched and provides an online interactive guide to the procurement processes. The Knowledge Map is very easy to use and provides detailed guidance on how to procure goods and services. It contains policies, procedures and standard templates for use in the procurement process. The map will not only improve efficiency and ensure consistency in the procurement process but will also reduce the risk of non-compliance.

10.4 Increase to Thresholds

10.4.1 It is recommended that the threshold be increased from the current threshold of £50,000 so that a formal tender process will in future only be required for goods, works and services in excess of £75,000.

The proposed new thresholds will be:

	Total Value	Procedure to follow where no Contract exists
Informal	Below £10,000	E-mail /telephone quotation(s)
	Above £10,000 but below £75,000 for goods, services and works.	Comparison of written quotations from at least 3 bidders.
Formal	Above £75,000 but below the EU threshold* for goods, services and works.	Formal tender process from at least 3 suppliers.
	Above the EU threshold* for goods, services and works.	Tender process in accordance with EU Procurement Rules.

10.4.2 The difference between the formal tendering process for contracts above £75,000 but below the EU threshold and a full tender process in accordance with EU Rules is that the EU Rules have mandatory procedures and mechanisms which the Council must comply with. This includes, for example, the time scales for issuing the advert and minimum response times which are laid down and prescribed. The Council's formal tendering procedure is not as strict or prescriptive, particularly in relation to the various timescales required.

10.4.3 The current Rules provide that procurements for spend exceeding £50,000 should follow a formal tender procedure. This enables the Council to control and monitor the manner in which below EU threshold procurements are conducted and to ensure that the principles of proportionality, transparency and equal treatment are not breached.

10.4.4 There is a concern, however, that the formal tendering route may disadvantage SMEs and there is growing support for awarding contracts to smaller local organisations with a view to stimulating and supporting the Local Economy and the Procurement Unit is working to encourage SMEs to become involved in tenders, by various means, including providing training on the procurement procedure. Unfortunately there are tensions with the underlying principles of European Procurement Regulations which seek to put all European operators on an equal footing in tendering and ensure that the foremost evaluation criteria is MEAT (Most Economically Advantageous Tender) with no discrimination on the grounds of nationality. In effect a balance needs to be found between making the Council's opportunities more accessible to SMEs without in fact giving SME's an unfair advantage.

10.4.5 Accordingly, if the threshold for the formal tender process is increased to £75,000 as recommended, the Council must ensure that the selection of contractors is transparent, non-discriminatory and treats all parties equally in order to avoid the risk of challenges to its appointment of contractors.

10.5 Informal Tenders below £10000

10.5.1 Quick quote provides the ability to run a simplified quotation procedure for one off purchases with a low value (under £10,000). This function is especially useful for procedures with a quick turnaround time. The system suggests three local suppliers where available for the specific category and allows them to be notified of the opportunity along with other potential suppliers thus increasing the opportunities for local SME success in contracting with the Council.

10.5.2 For contracts under £10,000 there is currently no requirement for a written contract signed on behalf of the Borough Solicitor. The possibility of increasing the threshold for which a contract signed by the Borough Solicitor is required has been considered but from a legal perspective certainty in relation to the terms on which the Council is purchasing is essential. The Council is bound by law to include certain provisions when it contracts, for example ensuring that a contractor's sub contractors are paid within certain time scales. Other terms are needed to identify each party's responsibilities so that in the event of disagreement the recourse of the parties is clear. As a result an increase in the current threshold of £10,000 is not recommended.

10.6 Bribery Act 2010

The Bribery Act 2010 came into force on the 1st July 2011 and introduced a new offence of a commercial organisation failing to prevent bribery. The Council already has anti corruption provisions in its tendering documentation and contracts. The government has confirmed that a conviction for the offence will trigger discretionary not mandatory exclusion from competing for public contracts under regulation 23 of the

Public Contracts Regulation 2006 (*SI 2006/05*). It is proposed that our procurement documentation is amended to include reference to the new offence and that our contracts contain a right to terminate a contract in the event that a contractor has such a conviction.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writers. There are no specific background documents.

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E Contract Procedure Rules**Why is this important?**

This section covers all aspects of procurement and Contracts procedures in relation to EU and National legislation.

What's covered in this Section?

The roles and responsibilities of:

- The Cabinet
- The Committees of the Cabinet
- The Statutory Officers
- All Officers procuring goods and services on behalf of the Authority

Introduction

E.1 These Rules set a clear framework for the procurement of goods, works and services for the Council. (**detailed guidance on these Rules can be found by accessing the Procurement Knowledge Map which can be found on the Council's intranet site**). This aims to ensure a system of openness, integrity and accountability where the probity and transparency of the process will be beyond reproach. Working within the Rules in turn leads to better value for money and gives confidence to all concerned that the Council is fulfilling its fiduciary responsibilities. These Rules apply to all quotations (informal procurement with a value up to £5075,000) and tenders (formal procurement over £5075,000)]

The reason is to update the Constitution following the development of the Knowledge Map. The Knowledge Map has been developed to assist officers in following the correct procurement path and to assist in ensuring compliance with the Council's Finance and Contract Procedure Rules. Also to increase the financial threshold from £50,000 to £75,000 for informal tenders making it easier for small businesses to do business with the Council.

E.2 Any dispute or difference as to the interpretation of these procurement procedure rules shall be resolved by the Borough Solicitor in consultation with the Borough Treasurer and Head of Assets.

E.3 There is a clear requirement for the Council to achieve Value for Money in its purchase of goods, works or services. These Contract Procedure Rules have been written to ensure that this requirement is achieved on behalf of the whole Council. Any procurement decision by a Service must therefore be made in the context of this overall Value for Money aims of the Council. It is a requirement that in all cases these Rules will be applied.

E.4 These Rules will ensure that the Council will:

- get value for money;
- keep within the law;
- maintain standards of conduct;
- be fair to suppliers;
- protect officers;
- demonstrate accountability for public money ;
- meet its corporate and directorate aims and policies; and
- comply with the Council's Procurement Strategy.

E.5 Officers must procure goods and services in the first instance through Corporate Contracts, where these have been awarded. Details of current Corporate Contracts can be obtained from the Borough Treasurer and the Head of Assets. Failure to comply with this Rule may be considered a breach of the Officer Code of Conduct.

Compliance and Officer Responsibilities

- E.6 Every contract made by or on behalf of the Council must comply with these Contract Procedure Rules and the associated detailed guidance.
- E.7 All Council employees and third parties/contractors engaged to act in any capacity to manage or supervise a Contract must comply with these Rules, and each Head of Service must ensure such compliance in the Service for which they are responsible. Failure to comply with these Rules or the associated detailed guidance maybe considered a breach of the Officer Code of Conduct and may result in disciplinary action and legal proceedings against the officers or third parties concerned. All Council employees and third parties engaged on the Council's behalf must ensure that any conflicts of interest are avoided. Any conflict of interest must be declared to appropriate line managers in the Council as defined and in line with the Officer Code of Conduct.
- E.8 ~~Where a Chief Officer or his designated representative intends to seek an exception to these Rules, as they apply to contracts and tenders, he/she shall arrange for a report to be prepared and submit it for consideration and approval by the Borough Solicitor and the Borough Treasurer and Head of Assets prior to the start of the relevant procurement process. Prior to the start of the relevant procurement process where a Chief Officer or his designated representative intends to seek an exception to these Rules, as they apply to contracts and tenders, he shall arrange for a Delegated Decision to be prepared (see E.23). Reason to update Constitution following clarification of when it is appropriate to seek a DD.~~
- E.9 All such exceptions should be recorded in the delegated decisions register and available for inspection as required.
- E.10 National or European Union legislation overrides these Finance and Contract Procedure Rules.
- E.11 Where it becomes apparent that a Service has failed to comply with these Rules then the Chief Officer or his designated representative shall issue a report outlining the reasons for the non-compliance and the steps taken to prevent a re-occurrence. The Chief Officer or his designated representative will be required to submit the report to the Borough Treasurer and Head of Assets and Borough Solicitor before reporting to the Audit and Governance Committee.
- E.12 When any employee either of the Council or of a service provider may be affected by any transfer arrangement. Officers must ensure that Transfer of Undertaking (Protection of Employment) Regulations (TUPE) issues are considered and obtain legal advice before proceeding with inviting tenders and quotations.

Appointment of Consultants

- E.13 Any appointment of a consultant or consultancy body is subject to these Rules and any detailed guidance. Advice should be sought from the Borough Treasurer and the Head of Assets prior to entering into any such arrangement.

Pre Contract Requirements

- E.14 The Council's Service Schemes of Delegation set out the approvals necessary for different types of contract.

- E.15 Before beginning a purchase, the authorised officer responsible for letting the contract must:

- make sure that the appropriate authority is in place to start the process and spend the money in accordance with the appropriate Scheme of Delegation;
- make sure that there is enough money in the budget to cover the total whole-life financial commitment being made (including any consultant's or other external charges or fees);
- make sure that the Forward Plan requirements have been followed where the purchase is a Key Decision.

- E.16 The authorised officer must ensure when entering into supply agreements that the requisition order and payment processes to be provided by the supplier are in accordance with Section D (Ordering and paying for work, goods and services) of these Finance and Contract Procedure Rules.

- E.17 For procurements above £10,000 advice should be sought from the Borough Solicitor's Department as to the relevant form of Contract to be employed for the procurement.

General Requirements

- E.18 Before beginning a purchase, the authorised officer responsible for it must also:

- Where the proposed value of the procurement is estimated to be over £50,000 **£75,000** ~~where it is necessary due to the nature of the procurement,~~ the appropriate officer should seek advice from The Borough Treasurer and the Head of Assets and where appropriate enquire whether the service is able to be provided by an 'in-house' Provider;
- Carry out an options appraisal, to decide what procurement method is most likely to achieve the purchasing objectives, in a form specified by the Borough Treasurer and the Head of Assets;
- Assess the risks associated with the purchase and how to manage them;

- Prepare a procurement plan where the value of the purchase exceeds ~~£50,000~~ **£75,000** or where the purchase poses a significant risk to the Council and send a copy to the Borough Treasurer and the Head of Assets;
- If the procurement is subject to European Procurement Rules, advice should be sought from the Borough Treasurer and the Head of Assets.
- Ensure that all bid evaluation criteria have been determined in advance; and
- Ensure that these Rules and ~~any~~ **the** detailed guidance **contained in the Procurement Knowledge Map** have been complied with, and that the proposed contract represents value for money. ***Reason to include the new guidance available on the Knowledge Map and to raise the financial threshold for informal tenders.***

Contract Procedures

E.19 The table below sets out which procedures must be followed for different contract values.

The Total Value of the contract is the Yearly contract value x Contract period in years (including any extension periods).

	Total Value	Procedure to follow where no Contract exists
Informal	Below £10,000	E-mail /telephone quotation(s)
	Above £10,000 but below £50,000 £75,000 for goods, services and works.	Comparison of written quotations from at least 3 bidders.
Formal	Above £50,000 £75,000 but below the EU threshold* for goods, services and works.	Formal tender process from at least 3 suppliers.
	Above the EU threshold* for goods, services and works. <u>See Procurement Knowledge Map for up to date current thresholds. Reason Knowledge Map can easily be updated thereby negating the need to formally update the Constitution when the thresholds change.</u>	Tender process in accordance with EU Procurement Rules.

* ~~See E.35 for EU thresholds.~~

Exceptions to Requirements of Competition

Framework Agreements

- E.20** ~~Only~~ Government, ~~and~~ Local Government **and other legally procured** Framework Agreements may ~~only~~ be used for the procurement of goods or services. ~~if they can be clearly identified on contract schedules held by these bodies.~~ The framework agreement must allow the Council to participate in such an agreement and must adhere to the principles of these Rules **and the specification must encompass the Council's requirements.** Before starting any procurement guidance should be sought from the Borough Treasurer and the Head of Assets.
- E.21** Examples of Government Frameworks **appear on the Office of Government Commerce** ~~are found on the "Catalist" and the Office of Government Commerce~~ (OgC Buying Solutions) website www.ogcbuyingsolutions.gov.uk. **If the Council is entitled to use the Framework Agreement a mini competition process may be performed to evaluate the best value supplier for the Council. Under these Framework Agreements already tendered under EU Rules value for money can be determined following the Catalist "mini competition" process set out on their website.** Advice on the process should be sought from the Borough Treasurer and the Head of Assets.
- E.22** Framework agreements must be for a maximum of four years. If there is any doubt about their duration advice should be sought from the Borough Treasurer and the Head of Assets.

Other Exceptions to Requirements of Competition

- E.23** ~~A Delegated Decision form must be completed by the Chief Officer or his designated representative for every exemption listed below and sent for approval to the Borough Treasurer and Head of Assets and the Borough Solicitor. Any request to approve waiving of any Finance and Contract Procedure Rule is also subject to such approvals by the Borough Treasurer and Head of Assets and the Borough Solicitor.~~ **Where a Chief Officer or his designated representative intends to seek an exception to these Rules as they apply to contracts and tenders, he shall arrange for a Delegated Decision (DD) to be prepared in accordance with the detailed guidance on DDs on the Knowledge Map. DDs are not available if the proposed exception would breach National or EU legal requirements. A DD can only waive the Council's internal rules. Reason clarifies when a DD may be used and directs officers to the Knowledge Map where guidance is provided on completing the forms and also the forms themselves.**

E.24 Provided that a proposed contract award complies with national and EU legislation and any other Finance and Contract Procedure Rule and subject to the Chief Officer or his designated representative ~~keeping a record of the reasons~~ **having a DD signed by the Borough Solicitor and the Treasurer and Head of Assets**, ~~reported annually to the Borough Treasurer and the Head of Assets~~, then the competition requirements may not apply to:

- The purchase of goods or services or the execution of works which in the opinion of the appropriate Chief Officer or his Authorised Officer and the Borough Treasurer and the Head of Assets is certain are obtainable only from one source or contractor, and where no reasonably satisfactory alternative is available;
- The purchase of a product required being compatible with an existing installation and procurement from any other source would be uneconomic given the investment in previous infrastructure as approved by the Chief Officer;
- The instruction of, advice from, or service provided by Counsel or, by exception, Solicitors to act on the Council's behalf;
- Special education or social care contracts if, in the opinion of the Chief Officer, following consultation with the Borough Solicitor and the Borough Treasurer and the Head of Assets, it is considered the **Client's Council's** interests are best met if there is exemption from the competition rules;
- The exercise of statutory grant aid powers delegated to a Chief Officer or his authorised officer (which shall be specified by that Chief Officer or his designated representative in each case);
- Circumstances which in the opinion of both the Borough Treasurer and Head of Assets and Borough Solicitor warrant an exception to the requirements for competition, to include, but not limited to when an emergency requires an immediate contract (which should in any event be procured from an approved list of suppliers where available) or when exceptionally the Chief Officer his authorised officer considers that is inappropriate in the interests of the efficient management of the service;
- Any other general circumstances, up to the EU threshold, as agreed by both the Borough Treasurer and Head of Assets and the Borough Solicitor.

E.25 ~~If in written~~ **In those** circumstances ~~requiring where~~ only 3 quotations or tenders **are required**, ~~quotations or tenders~~ cannot be obtained due to lack of suitable contractors prepared to quote/tender then a record of the reasons for this action must be kept and be reported annually to the Borough Treasurer and the Head of Assets.

E.26 The Chief Officer or his authorised officer must be satisfied that if three quotations/tenders have not been received that the offer accepted offers the Council best value and the prices are competitive. Advice from the

Borough Treasurer and the Head of Assets should be sought as to the most appropriate form of Contract to employ for the procurement.

Variations and Contract Extensions

- E.27** All variations must be in the form of written instruction to the contractor. Any such variation should be agreed, documented and signed by both parties.
- E.28** The Contract term cannot be extended where this would result in the value of the contract exceeding the European Procurement threshold. In such circumstances the advice of the Borough Treasurer and the Head of Assets should be sought.
- E.29** The term of a Contract may be extended with the approval of the Chief Officer or his authorised officer if there is provision within the Contract terms and conditions to extend and the ~~agreement of the Borough Treasurer and Head of Assets has been received with regards to the~~ budgetary provision **allows**. If the contract has already been extended to the full extent provided in the contract it cannot be extended further.
- E.30** If there is no provision within the contract terms and conditions for the Contract to be extended the approval of the Borough Solicitor and the Borough Treasurer and Head of Assets must be sought to any proposed extension of the term of contract, and a record kept by the Chief Officer and the reasons why.

Advertising of Procurement Opportunities

- E.31** To determine the market for each procurement in excess of £10,000 the Chief ~~O~~**officer or his authorised officer** should identify the most appropriate method of advertisement including but not restricted ~~to~~ **l**ocal press, relevant trade journals, council websites and other websites. The Borough Treasurer and the Head of Assets will facilitate advertisement in the OJEU.

Competition Requirements below £10,000

- E.32** Officers must seek quotations so as to demonstrate Value For Money. Procurement of goods and services below £10,000 must be in accordance with 'Ordering and paying for work, goods and services' (D.19 – D.43).

Competition Requirements for Procurements between £10,000 and **£5075,000**

- E.33** Procurement of goods and services must not be split to avoid a formal tender award procedure, or to have the effect by such a split indicate that the value of the goods or services would if not split breach the European Procurement Rules threshold.

E.34 Records required to be kept under Contract Procedure Rules E.20 – E.26 and E.32 – E.53 shall be in a format to be determined by the Borough Treasurer and Head of Assets.

Competition Requirements for Procurements over £5075,000 but below the EU Procurement threshold

E.35 Where contracts have an aggregate value over the life of the contract estimated at £5075,000 or more, a formal tendering procedure must be undertaken in a format to be approved by the Borough Treasurer and the Head of Assets. The invitation to tender must be advertised in an appropriate manner and tenders received must be dealt with and evaluated in accordance with these Rules. Subject to E37, either the Open or Restricted Procedures, described below, should be used as practicable. The full European Procurement Regime does not apply below the financial threshold (shown below **which is subject to change and should be verified by accessing the Knowledge Map**) it is not imperative to publish an OJEU notice in these circumstances, however advertising in the OJ may be a consideration. Further advice can be sought from the Borough Treasurer and the Head of Assets.

Competition Requirements under European Procurement Rules (currently applicable for Contracts valued as follows, until **January 31st December 2010)**

Services	Goods	Works
£139,893 £156,442	£139,893 £156,442	£3,497,313 £3,927,260
(€206,000) (€193,000)	(€206,000) (€193,000)	(€5,150,000) (€4,485,000)

These levels are set by the Public Sector Directive 2004/18/EC, The Public Contracts Regulations 2006, Council Regulation 1422/2007 (L317/34 5/12/07) Sterling Equivalents were published in C301/07 dated 13/12/07. Thresholds are net of VAT.

E.36 The procedures set out below follow the model set out in the European Procurement Rules. They represent best practice and should be adopted as the norm for all exercises over the threshold values. Either the Open or Restricted Procedure must be used as practicable. The Negotiated Procedure and Competitive Dialogue Procedure may only be used in exceptional circumstances and with the approval of the Borough Solicitor. Advice on the appropriate procedure to apply may be obtained from the Borough Treasurer and the Head of Assets or the Borough Solicitor.

Negotiated and Competitive Dialogue Tendering Procedure

E.37 The Negotiated and/or the Competitive Dialogue procedure should

only be used in exceptional cases where advice has been sought from the Borough Treasurer and the Head of Assets and the Borough Solicitor.

General Procedure

E.38 Contracts that are subject to the EU procurement rules (and other contracts where that is appropriate) generally follow a three-stage process:

▪ **Stage 1 - PQQ**

This stage uses a Pre-Qualification Questionnaire (PQQ) to short-list those tenderers to be invited to submit a tender. Templates are available from the Borough Treasurer and the Head of Assets and;

▪ **Stage 2 – Tender**

This stage involves the preparation of a detailed tender specification and instructions which explains what is required to be provided and how tenders will be managed and evaluated. Bidders will submit their tenders based on the information provided in this document and give contract specific proposals (including as to delivery and price) and;

▪ **Stage 3 - Evaluation**

This will usually lead to the award of the contract. It is at this stage that any contract specific proposals (e.g. price and how the contract will be delivered) are assessed. Evaluation is dealt with in more detail below.

E.39 Stage 1 PQQ - the only considerations are those matters which are relevant to the performance of the contract in question (e.g. financial standing, expertise, experience and technical capacity). There can be no consideration of the suppliers' proposals as to *how* the contract would be delivered.

E.40 Once an organisation has been selected through the PQQ stage, they are deemed to be suitable to undertake the contract and they cannot be failed on the same criteria at the Tender and Evaluation stage (Stage 2 & 3) unless relevant changes occur during the later stages of the procurement process (e.g. a change in a supplier's financial standing).

E.41 A minimum number of short-listed suppliers are then invited to submit tenders within a strict timetable. At the close of the period of time allowed for tender submission, each tender is evaluated against the criteria identified in the tender instructions/specification document sent out at Stage 3. (See paragraph E.42 below).

E.42 If following the PQQ stage less than 3 organisations meet the selection criteria consideration should be given as to whether continuing with the process will achieve a competitive price, value for money and quality of services. A further advertisement may be required to achieve a better response and more tenderers.

- E.43** The Chief Officer or his authorised officer must keep a record of the reasons for this action and report these annually to the Borough Treasurer and the Head of Assets.

Open Tendering Procedure

- E.44** All companies expressing an interest will receive an invitation to tender. There is no restriction or selection process prior to the dispatch of tenders.
- E.45** Public Notice must be given in relevant trade journals, newspapers, websites and the Official Journal of the European Union (OJEU) if the EU threshold is breached or exceeded, and where appropriate on the Council's Web-Site. At least 52 days public notice must be given in one or more local newspapers or trade journals circulating amongst such firms who undertake such contracts, and on the Council's Web-Site, setting out details of the proposed contract, inviting tenders from applicants and stating the last date on which tenders will be received. Tenders must be sent out within 6 days of a request. The OJEU must state the date and time of the opening of tenders whether or not the supplier is to be allowed to attend the tender opening.
- E.46** The time limits referred to in E.45 may be reduced by 5 days where electronic versions of the contract documents are made available or be reduced to a shorter period of generally not less than 36 days and in any event not less than 22 days where a prior information notice has been published in accordance with the EU Regulations. These two reductions in the periods of time may be combined. No decision to reduce those time limits must be taken without consulting the Borough Treasurer and the Head of Assets and the Borough Solicitor.
- E.47** If an alternative (variant) bid is to be permitted, the OJEU must say this. The Instructions for tendering specification document must give details of what is to be regarded as the minimum requirements of a variant bid. If these requirements are not met, a variant bid cannot be accepted.
- E.48** Evaluation of tenders submitted through the Open Procedure must be undertaken in accordance with the EU Procurement Regulations. All tenders submitted must be evaluated. The Open Procedure does not allow any negotiation with bidders.
- E.49** The Open Procedure may not be suitable where it is anticipated that there may be a large number of potential contractors interested in bidding for the contract. The Open Procedure is the most suitable for the procurement of non specialist goods such as stationary. The selection stage and the award stage can be undertaken simultaneously.

The Restricted Procedure

- E.50** This is a two stage process involving the invitation of expressions of

interest from interested bidders. A contract notice must be published in the OJEU **if the EU threshold is exceeded and where appropriate on the Council's website** allowing at least 37 days for receipt of expressions of interest from prospective bidders. A shortlist of bidders is then drawn up in accordance with qualification criteria. At least 5 bidders must be selected at this stage, based on economic standing and professional or technical ability. If an alternative (variant) bid is to be permitted, the OJEU must say this. The Instructions for tendering and specification document must give details of what is to be regarded as the minimum requirements of a variant bid. If these requirements are not met, a variant bid cannot be accepted. ***Reason clarifies when notice should be served.***

- E.51** Those bidders on the shortlist must be invited to tender, allowing at least 40 days for receipt of completed tenders. Tenders are evaluated at the end of the 40 day period. No negotiation with bidders is allowed.
- E.52** The contract will be awarded in accordance with the criteria specified in the OJEU notice. An award notice must be published within 48 days. Unsuccessful tenderers must be de briefed.
- E.53** In circumstances of urgency, the time limits can be reduced. The 37 day period for expressions of interest may be replaced by a period of not less than 15 days. The time for inviting short listed suppliers to tender can be reduced from 40 to 10 days. No decision to reduce the time limits must be taken without first consulting with the Borough Treasurer and the Head of Assets and the Borough Solicitor.

Despatch of Tenders

- E.54** If an invitation to tender is required such invitations can be made using any available form of communication providing all invited parties receive identical information despatched at the same time.

Submission and Receipt of Tenders

- E.55** Tenders should be submitted as instructed in the tender documentation. **The tendering process can be undertaken using an electronic tendering system and shall be opened by the Borough Solicitor or her authorised officer. The authorised officer will be given 'Verifier' status for the purpose of this task by the system administrator. The task of opening the tender should be performed when the authorised officer opens the electronic seal facility within the system. Following this action the authorised officer shall release the received tender to permit access by the Procurement Unit. Tenders received electronically shall be recorded as received when the authorised officer opens the electronic seal facility within the system. Reason to update Constitution to reflect the Council's ability to receive electronic tenders.** Non compliance with this requirement will result in the tender not being considered. Electronic tenders should only be sought following advice from the Borough Treasurer and the Head of Assets.

E.56 The tender must be submitted to the location, and by the time and date specified in the invitation to tender as being the last time and date for the receipt of tenders in the envelope provided bearing " Tender " or carrying any Tender label supplied with the Invitation to Tender.

E.57 Where the Council estimates the tender value to be £5075,000 or more, all tenders must be submitted to the Borough Solicitor.

E.58 Unless it forms part of an electronic tender process tenders will be submitted in hard copy in the first instance and must bear no details of name, mark, slogan or logo of the contractor on the tender envelope. Non compliance with this requirement may result in the tender not being considered. The Borough Treasurer and the Head of Assets will in such circumstances determine whether it is in the interests of the Council to consider the relevant tender. Electronic versions of tenders must not be delivered or opened before the opening of hard copy tenders.

E.59 The Council is not bound to accept the lowest (see E.83) or any tender.

E.60 Each **hard copy** tender submitted in accordance with the procedures detailed in E.55 – E.62 will remain in the custody of the Borough Solicitor until the time appointed for opening.

E.61 Upon receipt of a hard copy tender the receiving officer must indicate on the envelope the date and time of its receipt.

E.62 Tenders received after the date and time indicated for the receipt of tenders will not normally be considered except with the agreement of the Borough Solicitor and Borough Treasurer and Head of Assets. Such tenders will be opened and returned to the tenderer if they are not to be considered.

Opening and Registration of Tenders/Quotations

E.63 **Hard copy t**~~T~~enders shall be opened at one time by the Borough Solicitor or ~~his-her~~ **a**uthorised ~~o~~fficer, in the presence of the purchasing Chief Officer or his designated representative and Borough Treasurer and Head of Assets or his designated representative. ~~and any electronic tenders service provider, where applicable.~~

E.64 The **a**uthorised ~~o~~fficer must at the time **non electronic** ~~the~~ tenders are opened, record on the Register:

- the type of goods or materials to be supplied or disposed of, or the work or services to be carried out;
- the name of each contractor submitting a tender;
- the amount of each tender where appropriate
- the date of the opening of a tender

- the signatures of all persons present at the opening of each tender
- the reason for any disqualification of any tender
- the name of each contractor invited to tender but who did not submit a tender. *Reason to make clear that this only applies to hard copy tenders*

E.65 Every written quotation obtained for each proposed contract must be opened at one time and details recorded by the Chief Officer or his/her Authorised Officer.

E.66 Any request for an extension to the tender period must (in normal circumstances) be no later than 5 working days before the tender closing date. If the date is to be extended the revised date must be advised to all tenderers.

Errors in Tenders

E.67 Errors in Tenders shall be dealt with in one of the following two ways:

- the tenderer shall be given details of the error(s) found during the examination of the tender and shall be given the opportunity of confirming without amendment or withdrawing the tender; or
- Amending the tender to correct genuine error(s) provided that in this case, apart from these genuine errors, no other adjustment, revision or qualification is permitted.

E.68 Tender documents must state which method will be used for dealing with errors in tenders.

Exclusions of Tenders

E.69 No valid tender received should be excluded from the tender process without the approval of the Borough Solicitor and the Borough Treasurer and Head of Assets.

Evaluation of Tenders and criteria for selecting a supplier

E.70 All the procedures, with the exception of the Open Procedure, anticipate a selection process which involves at least two stages. The first stage is to draw up a shortlist of candidates who will be invited to submit tenders, and a second stage when the contract is awarded to one (or more) of the bidders. Where the procedure is a Negotiated Procedure or Competitive Dialogue Procedure when there may be an intermediate stage which allows further refinement of the shortlist.

E.71 The following criteria (set out in Public Contracts Regulations 23, 24, 25 and 26) may be used to draw up the shortlist of those who are to be invited to tender:

- Suppliers who have, or whose directors have been convicted of certain offences listed in Public Contracts Regulation 23 are

- ineligible to submit bids and must not be included in the short list;
- A public authority can (but does not have to) refuse to shortlist businesses which are insolvent, have been convicted of a criminal offence relating to the running of the business, or committed grave misconduct in the running of the business
 - Businesses can be excluded if they have not paid all their taxes or social security contributions
 - Businesses can be excluded if they are not included on the appropriate trade register in their home state
 - Public authorities are allowed to request evidence from prospective bidders to allow them to assess whether any of the above factors apply.
 - Public authorities may make an assessment of bidders' economic and financial standing by taking into account all or any of the following:-
 - statements from the bidders' bankers or evidence of relevant professional indemnity insurance;
 - published accounts where publication of such accounts are a legal requirement;
 - a statement covering the 3 previous financial years setting out the overall turnover of the bidder's business and the turnover in respect of the goods or services being provided.
 - Technical or professional ability which can only be assessed against the criteria set out in the Regulations.

Acceptance of Tenders/Quotations

- E.72** The award of a contract to the successful tenderer must be conditional upon the tender costs being within budgetary limits and subject to any prior Member decision making procedures.
- E.73** For goods and services procured in accordance with EU Procurement Rules notification to the successful tenderer of the award of the contract is subject to the 10 day "Alcatel" standstill period, (the Borough Treasurer and the Head of Assets can provide advice), and may, if a decision by Cabinet Members was required, involve the 5 working day 'call in' period. (see E.84)

Criteria for Awarding the Contract

- E.74** There are only two possible criteria:
- Lowest price; or
 - Most economically advantageous tender

NB where the selection is based on price the contract must be awarded to the bidder offering the lowest price unless it is made clear in its invitation to tender that it reserves the right not to award the contract at all.

- E.75** Where the winning bid is to be selected on the basis of the most

economically advantageous tender, this is assessed from the point of view of the contracting authority. Criteria linked to the subject matter of the contract must be used to determine the most economically advantageous tender. These might include:

- quality;
- price;
- technical merit;
- aesthetic and functional characteristics;
- environmental characteristics;
- running costs;
- cost effectiveness;
- after sales service;
- technical assistance;
- delivery date;
- delivery period;
- period of completion

E.76 The criteria to be used to evaluate bids and the weightings to be attached to them, or if weightings cannot be established, their relative importance, must be set out in the invitation to tender. However, it is not possible to take into account tenderer's experience, staffing levels, equipment or ability to perform the contract within a set timescale. These factors can only be considered at PQQ stage.

Specifications

- E.77**
- Any technical specifications to be met by the goods, services or works to be provided must be set out in the contract documentation.
 - Technical specifications can include requirements relating to quality, environmental performance and accessibility or usability by the disabled (among others)
 - Any reference to British Standards in the specification must be followed by the words "or equivalent"
 - A public authority is only allowed to consider bids which vary from the requirements set out in the specification if the OJEU notice states that variants are permissible
 - Where variants are to be permitted the public authority must set out its minimum requirements.

E.78 Subject to E.72 and E.73 above:

- in the case of a tender the Chief Officer or his authorised officer authorise the acceptance of the tender on behalf of the Council, such acceptance to be notified in writing to the successful tenderer in a manner specified by the Borough Solicitor; or
- in the case of a quotation the Chief Officer or ~~his~~ **authorised** officer may accept the quotation by issuing either an official order (which should be signed by the Chief Officer or his authorised officer (as set in the Scheme of Delegation) or an

Agreement signed by the Borough Solicitor or his/her Authorised Officers, as set out in E.98 - E.111.

- E.79** If a decision is taken to abandon or to recommence a tender process in respect of which a contract notice has been published, each tenderer must be informed of the decision and the reasons for it, as soon as possible after it has been made.

Post Tender Negotiations (Open and Restricted Procedure)

- E.80** Providing clarification of matters in the Invitation to Tender to potential or actual bidders or seeking clarification of a Tender, whether in writing or by way of a meeting, is permitted. However, the discussion with tenderers after submission of a Tender and before the award of a Contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must not be conducted. There are special rules relating to procurements using the Negotiated and Competitive Dialogue Procedures.
- E.81** Negotiations post-award of the Contract are only permissible in exceptional circumstances and should only be commenced after the Borough Treasurer and Head of Assets and the Borough Solicitor have given written approval of the procedure(s) to be adopted in any negotiation. The Borough Treasurer and the Head of Assets or the Borough Solicitor must be involved in the negotiation process and any consequent amendments to the contract terms and conditions must be approved by the Borough Solicitor.
- E.82** Where post-tender negotiation results in a fundamental change in specification (or contract terms) the Contract must not be awarded but re-tendered.

Best Offer

- E.83** As a rule the award of a contract will be made to the organisation offering the lowest price, or in the case of a sale the highest price. The lowest price may not then be the "best offer" and may not merit award of the Contract. In assessing the tender however consideration may be given to quality, service and other determining factors as well as price. Where this is intended then this must be clearly set down in the tender documentation and the evaluation criteria. The Chief Officer or his/her Authorised Officer will record the detail of the contract award where the basis of the award is "best offer" rather than lowest price, which should then be reported to the appropriate Member. Advice should always be sought from the Borough Treasurer and the Head of Assets as to whether the "best offer" approach is appropriate in the circumstances.

Procedure for Notification of Contract Award for EU Contracts

- E.84**
- All participants in a tender procedure must be notified in writing as soon as possible after the successful bidder has been chosen.
- Content of Standstill Notice**
- **The criteria for the award of the contract**
 - **The reason for the decision, including the characteristics and relative advantages of the successful tender**
 - **The score (if any) obtained by the tenderer to whom the notice is addressed and that of the successful tenderer**
 - **Any reason why the unsuccessful tenderer did not meet the technical specifications.**
 - **The name of the successful tenderer:**
 - **A precise statement setting out the date on which the standstill period ends or before which the contract will not be let. If a precise date cannot be given the notice should explain when it is expected to end, including anything which might affect the date.**
- ~~▪ The notice must set out the name of the successful bidder, the contract award criteria, the score received by the recipient of the notice and the score received by the successful bidder~~
- ~~▪ An unsuccessful bidder who makes a written request to the public authority for details of the reasons why it was unsuccessful by midnight on the second working day after despatch of notification that it has been unsuccessful, must be provided with this information within 7 days of the despatch of the original notice. If a request is made outside of this deadline, information must be made available within 15 days of the date of receiving the request. In both cases, the information to be provided is –~~
- ~~a) the reason(s) why the bidder was unsuccessful and;~~
- ~~b) the characteristics and relative advantages of the successful tender including the name of the successful tenderer.~~
- ~~▪ There must be a period of 10 days between the notification to the bidders of the successful bidder and the signature of the contract. This is to allow time for aggrieved parties to challenge the contract award process. This is the "Alcatel" standstill period referred to above~~
- A contract award notice must be published in OJEU within 48 days after the award of the contract
 - Information may be withheld if disclosure would :
 - a) improve law enforcement;
 - b) otherwise be contrary to public interest;
 - c) prejudice the legitimate commercial interests of any economic operator or

d) might prejudice fair competition.

Challenging the award of a Contract

E.85 Any person who was eligible to bid for the contract (even if they did not bid) or actually bid for the contract can challenge the award of the contract on the basis that the Regulations have not been complied with:

- A person proposing to bring proceedings must notify the public authority concerned of that fact;
- The proceedings must be brought promptly, and in any event within 3 months from the date when the grounds for bringing proceedings first arose unless the Court considers there is good reason for extending the period;
- ~~There are two possible remedies available to a party who wishes to challenge the award of a contract. The remedies available for a successful challenge are either the setting aside of the contract aware of the contract or and the award of damages. The contract can only be set aside prior to signature. After that the only remedy available is damages;~~
- Where the contract is set aside it may be necessary to carry out a further procurement process to award the contract. ***Reason new remedies have now been introduced that permit the set aside of a contract after signature if it has been illegally let.***

E.86 Advice as to the extent and detail necessary for debriefing tenderers should be sought from the Borough Treasurer and the Head of Assets.

Keeping Written Records

E.87 The Chief Officer or his/her designated representative must keep proper written records of:

- the different stages of the tendering process including all the quotes and letters you have received, and notes of phone calls and meetings about selecting suppliers;
- the awarding of the contract;
- any information provided to tenderers or contractors; and
- any decisions made, together with the reasons for those decisions.

E.88 Records must be kept for the periods set out in E.91.

Contracts Register

E.89 The Chief Officer or his designated representative must record on the Contracts Register held by the Borough Treasurer and the Head of Assets details of all contracts it has awarded with a total value of £50,000 or above

including contracts above the EU threshold for goods and services.

Changes to Contracts

E.90 Contract Extensions/Variations which take place must be consistent with the term specified in the OJEU notice. Any extension provision must be consistent with the OJEU notice, otherwise it is a breach of the Regulations. Similarly any substantial variation of the contract may amount to a breach of the Regulations, such as a change to include the provision of additional services.

Storing Documents

E.91 All documents relating to a tender award must be kept at least 12 years. Officers must consider confidentiality when storing contracts and other information relating to tenders and agreements.

Requests for Information under the Freedom of Information Act

E.92 Before making any disclosures to third parties on any element of a procurement following a request under the Freedom of Information Act advice should be sought from the Borough Treasurer and the Head of Assets and the Borough Solicitor.

Contracts where the Council is the supplier

E.93 Any Service, ~~including Cheshire Business Services~~ where such exists whose goods, works or services have been subjected to competition and who has now been approved as a nominated supplier, or are included on the Council's electronic marketplace, or where there is a Corporate Contract in place, in accordance with the Procurement Strategy, for those particular goods or services must be the first choice for that particular procurement. ***Reason CBS no longer exists.***

Collaborative and Partnership working

E.94 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must also follow these Finance and Contract Procedure Rules (Section F).

E.95 Collaborative and partnership arrangements include joint working where one partner takes the lead and awards contracts on behalf of the other partners, long term collaborative partnerships, pooled budgets and joint commissioning.

E.96 Further guidance can be obtained from the Borough Treasurer and the Head of Assets and the Borough Solicitor.

E Procurement

- E.97** The use of e-procurement technology does not negate the requirement to comply with all elements of these Finance and Contract Procedure Rules, particularly those relating to competition and value for money.

Written Contracts and Signing of Contracts

- E.98** Every contract must be in writing and advice should be sought from the Borough Solicitor.

The table below sets out which procedures must be followed for different contract values:

Total Value	Form of Contract
Below £10,000	As per Section D – Ordering and paying for work, goods and services (D.19 – D.28).
Above £10,000	As for Below £10,000, plus: The advice of the Borough Solicitor must be sought to agree an appropriate form of contract or written agreement which must be signed by the successful third party and on behalf of the Council by the Borough Solicitor and/or one of his/her authorised signatories, or by two of his/her authorised signatories.
Above £5075,000	Formal contract executed under seal and attested by the Borough Solicitor or his/her authorised signatory.

Content of Contracts

- E.99** The appropriate Chief Officer or his/her authorised officer must ensure that in addition to terms and conditions set out in E.103 every contract details:

- The goods, works and services, materials, matters to be carried out or supplied;
- The price to be paid and/or the amounts and frequency or the method of calculation of contract payments including the treatment of inflation, with a statement of discounts or other deductions including terms of payment and settlement periods;
- The time(s) within which the contract is to be performed;

- E.100** Every contract with an estimated value of £50,75,000 or more must state that if the third party fails to comply with its contractual obligations in whole or in part, the Council may:

- cancel all or part of the contract
- perform the contract
- recover from the firm any additional costs in completing the contract
- take other legal action against the contractor

Contract Terms and Conditions

E.101 A glossary set out in Annex 1 defines the terms used throughout this Section.

E.102 The Rules set out below will apply to all contracts entered into by the Council involving goods, works or services, with the exception of contracts of employment and contracts relating to the purchase or disposal of land and property. They will also apply to contracts entered into as where the Council acts as agent for another body, subject to the specific terms of the agency agreement.

E.103 Advice should be sought from the Borough Solicitor, prior to taking action to secure quotations and tenders referred to in the following paragraphs, on the specific Conditions of Contract, in addition to any standard terms and conditions, appropriate in each individual case. They may include some or all of the following:

- Form of Contract
- Authorised Officer
- Modifications
- Bonds and Guarantees
- Contractors Obligations
- Contractors Employees
- Control and Supervision of Staff
- Complaints
- Confidentiality
- Health and Safety
- Agency
- Standards
- Observance of Statutory Requirements
- Gratuities and Inducements
- Indemnities and Insurance
- Use of Authority's Premises and Facilities
- Security
- Equipment and Materials
- Freedom of Information and Data Protection
- Royalties and Patent Rights
- Certificates and Payments
- VAT
- Equality and Diversity
- Fluctuations
- Review of Prices
- Assignment and Sub-Contracting

- Emergencies
- Default
- Termination
- Recovery of Sums Due (set off)
- Notices
- Waiver
- Special Conditions

All contracts must also include appropriate clauses referring to:

- Prevention of Corruption
- Assignment or sub-contracting without the Council's agreement
- Quality Standards
- Indemnities and Insurance
- Compliance with Council policies and procedures where appropriate (see E.105 to E.111)
- Where possible application of TUPE or a successor provision could apply then the Personnel and Pensions Services must be consulted.
- **Transparency**
- **Anti Bribery**

E.104 Unless the Borough Solicitor and the Chief Officer or his/**her** designated representative considers it to be unnecessary or impractical, every contract must provide that:

- Where under any contract, one or more sums of money are to be received by the Council, the contractor responsible for the payment of such sum or sums must pay interest at the rate stated in the contract from the date when payment is due until the date when payment is received;
- In the performance of the contract, the contractor must not act incompatibly with the rights contained within the European Convention on Human Rights or the Disability Discrimination Act; **or the Bribery Act 2010**
- The contractor must provide any information reasonably requested relating to the performance of the contract to ensure that the Council meets its statutory obligations including under: Section 71 of the Race Relations Act 1976; Race Relations Amendment Act 2000; Best Value Legislation; Transfer of Undertakings and Protection of Employment Regulations; Code of Practice on Workforce Matters in Local Authority Service Contracts;
- In the performance of the contract, the Contractor must comply with the requirements of the Health and Safety at Work Act 1974, and of any other relevant Acts, Regulations, Orders or Rules of Law pertaining to health and safety;
- without prejudice, and subject to any other condition of the contract, no sub-letting by the contractor will relieve the contractor of its liability to the Council for the proper performance of the

contract;

- the contractor must not sub-contract the contract or any part of the contract, without the prior written consent of the appropriate Chief Officer or his/~~her~~ Authorised Officer who will take advice from the Borough Solicitor where appropriate.

E.105 The contractor is responsible to the Council for the proper performance and observance of all sub-contractors of all the Contractor's obligations under the contract as if references in the contract to "the contractor" were references to the sub-contractors. Failure or neglect by a sub-contractor is deemed to be failure or neglect by the contractor;

E.106 The contractor is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any part of its contract, without the prior written consent of the appropriate Chief Officer or his/~~her~~ ~~A~~authorised ~~o~~Officer (following consultation with the Borough Solicitor and the Borough Treasurer and Head of Assets);

E.107 All goods, works and services must comply with any appropriate European Union Specification or Code of Practice or British Standard Specification or British Standard Code of Practice or European Union equivalents in force at the date of tender/quotation;

E.108 The Council is entitled to cancel the contract and to recover from the contractor the amount of any direct loss resulting from such cancellation, if the contractor or its employees or agents (with or without its knowledge):

- does anything improper to influence the Council to give the contractor any contract;
- commits an offence under the **Bribery Act 2010** ~~Prevention of Corruption Acts 1889 to 1916~~ or under Section 117(2) of the Local Government Act 1972; ***Reason the Bribery Act 2010 came into force on 1st July and repealed previous legislation on corruption to reflect modern concerns.***

E.109 Whenever under the contract any sum of money is recoverable from or payable by the contractor, this sum may be deducted from any sum due or which at any time may become due to the contractor under this or any other contract with the Council. Exercise by the Council of its rights under this clause will be without prejudice to any other rights or remedies available to the Council under the contract.

E.110 The contractor must provide evidence of adequate insurance to cover both Public Liability and Employers' Liability. Indemnity Levels to reflect the risk to the Council which typically will be £10m for both public and employer liability policies. In some cases where the contract is of low risk this may be reduced to £5 million but advice should be sought from the

Insurance team on indemnity levels before the issue of Invitations to Tender have been despatched.

- E.111** Any standard terms and conditions of contract submitted by contractors must not be accepted without advice from the Borough Solicitor. Proposed payment arrangements under a contract must be discussed with and agreed by the Borough Treasurer and Head of Assets in advance of any contract being entered into.

Parent Company Guarantees and Performance Bonds

- E.112** Advice of the Borough Treasurer and Head of Assets whether a parent company guarantee or performance bond is needed in cases where;
- there is doubt about the suppliers financial standing
 - the contract poses a high risk to the Council

Performance Monitoring

- E.113** During the life of the contract, the ~~Authorised~~**authorised Officer**~~officer~~ should monitor the contract in respect of the following:
- Performance;
 - Compliance with specification and contract;
 - Cost;
 - Any Best Value requirements;
 - User satisfaction; and
 - Risk management
- E.114** Where the contract is to be re-let this information should be available early enough to inform the approach to re-letting the subsequent contract.

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 14th July 2011
Report of: Borough Solicitor
Subject/Title: Overview and Scrutiny Committees – Terms of Reference

1.0 Purpose of Report

1.1 To make a recommendation to Council to adopt new Terms of Reference for the new structure of six Overview and Scrutiny Committees.

2.0 Recommendations

2.1 That

(1) the proposed terms of reference for the six Overview and Scrutiny Committees as set out in the Appendix be recommended to Council for approval and part 3 of the Council's Constitution in relation to Scrutiny Committees be amended accordingly; and

(2) the responsibility for undertaking pre-decision scrutiny work as expressed in paragraph 10.5 below be incorporated into the General Responsibilities of all Scrutiny Committees as contained in part 3 of the Council's Constitution and the Borough Solicitor be authorised to amend the Constitution accordingly.

3.0 Reasons for Recommendations

3.1 Clear terms of reference enable committees to prepare work effective programmes.

4.0 Wards Affected

4.1 N/A

5.0 Local Ward Members

5.1 N/A

6.0 Policy Implications (including Climate Change/Health)

6.1 N/A

7.0 Financial Implications (Authorised by the Borough Treasurer)

7.1 NA

8.0 Legal Implications

8.1 None

9.0 Risk Assessment

9.1 There are no identifiable risks.

10. Background and Options

10.1 At its Annual Meeting on 18th May 2011, Council increased the number of Overview and Scrutiny Committees from 5 to 6 by dividing the functions of the former Health and Adult Social Care Committee and thereby creating two new committees: Health and Wellbeing Overview and Scrutiny Committee and Adult Social Care Overview and Scrutiny Committee.

10.2 The two new Committees considered draft terms of reference in June and the Scrutiny Chairmen's group met with the Leader of the Council on 14th June 2011 to review the terms of reference of all 6 committees in light of the changes made by the Leader in respect of the portfolio responsibilities of each of the Cabinet Members.

10.3 The Scrutiny Chairmen's Group's aspiration was to ensure that each portfolio was aligned to one Overview and Scrutiny Committee. This was achieved in all cases apart from two specific matters. The first relates to the operational delivery of leisure and cultural services which falls under the Environment Portfolio Holder. This would under normal circumstances be in the terms of reference of the Environment and Prosperity Scrutiny Committee but the Chairmen's group wished to maintain links between the operational and strategic delivery of Leisure and cultural strategy, the latter of which sits in the Health and Wellbeing Portfolio. The group considered that these two matters should be dealt with by the Health and Wellbeing Committee.

10.4 Secondly, Development Management and Building Control, which both sit in the Safer and Stronger Portfolio, were considered by the group to have strong links with matters contained in the terms of reference of the Environment and Prosperity Committee, and these two matters now appear in the Environment and Prosperity Committee's terms of reference.

10.5 The Appendix contains proposed new terms of reference for all six committees which reflect the discussions held with the Leader of the Council. The Appendix also contains an extract from the Constitution setting out the general responsibilities of all Scrutiny Committees. The Scrutiny Chairmen's Group recently discussed the need for the general responsibilities set out in Section 3 of the Constitution to be amended to

make clear that Scrutiny Committees have the right to undertake pre-decision scrutiny work as part of their work programme.

- 10.6 Members will be aware that following the Government's decision to 'pause' the passage of the Health Bill through Parliament, some significant changes to the makeup of the proposed Health and Wellbeing boards have emerged, which suggests that in 2013 they will become formal committees of upper tier local authorities. If this proposal is implemented, it will have an impact on the responsibilities of the Health and Wellbeing Overview and Scrutiny Committee and a further review of that Committee's terms of reference would be required to address issues that emerge in the new Act.

11.0 Access to Information

Background Documents: None

For further information:

Officer: Mark Nedderman Senior Scrutiny Officer

Tel No: 01270 686459

Email: mark.nedderman@cheshire.gov.uk

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Overview and Scrutiny Committees – Terms of Reference

Six Scrutiny Committees have been appointed which, between them, relate to the Cabinet and specifically as appropriate to the ten individual Portfolios:

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

1 General Responsibilities of all Scrutiny Committees

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

The Committees each consist of 12 Members (plus appropriate co-option).

The Scrutiny Committees may specifically:

- discharge the Council's functions under Section 21 of the Local Government Act 2000 (Scrutiny Committees);
- 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 Sustainable Community Plan priorities and outcomes;
- 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;
- ensure that officers discharge their responsibilities effectively and efficiently in relation to the scrutiny function;
- scrutinise decisions of the Cabinet, and offer advice or make recommendations on the matter under scrutiny once the Committee have considered the issues;
- 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;

- if requested, offer any views or advice to the Cabinet in relation to any matter referred to the Committee for consideration;
- 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;
- in performing its role, the Committee may consult and involve the local community and other local public, private and voluntary bodies or organisations;
- 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;
- scrutinise decisions after implementation to examine their effect and outcomes;
- review and make 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;
- 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;
- monitor the level and nature of Ombudsman complaints and advise the Cabinet, Committees, Sub-Committees and officers on remedial action as appropriate;
- ensure in conjunction with the Standards and Constitution Committees that the Council has in place appropriate mechanisms to protect organisational Integrity including the development of appropriate policies and guidance;
- deal with any overview and scrutiny matter which is the subject of a call-in, a Councillor Call for Action or a Local Petition (a Councillor Call for Action Protocol is included in Part 5 of this Constitution);
- provide a regular programme of training and development for all Members and Co-opted Members involved in the work of the Committee.

2 Specific Responsibilities

2.1 Health and Wellbeing

The Health and Wellbeing Scrutiny Committee will fulfil the functions of an Overview and Scrutiny Committee as they relate to performance management, Corporate Resources and Strategy and in particular (but not restricted to):

1. Health Scrutiny duties falling on the Authority by virtue of the relevant Health acts and subsequent relevant legislation and Government Guidance;
2. liaison with NHS Trusts and GP Consortia on any matter relating to the planning, provision and operation of Health services in Cheshire East, including commenting on any performance or quality documents.
3. responding to any formal consultations undertaken by relevant NHS Trusts and GP Consortia or relevant health providers or commissioners on any substantial development or variation in service; and any formal consultations undertaken by social care providers and commissioners and on any substantial development or variation in service that appears likely to affect the health and wellbeing of the citizens of Cheshire East.
4. participation with other relevant local authorities in joint scrutiny arrangements of NHS Trusts providing cross-border services to Cheshire East residents, in particular the Cheshire and Wirral Partnership, NHS Foundation Trust;
5. liaison with the Local Involvement Network (LINK) for Cheshire East, commissioning work and receiving reports and recommendations as appropriate;
6. deal with any matter referred by the Department of Health, the Local Involvement Network or by the Council;
- 7 scrutinise, the effective integration of the NHS and the work of the Council and its partners in delivering improved public health and public health protection
8. analyse and comment on the progress towards achieving the outcomes relevant to health and wellbeing whether specified locally, regionally or nationally

And the following specific portfolio holder responsibilities:

- Leisure and cultural strategy
- Mental health
- Disability
- Ensure Director of Public Health influences strategy
- Develop integrated services with health partners

- Support improved health and wellbeing
- Support health and wellbeing board
- Ensure delivery of health and wellbeing strategy
- Monitor impacts and outcomes of H and W strategy
- Joint Strategic Needs Assessment
- Ensure effective working of commissioners
- Support transition of public health within the council
- Help shape Health and Social Care local structure
- Ensure transition of LINKs to Healthwatch
- Public health promotion
- Liaise with NHS trusts
- Health promotion
- Operational delivery of leisure and cultural services

2.2 Adult Social Care Committee

The Adult Social Care Scrutiny Committee will fulfil the functions of an Overview and Scrutiny Committee as they relate to performance management, Corporate Resources and Strategy and in particular (but not restricted to): the operation of the Council's Adult Social Care functions, the Council's progress towards the objectives of 'Think Local, Act Personal', which is the overarching policy for social care nationally, to respond to reports from the care Quality commission in its regulatory function and to any formal consultations undertaken by social care providers and commissioners and on any substantial development or variation in service;

And the following specific portfolio holder responsibilities:

- Re-ablement
- Support to Informal Carers
- Community Equipment
- Occupational Therapy
- Assistive Technology
- Mobile Meals
- Respite and Short Breaks
- Family Based Care
- Domiciliary Care
- Residential Care
- Nursing Home Care
- Extracare housing
- Supported Employment
- Sensory Impairment Services
- Safeguarding Adults
- HIV/Aids
- Drugs and Alcohol Action team (DAAT) Services
- Domestic Violence Service
- Equality in service access and delivery
- Adult Social Care
- Welfare Rights
- Community Legal Service

- influence Health and Wellbeing Strategy
- Support connected service delivery for families.

2.3 Sustainable Communities Committee

The Sustainable Communities Scrutiny Committee will fulfil the functions of an Overview and Scrutiny Committee as they relate to performance management, Corporate Resources and Strategy and in particular (but not restricted to):

Community Strategies, and Crime and Disorder matters as provided by Section 19 of the Police and Justice Act 2006

And the following specific portfolio holder responsibilities:

- Civil protection/emergency planning
- 3rd sector and community delivery
- Youth Offending Team (liaise with Children and Families)
- Crime reduction/Crime and Disorder Reduction Partnership/police and emergency services liaison
- Anti Social Behaviour/drug abuse/domestic violence (liaise with Adult Social care)
- Community Safety Wardens
- CCTV
- Trading Standards
- Registration Services
- Licensing
- Food Safety
- Reviewing fares and licensing
- Environmental health
- Air pollution control and monitoring
- Environment enforcement
- Contaminated land
- Pest/vermin control
- Dog wardens
- Local Transport Plan
- Health and Safety enforcement
- Monitoring all enforcement activity
- Local Area Partnerships/Neighbourhood working
- Neighbourhood and community cohesion
- Performance management and transformation
- Customer access/services
- Risk management
- Information, intelligence and consultation
- Partnerships for Action in Cheshire East (PACE)
- Community strategy and planning
- Equality and diversity
- Voluntary, community and faith sector relationship/development
- Corporate and business planning
- Local Development Framework

- Twinning
- Communications and marketing
- ICT
- Revenues/exchequer functions including benefits
- Local Transport Plan
- Policy advice and developments
- Customer complaints and responses

2.4 Children and Families

The Children and Families Scrutiny Committee will fulfil the functions of an Overview and Scrutiny Committee as they relate to performance management, Corporate Resources and Strategy and in particular (but not restricted to): Education, Children's Social Care, Early Years Provision, Looked After Children and Youth Services.

And the following specific portfolio holder responsibilities:

- Children Act 2004
- Early Years and Child Care
- Children's Centres
- Education
- Children's social care and wellbeing
- Youth Support Services including Connexions and Youth Offending Service
- Services to Children & Young People with disabilities 0-25
- Lifelong Learning
- Family Support Services
- Strategy for responding to Health Inequalities
- Cared for Children and Care Leavers
- Children's Trust – Children & Young People's Plan
- Local Safeguarding Children's Board
- Children's Safeguarding Unit
- Child Poverty Needs Assessment
- Influence and inform the Health and Wellbeing Strategy and support implementation of operational services.
- Think Family approach

2.5 Environment and Prosperity

The Environment and Prosperity Scrutiny Committee will fulfil the functions of an Overview and Scrutiny Committee as they relate to performance management, Corporate Resources and Strategy and in particular (but not restricted to): Environmental matters, Highways, Strategic management of Assets, Economic Development, Housing and the Visitor Economy

And the following specific portfolio holder responsibilities:

- Economic development
- Employment initiatives

- Credit union and co-ops
- Industrial and commercial activities
- Public/private housing strategy and provision
- Homelessness
- Tourism and visitor economy
- Events programme coordination
- Tatton Park
- Arts
- Assets
- Strategic Highways and transport
- Highways operational management
- Waste management
- Development management
- Building control
- Strategic highways and transport
- Highways operational management
- Carbon reduction
- Waste management
- Environmental cleansing and street cleaning
- Street scene
- Markets
- Cremation and burial services

2.6 Corporate

The Corporate Scrutiny Committee will fulfil the functions of an Overview and Scrutiny Committee as they relate to performance management, Corporate Resources and Strategy and in particular (but not restricted to):
The Annual Budget, Civic matters, Audit, Human Resources and Procurement,

And the following specific portfolio holder responsibilities:

- Member training
- Finance service
- Annual budget
- Capital strategy
- Income and funding
- Business management
- Audit
- Civic matters
- Finance
- Financial strategy
- Capital programme
- Reserves strategy
- Treasure management
- Insurance
- Democratic services
- Electoral services
- Procurement Forward plan

- Human Resources Strategy
- Contracts register
- Procurement including participation in regional procurement hubs
- Transactional HR
- Liaison with employers, organisations and unions
- Corporate contracts
- Legal services
- Employee training and development
- Occupational health
- Corporate Health and Safety
- PFI projects
- Organisational development
- Procurement Strategy
- Shared services
- Pensions

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 14 July 2011
Report of: Democratic and Registration Services and Manager
Subject/Title: Director of Peaks and Plains Housing Trust

1.0 Report Summary

The Chairman is of the opinion that this matter constitutes urgent business and may be dealt with at this meeting in accordance with Committee Procedure Rule 37.2. The reason for urgency is as follows:

“A decision is required to be made as soon as possible, and cannot wait until the next meeting of the Civic Sub Committee, on whether the Mayor should continue as a Director of Peaks and Plains Housing Trust. The Constitution Committee as parent Committee of the Civic Sub Committee is able to determine the matter.”

2.0 Recommendations

That the Committee endorses that the Mayor continue to serve as a Director of Peaks and Plains Housing Trust.

3.0 Financial Implications

3.1 No issues can be identified as arising from the proposals contained in this report.

4.0 Legal Implications

4.1 No issues can be identified as arising from the proposals contained in this report.

5.0 Risk Management

5.1 No issues can be identified as arising from the proposals contained in this report.

6.0 Background

6.1 Under the Mayoral Code of Practice the Mayor should not be appointed as Chairman or Vice-Chairman of any Committee or Sub-Committee of the Council. He may accept ex officio positions with an outside organisation or body where his membership stems from his position as Mayor for the time being. He may attend the annual meeting or other special meetings of an outside organisation or body and may accept

the position of patron or president, but should not become actively involved during his term of office

- 6.2 Councillor Roger West has served as a Director of Cheshire Peaks and Plains Housing Trust since vesting day. As a Director both he and the Trust have invested considerable time, effort and resources in ensuring that he has the necessary skills and capabilities to perform the role of Director. However, under the Code of Practice the Mayor should consider resigning as a Director.
- 6.3 The Cabinet at its meeting held on 6th June 2011 made a number of appointments to Category 1 organisations including the Board of the Peaks and Plains Housing Trust. In view of the time and effort that has been invested by both the Mayor and the Trust the Cabinet resolved that the Civic Sub Committee be asked to consider the Cabinet's recommendation and endorse the Mayor's appointment as a Director of Peaks and Plains Housing Trust. In view of the need to resolve this matter at the earliest opportunity the Constitution Committee is asked to determine this matter.

7.0 Access to Information

- 71 The background papers relating to this report can be inspected by contacting the report writer:

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